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Is Everything Going to Be Fine(d)?

An Overview of New York City Fine Revenue and Collection



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Summary

Each year, New York City collects millions of dollars in revenue from residents, businesses, and visitors for violations of local and state laws and regulations. The city collected \$457.4 million in fine revenue in 2002, a figure that is projected to rise to \$661.9 million in 2004. The city's current fiscal situation has led many to look to fine revenue as a potential source of help in filling the city's budget gap. With the recent hike in parking and some other fines and news headlines blaring accounts of a "ticket blitz" or a "summer of citations," the push for more fine revenue appears to be underway.

The purpose of enforcement programs is not revenue generation. Violations are issued, and fines are levied, as a means of enforcing laws and regulations to protect the public health and safety, by ensuring clean streets, safe housing, or sanitary restaurants. In most instances, it costs the city more than \$1 in enforcement spending to raise \$1 in fine revenue. Nonetheless, even where this is true, it may be possible to both improve enforcement and increase *net* revenue by raising the likelihood that fines, when levied, will actually be paid. A considerable amount of fine revenue goes uncollected each year. An increase in spending on enforcement and collection efforts will only yield a net increase in revenue, however, if each additional dollar spent raises more than a dollar in fine revenue.

In this report, which IBO began at the request of Council Member Alan Gerson, we examine fine revenue collection in the context of enforcement of city and state laws and regulations. We present some general background on fine revenue and enforcement spending in New York City and lay out an analytic framework for considering how it might be possible to increase net fine revenue in the context of enforcement. We then present our findings and observations, among them:

- In 2002, the city spent \$0.22 for every \$1 in parking fine revenue collected. For all other fine revenue, the city spent \$2.09 for each \$1 collected.
- When the primary goal is correcting a violation such as cleaning up a chemical spill, collection rates for the associated fines tend to be lower. The enforcing agency will often not seek a monetary penalty if the violator cooperates in correcting the condition.
- Fine amounts do not consistently reflect the violation's social harm. For example, the same \$25 fine applies to sidewalk vendors who refuse to allow inspectors to ensure food is being handled safely as to taxi drivers who wear cut-off shorts.
- Some city agency tribunals can establish liens as a means of leveraging payment for fines while others cannot. The housing department, for example, must go to court, which can be costly and time consuming.

An appendix to this report provides several case studies of agencies charged with enforcement responsibilities. These case studies helped inform our analysis and conclusions. Together the agencies we studied accounted for 97 percent of fine revenue in 2002, including parking violations, the Departments of Environmental Protection, Housing Preservation and Development, Health and Mental Hygiene, and Consumer Affairs. We also examine the Environmental Control Board, which adjudicates cases for a dozen different city agencies.

BACKGROUND

More than a dozen city agencies are charged with enforcement of various provisions of the New York City Administrative Code and state law. In almost every instance, a violation may be punished by a monetary penalty—a fine.

In 2002, the city issued 9.2 million violations of various types, and collected \$457.4 million in fine revenue. Parking tickets accounted for the vast majority of both summonses and revenue—8.1 million summonses, and \$379.6 million in fine revenue collected. Another \$47.8 million was collected from over 673,000 violations issued by multiple city agencies (principally the Department of Sanitation) and adjudicated by the city's Environmental Control Board. Other agencies collected another \$30.1 million.

Fine revenue is expected to rise by \$204.5 million in 2004 and total \$661.9 million. The largest share of the increase arises from higher parking fines and a greater number of parking tickets, but other changes, both in fine amounts and in collection efforts, will also contribute to the increase.

The city spends a significant amount of money to enforce city and state laws and regulations. Enforcement here may be thought of as having two components—"up-front" enforcement and "back-end" enforcement. By up-front enforcement we mean the inspectors and other agents who seek out, identify, and place violations, such as traffic enforcement agents, housing code inspectors, and public health sanitarians, as well as, in some cases, the legal staffs who are responsible for bringing action in court against violators. On the back end are the personnel who are responsible for adjudication, such as Administrative Law Judges, and the personnel responsible for ensuring collection of judgments and penalties (including contracts with collection agencies). In 2002, expenditures on all aspects of enforcement totaled \$244.9 million.

For the majority of agencies, the cost of enforcing the laws for which they are responsible exceeds the revenue from fines. Only parking tickets actually reap more in revenue than it costs to enforce parking laws. For other agencies the cost of enforcement varied from 1.5 times revenue to 15 times revenue. Does this indicate a failure of enforcement by these

agencies? Not necessarily. As we discuss below, a low collection rate may indicate either a poor track record in enforcing judgments against violators, or it may be indicative of an enforcement strategy that focuses on corrective action rather than on punishment through imposition of a fine. Moreover, when low collection rates indicate an ineffective enforcement strategy, there may be more than one cause. To better evaluate the city's ability to both improve enforcement and raise net fine revenues, a more complete understanding is needed of the resources, strategies, processes, and tools available to different agencies and for different types of violations.

2002 Enforcement Spending and Fine Revenue				
	Revenue (millions)	Enforcement (millions)	Net Revenue (millions)	Amount Spent to Raise \$1.00
Parking	\$379.6	\$82.1	\$297.5	\$0.22
ECB	47.8	74.4	(26.6)	1.56
Health	10.3	21.1	(10.8)	2.05
DOB	7.7	21.6	(13.9)	2.79
TLC	7.3	11.2	(3.9)	1.53
DCA	2.5	4.3	(1.8)	1.73
HPD	2.0	28.0	(26.0)	13.67
OATH	0.1	2.2	(2.1)	15.11
TOTAL	\$457.4	\$244.9	\$212.5	\$0.54
Total	\$77.8	\$162.8	(\$84.9)	\$2.09
<i>excluding parking</i>				

SOURCE: IBO, from agency data and Comprehensive Annual Financial Report of the Comptroller.
 NOTES: ECB enforcement figure includes enforcement expenditures by Departments of Environmental Protection, Sanitation, Parks & Recreation, Transportation, Small Business Services, Fire, and Information Technology and Telecommunications, as well as ECB expenditures. OATH refers to the Office of Administrative Trials and Hearings.

Using the framework laid out below, we studied enforcement in five agencies that together account for over 90 percent of violations placed and fine revenue collected each year, as well as the Environmental Control Board, which adjudicates and makes initial collection efforts for over 80 percent of non-parking violations each year. Details of our reviews are contained in the appendix.

A FRAMEWORK FOR THINKING ABOUT FINES

The effectiveness of enforcement depends on several separate elements working together. In our analysis of city agencies that collect fine revenue, we considered five elements that determine both the effectiveness of enforcement and the amount of fine revenue raised: the level of enforcement resources; the different types of violations and enforcement strategies; the size of penalties that can be levied; the

procedures for adjudication of violations; and the tools and resources available to collect judgments against violators.

Enforcement Strategies: "Punitive/Deterrent" versus "Corrective." The nature of a violation in large measure dictates the enforcement strategy that an agency will pursue. Practically speaking, some violations are "point-in-time" and will correct themselves within relatively short periods of time. For example, in most cases the driver of a car parked illegally will eventually move the car. Similarly, recyclable materials tossed out with the regular waste will be picked up in the next garbage collection run. In contrast, some violations will continue to exist until the violator takes direct corrective action—peeling lead-based paint in an apartment, or unsafe storage of a hazardous material, for example. Correction of these ongoing violations will usually involve some cost, unlike the short-term violations, which require little or no expense on the part of the violator to correct (if correction is even possible).

The differences in violations lead to different strategies for enforcement. Point-in-time violations typically will result in a ticket or summons, and rely on the city's ability to impose and collect a fine as a deterrent to future violations. In the case of ongoing violations that require substantial corrective action, the enforcing agency will often emphasize correcting the condition, using the threat of a penalty only to enforce compliance. The penalty may be lowered or removed once the violation has been removed. We refer to these two broad strategies as punitive/deterrent and corrective.

