

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

September 18, 2014

9:30 A.M. to 11:10 A.M.

October 30, 2014

## MEMBERS PRESENT:

Lt. Dan Albano, Esq. - Police Department  
Suzanne Beddoe, Esq. - Chair, OATH  
Robert Carver, Esq. - Citizen Member  
Hon. Ernest J. Cavallo - Citizen Member  
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  
**Russell Pecunies, Esq. - Dept. of Environmental Protection**  
Douglas Swann - Citizen Member

## ALSO PRESENT:

**Leslie Bailey - Law School Fellow, OATH**  
Denis Brogan - Assistant General Counsel, OATH  
**Kelly Corso, Esq. - Asst. Director of Adjudications, ECB**  
Arisleyda Fernandez - Facilities Assistant, OATH/ECB  
Fana Garrick - Public Affairs Assistant, OATH/ECB  
**Shamonda Graham - Department of Transportation**  
David Goldin, Esq. - Administrative Justice Coordinator  
**Diana Haines - Assistant General Counsel, OATH**  
Mark H. Leeds, Esq. - Special Counsel, ECB  
Jim Macron, Esq. - Counsel to the Board, ECB  
Maria Marchiano - Senior Counsel/Assistant Commissioner,  
OATH  
Denise Ortega - IT Support, OATH  
Teresita O'Neill - Assistant Director of Public Data  
Peter Schulman, Esq. - Deputy Supervising Attorney,  
Appeals, ECB  
Marisa Senigo - Assistant Commissioner for Public Affairs  
& Communications  
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 9:30  
3 A.M.)

4                           MS. SUZANNE BEDDOE, ESQ., CHAIRPERSON,  
5 COMMISSIONER & CHIEF ADMINISTRATIVE LAW JUDGE,  
6 OATH: Okay. So good morning, everyone.

7                           LT. DAN ALBANO, ESQ., POLICE DEPARTMENT:  
8 Good morning.

9                           MS. BEDDOE: As all of the Board members  
10 know and I think most of the audience members  
11 know, this will be my last Board meeting and my  
12 last round as Chair of the Board and as the  
13 Commissioner both. But it has been a wonderful  
14 tenure and working with all of you has been a  
15 tremendous joy in my professional life. And I  
16 certainly; too bad Tom isn't here because -- Tom  
17 Shpetner, because he talked me into the Board  
18 meeting today. I said: Well, you know; but he  
19 said: No, no, no. You should do it. So I said:  
20 You know what? You're right. So without further  
21 ado, let us get started with today's agenda.

22                           MR. ROBERT CARVER, ESQ., CITIZEN MEMBER:  
23 Wait, wait. So, I think we need a round of  
24 applause.

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2                   MS. AMY SLIFKA, ESQ., DEPUTY  
3           COMMISSIONER/EXECUTIVE DIRECTOR, ECB:   Yes,  
4           absolutely.

5                   MS. BEDDOE:   Thank you. Thank you. I, I  
6           don't, you know -- I don't ever overlook the fact  
7           that it has been this sort of collective effort;  
8           not only with the Board's input with the issuing  
9           agencies, the cooperative sort of endeavor we've  
10          had that has really changed I think this  
11          organization and changed what government can be.  
12          Which is really what, you know, I've been all  
13          about. It's, it's when people walk in and they  
14          expect government, that they get something really  
15          spectacular. And that kind of excellence is what,  
16          you know, my team has brought to the table, what  
17          this Board has brought to the table. And so that  
18          applause is really for everyone here. So thank  
19          you so much.

20                   So after the meeting obviously I just  
21          want to exchange contact information and let you  
22          know where I'll be, what I'll be doing. But I  
23          know you've been waiting here for a while. So  
24          let's get started. The -- is there a motion to

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2           adopt the minutes from our last meeting of  
3           September 18th? Alright. Any abstentions? No.  
4           Okay. So the first item on our agenda today is  
5           our quarterly presentation that Amy Slifka is  
6           going to present.

7                       MS. SLIFKA: If I can figure out how to  
8           work this. I'm getting there. Good, I did it.  
9           Okay, good morning everyone. For those of you who  
10          don't know, the quarterly review is a report that  
11          sets forth the number of violations received by  
12          ECB, broken down by issuing agency; quarterly  
13          comparison of the violations received; violations  
14          heard and decisions rendered; a look at the  
15          elapsed time from hearing to decision date; a  
16          look at the decision results for each of the  
17          issuing agencies; and lastly, a look at the most  
18          commonly issued violations by agency.

19                       So let's begin. We're looking at the  
20          third quarter of 2014. I'll just organized here.  
21          Okay. So in the third quarter, comparing the  
22          second quarter to the third quarter, there has  
23          been for DSNY, there's been a decrease of four  
24          percent. For DOB, a 36 percent increase. You're

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2           killing us, Renaldo. So for DOT, a 13 percent  
3           increase. FDNY, a 22 percent increase. DEP, a 25  
4           percent increase. And Department of Health, a 16  
5           percent increase. For the Department of Parks and  
6           Recreation, an eight percent decrease. NYPD, it's  
7           a four percent decrease. DoITT, a 98 percent  
8           increase from 192 to 381. BIC is a 12 percent  
9           increase. And Landmarks is a 52 percent increase  
10          from 31 to 47.

11                        So the violations received, hold on  
12          here. Okay. So comparing the third quarter of  
13          2013 with the third quarter of 2014, you see for  
14          DSNY there's been a 20 percent increase. For  
15          FDNY, a 48 percent increase. For DOB, a 27  
16          percent increase. For DOT, a two percent  
17          decrease. For Health, a five percent decrease.  
18          For NYPD, a five percent increase. For DEP, a  
19          nine percent increase. For Department of Parks, a  
20          38 percent increase. For DoITT, a 115 percent  
21          increase. And for Landmarks, a 161 percent  
22          increase.

23                        Okay. Comparing the total violations  
24          heard third quarter 2013 with 2014, you have an

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2           eight percent decrease for Sanitation. A one  
3           percent increase for DOB. For FDNY, it's about  
4           even. For Health, it's a 21 percent decrease. And  
5           for DEP, it's 11 percent increase. For NYPD, a 25  
6           percent increase. For DOT, a 38 percent decrease.  
7           For DoITT, a 34 percent decrease. For Parks and  
8           Recreation, a 36 percent decrease. For Landmarks,  
9           a 21 percent decrease. And for BIC, a 65 percent  
10          decrease.

11                 Okay. And then we have decisions  
12          rendered third quarter, comparing third quarter  
13          of 2013 with third quarter of 2014. So we have a  
14          14 percent increase for Sanitation. For DOB, a 12  
15          percent increase. For FDNY, an eight percent  
16          increase. For Health, a 24 percent decrease. For  
17          NYPD, a 55 percent increase. For DEP, a 13  
18          percent increase. DOT, a 21 percent decrease.  
19          Parks, a six percent increase. DoITT, an 11  
20          percent decrease. And Landmarks, a 60 percent  
21          decrease. And BIC, a 55 percent decrease.

22                 So, and then for hearing to decision  
23          date, you can see that we're getting 84 percent  
24          of our cases are decided in less than ten days;

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2           and 14 percent between 11 to 20 days. And again I  
3           just want to thank Sue Beddoe because she really  
4           had an impact and it was really her influence  
5           that caused this. So thank you.

6                     MS. BEDDOE: Right back at you.

7                     MS. SLIFKA: So, okay. So, decisions  
8           rendered, you could see that the total in  
9           violation is 52.2 percent and the totally  
10          dismissed is 46.7 in 2013. Now in 2014, it's gone  
11          -- in violation has gone up a bit to 59.8 percent  
12          and dismissal has gone down to 39.3 percent. So  
13          --

14                    LT. ALBANO: Going in the right  
15          direction.

16                    MS. SLIFKA: Well, I think also, if  
17          you're questioning why, I think more of the  
18          agencies happen to sending representatives to  
19          hearings. NYPD is sending representatives. DEP is  
20          sending more reps for different types of cases  
21          and such. So --

22                    MR. HYLTON: Amy, Renaldo from DOB.  
23          Could, could some of that be attributed to just  
24          better written violations?

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2                   MS. SLIFKA: That of course too. But, so  
3 all of those things come into play. But yes,  
4 definitely. So -- okay. So for DSNY, you have 43  
5 percent in violation; 57 percent dismissed. For  
6 DOB, you have 78 percent in violation; 22 percent  
7 dismissed. For DOT, it's 59 percent in violation;  
8 41 percent dismissed. FDNY, 89 percent in  
9 violation; nine percent dismissed. DEP, 76  
10 percent in violation; 14 percent dismissed. And  
11 NYPD, 49 percent in violation; 51 percent  
12 dismissed. So, it's getting better. So as far as  
13 you're concerned, Dan. So --

14                   LT. ALBANO: Compared to past years,  
15 it's a lot better, right?

16                   MS. SLIFKA: Exact- well, yes. And I  
17 think the fact that you're sending  
18 representatives at the hearings could have- be  
19 having an impact.

20                   LT. ALBANO: I, I, I'd love to have you  
21 tell you that to the Chief, who doesn't want me  
22 to do that.

23                   MS. SLIFKA: Well, it's always two  
24 sides. Then you have both parties represented,

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2           equally represented.

3                   LT. ALBANO:   That's great.

4                   MS. SLIFKA:   DOH, you have 53 percent in  
5           violation; 47 percent dismissed. Parks, 59  
6           percent in violation; 41 percent dismissed.  
7           DoITT, 64 percent in violation; 36 percent  
8           dismissed. And Landmarks, 71 percent in  
9           violation; 29 percent dismissed. Okay.

10                   The most commonly issued violations. For  
11           DOT, it's failure to comply with the terms and  
12           conditions of a permit; failure to permanently  
13           restore the cut within the required time; and  
14           opening on the street without a permit. NYPD,  
15           it's vending in a bus stop or within ten-feet of  
16           a subway or a crosswalk; failure to display your  
17           license; or vending on a sidewalk less than 12-  
18           feet from the curb. DOB, unlawful acts --

19                   LT. ALBANO:   But Amy, is that -- that's  
20           included in the vicarious liability ones are in  
21           there too, right?