Enforcement Resources. The effectiveness of enforcement is in part a function of the level of resources devoted to seeking out and identifying violations and violators, relative to the universe of violations. If enforcement resources are too low, then the likelihood of getting caught will be low, and potential violators may not be deterred—or caught. Given limited resources, the Mayor, the City Council, and agencies must prioritize programs in response to both public demand, changes in circumstance, and perceived and actual harm. Attempting to catch some types of violations may be costly relative to the actual harm inflicted. Finally, agencies may actively seek out violations, or their enforcement may largely be complaint driven.

Across all city agencies, there are some 5,300 full-time personnel empowered to issue, prosecute, or adjudicate violations, and to collect fine payments.¹ Whether this is the right level or not is difficult to determine because we cannot know with certainty how many violations may be taking place

undetected. Although it is possible that there are insufficient resources devoted to enforcement, or that resources are misallocated, for purposes of this analysis we take the current level as given.

Several recent news reports have suggested that the city has gone on a "ticketing blitz" in an effort to raise greater revenue to help close the budget gap. As our analysis revealed, there are some types of violations that generally have higher "yields" than others. As a short-term strategy, it may indeed be possible to boost fine revenue by targeting certain kinds of violations.

Size of Penalty. Fines vary tremendously in amount, from a one-time penalty of \$25 for a parking violation to \$25,000 per day for an illegal residential conversion violation. In theory, fines are optimally structured to recapture the social costs imposed by violations: violations that cause more serious harm should carry larger fine amounts.

What also matters, both as a matter of enforcement and as a matter of revenue generation, is a violator's perception of the size of the fine relative to the benefit from breaking the rule. In some cases violators may treat fines as a "cost of doing business," as recent news articles have documented with respect to parking tickets and commercial delivery companies.² For a private citizen, however, the same ticket for illegal standing, for instance, may seem very costly relative to the gain from the violation.

Finally, the size of the fine may dictate how it is dealt with. Most people pay their parking tickets by simply mailing in payment. Although this constitutes a guilty plea, parking tickets—as opposed to moving violations—do not become part of one's driving record. Pleading guilty and paying is easy and relatively consequence-free. If the penalty for staying over on a meter was \$1,000, however, more people might contest—appearing at a hearing might seem worth the trouble and risk in order to avoid having to pay the full amount of the ticket. If the penalty were that large and the probabilities of getting caught and of having to pay the full amount were both high, there would be fewer parking violations, because the risks would be disproportionate to the potential benefits. Although this might be an effective enforcement strategy, it might actually result in lower revenue, because fewer violations would be committed. There is also the issue of the "justice" or "fairness" of a penalty—as a matter of common law, in fact, a fine must be proportionate to the offense for which it was imposed, or it is considered excessive.³

Adjudication. Agencies use different forums to resolve violations that are not paid immediately. In some cases, such as Housing Maintenance Code violations, the agency must take a violator to court in order to get a judgment, or monetary fine, placed. Other agencies use internal administrative tribunals, with their own Administrative Law Judges. The Environmental Control Board provides an administrative adjudicatory forum for several city agencies, including sanitation, buildings, parks and recreation, the fire department, and others. Generally speaking, taking a violator to court is more costly than an administrative tribunal. The housing department, for example, with relatively limited resources for its legal division, focuses its efforts on pursuing "comprehensive cases" against owners of buildings with large numbers of violations.

In general, when a violator pleads guilty, or fails to appear for a hearing, the administrative tribunal will enter a default judgment against the party to whom the notice of violation was issued, and then docket it—essentially, record the judgment—with the city's civil court. At that point the judgment becomes enforceable and the city may proceed to take action to collect the fine.

Collection. Finally, once a judgment has been entered against a defendant, the mechanisms must exist to ensure that the judgment can be enforced, and penalties collected or corrective actions taken. The ability to effectively deny a violator something of value for failure to pay a penalty (or correct a violation) is an important dimension of effective enforcement and fine collection. Some agencies can place liens on real property or even freeze bank accounts. Others have more limited leverage. The Department of Consumer Affairs, for example, may refuse to renew a business license for outstanding violations. But there are businesses that do not need a consumer affairs license to operate, and the department has less leverage over these companies to enforce compliance.

To summarize, effective enforcement depends on adequate and appropriate resources and strategies to ensure that violations are discovered and addressed, on a penalty set at a level that is both appropriate to the social harm caused by the violation and greater than the perceived benefit of committing the violation, and by mechanisms for assessing a penalty and collecting it that are efficient and likely to ensure that a high proportion of fines are actually paid. If any one of these elements is not working effectively, then enforcement overall will be weakened—and fine revenue may be less than it could be.

CONCLUSIONS

In all areas except parking tickets, the amount spent on enforcement exceeds the revenue collected from fines. At the margin, therefore, each additional dollar spent on increased enforcement must be assured of bringing in more than a dollar in fine revenue if the city is to realize a net gain. In almost every area of enforcement, absent any other changes, this will not be accomplished by adding "up-front" enforcement personnel—that is, inspectors and other enforcement agents whose job is to locate, identify, and write the initial notice for violations.

There are at least three other ways to increase net fine revenue: by raising fine amounts; by improving collection; and by more frequently seeking fines for types of violations for which the city has traditionally pursued a "corrective" strategy.

City agencies have raised fines for several types of violations recently—most notably, for parking violations. Higher parking fines are expected to result in an additional \$82.9 million per year beginning in 2004 (this was prior to hiring additional traffic agents). Sanitation and recycling violation base fines have also doubled, from \$50 to \$100, for another \$9.7 million. The Board of Health also raised fines in January, which is projected to increase revenues by \$3.0 million in 2004; the Department of Consumer Affairs also will soon propose a revised fine schedule. The initiative currently rests with each agency to update its fine schedule. The city may usually change fines either administratively or by local law, but in some cases state legislation is required.

Our analysis indicates that in some cases it would be possible to increase net revenue by improving back-end enforcement: that is, by strengthening the adjudication and collection tools available to agencies. This could be as simple as allowing liens to be placed against more types of unpaid fines than currently permitted. The Department of Consumer Affairs is seeking state legislation that would allow it to hear violations against certain categories of businesses in its administrative tribunal, rather than having to go to state court. The Department of Housing Preservation and Development, in contrast, remains the city's only agency that must pursue judgments for any and all violations in court—with the result that many violations are placed but never pursued, and both enforcement and revenue are weakened. Even where judgments may be easily recorded, however, as at the Environmental Control Board, a large number of them are never collected.

A change in strategy with respect to violations requiring corrective action that emphasized imposing fines more frequently could also yield additional revenue at relatively low cost. Implementing this strategy is not entirely within the agencies' control, however, notably at the housing department, where monetary penalties are imposed at the discretion of state court judges. This would also be a significant shift in policy for several agencies. Often an agency does not seek a fine because it believes the violation was not willful, or the violator was cooperative in correcting the situation. A shift to a more punitive strategy could be seen as counterproductive. More generally, the city will have to strike a balance between effective enforcement of the law and the perception that its real goal is less enforcement than balancing the budget through fines.

Some more specific observations and conclusions follow.

1) Increasing enforcement is not the same as increasing revenue. In general, with the exception of parking violations, it costs the city over \$2 for each \$1 it collects in fine revenue.

Holding everything else constant, therefore, simply increasing the number of enforcement personnel will not yield a net increase in revenue, and in fact could result in a net loss in revenue in certain areas. To achieve a net revenue gain to the city, at the margin each additional dollar spent on enforcement must result in more than \$1 in fine revenue.

2) When the primary goal is correcting a violation, rather than imposing a monetary penalty, collection rates for fines tend to be lower. The types of violations that are subject to a "corrective" or compliance enforcement strategy tend to have somewhat lower collection rates, because the primary goal of enforcement is to correct the violating condition. In many instances, the enforcing agency will not seek a monetary penalty if the violator cooperates in correcting the condition. In contrast, violations not requiring a costly "cure"—parking violations being the prime example—are usually subject to a punitive/deterrent enforcement strategy in which a summons is issued with the expectation that, in most instances, the violator will simply plead guilty and pay the fine. Relative to the cost of enforcement, therefore, these types of violations tend to produce more in revenue.

3) Fine amounts do not consistently reflect the violation's social harm. Most fine amounts are set in the city's Administrative Code. They can vary widely, and often do not seem to reflect a consistent consideration either of the social harm the violation causes, or the likelihood that the penalty would be effective in deterring future violations. For example, false

statements made in certifications or reports required by the Building Code, administered by the Department of Buildings, carry fines of \$1,000 to \$5,000. False certification of correction of Housing Maintenance Code violations (administered by the Department of Housing Preservation and Development) are subject to fines of \$50 to \$250.

Similarly, the fine for a host of food vendor violations, including refusal to permit regular inspections, is \$25, which is the same as the fine for a taxi driver wearing inappropriate clothing, such as a tube top or cut-off shorts. The harm associated with unsanitary food is clearly greater than that stemming from unaesthetic taxi drivers, yet the fines are the same.

Changing fine amounts usually requires local legislation.⁴ In general, the initiative to change the range of fines for particular violations comes from the enforcing agencies. There is currently no mechanism for regular, comprehensive review of fine amounts.

4) Different administrative tribunals have different powers. The most important authority that administrative tribunals can have is the ability to docket a judgment: that is, to record a judgment against a violator with the clerk of the county court, which automatically establishes a lien against any real property of the violator. For some administrative tribunals, however, obtaining a judgment requires going to court. This is notably the case for the housing department and for the Department of Consumer Affairs with respect to businesses not licensed by the city. Since going to court is costly and time consuming, and the outcome is uncertain, agencies frequently do not invest resources in pursuing judgments for those types of violations.

5) Collection efforts are most effective when the agency has the ability to deny the violator something of value. Once a judgment has been entered, the city must then try to collect it. In some instances an agency can leverage payment of a fine by denying the violator something of considerable value: for example, by towing a vehicle, revoking or not renewing a business license, padlocking a business or seizing assets, or denying access to agency programs. In these instances, collection rates are usually higher. By itself a lien against real property frequently does not result in prompt collection.

6) Many judgments cannot result in liens, and liens themselves cannot be sold. Fines for some types of violations are not subject to liens—for example, Department of Health and Mental Hygiene fines for pest infestation violations cannot

result in a lien. Others have recently become eligible for liens, such as certain Building Code violations on one- to three-family homes.

The city began selling liens for delinquent real property taxes in 1996.⁵ The result has been a decline in the property-tax delinquency rate. The majority of property owners come forward to pay their property taxes if their buildings are included in a tax-lien sale. Although most fine judgments can result in a real property lien, the lien itself cannot be sold, either singly or as part of a tax-lien sale. The City Council has recently proposed extending tax-lien sales to include unpaid violations that have reached certain threshold levels of delinquency and size.⁶

7) Inability to identify or locate violators hinders collection.

Often a violation is placed against a building or business and the city has inadequate information to identify or locate the party ultimately responsible for any penalty. Ownership can be complex and multi-layered, and the city may have limited ability to track owners down. Although with additional resources it might be possible to do so with more success, it is not clear that the resulting collections would outweigh the costs incurred. Certainly this is the case with Department of Finance attempts to collect against certain types of

Environmental Control Board violations, where collection efforts more or less end after two or three letters have been sent to whatever address the city has on the Notice of Violation.

Difficulties in identifying violators also was a major factor behind the failure of the city's Consolidation Project, a mid-1990s effort to create a single administrative tribunal that would adjudicate all violations covered under the Administrative Code. One objective was to link agency records so that each agency would know about violations issued by other departments, in the hope that this would allow for more effective collection. Thus, if a business owner owed more than \$1,000 in total fine revenue, the proprietor would be denied any license he or she applied for until those fines were resolved.

For several reasons the Consolidation Project was discontinued. There was concern that technological barriers would prevent the system from working correctly. Most Administrative Law Judges are specialized, and do not have the expertise to rule on other issues. And most importantly, it proved more difficult to match violations from different sources to a single responsible party.

Fine Revenue Collected, by Agency and Category, Dollars in millions					
	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>
Parking Violations Bureau	\$ 378.00	\$ 380.73	\$ 367.57	\$ 382.23	\$ 379.56
Environmental Control Board					
Sanitation	11.77	10.44	11.35	12.94	14.03
Buildings	5.21	7.95	9.26	12.63	13.44
Street Construction	4.15	3.32	3.71	6.49	7.86
Fire	2.91	3.15	3.27	3.26	3.25
Asbestos	1.67	1.53	1.32	1.98	2.24
Recycling	1.42	1.67	2.27	2.28	2.10
Air	1.90	1.50	1.49	1.52	1.61
Noise	0.62	0.70	0.70	0.77	0.72
Industrial Waste	0.31	0.23	0.25	0.39	0.50
Abandoned Vehicles	0.46	0.31	0.25	0.32	0.42
Health Code	0.29	0.37	0.31	0.40	0.42
Water	0.08	0.07	0.08	0.14	0.40
Parks	0.33	0.33	0.29	0.40	0.34
General Vending	0.18	0.17	0.16	0.20	0.21
Food Vending	0.26	0.32	0.20	0.23	0.20
Canine Waste	0.06	0.07	0.04	0.04	0.03
Lead Paint	0.04	0.06	0.03	0.03	0.01
Title X	-	-	-	-	-
Lead Acid Battery	-	-	-	-	-
Telephones	-	0.06	0.01	-	-
Markets	0.01	0.01	0.01	0.01	-
Miscellaneous	-	-	-	-	-
ECB SUBTOTAL	\$ 31.69	\$ 32.25	\$ 34.99	\$ 44.03	\$ 47.78
Department of Health and Mental Hygiene					
Restaurant	11.13	10.60	10.18	9.66	8.20
Pest Control	0.13	0.39	0.49	0.56	0.90
Public Health	0.22	0.21	0.19	0.16	n.a.
Animal Affairs	0.05	0.07	0.04	0.06	n.a.
Lead Poisoning	0.05	0.03	0.05	0.10	n.a.
Building Complaints	0.11	0.14	0.10	0.10	n.a.
Radiation	0.10	0.12	0.09	0.08	n.a.
Day Care/Camp	0.09	0.06	0.07	0.08	n.a.
Smoking & Respiratory Equip.	0.16	0.15	0.16	0.12	n.a.
Vector Control (West Nile Virus)	-	-	-	-	n.a.
Hazardous Substances	0.01	0.01	0.01	0.01	n.a.
Milk	0.05	0.01	-	-	n.a.
Adult Shops	-	0.01	0.01	-	n.a.
Mobile Vendor	0.03	0.05	0.02	0.01	n.a.
Barber and Beauty Parlor	-	-	-	-	n.a.
Window Guards	0.23	0.33	0.52	0.47	n.a.
All Other	0.23	n.a.	n.a.	n.a.	1.20
DOHMH SUBTOTAL	\$ 12.37	\$ 12.20	\$ 11.93	\$ 11.43	\$ 10.30
Department of Buildings (civil penalties)	4.61	5.59	6.61	7.26	7.75
Taxi and Limousine Commission	7.85	7.90	7.28	8.69	7.32
Department of Consumer Affairs					
Cigarette Retail Dealer	n.a.	n.a.	0.11	1.27	1.41
Stoop Line Stand	n.a.	n.a.	0.35	0.27	0.19
Garage and Parking Lot	n.a.	n.a.	0.33	0.32	0.17
Second Hand Dealers	n.a.	n.a.	0.27	0.27	0.14
Electronic Stores and Services	n.a.	n.a.	0.30	0.42	0.12
Home Improvement	n.a.	n.a.	0.10	0.08	0.11
Laundry	n.a.	n.a.	0.11	0.07	0.08
Unnamed/unclassified	n.a.	n.a.	0.13	0.24	0.07
Other Retail	n.a.	n.a.	0.25	0.07	0.05
Tow Trucks	n.a.	n.a.	0.13	0.15	0.04
Sidewalk Cafes	n.a.	n.a.	0.03	0.03	0.04
Other Non-Retail	n.a.	n.a.	0.07	0.08	0.03
Cabaret	n.a.	n.a.	0.03	0.05	0.02
Supermarkets	n.a.	n.a.	0.08	0.02	0.01
Drug Stores Retail and Wholesale	n.a.	n.a.	0.05	0.02	0.01
DCA SUBTOTAL	n.a.	n.a.	\$ 2.34	\$ 3.39	\$ 2.49
Housing Preservation and Development					
Heat & Hot Water	0.98	1.07	0.84	1.05	1.14
Tenant Initiated	0.24	0.39	0.35	0.37	0.54
Comprehensive Cases	0.32	0.30	0.41	0.46	0.28
Comp. Cases + False Cert.	0.04	0.02	0.06	0.03	0.04
False Certification	0.05	0.01	0.04	0.02	0.04
Failure to Register	-	-	0.00	-	-
Other	-	-	0.00	0.01	-
7A	0.26	0.03	0.03	-	-
HPD SUBTOTAL	\$ 1.90	\$ 1.82	\$ 1.74	\$ 1.93	\$ 2.05
Office of Administrative Trials and Hearings	\$ 0.43	\$ 0.47	\$ 0.23	\$ 0.26	\$ 0.15
TOTAL	\$ 436.84	\$ 440.96	\$ 432.68	\$ 459.22	\$ 457.40