22                   MS. SLIFKA:   I'm not sure what you mean  
23           by that --

24                   LT. ALBANO:   Yeah, we were holding the

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2           permit holder for having an --

3                   MS. SLIFKA:   Yes, yes. It's all, yes,  
4                   right.

5                   LT. ALBANO:   Okay.

6                   MS. SLIFKA:   Yes. For DOB, it's unlawful  
7                   acts; failure to comply with the Commissioner's  
8                   order; failure to maintain building in code  
9                   compliant manner; failure to comply with the  
10                  Commissioner's order to file a certificate of  
11                  correction. DSNY, it's dirty sidewalk; failure to  
12                  clean 18-inches into the street; and failure to  
13                  store your receptacles. For DEP, its failure to  
14                  submit an annual test flow for backflow  
15                  preventer; failure to install backflow preventer;  
16                  and operating without renewing an operating  
17                  certificate. For FDNY, it's inspection and  
18                  testing; it's permits and it's unnecessary  
19                  alarms.

20                           For Health, it's failure to eliminate  
21                           rodent infestation for active rodent signs or  
22                           eliminate conditions conducive to rodent or  
23                           unpermitted mobile booth cart. For Landmarks,  
24                           it's basically not having a permit. They're

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2           basically the same thing, those three, the  
3           different charges. For DoITT, its failure to  
4           provide working public pay telephones; failure to  
5           maintain your public pay telephone and your sign  
6           if missing. And for Parks, it's unauthorized  
7           consumption, unauthorized vending and failure to  
8           comply with the directions of the signs. And for  
9           BIC, it's idling a motor vehicle; failure to  
10          register your wholesale business; and failure to  
11          register per the Section 210 days.

12                    Okay. Any questions? Okay. This is your  
13          appeals number, third quarter: DSNY, 339. DOB,  
14          298. FDNY, 160. Health, 83. DOT, 59. DEP, 43.  
15          Parks, 33. NYPD, 20. And DoITT, 2. Okay. And  
16          percentage of defaults: Largely DSNY, 53,977 to  
17          67 percent of your issuance. Department of  
18          Transportation, 7,184. And Health, 5,543. And  
19          that's it. Okay.

20                   MR. HYLTON: Very good.

21                   MS. SLIFKA: Thank you.

22                   MS. BEDDOE: Any questions for Amy?

23                   LT. ALBANO: No.

24                   MS. BEDDOE: Okay. Alright, next up on

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2           our agenda is Shamonda Graham from DOT, to  
3           discuss modifications to the DOT penalty  
4           schedule.

5                       MS. SHAMONDA GRAHAM, DEPARTMENT OF  
6           TRANSPORTATION: Good morning ladies and  
7           gentlemen of the Board. My name is Shamonda  
8           Graham and I'm here on behalf of the DOT's  
9           Commissioner Maniscalco. The DOT is requesting  
10          that the Board review and approve modifications  
11          to our penalty schedule. We're asking that the  
12          fine associated with infraction for inadequately  
13          protected work zones be increased from 400 to  
14          \$1,200. This fine and infraction code was created  
15          back in 1995. It has not been increased nor has  
16          anything changed since then. As such, the DOT  
17          believes that we should increase it to match  
18          other infractions similar in nature.

19                       I submit to you and I ask that you pass  
20          out random photos of what we believe to be  
21          inadequately protected work zones. As you can see  
22          once you receive the photos, you can pass one to  
23          each person -- it doesn't matter. You will find  
24          that these work zones are very unsafe. You will

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2           find open excavations, whereby the public, any  
3           member of the public could, could be exposed to  
4           danger. You will find inadequately protected  
5           equipment, where equipment hasn't been cordoned  
6           off so that members of the public do not enter  
7           the work zone.

8                         The point being, the Department believes  
9           that if you increase fines associated with  
10          egregious and unsafe violations, we will likely  
11          deter these acts. The enabling legislation for  
12          this section of law is Administrative Code  
13          Section 19-109A, per Administrative Code Section  
14          19-150. The maximum fine amount for this  
15          infraction is \$5,000. So as you can see, a \$400  
16          penalty in relation to a \$5,000 maximum is  
17          relatively low. Therefore, the Department is not  
18          only asking that you increase the penalty  
19          associated with this infraction; we're likewise  
20          requesting that the default amount would also  
21          change. The current default is \$1,200. And we'd  
22          like to adjust it to \$3,600. We believe that if  
23          you approve our request, it will enable the  
24          Department to effectively and adequately maintain

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2           public safety by preventing breaches.

3                   MS. BEDDOE:   Okay.

4                   MR. HYLTON:   Just a quick question by  
5           the --

6                   MS. BEDDOE:   Okay -- Renaldo.

7                   MR. HYLTON:   Renaldo from DOB. How do  
8           you come up with your default --

9                   MS. GRAHAM:   The DOT has routinely set  
10          defaults three times.

11                   MR. HYLTON:   Three times.

12                   MS. GRAHAM:   The original penalty  
13          amount.

14                   MR. HYLTON:   Thank you.

15                   MS. BEDDOE:   Elizabeth?

16                   MS. ELIZABETH KNAUER, ESQ., CITIZEN  
17          MEMBER:   Elizabeth Knauer, Citizen Member. Are  
18          there -- are there sort of rules governing what  
19          types of protections are needed for what type of  
20          work?

21                   MS. GRAHAM:   Absolutely.

22                   MS. KNAUER:   Okay.

23                   MS. GRAHAM:   Under Section 19-109A of  
24          the Administrative Code, it basically says that

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2           all work zones must have adequate protection,  
3           barriers, lights, shoring, that type of thing. It  
4           also states that the Commissioner has the right  
5           to promulgate rules within our highway rules;  
6           that basically outline specific items that have  
7           to be -- that have to be at these work locations,  
8           namely, MUTCD approved traffic safety devices in  
9           cordoning off what- temporary traffic control  
10          devices.

11                        So while there are no specific rules in  
12           relation to specific situations; because again,  
13           inspectors can come across virtually anything  
14           when they're in the field. So we do have to allow  
15           for a certain amount of discretion for the  
16           inspector to determine that. However, once a  
17           violation is written and it's put before an  
18           Administrative Law Judge, we believe having it in  
19           front of that neutral body will give us the  
20           leverage we need to, to basically say whether or  
21           not the inspector used his discretion properly or  
22           it was incorrect.

23                        MR. HYLTON:   So just a follow up on that  
24           -- Renaldo again.

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2                   MS. GRAHAM:   Mm-hmm.

3                   MR. HYLTON:   So the discretion is- lies  
4                   mainly with the inspector and not with; how about  
5                   the -- how about the person doing the work, the  
6                   contractor? What- how does their discretion as to  
7                   what is adequate if there's no rules?

8                   MS. GRAHAM:   Well, again, the rule  
9                   itself does say that every work zone must be  
10                   adequately protected with barricades, with parti-  
11                   and again the MUTCD outlines and that's where it  
12                   gets very specific.

13                   MR. HYLTON:   Okay.

14                   MS. GRAHAM:   The MUTCD outlines what  
15                   type of barricade, what type of cone, what height  
16                   of cone, what color. It outlines all of those  
17                   things. And what the Department has done is  
18                   created an overall rule that says any time you  
19                   use these type of devices it must be in  
20                   accordance with MUTCD.

21                   MR. HYLTON:   And MUTCD is --

22                   MS. GRAHAM:   Oh, the manual -- wait, let  
23                   me make sure I get it correctly. The Manual on  
24                   Uniform Traffic Control Devices and it's a

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2           federal -- it's a federal mandate.

3                   MR. HYLTON:   Okay, alright.

4                   MS. GRAHAM:   So again, the discretion is  
5           whether or not the inspector sees adequate  
6           protection. The use and the type of devices used  
7           is based off of the MUTCD.

8                   MS. BEDDOE:   Okay. Any other questions  
9           for Ms. Graham? Okay. Well, with that, is there a  
10          motion to approve? Anyone against? Any  
11          abstentions? Okay. We'll proceed with CAPA. Okay.  
12          Next up we have -- is Diana here? Yup. Diana  
13          Haines from --

14                   MR. CAVALLO:   You skipped Dan.

15                   MR. JIM MACRON, ESQ., COUNSEL TO THE  
16          BOARD, ECB:   It's Dan Albano.

17                   MS. BEDDOE:   Oh, I'm sorry, Dan. Excuse  
18          me.

19                   LT. ALBANO:    Oh, okay.

20                   MS. BEDDOE:   Excuse me. I skipped -- I  
21          skipped, I skipped Dan because I put a checkmark  
22          next to him. Dan, penalties for traffic related  
23          violations and you have a handout.

24                   LT. ALBANO:    Yes. And I think

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2           everybody's got a copy of the update.

3                     MS. BEDDOE:    Yup.

4                     LT. ALBANO:    Good morning everybody. I'm  
5           Dan Albano from the Police Department. And I'm  
6           here today to ask for a increase or actually to  
7           ask for a penalty schedule for some new  
8           legislation that was passed by the City Council.  
9           As part of the Mayor's Vision Zero Plan to reduce  
10          traffic fatalities, both pedestrian and  
11          vehicular, the Mayor has proposed two new  
12          statutes. One is which- of which is the right of  
13          way. If a motorist fails to yield the right of  
14          way to a pedestrian or bicyclist, they're subject  
15          to a new fine under the Administrative Code and  
16          it's Section 19-190A: failure to yield the right  
17          of way. And we're asking for the maximum penalty  
18          that the Administrative Law Judges be allowed to  
19          impose the maximum penalty with a default penalty  
20          of 100.

21                    Now the penalty increases if the failure  
22          to yield the right of way causes a physical  
23          injury. And that penalty again we're asking for  
24          the maximum of \$250 with a default penalty of

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2           250. If the -- the next statute is about leaving  
3           the scene. Now all of these things, both  
4           statutes, both failure to lead the right -- the  
5           failure to give the right of way and leaving a  
6           scene of an accident without exchanging your  
7           information; both of these are offenses under the  
8           current State Vehicle and Traffic Law. But the  
9           Mayor's Office and the Police Department feel and  
10          the City Council felt that the, the fines under  
11          the State Traffic Law are too low and not helping  
12          us reduce traffic accidents and fatalities.

13                 So, the next section's about leaving the  
14          scene. And if it's only property damage, you  
15          leave the scene of the accident without reporting  
16          it to the police; if it's only property damage,  
17          we're asking for a penalty of 500 with a default  
18          penalty of 500. If you're leaving a scene and  
19          it's a physical injury, the penalty we want is  
20          \$2,000, which is the maximum allowed under the  
21          Statute; with a default penalty of 2,000. If you  
22          leave the scene and there's a serious physical  
23          injury and serious physical injury is defined in  
24          the State Penal Law as a long-term protracted

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2           illness such as broken bones, concussions, things  
3           like that; so if somebody suffered a serious  
4           physical injury, we're asking for the penalty,  
5           the maximum penalty allowed under the Statute of  
6           \$10,000 with a default penalty of \$10,000.