SOURCES: IBO, Department of Finance, Environmental Control Board, Department of Health and Mental Hygiene, Department of Consumer Affairs, Department of Housing Preservation & Development, Office of Administrative Trials & Hearings, Comptroller's Reports.

NOTE: 2002 Health figures are through April 2002, annualized.

Violations Issued by Agency and Category					
	1998	1999	2000	2001	2002
Parking Violations Bureau	9,142,969	8,867,983	8,610,972	8,240,808	8,088,514
Environmental Control Board					
Sanitation	265,865	251,585	306,724	356,145	364,315
Buildings	34,266	38,104	46,529	49,439	43,825
Street Construction	15,803	13,498	17,698	32,142	35,652
Fire	58,268	52,837	56,653	54,010	55,987
Asbestos	1,342	964	1,241	1,866	1,446
Recycling	75,195	89,293	129,466	110,819	102,981
Air	6,675	4,613	5,760	4,593	5,987
Noise	2,521	1,995	2,649	2,423	2,269
Industrial Waste	925	800	690	1,639	1,863
Abandoned Vehicles	4,730	3,187	3,092	4,103	6,795
Health Code	7,371	9,195	8,431	9,676	13,795
Water	461	486	742	1,437	5,566
Parks	6,662	6,668	5,094	6,251	5,521
General Vending	13,436	13,036	14,617	15,573	14,175
Food Vending	16,529	16,887	18,351	17,698	12,703
Canine Waste	1,527	2,160	1,364	1,086	581
Lead Paint	298	408	191	13	9
Title X	204	44	23	39	22
Lead Acid Battery	26	47	34	96	78
Telephones	131	27	24	5	241
Markets	10	16	20	57	17
Miscellaneous	-	1	11	11	41
ECB SUBTOTAL	512,245	505,851	619,404	669,121	673,869
Department of Health and Mental Hygiene					
Restaurant	32,856	29,699	28,198	24,465	17,259
Pest Control	3,346	8,038	9,338	8,459	9,274
Public Health	674	625	528	357	373
Animal Affairs	727	393	793	607	665
Lead Poisoning	484	489	629	1,540	828
Building Complaints	813	741	1,169	997	509
Radiation	205	204	178	105	92
Day Care/Camp	433	393	463	334	376
Smoking & Respiratory Equip.	868	740	986	547	157
Vector Control (West Nile Virus)	-	-	-	-	42
Hazardous Substances	123	120	165	90	220
Milk	266	72	25	3	8
Adult Shops	-	32	-	-	-
Mobile Vendor	131	222	79	20	3
Window Guards	1,317	1,800	1,952	1,433	-
Barber and Beauty Parlor	10	46	7	3	1
DOHMH SUBTOTAL	42,253	43,614	44,510	38,960	29,807
Department of Buildings (civil penalties)	33,922	33,252	39,769	39,913	35,763
Taxi and Limousine Commission	74,403	63,164	63,520	57,845	41,689
Department of Consumer Affairs					
Cigarette Retail Dealer	NA	NA	427	1,953	2,540
Scoop Line Stand	NA	NA	1,173	1,139	822
Garage and Parking Lot	NA	NA	332	366	304
Second Hand Dealers	NA	NA	694	586	476
Electronic Stores and Services	NA	NA	583	781	319
Home Improvement	NA	NA	445	286	249
Laundry	NA	NA	316	290	358
Unnamed/unclassified	NA	NA	360	281	215
Other Retail	NA	NA	972	881	603
Tow Trucks	NA	NA	407	341	139
Sidewalk Cafes	NA	NA	110	93	206
Other Non-Retail	NA	NA	1,292	1,479	956
Cabaret	NA	NA	87	102	80
Supermarkets	NA	NA	2,173	1,674	1,592
Drug Stores Retail and Wholesale	NA	NA	241	180	120
DCA SUBTOTAL	NA	NA	9,612	10,432	8,979
Housing Preservation and Development					
Heat & Hot Water	1,485	1,818	1,740	2,511	2,178
Tenant Initiated	8,124	9,891	10,214	10,071	10,595
Comprehensive Cases	199	351	479	415	516
Comp. Cases + False Cert.	23	33	26	64	64
False Certification	30	35	66	69	83
Failure to Register	-	1	-	21	1
Other	-	-	-	2	-
7A	21	46	66	91	47
HPD SUBTOTAL	9,882	12,175	12,591	13,244	13,484
Office of Administrative Trials and Hearings	19	43	50	30	19
TOTAL	9,815,693	9,526,082	9,400,428	9,070,353	8,892,124

SOURCES: IBO, Department of Finance, Environmental Control Board, Department of Health, Department of Consumer Affairs, Department of Housing Preservation & Development, Office of Administrative Trials & Hearings, Comptroller's Reports.

NOTES: 2002 Health figures are through April 2002, annualized; HPD figures refer to the number of cases.

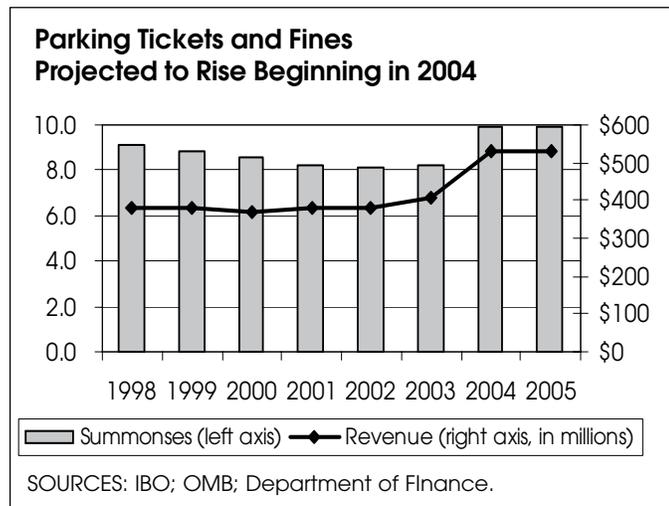
Appendix: Case Studies

In this appendix we analyze fine revenue generated by several different agencies using the framework laid out in the report. We begin with parking violations, adjudicated at the Department of Finance (DOF), which is famously effective at collecting on parking tickets. We then examine two agencies, the Department of Environmental Protection (DEP) and Department of Housing Preservation and Development (HPD), that more often must address ongoing violations that require corrective action on the part of the violator. These two agencies have relatively low collection rates, but in large part this can be explained by the nature of the violations they pursue and their strategies for enforcement. Two other agencies, the Departments of Consumer Affairs (DCA) and Health and Mental Hygiene (DOHMH), have a wider range of enforcement responsibilities—and more mixed results. Finally, we also consider the Environmental Control Board (ECB), which adjudicates over 80 percent of non-parking, "quality-of-life" violations issued by several city agencies.

A note on data. Most city agencies do not maintain data on their collection rates for fines. Most agencies track the revenue received in a given year, but fines may be paid in a different fiscal year from that in which they were issued. In most cases, therefore, an accurate collection rate based on results of individual violations cannot be calculated. A few agencies were able to provide us with information on collection rates. In other cases, agencies had collection data for samples of fines. A few agencies, including HPD and the Taxi and Limousine Commission, had no detailed information. To help get around this problem we calculated collection rates over a period of several years, when data were available.

Parking Violations

Revenue from parking violations made up more than 80 percent of total city fine revenue in 2002, according to the Comptroller's *Comprehensive Annual Financial Report*. Parking violations have one of the highest collection rates of any type of infraction that we studied. The Department of Finance estimates that almost 85 percent of fines are collected within three years. Several factors contribute to this: a high level of enforcement; convenient payment methods, including credit card payment over the Internet; relatively low fine amounts for the most common violations, which encourages payment; and a high level of enforcement, including towing and selling liens on debtor assets. As a result, parking violations are the one area in which enforcement pays for itself, and generates additional revenue.



Enforcement. New York City is the largest parking ticket issuer in the United States. The city issues more than 8 million parking tickets a year and collects nearly \$400 million annually from parking-related fines. Parking tickets are primarily issued by the police department's civilian Traffic Enforcement Agents (TEA) and by uniformed police officers, although the Department of Sanitation, the Department of Transportation, and other city agencies—as well as a few nongovernmental agencies—also write parking tickets.

The city devotes considerable resources to enforcing parking laws. There are roughly 2,000 TEAs currently, with plans to hire another 300 in the coming year. The number of parking tickets written has declined over the past decade, but the quality has improved, thanks in part to DOF training and feedback. For this reason, collections have been relatively stable. With the increase in fine amounts implemented in

October 2002 and more TEAs, the city expects to take in \$532 million from parking ticket fines in 2004 and beyond—a 40 percent increase over what it collected in 2002.

Parking violations are out in the open, and are therefore easier for enforcement agents to identify than many other types of violations, such as peeling lead-based paint in an apartment, or unsanitary conditions in restaurant kitchens, which require access and inspection. Parking violations are also the most obvious example of a transient violation. In most cases, a parking violation will be corrected in the course of normal activities, even if no parking ticket is issued. The issuance of the punitive fine is expected to deter future violations.

About 20 percent of parking tickets are contested, resulting in about 1 million hearings per year. Thirty-three percent of hearings result in dismissal of the ticket, which translates into an overall dismissal rate of about 6.6 percent.

Penalties. Parking violation fines range from \$25 to \$180. Violations of alternate side parking rules—the most common parking ticket—carry fines of \$35-\$55 (depending on location). If after 30 days a violation is unanswered, a late notice is mailed and a \$10 late penalty is assessed, which rises to \$30 after a notice of impending default at around 70 days and to \$60 after more than 100 days. A civil judgment is entered at that time. The city also charges interest at a 9 percent annual rate on outstanding parking judgments. While these penalties may be enough to convince most motorists to obey the law, for some commercial entities tickets are often both difficult to avoid and treated as simply a cost of doing business.⁷

Adjudication. The Department of Finance's Adjudication Division hears and determines charges of parking violations, accepts pleas, and enters and enforces judgments. A person who has received a parking ticket must enter a plea within 30 days to avoid penalties. A guilty plea must be accompanied by payment in full. If a person pleads not guilty, he or she has a hearing with a hearing examiner, which may result in the dismissal of the violation, or a guilty finding, in which case the person is required to pay the ticket. A person who is found guilty may appeal the decision, but must pay the fine before the appeal is heard.

Collection and Payment. Parking ticket collection rates are high. The Department of Finance estimates that the final collection rate is close to 85 percent. Another 10 percent of

tickets are dismissed through adjudication or administrative disposition. About 20 percent of the remaining uncollected tickets are from out-of-state drivers, which are harder to collect. The penalties for not paying a ticket are very real, and may be felt relatively quickly.

The Department of Finance has made payment of parking tickets relatively easy by allowing payments at borough offices and via the Internet using a credit card. The finance department has a wide range of tools that it can use when fines are not paid. The department begins by sending collection letters to outstanding ticket holders. In addition, the city currently is contracting with collection agencies to pursue debt that is greater than a year old. If a vehicle owner has more than \$230 in outstanding parking tickets in judgment, any vehicle registered to that owner can be towed by either a Department of Finance Deputy Sheriff or a City Marshal,⁸ who patrol using mobile terminals that give them access to judgment information, and tow more than 100,000 vehicles per year belonging to persons with unpaid fines. In addition, New York State defers vehicle registrations for

persons having three or more delinquent tickets within an 18-month period.

The city also may place a lien on an owner's real property, including any real estate that person owns, for unpaid parking tickets. To sell property with a lien, that lien must first be removed. This can only be done through resolution of all outstanding judgment tickets, either through payment or dismissal at a hearing. The city can also freeze bank accounts and garnish wages in order to recover outstanding tickets. Currently there are more than 1,500 active garnishments and more than 5,000 account restraints made per year.

Conclusion. The high collection rate associated with parking tickets results from the interaction of many variables: ease of payment; a high level of enforcement; which ensures that there is a high likelihood that it will not be possible to simply evade payment without consequences; and the relatively modest size of many fines. As a result, this is the one area where it is clear that increasing enforcement expenditures will result in revenue gains for the city.

Department of Environmental Protection

There are two general classes of violations with which the Department of Environmental Protection deals—those requiring corrective action and those that do not (referred to as "B" and "A" violations, respectively). For example, a smokestack exceeding air emissions standards requires corrective action, while a horn-honking violation is more likely to be a single occurrence that ends quickly. Most of the violation types that DEP enforces are not single occurrences, but rather ongoing violations—for example, exceeding emission standards, or insufficient drainage controls. Once the violation has been cured, the fine amount may be eliminated or greatly reduced. During the period from 1998 through 2002, DEP issued a total of 31,948 summonses for violations requiring corrective action and 22,146 of the single-occurrence type. DEP has stated that the violations requiring ongoing compliance are given higher priority because of the greater potential harm they represent.

	1998	1999	2000	2001	2002
Expenditures					
Environmental Compliance	\$5.50	\$5.60	\$5.90	\$6.10	\$6.60
Water Supply (Watershed)	2.9	3.3	6.6	6.1	8.5
Wastewater Treatment	1.4	1.4	1.7	1.4	1.7
Water and Sewer Operations	1.1	1.4	1.3	1.4	1.6
Total Expenditures	\$10.90	\$11.70	\$15.50	\$15.00	\$18.40
Headcount					
Environmental Compliance	81	81	81	81	81
Water Supply (Watershed)	62	71	109	117	132
Wastewater Treatment	27	27	31	27	30
Water and Sewer Operations	18	20	19	21	22
Total Headcount	188	199	240	246	265

SOURCES: IBO, Department of Environmental Protection.

These categories are generally consistent with our framework of two broad types of enforcement strategies: a punitive/deterrent strategy for transient or one-time violations that do not require corrective action (A violations), and a compliance strategy, in which the principal goal of enforcement is to correct a hazardous or unhealthy condition, and monetary penalty may be secondary (B violations). Since DEP gives priority to correcting the harm associated with a particular violation, the agency will, in many cases, work with those responsible to correct the violation without issuing a fine, or a reduced fine if a violation is issued. As a result, the agency's fine collections are relatively low. It is unlikely that spending more on enforcement would increase

net revenue without a drastic change in strategy to emphasize punishment as well as correction.

Enforcement. The city's Department of Environmental Protection is responsible for enforcing laws pertaining to air and water quality within the city and in the city's upstate watershed, as well as hazardous materials emergencies, chemical spills, and asbestos exposure. The five broad areas of enforcement responsibility are air pollution, noise, water supply, drainage and sewer control, and hazardous substances. In 2002, DEP spent \$18.4 million on enforcement activities, with an overall headcount of 265 inspectors and support staff. The largest increase in expenditures has been in the protection of the upstate water supply—the upstate watershed police unit has almost doubled its headcount since 1999.

The revenue collected on violations written by DEP from 1998 through 2002 has remained relatively constant, ranging between \$2.5 million and \$3.2 million annually. Total summonses issued by DEP had been relatively steady from 1998 through 2001, averaging 9,600 summonses per year. In 2002, the number of summonses issued increased to 15,685 due to the large number of violations of water-use regulations during the drought.