7                         And last but not least, if you leave the  
8           scene of the- of an accident causing death and I  
9           think we've all seen that happen several times  
10          each year in the City and it's always some heart-  
11          rendering situation; if you leave the scene of an  
12          accident without reporting it and someone  
13          suffered a death, we're asking for a penalty of  
14          \$10,000, which again is the maximum allowed under  
15          the Statute, and a default penalty of \$10,000. We  
16          think that these substantial penalties will help  
17          reduce traffic fatalities and make people more  
18          responsible drivers.

19                         This is one part of the Mayor's Vision  
20          Zero Plan. Next month I hopefully will be before you  
21          with a plan to reduce the City's speed limit from  
22          30 miles an hour to 25 miles an hour. The Mayor  
23          just recently signed that legislation. So there's  
24          several pieces to this package. This is the first

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2           one that we're presenting to the Board. Thank  
3           you.

4                       MS. BEDDOE:   Dan, I have one quick  
5           question.

6                       LT. ALBANO:   Sure.

7                       MS. BEDDOE:   In terms of how it plays  
8           out in the adjudication process, for example, if  
9           someone receives a violation ticket for leaving  
10          the scene and there's a serious physical injury;  
11          first of all, does that change or do you reissue  
12          a ticket if the person subsequently dies? Or do  
13          you get hit with 10,000 because there was a  
14          serious injury and then 10,000 because there's a  
15          subsequent death? And how -- you know, how does  
16          that play out?

17                      LT. ALBANO:   Yeah, more likely than  
18          that, just because of the bureaucracy of handling  
19          something like that, more likely than not the  
20          person would just receive the first summons for  
21          leaving the scene of the accident with a whatever  
22          type of injury. Unless there was some subsequent  
23          criminal charges: the person was drunk-driving or  
24          intentionally ran the person over; unless we were

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2           able to discover that, it would probably stay at  
3           the initial summons.

4                     MS. BEDDOE:    Okay.

5                     LT. ALBANO:    And there wouldn't be an  
6           increase.

7                     MS. BEDDOE:    So would -- I'm just trying  
8           to understand what gets funneled to criminal  
9           court and what would come to ECB. So let's play  
10          out the serious physical injury. I imagine there  
11          may be some criminal charges and then this sort  
12          of civil fine. Would you be staying the civil  
13          matter for resolution of the criminal matter? How  
14          would that work?

15                    LT. ALBANO:    That would be up to the DA.  
16          We'd go by what the DA wanted.

17                    MS. BEDDOE:    Okay.

18                    LT. ALBANO:    But I've got to add is that  
19          the, the most common offense, which is going to  
20          be the first one: the failure to yield the right  
21          of way when no one is injured; we currently write  
22          about 8,000 summonses a year under the current  
23          VTL Statute. And because it's easy for the  
24          officers, they're aware of it, they know it;

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2           that's what we're probably going continue doing  
3           rather than using a piece of the Administrative  
4           Code.

5                   MS. BEDDOE:   Okay. Elizabeth?

6                   MS. KNAUER:   So in that sentence you  
7           wouldn't contemplate the officers would be  
8           writing a ticket to DMV or that's returnable at  
9           DMV and a ticket that's returnable at ECB --

10                   LT. ALBANO:   In which case?

11                   MS. KNAUER:   For the example of the one  
12           that you just gave, for the failure to yield. I  
13           think you mentioned that that is -- I mean,  
14           obviously that is something that's, that --

15                   LT. ALBANO:   But all of this is covered  
16           by the VTL.

17                   MS. KNAUER:   Right.

18                   LT. ALBANO:   The, the most common one is  
19           failure to yield; there's no injury, there's no  
20           property damage. Just somebody failed to yield to  
21           a pedestrian or bicyclist.

22                   MS. KNAUER:   Uh-huh.

23                   LT. ALBANO:   Just because it's such a  
24           lift for us, a heavy lift for us to do all this

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2           training; we're going continue using the Vehicle  
3           and Traffic Law provision. And that's --

4                   MS. KNAUER:   And, and having those go to  
5           the DMV?

6                   LT. ALBANO:   And they go to Traffic  
7           Violations Bureau.

8                   MS. BEDDOE:   Okay. Arnie -- I'm sorry.

9                   MS. KNAUER:   So, but do you, do you, do  
10          you expect that for even for some of the more  
11          serious ones, that someone might be issued a  
12          summons both to ECB and to Traffic Violations?

13                   LT. ALBANO:   No. They'd only be issued  
14          one summons?

15                   MS. KNAUER:   They'd just be issued one.

16                   LT. ALBANO:   Just one, one summons with  
17          the offense.

18                   MS. KNAUER:   And these are just higher  
19          penalties that would be available?

20                   LT. ALBANO:   Yes.

21                   MS. KNAUER:   Okay.

22                   LT. ALBANO:   But I, I've got to be quite  
23          frank. Because we already have tools that we're  
24          well familiar with under these sections.

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2                   MS. KNAUER:   Mm-hmm.

3                   LT. ALBANO:   And under the VTL if you  
4           lose the scene of an accident, you're subject to  
5           arrest and not just a civil penalty.

6                   MS. BEDDOE:   Right. Mm-hmm. Ernie?

7                   HON. ERNEST J. CAVALLO, CITIZEN MEMBER:  
8           Ernest Cavallo, citizen member. Dan, I sit in  
9           court and I see many police reports that say:  
10          left scene of accident. But I don't see ticket  
11          given. The driver that stayed gives the police  
12          officer a license number. What's the procedure?  
13          How is -- what level of proof is going to be  
14          necessary before you issue a ticket to somebody  
15          who allegedly left the scene of an accident?

16                   LT. ALBANO:   Well, if, if somebody left  
17          the scene of an accident and it's clear -- it  
18          would be clear to, just by common sense, it's  
19          clear that I was in an accident.

20                   MR. CAVALLO:   Right.

21                   LT. ALBANO:   Right? Let's say you have  
22          people have accidents and they don't realize it.  
23          That's not leaving the scene.

24                   MR. CAVALLO:   What I'm saying is: Is the

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2           police officer going to go and check out where  
3           this car is and see if there's damage on it and  
4           then issue a ticket to him? Or are they just  
5           going to take the say-so of the person that is  
6           back sitting in the street waiting for the police  
7           to come to write up an accident report?

8                   LT. ALBANO:  No, we would have to -- we  
9           would have to go find the person who left the  
10          scene.

11                   MR. CAVALLO:  There'd be an  
12          investigation?

13                   LT. ALBANO:  There'd be some; not much  
14          of an investigation.  But there would be an  
15          investigation.

16                   MR. CAVALLO:  On the serious ones there  
17          --

18                   LT. ALBANO:  Yes.

19                   MR. CAVALLO:  -- clearly would be.

20                   LT. ALBANO:  On the serious ones, it's  
21          handed over to the detective squads.  And it's  
22          more -- it's more of an investigation.  But for  
23          the average property damage, they leave the  
24          scene; the officers will track down the person

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2           based upon the information they get from the  
3           person who stayed behind at the scene and serve a  
4           summons upon that person. Now, now we're going to  
5           have a choice between whether we're going to use  
6           the VTL, which the officers are familiar with;  
7           and we've got to gear them up to get them trained  
8           to do what the Mayor wants, which is the -- to  
9           use the Administrative Code.

10                   MS. BEDDOE:   Okay. Doug, you have a  
11           question?

12                   MR. DOUGLAS SWANN, CITIZEN MEMBER:  
13           Douglas Swann, citizen member. I just wanted to  
14           know in terms of leaving the scene, I'm not -- I  
15           think we've all seen that people get into an  
16           accident. It's traumatic. They might do something  
17           rash and leave the scene. If they come back five  
18           minutes later, is that still --

19                   LT. ALBANO:   Then, that we're not going  
20           to arrest somebody; you'll give them the summons.  
21           Leave the scene is when we have to go look, or  
22           the police have to go look for you.

23                   MR. SWANN:   Okay.

24                   LT. ALBANO:   And find you. You're right.

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2           People do that. They get upset. Sometimes  
3           they're, they're frightened or the person they'd  
4           have an accident with is, is angry. They're  
5           frightened. So they leave the scene and come back  
6           at some, some other point. Or they drive to a  
7           police station because that's where they feel  
8           safe exchanging the information. And that's not  
9           leaving the scene.

10                   MS. BEDDOE:   Okay. Tayo?

11                   MS. TAYO KURZMAN, FIRE DEPARTMENT:   Tayo  
12           Kurzman, Fire Department. I'm just wondering why  
13           the regular penalty and the default penalty are  
14           the same? Like what the justification would be?  
15           Do you expect --

16                   LT. ALBANO:   They -- the Police  
17           Department wanted the highest, the maximum  
18           penalty under the Statute. And naturally somebody  
19           that defaults I think should suffer the same  
20           penalty.

21                   MR. HYLTON:   Really? I mean --

22                   LT. ALBANO:   I mean, I think that's what  
23           we do in a lot of other contexts if I'm not  
24           mistaken.

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2                   MS. KURZMAN: I just wonder what the --

3                   LT. ALBANO: With the default penalty  
4 and not just the highest penalty.

5                   MS. KURZMAN: Usually, I mean, usually  
6 what we do is we, we have a default penalty  
7 higher -- at least a little bit higher so that  
8 the respondents have an incentive to --

9                   LT. ALBANO: To show up?

10                  MS. KURZMAN: -- to show up at the  
11 hearing. So it just might be something you'd like  
12 to think about. I understand wanting the maximum  
13 penalty for all of the infractions. But then is  
14 there incentive for them to show up at the  
15 hearing if they're going to receive the same  
16 penalty regardless?

17                  LT. ALBANO: A very good question. But  
18 I, I, I believe is that we can only set it as the  
19 maximum penalty under the law, right? And that is  
20 the \$100 in the Vehicle as a maximum penalty.

21                  MR. HYLTON: The default you can. Right.

22                  LT. ALBANO: The default can be  
23 accepted?

24                  MR. HYLTON: But you have discretion

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2           under standard penalty.

3                   LT. ALBANO:  Alright, that's something I  
4           didn't know.  Alright.

5                   MS. KURZMAN:  Instead of making -- I  
6           mean, even to just make the standard penalty 950  
7           [sic] instead of 100, just to give an incentive  
8           to a respondent to show up or something like  
9           that; you know, just a little bit less.  
10          Otherwise, my concern would be that people won't  
11          actually show up for the hearing.

12                   LT. ALBANO:  That's a good point.  That's  
13          something I can bring back to my superiors.  But  
14          my concern right now is to get this rolled out as  
15          soon as possible.

16                   MS. BEDDOE:  Okay.  Russ?

17                   MR. RUSSELL PECUNIES, ESQ., DEPARTMENT  
18          OF ENVIRONMENTAL PROTECTION:  Yeah.  Russ  
19          Pecunies, DEP.  My question relates to the, the  
20          consequences of being found in violation at ECB,  
21          as opposed to criminal court or traffic court.  
22          Will the results of these hearings affect a  
23          driver's insurance?  Could they result in license  
24          revocation?  Or will this just be a fine and

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2           there'll be no impact on the driver's record?

3                   LT. ALBANO:  Another very good question.  
4           And you're probably right is that if somebody was  
5           found guilty in ECB, at the Environmental Control  
6           Board, there is no way for the Department of  
7           Motor Vehicles to know that.  It's just that the  
8           fine is higher.

9                   MS. KNAUER:  So they wouldn't be  
10          [unintelligible][00:30:30]?

11                   LT. ALBANO:  And I think that was the  
12          purpose of the Administration is the higher fine  
13          and hope that we would get compliance.  The idea  
14          is not of course to collect fines.  The idea is to  
15          get people to comply.

16                   MS. BEDDOE:  Okay.  Elizabeth, you had a  
17          comment?

18                   MS. KNAUER:  I'm sorry.  I shouldn't have  
19          interrupted.  So they -- you, there would be no  
20          ability obviously of the ECB to, to issue points  
21          on someone's license?

22                   LT. ALBANO:  No.  No.

23                   MS. KNAUER:  So --

24                   LT. ALBANO:  DMV, the Department of

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2           Motor Vehicles at the Traffic Violations Bureau  
3           would have that authority, yes.

4                   MS. KNAUER:   So, in the, I guess --

5                   LT. ALBANO:   And criminal court has a, a  
6           connection --

7                   MS. KNAUER:   Right.

8                   LT. ALBANO:   -- with the Department of  
9           Motor Vehicles. And criminal court would be able  
10          to notify the Department of Motor Vehicles that  
11          you've been convicted of whatever the offense is.

12                   MS. KNAUER:   Mm-hmm.

13                   LT. ALBANO:   And that has an effect on  
14          your license.

15                   MS. BEDDOE:   Tayo, you had a further  
16          comment?

17                   MS. KURMAN:   Well, my question was just  
18          to that end. Would there be possibly, I mean,  
19          maybe not at the moment but maybe the possibility  
20          of looking in; speaking to DMV and seeing if  
21          either the Police Department could provide the  
22          ECB decisions or if ECB could provide a decision  
23          directly to Motor Vehicles and have some kind of  
24          connection there? But that would be probably down

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2           the line -- I'm not sure, you know, if possible?

3           MS. BEDDOE:   Elizabeth?

4           MS. SLIFKA:   It's that unlikely that ECB  
5           would be providing decisions to the Department of  
6           Motor Vehicles. So, I mean, so NYPD is making a  
7           choice whether they want to have points on  
8           someone's license when they do the issuance or  
9           not; that where they decide where they're making  
10          the case returnable to. And it's their, their --  
11          it's in their hands.

12          LT. ALBANO:   Alright. But the, the  
13          Department --

14          MS. BEDDOE:   Elizabeth and then Renaldo.

15          LT. ALBANO:   Excuse me. The Police  
16          Department can't impose points on someone's  
17          license. Only the Department of Motor Vehicles  
18          can do that.

19          MS. KNAUER:   In response --

20          LT. ALBANO:   So there would have to be  
21          some connection between the Environmental Control  
22          Board and the Department of Motor Vehicles.

23          MS. BEDDOE:   Elizabeth?

24          MS. KNAUER:   Well, I, I would just think

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2           as suggestion that in training police officers; I  
3           mean, obviously when they -- when they stop or  
4           they get somebody for a violation of this nature,  
5           they'll run their license. So, if, if it's  
6           somebody who's -- who already has a lot of points  
7           or has a history, that might be something that's  
8           taken into consideration to which enforcement  
9           mechanism to use. But maybe sometimes it's better  
10          to suspend someone's license than issue a larger  
11          fine. Maybe that's just something to consider for  
12          training purposes.

13                    LT. ALBANO:  There's, unfortunately,  
14                    there's a limited picture that the officers can  
15                    get out in the field by radio or by the computers  
16                    that we have in the radio cars. There's a limited  
17                    pictures of what, what we can see on your  
18                    license.

19                    MS. KNAUER:  Oh, okay.

20                    MS. BEDDOE:  Renaldo?

21                    MR. HYLTON:  So -- thank you. So that's  
22                    where my question is: How much discretion then is  
23                    the officer in terms of where does he, in terms  
24                    of using these enforcement mechanisms, whether it

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2           be through ECB or criminal or traffic? Because I  
3           can see the enforcement of this being so, you  
4           know, all over the place: somebody given a break  
5           to somebody going to ECB.

6                    LT. ALBANO: Right. And I understand  
7           your point. It, it -- you think it might be left  
8           up to the discretion of the individual officer:  
9           Am I going to go with DMV summons? Or am I going  
10          to go with the ECB summons?

11                   MR. HYLTON: Right.

12                    LT. ALBANO: And that's not going to be  
13          the case. They will continue to, as I explained  
14          before, the more common one -- the failure to  
15          yield --

16                    MR. HYLTON: Okay.

17                    LT. ALBANO: -- because they've already,  
18          they're already familiar with it. They're writing  
19          summonses. I think last year we wrote 8,000  
20          summonses for failure to yield to a pedestrian or  
21          bicyclist under the VTL. They will continue to do  
22          that. And then they're going to be instructed to  
23          write ECB summonses; ECB notices of violations  
24          for all the other offenses.

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2                   MR. HYLTON:   Okay.

3                   LT. ALBANO:   Now there may be some  
4 individual cases that are, you know, something  
5 very egregious; where we're going to arrest  
6 people under the VTL for leaving the scene of an  
7 accident, for causing a serious physical injury.  
8 That may happen.

9                   MS. BEDDOE:   Elizabeth?

10                  MS. KNAUER:   Just out of curiosity: What  
11 is the penalty available under the VTL for these  
12 types of violations?

13                  LT. ALBANO:   The VTL has a variety of  
14 penalties. If it's an equipment violation, it's  
15 as low as \$40, which, you know, you're missing a  
16 mirror or your headlight's out.

17                  MS. KNAUER:   Right.

18                  LT. ALBANO:   And I think --

19                  MS. KNAUER:   But for leaving a scene?

20                  LT. ALBANO:   Um, I think the Department  
21 of Motor Vehicles can impose up to like about  
22 \$400 penalty. But that's for like red lights; I'm  
23 not sure exact- going through a red light. I'm  
24 not sure exactly what the penalty is under the

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2           VTL for failure to yield or one of these other  
3           offenses. But they're not as substantial as this.

4                   MS. BEDDOE:   Okay. Alright. Let's wrap  
5           up this dialogue. Any other questions for Dan  
6           before we take a vote? Okay. Well, let's see  
7           where we are with this. Is there a motion to  
8           approve? Anyone against? Abstentions? Okay.  
9           Alright.

10                   LT. ALBANO:   Thank you.

11                   MS. BEDDOE:   Thanks, Dan. And now we  
12           have Diana, who's going to talk to us about  
13           amendments to our procedural rules.

14                   MS. DIANA HAINES, ASSISTANT GENERAL  
15           COUNSEL, OATH:   Okay. Good morning. We have just  
16           some revisions and amendments predominantly  
17           really just refining some of the sections and  
18           providing some definitions and clarity on the ECB  
19           procedural rules. So what I'd like to do is run  
20           through; you should have received the memorandum  
21           from Helaine. I'd like to just run through it.  
22           Obviously, if there are questions I'll, I'll  
23           pause in between; so that if you have questions  
24           pertaining to a specific provision just let me

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2           know.

3                       The first one is pertaining to the Board  
4           or Tribunal. There are several sections being  
5           amended to clarify when the Tribunal is acting on  
6           behalf of the Board and when the Board itself is  
7           acting. Moving along, the definition of exception  
8           and appeals processing. The charter section of  
9           1049A allows the Board to consider exceptions to  
10          a hearing officer's recommended decision and  
11          order. When in actuality the filing of exceptions  
12          is treated as an appeal. So we have several  
13          amendments here that are making this clearer.  
14          Including the addition of an actual definition of  
15          an exception. And amendments to the wording in  
16          subchapter D, which details appeal procedures.

17                      We're also requesting a change that  
18          would require appeals and extension requests to  
19          be filed on forms prescribed by the Executive  
20          Director. Which would align ECB procedures with  
21          the requirements of other OATH tribunals. And  
22          finally with respect to that, we are requesting  
23          to extend the time for payment of the penalty or  
24          requesting a waiver of the prepayment from 20

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2           days to 30 days.

3                   Okay. Next, we have -- we're defining  
4           the Executive Director. Basically this is to  
5           clarify that the Executive Director is empowered  
6           to designate someone else to act on his or her  
7           behalf if the Executive Director is unavailable.  
8           So to that extent, we've deleted references where  
9           they say: Executive Director or his or her  
10          designee.

11                   We've defined petitioner to the extent,  
12          several sections of the Administrative Code  
13          provide for the commencement of ECB actions by  
14          citizens. Recently, ECB has seen a rise in the  
15          requests by citizens to commence actions. And so  
16          in those circumstances, the petitioner is  
17          actually -- the citizen is actually the  
18          petitioner. However, the definition of petitioner  
19          as it stands is not currently broad enough to  
20          include the citizen population. Therefore, we're  
21          requesting that the definition be reworded to  
22          include the citizen petitioners.

23                   Okay. Regarding documents, 48RCNY3-14C  
24          is being amended to change the word "affidavit"

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2           to "certification," as many submissions by both  
3           petitioners and respondents are not sworn or  
4           notarized. Basically, we're looking to provide  
5           better access to justice by putting respondents  
6           who may not understand the legal complexities of  
7           drafting an affidavit on equal footing with  
8           petitioners who routinely file certifications of  
9           service.

10                   Okay. Next, regarding computation of  
11           time, 48RCNY3-15B is being amended to allow an  
12           additional five days to take action when making  
13           any response whenever mail is in use, you know,  
14           to serve documents.

15                   LT. ALBANO: Why did we pick the five?  
16           They couldn't have made it more, more days?

17                   MS. HAINES: Well, currently it's --

18                   LT. ALBANO: It's always when we find we  
19           have to mail something to a city agency, five  
20           days is such -- for something important, such a  
21           tight time.