Penalties. The penalty schedule for environmental quality violations tends to be quite high—in some rare cases, violators could be assessed \$25,000 for each day that the violation continues. There are two reasons why DEP fines are much higher than those we see elsewhere: often the violators are corporations that operate on a different financial scale than

	1998	1999	2000	2001	2002
Noise	\$0.6	\$0.7	\$0.7	\$0.8	\$0.7
Industrial Waste	0.3	0.2	0.3	0.4	0.5
Water	0.1	0.1	0.1	0.1	0.4
Air	1.9	1.5	1.5	1.5	1.6
Total	\$2.9	\$2.5	\$2.6	\$2.8	\$3.2
Total Summonses	10,582	7,894	9,841	10,092	15,685

SOURCES: IBO; Environmental Control Board.

individuals, and more importantly, the harm associated with large-scale air and water violations can be quite significant. DEP also issues "point-in-time" violations that will incur one-time fines—for example, the fine for performing plumbing work without a permit is \$250 for the first violation.

instances DEP develops a plan of corrective action with the violator to achieve a solution without issuing an NOV. Otherwise, DEP violations are adjudicated by the Environmental Control Board.

Disposition of DEP Violations, 1998-2002			
<i>Percent of all violations cited</i>			
	"A" violations	"B" violations	All violations
Resolved			
Cured	n.a.	0.03%	0.02%
Dismissed	13.0%	11.0%	11.8%
Paid	47.6%	65.9%	58.4%
Subtotal, Resolved	60.6%	76.9%	70.3%
Unresolved	39.4%	23.1%	29.7%
Memo: Number of violations cited (1998-2002)	22,146	31,948	54,094
Average payment	\$303	\$512	\$442
SOURCES: IBO; Department of Environmental Protection.			
NOTES: Unresolved also includes violations placed against publicly-owned property, which are resolved without a fine. This averages about 6 percent of total cases.			

Collection. According to ECB records, payment rates on DEP-initiated violations have ranged from 50 to 70 percent during the period 1998-2002. See the section on ECB for a full discussion of collection procedures.

Conclusion. The relatively small amount of fine revenue generated by DEP primarily reflects the agency's emphasis on compelling corrective action for a specific violation. During the negotiation process, fines may be lowered or eliminated altogether. DEP's desire to work with violators to correct the violation as opposed to simply issuing a

Adjudication. Once a Notice of Violation is written, it must go through the adjudication process. As a result, in many

fine is a result of the type of violations that DEP encounters and the serious harm that continued violation could impart.

Department of Housing Preservation and Development

Housing code violations typically exist until the violator (the building owner) takes action to correct them. Because the Department of Housing Preservation and Development's main priority is to ensure tenants' safety, the agency issues violations in order to compel the landlord to correct the problem. The first goal is correction of the violation. In many cases, if the violation is fixed promptly, the fine is eliminated or greatly reduced. Thus like DEP, the housing department's fine collections are relatively low and increased enforcement spending by itself will not raise more net revenue for the city. Moreover, the vast majority of non-hazardous code violations placed by HPD inspectors are never pursued because, uniquely among city agencies, HPD must go to state court to adjudicate all violations—a costly, time-consuming process.

Enforcement. The Department of Housing Preservation and Development is responsible for enforcing the New York City Housing Maintenance Code and the New York State Multiple Dwelling Law. HPD has more than 300 housing inspectors who visit residential dwellings and document violations of the Housing Maintenance Code or Multiple Dwelling Law. In total, roughly 500 HPD employees—including the inspectors, inspection support and supervisory staff, and Housing Litigation Division personnel—are involved in enforcing housing laws. In 2002, HPD spent \$28 million on enforcement, and collected \$2.0 million in fine revenues.

The housing code classifies violations as class A (non-hazardous), class B (hazardous), or class C (immediately hazardous). HPD issues more than 300,000 housing violations annually and pursues about 13,000 cases in housing court each year. While some of HPD's cases are so-called comprehensive cases, in which the agency targets landlords

with multiple violations, class A and B violations are never pursued by the agency unless they are part of comprehensive cases. As a result, the number of violations issued far exceeds the number of cases initiated.

HPD's enforcement of housing maintenance standards is largely a complaint-driven process. Code violation complaints are received at the Central Complaint Bureau. HPD code inspectors follow up on complaints made through the complaint bureau, as well as problems reported by elected officials, housing court, and community boards. When an inspector finds a condition that violates the New York City Housing Maintenance Code or the New York State Multiple Dwelling Law, he or she issues a Notice of Violation.

When HPD sends a landlord a Notice of Violation, the landlord is required to certify correction of the violation by a certain date. If the landlord fails to do so, HPD can initiate litigation to enforce penalties.

Penalties. The Housing Maintenance Code lays out a penalty schedule for violations of housing standards. In general, the penalty for a non-hazardous violation is a flat fine of \$10-\$50. For a hazardous violation the penalty is \$25-\$110 per day. Immediately hazardous violations in buildings with five or fewer units are fined at a rate of \$50 per day, and buildings with more than five apartments are fined \$50-\$150, plus \$125 per day. The fine for heat and hot water violations is \$250 per day. Lead-paint violations have their own fine schedule of \$250 per day, up to a maximum of \$10,000.

The majority of HPD fines are levied on a per diem basis. As a result, the total amount the landlord is assessed can be very high, although the amount he or she must actually pay is often negotiated down. The actual amount paid is determined on a case-by-case basis by housing court judges and HPD staff.

Adjudication. Enforcing penalties against violators requires HPD to initiate litigation in housing court (technically, the Housing Part of Civil Court). Going to court is costly and time consuming, which

HPD Fine Revenue					
<i>Dollars in millions</i>					
	1998	1999	2000	2001	2002
Heat & Hot Water	\$1.0	\$1.1	\$0.8	\$1.0	\$1.1
Comprehensive Cases	0.3	0.3	0.4	0.5	0.3
Tenant-Initiated	0.2	0.4	0.4	0.4	0.5
All Other	0.4	0.1	0.1	0.1	0.1
TOTAL	\$1.9	\$1.8	\$1.7	\$1.9	\$2.0
Total Violations	309,921	366,860	295,346	322,270	319,300
Total Cases	9,882	12,175	12,591	13,244	13,484

SOURCES: IBO; Housing Preservation and Development.
NOTE: Cases typically include multiple violations.

is largely the reason why HPD focuses on cases with multiple violations. Most housing litigation cases are resolved through a legal settlement between HPD and the landlord, in which the landlord may be required to participate in education programs, or simply to correct the violation within a specified time frame, rather than be subject to a financial penalty.

HPD generally does not pursue violations that have less serious consequences for tenants. As a result, the consequences for failure to certify correction of individual class A or B violations are minimal. When class A or B violations are captured through comprehensive cases, however, landlords are held responsible for correcting these violations.

Cases in which the landlord fails to appear before the court account for most of those in which there is no settlement, and result in a default judgment. These missing landlords rarely pay the judgment promptly. Default judgments enter the collection process.

HPD is the only city agency which must take all violators to court in order to collect a fine. Given limited resources, HPD has chosen to focus its litigation staff on "comprehensive" cases. Pursuing most single violations—or even multiple non-hazardous violations—to obtain a judgment is simply not cost-effective. The agency focuses its limited resources on the cases in which the violation can cause the most serious harm. The risk of punishment for not correcting individual class A or B violations is thus minimal unless they become part of a comprehensive case. In addition, if a class C hazardous violation is fixed through HPD's Emergency Repair Program, the cost of the repair and an HPD administrative fee is placed as a lien against the property, but unless HPD takes the landlord to court, no fine is collected.

Many observers, and HPD itself, have advocated giving the department the adjudicatory and collection tools that would allow it to pursue lower level violations without going to court. Having an administrative forum for adjudicating at least certain types of violations might result in a larger number of cases being brought and could lead to higher fine revenue overall—although it would not necessarily change HPD's

basic "corrective" enforcement approach.