22                   MS. HAINES: Right. And that's the  
23           thing, it currently is five. And so we're  
24           extended it an additional five days, so it will

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2           be ten.

3                   LT. ALBANO:   Ten, okay.

4                   MS. HAINES:   Is that enough?

5                   LT. ALBANO:   Yup.

6                   MR. SCHULMAN:  No, right now.

7                   MS. HAINES:   I'm sorry?

8                   MR. SCHULMAN:  No. Right now it is five  
9           days in the rules. But that's limited by rule to  
10          when a party sends another document to another  
11          party. So we're expanding it to include documents  
12          sent by the Tribunal as well. So that would  
13          include decisions as well as appeal decisions.  
14          And that's, that really comports with the CPLR,  
15          as far as the five days.

16                   LT. ALBANO:   So it's still five days?

17                   MR. SCHULMAN:  It's still five days. But  
18          it expands it to include documents sent by the  
19          Tribunal. Whereas right now, it's only documents  
20          being served on one party to the other.

21                   MR. HYLTON:   So this is not going to  
22          benefit petitioners, right?

23                   MS. HAINES:   Yes.

24                   MR. SCHULMAN:  It would benefit you

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2           because it's documents that we; if we mail you  
3           something, you would also get five days as well,  
4           if we mail it. If we email it, then, then it's  
5           questionable but it's good for everybody.

6                     MR. HYLTON:   Okay.

7                     MS. HAINES:   So everybody gets five  
8           days.

9                     LT. ALBANO:   But we're under such time  
10          constraints because of the CPLR. We can't go past  
11          what the CPLR want -- says.

12                    MR. SCHULMAN:  Well, could we -- I think  
13          we could go past. I mean, we're modeling it after  
14          the CPLR.

15                    MS. HAINES:   We are.

16                    LT. ALBANO:   Alright.

17                    MR. SCHULMAN:  We're modeling it after.  
18          And five days, as far as what party they're  
19          currently using on each other is working fairly  
20          well.

21                    LT. ALBANO:   You know, my point is just  
22          sometimes we put ourselves, the City puts itself  
23          in such time constraints that it's very difficult  
24          for a City agency to do something in that short

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2           window of time. And if we should get any  
3           opportunity we can to expand it, we should have  
4           it.

5                   MR. SCHULMAN: Well, it's five  
6           additional days to the time provided by any other  
7           rule. So if you have 30 days to file an appeal,  
8           you'll have 35 days.

9                   LT. ALBANO: Thirty-five days, okay. No,  
10          that's good. That's good. Alright. So, I  
11          understand.

12                   MR. HYLTON: We're not debating this  
13          right now, right? Just because some --

14                   MS. HAINES: Yeah, let's --

15                   MR. HYLTON: Okay.

16                   MS. HAINES: Do you have questions about  
17          this particular --

18                   MR. HYLTON: I was just wondering if; I  
19          was going to raise a question about whether or  
20          not is it business days versus calendar days?

21                   MS. BEDDOE: Calendar days.

22                   MR. SCHULMAN: If, if -- that rule is  
23          modified by several other time computation rules,  
24          which define rules of calendar days. But at the

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2           same time, depending upon when the period starts,  
3           if you mail something on a Friday, it will start  
4           counting on a Monday.

5                     MR. HYLTON: By what rules?

6                     MS. KNAUER: No.

7                     MR. HYLTON: By what- by who -- by  
8           discretion?

9                     MR. SCHULMAN: No, by, by rule.

10                    MS. KURZMAN: No, that's not what this  
11           says.

12                    MR. SCHULMAN: No, no, the rule --

13                    LT. ALBANO: That's also not what the  
14           law says.

15                    MR. SCHULMAN: ECB's rule has several  
16           other rules in the time computation. This is only  
17           talking about this one particular rule.

18                    MS. HAINES: Right.

19                    MS. KURZMAN: No, that's not what it  
20           says in, in one, two and three. But we can  
21           discuss this after she's done with this part of  
22           the presentation.

23                    MS. HAINES: Regarding appearances.

24                    MS. BEDDOE: Let's let Diana proceed

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2           please.

3                       MS. HAINES: 48RCNY3-16D is being  
4           amended to clarify when a current property owner  
5           may appear on behalf of a prior owner. Registered  
6           representatives, 48RCNY3-16.1F is being amended  
7           to clarify the types of disciplines which a  
8           registered representative might be suBJECT. And  
9           also 48RCNY3-52D is being amended to clarify that  
10          hearing officers have the power to bar  
11          participants from hearings. And this is actually  
12          different from and in addition to the types of  
13          discipline for registered representatives.

14                      Regarding motions to intervene, 48RCNY3-  
15          35A allows intervention as a right at ECB only  
16          when a person may be directly and adversely  
17          affected by an order of the Board. The section  
18          goes on to state that: Imposing only a monetary  
19          penalty shall not be deemed an order directly or  
20          adversely affecting any person other than the  
21          respondent. Because intervention as of right-  
22          because of the status of intervention as of right  
23          gives the intervener the same rights as of party,  
24          including the right to appeal. Many complainants

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2           attempt to intervene as of right. And while these  
3           requests are usually denied and complainants are  
4           granted discretionary intervener status, there  
5           has been some ambiguity as to when intervention  
6           as of right is allowed.

7                        So basically this amendment clears up  
8           the ambiguity by allowing intervention as of  
9           right only in a cease and desist proceeding  
10          commenced pursuant to 48RCNY3-91. And also with  
11          respect to that, we're looking to increase the  
12          time period to file a written application to  
13          intervene as of right prior to the hearing from  
14          five days to ten days.

15                       Okay. Next we have adjournments.  
16          Basically 48RCNY3-52.1 is being amended to  
17          clarify some of the terminology, as well as when  
18          hearing officers may or may not adjourn.

19                       MS. KNAUER: Can I -- can I just --  
20          sorry. Can I just make a suggestion on that  
21          section?

22                       MS. HAINES: Sure.

23                       MS. KNAUER: In terms of the Subsection  
24          B2, the added languages, whichever is greater; I

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2           thought whichever is later would make more sense  
3           in this context. Because it's really -- it's not  
4           a time period.

5                     MS. BEDDOE: Right.

6                     MS. KNAUER: It's --

7                     MS. HAINES: You're talking about a  
8           timeframe as opposed to --

9                     MR. KNAUER: Timeframe. And so like time  
10          after. So I would just -- that is just a  
11          suggested word change.

12                    MS. SLIFKA: Excellent. Okay.

13                    MS. HAINES: Okay. Regarding decisions,  
14          we're proposing to add a new section, 48 --  
15          RCNY3-57C, to allow parties to make an  
16          application to the Executive Director for a  
17          superseding decision and order if the hearing  
18          officer's order contains a ministerial error. So  
19          this should hopefully lead to fewer appeals to  
20          correct these types of errors; since the  
21          application should truly be only for ministerial  
22          reasons.

23                    MS. KNAUER: I have a question about --

24                    MS. HAINES: Yeah.

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2                   MS. KNAUER:  -- sorry, Elizabeth Knauer,  
3           citizen member.  I was just wondering about this  
4           one because of the language that the issuance of  
5           the superseding decision and order under this  
6           section would not extend the time period in which  
7           to file an appeal.

8                   MS. BEDDOE:  Mm-hmm.

9                   MS. KNAUER:  So if that's -- if that's  
10          the case, how, how would this actually; you know,  
11          somebody's who's faced with this situation where  
12          they believe there's a ministerial error but they  
13          don't, you know, they might bring that up and  
14          request a superseding decision.  But they only --  
15          they still only have the 30 days to appeal.  
16          Wouldn't they, you know, pending a decision on  
17          that request for a superseding decision; they  
18          would still have to file an appeal.  So I'm just  
19          wondering how many appeals is this actually going  
20          to avoid?  They might -- you know, many of them  
21          may be ultimately mooted by a superseding  
22          decision but that just; it would depend on the  
23          timing.  There's no real timing set forth for the  
24          Executive Director to, to make a decision on that

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2           application. So, if -- I, I, you know, as  
3           someone's attorney, I would feel that I'd have to  
4           do both.

5                   MS. SLIFKA: Right, you raised -- you  
6           raised a good point and we looked at it. What  
7           happens often is it goes to; they end up  
8           appealing and appeal comes to us and says really  
9           they're only appealing because the penalty is  
10          incorrect. So, then we want to correct it rather  
11          than go through the appeal. We didn't actually  
12          look at it from going to the Executive first and  
13          not the appeal. And we also looked at it as we  
14          don't want to give someone additional 30 days if  
15          we're only- we're not correcting anything that  
16          deals with the merits of the case that they would  
17          be appealing anyway. So it's interesting. I don't  
18          know, I'd have to think about this. So you raised  
19          very -- you raised a good point. I'll have to  
20          think about it.

21                   MS. KNAUER: And then another related  
22          issue is that, I mean, there's not -- I don't, I  
23          don't know if you would; if you want to consider  
24          just putting in any kind of time limitation on

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2           seeking the superseding decision? Because there's  
3           not -- there's not one in this text. So that,  
4           just that people aren't years later saying: Oh, I  
5           was charged the wrong penalty or whatever.

6                   MS. SLIFKA:   Good points. So we'll look  
7           at that.

8                   MS. BEDDOE:   Ernie?

9                   MR. CAVALLO:   Ernest Cavallo, citizen  
10          member. I agree with Elizabeth but I go one step  
11          farther. I think -- I think it's a real trap for  
12          an unsophisticated litigant not to have the toll  
13          while the Executive Director does this. I just  
14          don't think they understand the process at all.  
15          And if somebody is reading: Oh, I can write to  
16          the Executive Director rather than do an appeal,  
17          I'll do that. They think they've preserved their  
18          rights. I, I find this; and how difficult is it  
19          for the Appeal Division to just issue a, a one-  
20          sentence thing saying: The fine was wrong. We  
21          hereby grant the appeal to the extent of  
22          correcting the fine amount to \$300. And why give  
23          this; I think people are going to be writing to  
24          the Executive Director all over. They'd rather do

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2           that than, than go through what they consider to  
3           be an appeal process. I think this is not helpful  
4           to the ordinary citizen at all.

5                   MS. BEDDOE: Renaldo, did you have a  
6           comment?

7                   MR. CAVALLO: I would eliminate the  
8           whole thing, is what I'm saying.

9                   MS. BEDDOE: Alright, I get that.

10                   MS. SLIFKA: I think -- I think for the  
11           purposes of there are other issues here that I'd  
12           like to see go through; so for the purposes of  
13           this change, we'll take out that section. It's  
14           not -- we're not married to it. It's not that  
15           important to us. So, we'll take out; we'll delete  
16           that section. That's fine.

17                   MR. HYLTON: Yeah, we -- I completely  
18           agree with you.

19                   MS. SLIFKA: Okay.

20                   MR. HYLTON: But I just want to; I  
21           think, Elizabeth, you brought up a good point  
22           about the timeframe for --

23                   MS. HAINES: I'm taking it out.

24                   MR. HYLTON: -- for perhaps the

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2           superseding. Is that --

3                   MS. SLIFKA: Well, we're taking it out.  
4           We're taking it out.

5                   MS. BEDDOE: Well, if you -- if you  
6           remove the provision.

7                   MS. SLIFKA: We're taking out the whole,  
8           the whole section.

9                   MR. HYLTON: Okay.

10                   MS. KNAUER: And I, I would just -- I  
11           would just add to this, you know, my, I, I agree  
12           that I think it would just add to the confusion  
13           for probably everybody.

14                   MS. SLIFKA: Gone. It's gone.

15                   MR. HYLTON: Okay.

16                   MS. BEDDOE: Okay. Next, the exhaustion  
17           of --

18                   MS. HAINES: Yeah, just a couple more.

19                   MS. BEDDOE: Mm-hmm.

20                   MS. HAINES: 48RCNY3-75, regarding  
21           exhaustion of administrative remedies. They allow  
22           for an application for superseding appeal  
23           decision in order to correct ministerial errors  
24           or errors due to mistake of fact or law. Some

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2           parties to ECB proceedings routinely file these  
3           requests because they believe this step is  
4           required before an appeal can be taken in the  
5           courts. And this confusion causes additional work  
6           for the Appeals Unit. And so we're therefore  
7           requesting the additional of a sentence to  
8           clarify that this step is not required in order  
9           for a party to exhaust its administrative  
10          remedies.

11                   LT. ALBANO:   Who is the --

12                   MS. KNAUER:   Sorry, I have a one -- I  
13           have a question on this one too. Elizabeth  
14           Knauer. So, I, I find this confusing because I  
15           reading this am not sure if, if when I am able  
16           to; I, I, I understand that this says that if I  
17           get an appeal decision that's adverse to me, I  
18           can then file an Article 78 petition.

19                   MS. BEDDOE:   Mm-hmm.

20                   MS. KNAUER:   But I guess the question  
21           that this raises in my mind is if the appeal  
22           decision is final, do I then have four months  
23           from that date to file my Article 78? Or if I  
24           decide to request a supersede, is it up to me? Do

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2           you see what I mean? That if I decided to request  
3           a superseding appeal, do I then -- am I then  
4           thereby totally; because the general rule or the  
5           jurisprudence at least under Article 78 is that  
6           if you request a reconsideration of a final  
7           decision, that doesn't add to your- the  
8           limitations period or toll limitations period.

9                   LT. ALBANO: You still have four months.

10                   MS. KNAUER: So this is confusing to me;  
11           as if I am going to seek a superseding appeal, do  
12           I still have to move forward in the judicial  
13           process at the same time? Or there's this  
14           ambiguity there.

15                   MS. SLIFKA: You're right. So we should  
16           make clear that there's no tolling of your right-  
17           your appeals time.

18                   MS. KNAUER: That the --

19                   MS. SLIFKA: So add a sentence to --

20                   MS. KNAUER: That the appeal decision,  
21           the first appeal decision is final, a final  
22           administrative decision. And then, you know, if  
23           you also decide on this separate track to seek  
24           the superseding appeal, that that's not adding to

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2           your four months. I, I -- or if you want to do it  
3           the other way, you could. I just think it needs  
4           to be clear for people; so there's, you know, you  
5           don't have litigation about this.

6                   MS. SLIFKA: So, we'll, we'll add some  
7           clarification in regard to that.

8                   MS. HAINES: Okay.

9                   MS. BEDDOE: Okay.

10                   MS. HAINES: And then finally regarding  
11           service of cease and desist actions; this staff  
12           is requesting 48RCNY3-91C be amended to offer  
13           service of cease and desist orders and notices of  
14           special hearing by regular mail. Since DEP also  
15           serves this orders by delivering them to  
16           respondents at the address where the equipment is  
17           located, service by certified mail return receipt  
18           requested is not necessary. Furthermore, ECB  
19           rules provide for prompt hearing post-sealing  
20           special hearings should equipment be sealed based  
21           on failure to appear at a pre-sealing hearing.  
22           Anything on that one?

23                   LT. ALBANO: I would make it in a  
24           document that something's been sent by certified

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2           mail.

3                   MS. SLIFKA: Well, we've been doing it  
4           certified. We want to do it by regular mail.

5                   LT. ALBANO: Let me ask you, by regular  
6           mail --

7                   MS. SLIFKA: The same way that we do  
8           with decisions, there'll be an affidavit.

9                   LT. ALBANO: Okay.

10                   MS. SLIFKA: That will be signed when  
11           it's mailed out.

12                   MS. BEDDOE: Okay. Elizabeth?

13                   MS. KNAUER: Um, is it really a big deal  
14           to do the certified mail? I'm just --

15                   MS. BEDDOE: Yes.

16                   MS. KNAUER: It is?

17                   MS. SLIFKA: It actually is. It really  
18           is.

19                   MS. KNAUER: Because I just, I feel like  
20           for a cease and desist, it's really important  
21           that the person receive it.

22                   MS. SLIFKA: I get that. And there's two  
23           issues. One, it is -- it actually is a really big  
24           deal. And two, I don't even know that that works

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2           because people have to go then to the Post Office  
3           to get it and people are busy. They don't get;  
4           like I've gotten things certified mail and it's  
5           like by the time I get to the Post Office, it  
6           could be a week later because I'm at work from  
7           the times the Post Office is open. So I have to  
8           try to go on a Saturday or something like that.  
9           So I don't necessarily think we're doing the  
10          respondent any favors by sending it certified  
11          mail. I really thought this one through. So --

12                   MR. HYLTON:   But I did --

13                   MS. BEDDOE:   And especially because DEP  
14                   is serving it --

15                   MR. HYLTON:   But I get her point though  
16                   because you're talking about a cease and desist  
17                   action.

18                   MS. SLIFKA:   Well, C -- DEP is also  
19                   going out.

20                   MR. PECUNIES:   Yeah. We, we send an  
21                   inspector to serve all of them. I, I, I would  
22                   just say that if it turns out that this results  
23                   in an abrupt drop in the number of people that  
24                   are showing up for hearings, then we might have

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2           to --

3                   MS. SLIFKA: To reconsider.

4                   MR. PECUNIES: -- go back and reexamine  
5           it.

6                   MS. SLIFKA: Right.

7                   MS. BEDDOE: Okay? Alright. Emily, I'm  
8           sorry, go ahead.

9                   MS. EMILY S. LALLY, CITIZEN MEMBER:  
10          This is -- I don't know, have we ever seen  
11          anybody else issue a cease and desist?  
12          [unintelligible][00:56:05], DEP?

13                   MS. SLIFKA: No.

14                   MS. HAINES: No.

15                   MS. LALLY: So if you are going to serve  
16          them all personally and -- is it really and by  
17          regular mail rather than or by regular mail?

18                   MS. HAINES: No.

19                   MR. HYLTON: I think it has to be both,  
20          right? Because you need that person that --

21                   MS. HAINES: Right. But this says or.

22                   MR. PECUNIES: Yeah. As, as of right  
23          now, it's, it's either one is enough. But we do  
24          both.

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2           MR. HYLTON: But if you're going to do  
3 regular mail, it can't be -- it can't be one.

4           MR. CAVALLO: That can't be the only  
5 one.

6           MS. HAINES: No, personally is still --

7           MR. PECUNIES: Yeah, that's probably a  
8 good point.

9           MS. KNAUER: So, should we propose a  
10 change that this should say and regular mail?

11          MS. BEDDOE: So, Subsection C, is that  
12 what you're looking at?

13          MS. SLIFKA: Right.

14          MS. KNAUER: If that's the practice  
15 anyway, it shouldn't be an additional burden on  
16 the agency.

17          MS. BEDDOE: Okay. So just to clarify,  
18 we're looking at --

19          MR. PECUNIES: Yeah. We, I don't think  
20 -- we do it anyway; so I don't think we would  
21 have an objective --

22          MS. SLIFKA: Okay. So I mean, it's just  
23 -- right, it's just -- no.

24          MR. PECUNIES: I don't think we would

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2           object to making it and instead of or.

3                   MS. SLIFKA:   Okay, fine.

4                   MS. BEDDOE:   Okay.  Alright.  So just to  
5           recap where we are.  With respect to the changes  
6           to the ECB procedural rules that were presented;  
7           we are looking at the following modifications  
8           under the adjournment section 48RCNY3-52.  Just  
9           terminology, talking about later instead of  
10          greater.  The section below, where we -- in  
11          decisions where we talked about a process for  
12          getting the Executive Director to amend  
13          decisions; we said we were going to remove that  
14          provision wholesale.  And then with respect to the  
15          exhaustion of administrative remedies, we are  
16          going to clarify that that option does not extend  
17          the time for filing an Article 78; so the four  
18          months isn't tolled.  And then with respect to  
19          this final provision, cease -- the service the  
20          cease and desist actions; we will change the  
21          connector in 3-9 -- subsection, Section 3-91,  
22          Subsection C to read:  That the order to cease and  
23          desist and notice of special hearing shall be  
24          served personally and by regular mail; so instead

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2           of or.

3                       Okay? So that those were the comments.  
4           Tayo, you had one other thing?

5                       MS. KURZMAN: I think that some of the  
6           agencies have quite a bit of other concerns. So I  
7           think Madelynn can sort of tell you about one.

8                       MS. BEDDOE: Madelynn, you wanted to --

9                       MS. MADELYNN LIGUORI, ESQ., DEPARTMENT  
10          OF SANITATION: -- Liguori, Sanitation. I guess  
11          we're just a little bit concerned that -- I  
12          actually just received rules yesterday; there was  
13          an issue with emailing to me.

14                      MS. BEDDOE: Okay.

15                      MS. LIGUORI: So my agency really didn't  
16          get a chance to fully review this. I got it in  
17          late afternoon yesterday.

18                      MS. BEDDOE: Okay.

19                      MS. LIGUORI: And are we approving this  
20          today? Or is this going to be told to --

21                      MS. BEDDOE: We are -- we are seeking  
22          the approval with the amendments to that that we  
23          just discussed.

24                      MS. LIGUORI: Could we move that to the

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2           next Board Meeting?