Collection. The agency has several tools at its disposal to collect judgments, including placing an enforceable lien on a property, sending "dunning" letters, freezing a property owner's bank accounts, subpoenaing employer records, and garnishing an owner's wages. Landlords who owe fines and penalties are also prohibited from participating in HPD programs. These collection efforts are the responsibility of the Judgment Enforcement Unit of the Housing Litigation Division.

HPD was not able to provide IBO with data on fine collection rates. Because housing court cases often extend over more than one fiscal year, we cannot draw a clear line between the number of cases initiated or closed, and the amount of revenue collected. And because most HPD cases address multiple violations in a single building, it is similarly difficult to reach any conclusions about collection rates for specific violations.

At a May 2002 budget hearing, HPD Commissioner Jerilyn Perine reported that HPD collects some revenue on about 50 percent of the default judgments.⁹ Of the 50 percent of judgments in which some revenue is collected, half (25 percent of the total number of judgments) are collected relatively quickly. Another 25 percent of the total number of landlords subject to judgments contact HPD when they are trying to refinance or sell their building, and pay some portion of their penalties at that time. The remaining 50 percent go uncollected, often because the owner is facing foreclosure.

Conclusion. HPD's enforcement strategy is primarily focused on correcting violations, and only secondarily on punishing violators. In many cases, therefore, HPD may not seek a punitive fine as long as the building owner corrects the condition. If HPD hired more inspectors, the agency might detect more violations, but the resulting fine revenue would be unlikely to cover the increased cost, largely because of the requirement to go to state court to pursue penalties.

Department of Health and Mental Hygiene

Department of Health and Mental Hygiene violations are of both the point-in-time and ongoing types. In some cases, the agency will simply issue a ticket and expect it to be paid. More often, however, DOHMH will also seek the correction of a violation, such as improper storage of food in a restaurant, or a rodent infestation in a residential building. In many instances a fine may be removed or lowered if a violation is corrected. Depending on the type of violation, DOHMH can have very strong or relatively weak collection powers, which in turn affect revenue raised, so simply increasing enforcement expenditures will not necessarily increase net revenue.

Enforcement. The Department of Health and Mental Hygiene is responsible for the routine and complaint-based inspections of all restaurants, food vending carts, the Fulton Street Fish Market, senior center meal programs, and for responding to complaints regarding window guards, environmental nuisances, violations of no-smoking rules and other matters.

The department is charged with enforcement of the city's Health Code which is established by the Board of Health. The types of violations handled by DOHMH can be broadly categorized as restaurant inspection, pest control, public health nuisances, smoking, lead poisoning, building complaints, and radiation. By far the largest category of both violations written and fine revenue collected each year is restaurant violations.

Protection and other agencies whose agents write notices of violations adjudicated through the Environmental Control Board.

Penalties. The Health Code provides for penalties generally starting at \$200, not to exceed \$2,000, for each violation of the code. Businesses conducting activities without the required permit or license are subject to fines starting at \$200 per day, going up to \$2,000.¹⁰ New York State law provides for a maximum fine of \$500 for violations of the New York State Sanitary Code, much of which is enforced by DOHMH.

In January, the Board of Health raised certain minimum fines. Fines for critical violations by licensed food establishments doubled from \$100 to \$200 per violation, and fines for violations in establishments operating without proper Board of Health licenses went from \$200 to \$1,000 per day.

Adjudication. The DOHMH administrative tribunal is the forum to settle a Notice of Violation of the Health Code and other related laws. Respondents have the option of having their cases adjudicated without appearing by submitting evidence by mail. A respondent who admits guilt by mail is advised of the penalty amount due DOHMH. A respondent denying the allegation has the right to request the presence of the inspector who issued the Notice of Violation at the administrative tribunal so that the inspector can answer questions about the allegation.

In January, the Board of Health codified the practice of doubling fines for failure to appear at a scheduled administrative tribunal hearing.

Collection. The percentage of total DOHMH fines collected has increased

from 49 percent in 1998 to 59 percent in 2002. The collection rate varies substantially across different categories of violations, however. The rate of collection for restaurant violations, which constitute 65 to 70 percent of violations written by DOHMH each year and nearly 90 percent of fine revenue, has risen from 55 percent to over 75 percent over the last five years. In the next largest category of violations—pest control—the collection rate also has improved, but remains much lower, at less than 25 percent. The department cites the fact that, although liens may be placed against properties when the department is forced to take corrective action itself

DOHMH Enforcement Resources					
<i>Dollars in millions</i>					
	1998	1999	2000	2001	2002
Enforcement Expenditures	\$27.3	\$34.4	\$27.8	\$29.5	\$21.1
Total Enforcement Personnel	291	239	328	322	307
Public Health Sanitarians	n/a	39	97	67	82

SOURCES: IBO; Department of Health and Mental Hygiene.
NOTE: Excludes some inspection services performed under contract.

Public Health Sanitarians and Associate Public Health Sanitarians carry out inspections for the various programs and write the majority of violations for the department. There were 67 of these workers in 2001 and 82 in 2002. The department has contracts with private companies for additional inspections. DOHMH also contracts with the Department of Consumer Affairs to carry out inspections regarding most smoking and tobacco sales violations under the Health Code. These violations are adjudicated by DCA. Certain Health Code violations relating to environmental issues are also enforced by the Department of Environmental

because the owner fails to, they can only be used to recover costs of correction of violations and not the fines themselves. Property owners therefore have a greater incentive to pay for lot clean-ups or exterminations than for fines for violations. Collection rates for other types of DOHMH violations vary widely, but in general average roughly 50 percent.

DOHMH may withhold a permit or license from any business with outstanding fines or judgments, and restaurant owners and mobile food vendors can lose their licenses for failure to pay fines.

Unpaid fines are referred to a collection agency through a contract with DOHMH that provides for the collection

agency to receive 16 percent of collected fines, permanently reducing the potential collection rates.

Conclusion. DOHMH licenses certain businesses, and has the ability—indeed, the statutory obligation—to withhold license renewal if a business has outstanding fines. Restaurant licenses are renewed annually and mobile food vendors must renew their licenses every two years. (Mobile food vendor violations are adjudicated at the Environmental Control Board.) The collection rates for these two categories of violations are generally high. For some other types of violations, however, DOHMH has had trouble collecting fine revenue because incentives are lacking to encourage payment. Owners are identified through tax records, but absentee landlords and

complex relationships among both residential and commercial landlords make collection of fines problematic. Fines may not be added to a building's tax bill, cannot be entered as a lien against a property, and cannot be included in tax lien sales, making it difficult to increase collection rates for at least some categories of DOHMH fines.

DOHMH Fine Revenue (Administrative Tribunal)					
<i>Dollars in millions</i>					
	1998	1999	2000	2001	2002
Restaurant Inspection	\$11.1	\$10.6	\$10.2	\$9.7	\$8.2
Pest Control	0.1	0.4	0.5	0.6	0.9
All Other	1.2	1.2	1.2	1.1	1.2
TOTAL	\$12.4	\$12.2	\$11.9	\$11.4	\$10.3
Total Summonses	42,253	43,614	44,510	38,960	29,808

SOURCES: IBO; Department of Health and Mental Hygiene.
 NOTES: Does not include violations adjudicated through Environmental Control Board.

Department of Consumer Affairs

The Department of Consumer Affairs is responsible for enforcing consumer protection and other laws related to the sale of goods and services, including those governing movie theaters, supermarkets, electronics stores, parking lots, sidewalk stands, home improvement contractors, and tobacco sales. The agency has taken numerous steps in the last year to improve its enforcement and collection efforts. In addition, pending state legislation would address a long-standing collection and enforcement problem by extending DCA's adjudicatory authority to cover businesses not licensed by the city. Currently, the department may deny renewal or revoke the license of a business it licenses, but has no such power with respect to businesses the city does not license but for which it has enforcement responsibilities. The department also will soon propose a new fine schedule that raises minimum fines and increases fines for repeat offenders. The result is that DCA expects to collect \$4.9 million in fine revenue in 2004—up from \$3.0 million in 2000—without an increase in agency spending.

Enforcement. DCA is a regulatory agency that enforces compliance with city business license and consumer protection laws, tobacco laws, and state and city weights and measures laws. The department has over 80 full-time enforcement staff people, plus 21 staff members who fulfill adjudicatory functions.