3                   MS. BEDDOE:   Why would we do that?

4                   MS. LIGUORI:   And have -- and have ECB  
5           come back with a new draft for us to approve  
6           before we sit and approve it? And maybe be- have  
7           more time to give any other comments we may have?

8                   MS. HAINES:   No.

9                   MS. BEDDOE:   Well, let's take a straw  
10          poll. Let's just see: Who's prepared to approve  
11          it with the amendments that we just discussed?

12                  MR. CARVER:   Well, I just have a  
13          question as to which agencies think they need  
14          more time?

15                  MS. BEDDOE:   Fire, Buildings,  
16          Sanitation, DEP.

17                  MR. CAVALLO:   Will it hurt if we do it a  
18          month later?

19                  MR. PECUNIES:   It's actually only three  
20          weeks I think until the next meeting.

21                  MR. CAVALLO:   Three weeks?

22                  MS. KURZMAN:   And I don't feel  
23          comfortable, just -- Tayo from Fire; I also have  
24          quite a number of concerns to bring up.

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2                   MS. SLIFKA:  But let, let me just -- I,  
3           I, that's; we can put it off but let me just  
4           explain. We're not revamping all the rules. These  
5           were very little minor errors. So we're not  
6           looking, you know, to change this. We're not  
7           looking to rewrite our rules at this point in  
8           time.

9                   MR. HYLTON:  But it was broad-based. It  
10          wasn't any particular section. You did a whole  
11          review of the entire rule. It wasn't just a  
12          particular section.

13                  MS. BEDDOE:  Well, let me just clarify.  
14          This is not an opportunity to reopen ECB  
15          procedural rules.

16                  MS. SLIFKA:  Correct.

17                  MS. BEDDOE:  This is an effort to  
18          clarify what already exists. And if you want  
19          input in that, that's what we're bringing to the  
20          table. Okay?

21                  MR. HYLTON:  But does it -- does any of  
22          these changes change the procedural rule stuff  
23          though?

24                  MS. SLIFKA:  No.

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2                   MR. HYLTON:    The procedures?

3                   MS. KURZMAN:   Yes, they do.

4                   MS. SLIFKA:     Which ones?

5                   MS. KNAUER:     DEP rules.

6                   MS. SLIFKA:     DEP is fine. We've  
7                   discussed; we discussed this with DEP prior to  
8                   this change.

9                   MS. KURZMAN:    I under- right.

10                  MR. PECUNIES:   That part, yeah.

11                  MS. BEDDOE:     The service, mm-hmm.

12                  MS. KURZMAN:   But there are things that  
13                  affect the other agencies. There are also I think  
14                  based on some of the changes that may be  
15                  potentially definitions that needed I think a  
16                  couple of the rules actually are a little; they  
17                  make things a little too narrow. And I can give  
18                  you an example: 316.1F talked about subject to  
19                  discipline only in accordance with these rules.  
20                  But then if kind of leaves out any other types of  
21                  discipline.

22                  MS. SLIFKA:    Three dash what?

23                  MS. KNAUER:    3-16.1F. It says that --

24                  LT. ALBANO:    The registered

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2           representatives --

3                   MS. KNAUER: Registered representatives  
4           would only be subject to these rules in  
5           accordance with 16.2C and 16.2D. But it's too --  
6           I think it's too narrow. What about all of the  
7           other licensing entities? And what about DOI? So  
8           kind of would -- if I were reading this --

9                   MS. SLIFKA: This is for just discipline  
10          within ECB.

11                  MS. BEDDOE: This is just discipline  
12          within ECB.

13                  MS. KURZMAN: Right. But if ECB chooses  
14          to report it outside, that is --

15                  MS. SLIFKA: We can still do that.

16                  MS. BEDDOE: Well, we don't have to; we  
17          don't have to embody that language here because  
18          we are obligated to do that by other City rules.  
19          So we don't have to repeat that provision in  
20          here. I mean, we're obligated to report  
21          corruption and other kinds of improper practices  
22          do DOI.

23                  MS. KURZMAN: Okay.

24                  MS. BEDDOE: So I don't think we need to

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2           have a rule that says that.

3                   MS. KURZMAN: I would think that this  
4           rule seems to limit it. But --

5                   MS. BEDDOE: Okay. Let's just stop  
6           there.

7                   MS. KURZMAN: There are a couple other  
8           concerns that we have.

9                   MS. BEDDOE: Let's just stop there.  
10          Excuse me, let's just stop there. Let's take a  
11          straw poll. What we are trying to do is clarify  
12          rather than revisit. So if you're not prepared to  
13          go forward with this, with these amendments as  
14          they are, can I see a show of hands?

15                   MS. KURZMAN: Not prepared to move  
16          forward?

17                   MS. BEDDOE: Not prepared. You're not  
18          prepared to vote on this today. Okay. Alright. So  
19          the majority of the Board here is not prepared to  
20          go forward today. Let's table this and put this  
21          over for the next meeting. Okay. Alright. So, it  
22          will be revisited at another time. Okay? Alright.

23                   MR. CAVALLO: Not next month?

24                   MS. BEDDOE: That will not be up to me.

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2                   MR. CAVALLO:  Oh, that's right.

3                   MS. BEDDOE:  So, we will see if and when  
4           that will happen.  Alright.  Thank you, Diana.

5                   MS. HAINES:  I'm staying.  Right?  I'm up  
6           next again?

7                   MS. BEDDOE:  Well, there is a Department  
8           of Transportation penalty schedule that we are  
9           looking at.

10                  LT. ALBANO:  Yeah.  We haven't gotten  
11           their [unintelligible][01:04:00].

12                  MS. BEDDOE:  Yeah.  Is there a Leslie  
13           Bailey who is presenting?

14                  MR. MACRON:  We have to do the  
15           Buildings.

16                  MS. HAINES:  We have to do buildings as  
17           well.

18                  MR. MACRON:  We didn't do the Buildings.

19                  MS. BEDDOE:  No.  Do I have the wrong one  
20           here -- number six?

21                  MR. MACRON:  Number six.

22                  MS. BEDDOE:  I'm checking things too  
23           soon.  I'm so sorry.  I'm so sorry.  Go ahead.

24                  MS. HAINES:  You're still here.

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2                   MS. BEDDOE: The Buildings penalty  
3 schedule. Thank you.

4                   MS. HAINES: Okay. So these amendments  
5 were proposed by Buildings in September. We did  
6 receive approval certification from the Mayor's  
7 Office of Operations, as well as the Law  
8 Department. And so pending your approval today,  
9 will, will then, you know, be subject to, to  
10 public hearing. I do want to note that local law  
11 has changed the effective date of this rule from  
12 October to December 31st of 2014. Okay?

13                   And basically ECB is proposing to amend  
14 the Department of Buildings penalty schedule, you  
15 know, for notices of violations issued by  
16 Department of Buildings, to help enforce local  
17 law 141, which updates the Administrative Code,  
18 the Plumbing Code, the Building Code, the  
19 Mechanical Code and the Fuel and Gas Code. So,  
20 local law 141 amended some requirements, added  
21 some new requirements and renumbered the existing  
22 sections of the codes. And the penalty schedule  
23 now has to be amended to reflect these changes.

24                   I just want to note that the penalty

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2           amounts for all the existing infractions remain  
3           unchanged; that they all fall within the  
4           guidelines for all classes of violations and that  
5           any new violations that are not immediately  
6           hazardous are indicated as curable in the penalty  
7           schedule. So should we go through each section?  
8           Or are there questions?

9                   MS. BEDDOE: I'll just ask if there are  
10           questions on that? Elizabeth?

11                   MS. KNAUER: Um, on the -- I just, just  
12           referring to the Council Member Rose's comments  
13           that were included in our package; there was one  
14           about --

15                   MS. HAINES: That's the DEP. We'll --

16                   MS. KNAUER: Oh, I'm sorry.

17                   MS. HAINES: I'll, I'll answer that  
18           later gladly.

19                   MS. KNAUER: Okay, I'm sorry.

20                   MS. HAINES: Yeah, that's -- we're doing  
21           DOB right now.

22                   MS. KNAUER: Yes, oh, okay. Sorry.

23                   MS. BEDDOE: Okay. Any other questions?

24           Alright. So shall we take a vote? Is there a

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2           motion to approve? Anyone against?

3                   MR. HYLTON: Vote to approve it, I  
4           guess, right? I think so.

5                   MS. BEDDOE: Yeah. Okay. Anyone against?  
6           Any abstentions? Okay.

7                   MS. HAINES: Thank you. I'll be back.

8                   MS. BEDDOE: Alright.

9                   MR. HYLTON: [Unintelligible][01:07:10]  
10          abstentions?

11                   MS. BEDDOE: No, there were no  
12          abstentions.

13                   MR. HYLTON: I should have abstained on  
14          that.

15                   MS. BEDDOE: Renaldo -- okay. Renaldo's  
16          going to change his vote to abstention.

17                   MS. HAINES: Yeah.

18                   MS. BEDDOE: Okay. Next up we have is  
19          the proposed rule to amend the Department of  
20          Transportation penalty schedule. Leslie?

21                   MS. LESLIE BAILEY, LAW SCHOOL FELLOW,  
22          OATH: Good morning. I am Leslie Bailey. I am a  
23          Legal Fellow in the OATH General Counsel's  
24          Office. And I'm going to present two related

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2           rules which amend ECB's DOT penalty schedule.

3           Both of these rules were presented to the Board  
4           by DOT during September's meeting. And I note  
5           that both rules have now been approved by the Law  
6           Department and the Mayor's Office of Operations.

7                        So the first rule decreases the fine for  
8           failure to obtain a confirmation number for a  
9           street opening permit on a protected street where  
10          the permittee is not engaging in backfill. So the  
11          penalty would be reduced from the current \$750 to  
12          \$250, with a default penalty of \$750.

13                       The second rule establishes a new  
14          penalty for failure to obtain a confirmation  
15          number two hours prior to the commencement of a  
16          backfill on a protected street. The new rule  
17          carries a penalty of 750, with a default penalty  
18          of \$2,250.

19                       MS. BEDDOE:   Okay.

20                       MS. BAILEY:   Are there any questions?

21                       MS. BEDDOE:   Any questions for Leslie on  
22          this? Okay. Is there a motion to approve? Anyone  
23          against? Abstentions? Okay. Thank you. That was  
24          easy. Alright. We've got an active Board today.

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2           Come on.

3                       Okay. Next up, this is another final  
4           rule for an amendment to the Air Asbestos -- the  
5           Air Asbestos Code. Diana, you're at it again?

6                       MS. HAINES: Here I go.

7                       MS. BEDDOE: Okay.

8                       MS. HAINES: Hold your questions. Okay.  
9           So this is a final rule. Obviously, it's already  
10          been approved by the Mayor's Office and the Law  
11          Department and a public hearing on this was held  
12          on September 12th. And also the rule was  
13          published in the City Record on August 12th. Some  
14          of the changes address the evolving industry  
15          practice that raised certain safety concerns and  
16          others were introduced in response to revisions  
17          by the rules of the City of New York. It should  
18          be noted that there are no cure periods available  
19          because the governing statutes mandate the  
20          imposition of a minimum penalty.

21                       Regarding the public hearing that was  
22          held, there was one member from the public and a  
23          representative from DEP. The member from the  
24          public chose not to testify. We also received

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2           certain written comments, which have been sent to  
3           the Board and addressed and we'll address any  
4           other questions that you have as well.

5                       So I just want to briefly go through  
6           them. There's a change to the Air Asbestos  
7           penalty code -- penalty schedule; basically  
8           requiring DEP to establish a program that  
9           provides registration of practicing master  
10          environmental hazard remedy technicians. And so  
11          the ECB penalty schedule needs to be modified to  
12          specify any violation of this, where an  
13          individual falsely identifies him or herself as a  
14          master hazard remediation technician.

15                      There's also with respect to the Air  
16          Asbestos penalty schedule, an added penalty that  
17          basically the section requires contractors to  
18          carefully install ducting for negative pressure  
19          units. Because the improper installation does  
20          threaten the release of asbestos. Okay.

21                      Then there's several changes to the Air  
22          code penalty schedule. These relate to dry  
23          cleaning facilities. And basically what they do  
24          is they spell out each requirement: First, New

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2           York State requirement that notice has to be  
3           posted; and then subsequently, you know, whether  
4           they're using Perc or non-Perc chemicals and the  
5           related penalties for not having those postings.

6                         In addition, the Air code penalty  
7           schedule is being amended to set forth  
8           performance standards and engineering criteria  
9           for boilers and water heaters. Basically  
10          requiring that boilers that require a  
11          certification- a certificate of operation undergo  
12          an annual tune-up and combustion efficiency test.  
13          And those testings need to be maintained; the  
14          records of those testings need to be maintained.  
15          And finally, the air pollution control code which  
16          prohibits the use of delivery or use of heating  
17          oil that contains less than two percent bio-  
18          diesel by volume carries certain penalties  
19          depending on whether you're using or delivering  
20          noncompliant heating oil.

21                         Are there any questions about any of  
22          these provisions?

23                         MS. BEDDOE: Elizabeth, you had a  
24          question?

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2                   MS. KNAUER:  Yeah.  I just would be  
3 interested to hear DEP's response to the Council  
4 Member Rose's comments on Section 1-91N about the  
5 failure to fully install ducting to ensure  
6 against the fiber release of asbestos fibers.  I  
7 think she had just asked how, you know, how  
8 carefully install is defined.  I mean, is there  
9 some kind of standard?

10                   MR. PECUNIES:  Well, this is not -- this  
11 is not a new section.

12                   MS. KNAUER:  It's not?

13                   MR. PECUNIES:  This is an existing  
14 section that had been accidentally omitted from  
15 the penalty schedule.

16                   MS. KNAUER:  Okay.

17                   MR. PECUNIES:  So it's not, you know,  
18 this is not something that we just promulgated in  
19 terms of the rule itself.  The rule has been there  
20 for, you know, 30 years.

21                   MS. KNAUER:  And it's been -- and the  
22 violations have been issued under a more general  
23 section.

24                   MR. PECUNIES:  It's not a section; it,

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2           it really came to light that it had been omitted  
3           when an inspector finally wanted to issue it.  
4           It's not a section that is regularly or routinely  
5           cited.

6                   MS. KNAUER:   Okay. So there, there  
7           aren't any, you know, specific requirements that  
8           would, you know, carefully would be defined by --

9                   MR. PECUNIES:   Carefully is not --  
10          carefully is not defined to my knowledge, no.

11                   MS. BEDDOE:   Any other questions with  
12          respect to the DEP amendments? Okay. Is there a  
13          motion to approve? Anyone against? Any  
14          abstentions? I'm sorry -- one more time with the  
15          abstentions? Three. Okay. Alright. Okay. Thank  
16          you. Okay. Now, Russ, you're up with cease and  
17          desist orders.

18                   MR. PECUNIES:   Yup.

19                   MS. BEDDOE:   And we have a lot of them.

20                   MR. PECUNIES:   Actually not as many as  
21          we've had on some other occasions. But, okay.  
22          Okay. This month DEP has in terms of requests for  
23          cease and desist orders: first, one request under  
24          the noise code. This is for TJ Food Corp at 3419

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2           Broadway in Manhattan. Their air conditioning  
3           unit has been cited on four occasions: three  
4           times last summer and fall and now again in  
5           September of this year. The same unit has been  
6           cited again for being too noisy. This is  
7           apparently a Subway sandwich store. Based on the  
8           repeated violations and the fact that the unit is  
9           still too noisy, DEP is requesting an order to  
10          cease and desist.

11                   MS. BEDDOE:   Okay.

12                   MR. PECUNIES:   Do we go all of them?

13                   MS. BEDDOE:   Well, let's just ask if  
14           there; because it's a noise issue, let's just ask  
15           if there are any questions on this particular  
16           request?

17                   MR. PECUNIES:   Okay.

18                   MS. BEDDOE:   No? Okay.

19                   MR. PECUNIES:   Okay. We also have one  
20           request under the Air code for something other  
21           than a boiler. This is for Diamond Cut Auto Body  
22           at 2364 Flatbush Avenue in Brooklyn. They have a  
23           spray booth for painting cars. And they have been  
24           cited on three occasions this year for operating

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2           the spray booth without a certificate of  
3           operation. They have defaulted on the first two  
4           violations. The third one is coming up for a  
5           hearing in December. This is a location that  
6           we're getting a lot of complaints about. And  
7           because of the repeated violations and continuing  
8           failure to correct, DEP is requesting an order to  
9           cease and desist from the use of the spray booth.

10           MS. BEDDOE: Okay. Any questions on that  
11           air violation? Okay. Russ?

12           MR. PECUNIES: Alright. We have two  
13           requests under the Air code relating to locations  
14           that have boilers that have expired certificates  
15           of operation to use number six oil. And these are  
16           the same essentially as the ones that we've been  
17           bringing to the Board each month for the last few  
18           months.

19           MS. BEDDOE: Okay. Anything on the  
20           boilers? Alright.

21           MR. PECUNIES: And then we have the  
22           usual 28 requests for cease and desist orders  
23           related to failure to install backflow devices.

24           MS. BEDDOE: Okay. Any question- any

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2           questions on any of those 28 backflow requests?

3                   LT. ALBANO:   No.

4                   MS. BEDDOE:   No? Okay. So let's take a  
5           vote collectively on the noise, the three air and  
6           the 28 backflow C&D requests. Is there a motion  
7           to approve? Anyone against? Any abstentions?  
8           Russ. Okay.

9                   MR. PECUNIES:   Yup, thank you.

10                  MS. BEDDOE:   Thank you very much. Okay.  
11           Now we have the pre-sealing reports. Kelly Corso  
12           is presenting today.

13                  MS. KELLY CORSO, ESQ., ASSISTANT  
14           DIRECTOR OF ADJUDICATIONS, ECB:   Good morning.

15                  LT. ALBANO:   Good morning.

16                  MS. CORSO:   We have 19 pre-sealing  
17           reports today; two of them pertain to noise from  
18           kitchen exhaust systems. And in both of these  
19           cases, the respondents' representatives provided  
20           proof of work done on the kitchen exhaust systems  
21           to bring them into compliance with the noise  
22           code. And based on the evidence of compliance,  
23           the ALJ's in both cases recommended that DEP re-  
24           inspect the equipment and that the equipment

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2           remain unsealed if the initial re-inspection show  
3           no violations and if further re-inspections for a  
4           period of 180 days show no violations.

5                     MS. BEDDOE:   Okay.

6                     MS. CORSO:   The next case we have is  
7           pertaining to violation of the Air code. In this  
8           case again this is related to boiler equipment.  
9           Again, in this case respondent's representative  
10          provided proof of a valid operating certificate  
11          bringing the boiler into compliance with the Air  
12          code. Based on that information, the ALJ has  
13          recommended that no further action is necessary  
14          given the respondent's compliance.

15                    Then we have one case pertaining to  
16          failure to install proper sewer equipment. In  
17          this case the ALJ recommended that the C&D order  
18          be discontinued because DEP records show that the  
19          respondent had come into compliance.

20                    MS. BEDDOE:   Okay. Any -- oh, I'm sorry,  
21          Kelly. Go ahead.

22                    MS. CORSO:   And 15 of the reports  
23          pertain to failure to install backflow devices.  
24          In 14 of those cases, the ALJ's recommended that

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2           there be no sealing or other action given the  
3           respondent's compliance. In the remaining case,  
4           the ALJ recommended that the C&D be discontinued  
5           based on DEP's acknowledgement that the C&D was  
6           issued for incorrect lot number.

7                     MS. BEDDOE:   Okay.

8                     MS. CORSO:   And that's it.

9                     MS. BEDDOE:   Alright. Any questions on  
10           any of those reports? Okay. So let's vote on them  
11           collectively. Is there a motion to approve?  
12           Anyone against? Abstentions? Russ. Great. Okay.  
13           It's about that time when we have to discuss our  
14           litigation and appeals. And so is there a motion  
15           to go into executive session? Alright. Anyone who  
16           isn't a part of OATH will have to excuse us for a  
17           while.

18                     [OFF THE RECORD]

19                     [ON THE RECORD]

20                     MS. BEDDOE:   So with that, is there a  
21           motion to affirm the appeals decisions from the  
22           October 9th and the October 23rd panels? Okay.  
23           Thank you very much.

24                     MS. KURZMAN:   I just have a procedural

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2           question --

3                   MS. BEDDOE:   Yes.

4                   MS. KURZMAN:  -- with the votes on the  
5           pan- for the panels. Do you have the agencies  
6           abstaining from their own decisions? Or --

7                   MR. MACRON:  Right, we note that.

8                   MS. BEDDOE:  Yes, we note that.

9                   MS. KURZMAN:  Okay. I just -- I just  
10          wanted to make sure.

11                   MS. BEDDOE:  Yeah, absolutely. And so is  
12          there a motion to adjourn? Okay. Thank you  
13          everyone.

14                   (The public hearing concluded at 11:10  
15          A.M.)

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of Environmental Control Board on October 30, 2014 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



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Date: October 31, 2014

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