DCA Enforcement and Adjudication Personnel Expenditures				
<i>Dollars in millions</i>				
	1999	2000	2001	2002
Enforcement	\$2.8	\$3.1	\$3.4	\$3.3
Adjudication	\$0.9	\$0.9	\$1.0	\$1.0
Total	\$3.7	\$4.0	\$4.4	\$4.3
Headcount	103	102	105	105

SOURCES: IBO; Department of Consumer Affairs.

The department conducts enforcement in a variety of ways, including tips, complaints, inspections, and investigations. DCA seeks to resolve consumer complaints through a mediation process, and will pursue in court businesses that defraud customers—including by seeking monetary penalties. The agency conducts over 100,000 inspections annually, including undercover investigations.

The department records violations in four broad categories: weights and measures violations, pertaining to the calibration of scales in supermarkets and other food retailers; licensed violations, which include all violations by licensed businesses

except weights and measures violations; consumer protection violations by categories of businesses that are not licensed by DCA; and all violations except weights and measures by businesses that are legally required to have a license but do not (unlicensed).

In December 2002 and January 2003 the department "cross-trained" its inspection force so that inspectors were no longer specialized, but could enforce the entire range of laws for which consumer affairs is responsible.

Penalty Size. Penalties vary widely, reflecting the different harm levels associated with different violations. Fines can be as low as \$25 for the first offense for a violation of the "dealer in second-hand articles" law and as high as \$5,000 for the first offense for a violation of the towing vehicles law. Most first offenses range from \$75 to \$500, with a suspension or revocation of license in some cases. Most third offenses range from \$350 to \$500 with possible suspension or revocation of license if applicable. Settlements range in amount depending on the violation. The department will shortly propose an increase in minimum fines of about 50 percent, and will raise the maximum fine for repeat offenses—to \$1,500 for the second offense and \$3,000 for the third.¹¹

Adjudication. When a violation is issued, the agency first attempts mediation; if this is not successful, the case goes to court. The process for businesses licensed by DCA differs from that for non-DCA licensed businesses. Violations by DCA-licensed (or unlicensed) businesses may be handled by DCA's administrative tribunal. But the department must pursue violations by businesses that are not required to have a license in state court.

For violations involving a licensed business, the vendor receives a ticket that sets a hearing date. At the same time, the department sends a "pleading letter" outlining the conditions for a settlement. Generally, a settlement simply involves a guilty plea and payment of the fine, much like a parking ticket. In the past, a vendor could appear at the hearing to contest the charges, with about 50 percent choosing to do so. The department has recently begun requiring pre-hearing settlement conferences. The result has been that about half of all vendors who would otherwise have gone to court now settle instead without a hearing. The department's costs are lower as a result, although average fine amounts are smaller, according to DCA. Beginning in August 2002, the department also began issuing default judgments against

respondents who failed to appear at hearings.

In some cases the settlement may include other terms, such as an agreement to remove the violating condition, or, for unlicensed businesses, to obtain a license. DCA may padlock businesses that are violating their settlement terms, or that are operating without a license. The agency can also confiscate property, such as vehicles of unlicensed home improvement contractors or tow-truck operators, or chairs and tables from an illegally operated sidewalk café. (Under the terms of a recently enacted law, DCA will be able to padlock an entire restaurant for a sidewalk café violation). For businesses with multiple violations, DCA may seek revocation of a license, although this is rare—generally no more than two to three times a year.

For violations involving establishments that do not require a license (non-licensed), the vendor receives a Notice of Violation listing a settlement date rather than a ticket with a hearing date. If the vendor does not settle, DCA lawyers can elect to pursue the violation in state court. Non-licensed establishments can receive a hearing notice under a weights and measures violation. DCA has no authority to padlock a business not licensed by the city, nor can it pursue license revocation.

Fine revenue collected totaled \$2.3 million in 2000, increased by 45 percent to \$3.4 million in 2001, and then dropped to \$2.5 million in 2002. The number of assessments followed a similar pattern, with a smaller drop between 2001 and 2002.

Between 2000 and 2002, violations for licensed establishments made up an average of 59 percent of all assessments, with a total of \$9.1 million. They made up 76 percent of all collections, totaling \$6.3 million. The collection rate is generally higher for DCA-licensed businesses than it is for non-licensed businesses, which DCA attributes to its lack of docketing power over such businesses. The department estimates that \$1.1 million in fines went uncollected over the past three years due to the lack of docketing authority. Collection rates on weights and measures violations are consistently low because they also mostly represent non-licensed establishments.

Collection rates were particularly low in 2002. This was due in part to the failure to implement regular bill payment notices and in part to post-September 11th absenteeism at DCA. The department has taken several measures to address collection problems, including promoting a DCA veteran to assistant commissioner, issuing quarterly bill payment notices to delinquent accounts, and cross-training staff to handle multiple collections functions.

In 2000, DCA became responsible for enforcement of tobacco laws, particularly sale of tobacco to minors. In terms of fine revenue, tobacco violations have become DCA's principal revenue source. Fine revenue for tobacco violations went from \$105,000 in 2000 to \$1.4 million in 2002. At the same time, however, fines

DCA Collection Rates, 2000-2002					
<i>Dollars in thousands</i>					
	<u>Fines Assessed</u>		<u>Fines Collected</u>		Collection Rate
	Percent of Dollars	Percent of Total	Percent of Dollars	Percent of Total	
Licensed Activity	\$9,133.2	59.2%	\$6,272.1	76.4%	68.7%
No License Requirement	169.6	1.1%	142.4	1.7%	84.0%
Unlicensed Activity	3,138.2	20.3%	1,085.3	13.2%	34.6%
Weights and Measures	2,996.7	19.4%	712.7	8.7%	23.8%
TOTAL	\$15,437.6	100%	\$8,212.4	100%	53.2%

SOURCES: IBO; Department of Consumer Affairs.
 NOTE: Tobacco dealers paid significant amounts of outstanding fine amounts prior to being brought under DCA regulation in 2000. Collection rates for non-licensed business fines are more typically under 50 percent.

Pending state legislation would confer hearing and docketing authority (the ability to record a judgment and place a lien) on DCA for non-licensed businesses as well. This would allow DCA to impose judgments for nonpayment of fines and then proceed to collection, which can include sheriff visits or seizure of cash register or credit card receipts. The department still would not be able to padlock non-licensed businesses, however.

Collections. In the past three years, DCA has collected some fine revenue on less than 50 percent of its cases.

collected for other types of violations declined by over 50 percent, from \$2.2 million to less than \$1.1 million.

DCA Fine Collections by Business Type			
<i>Dollars in thousands</i>			
	2000	2001	2002
Tobacco Retail Dealers	\$105	\$1,271	\$1,408
Home Improvement Contractors	96	84	109
Garage & Parking Lots	330	315	174
Electronics Stores & Services	297	423	123
All other	1,512	1,295	672
Total	\$2,340	\$3,388	\$2,485
Number of Violations Cited	9,612	10,432	8,979

SOURCES: IBO; Department of Consumer Affairs.

Conclusion. DCA's enforcement requires active inspection efforts. The department's workload has grown since it was given responsibility for enforcement of tobacco laws, although its resources for enforcement, adjudication and collections have remained flat. Pending state legislation would strengthen its enforcement powers by expanding its adjudicatory and docketing authority to businesses currently not licensed by the city. Although the enforcement tools available to the

department will still not be as strong as those it has with respect to city-licensed businesses, the change should allow the department to improve its enforcement efforts—and possibly increase its fine revenue—against non-licensed violators. Other steps the department has taken also should serve to strengthen its enforcement and collection tools, resulting in both greater enforcement and higher revenue collections.

Environmental Control Board

The Environmental Control Board is an administrative tribunal that adjudicates hearings on notices of violations issued by other city agencies for various quality-of-life infractions of the city's laws and regulations. ECB does not issue notices of violations, does not establish enforcement policies, does not employ inspectors or agents, and does not direct, control or otherwise influence where, when or to whom notices are to be issued. The issuing agencies include the sanitation, fire, buildings, and transportation departments, among others.

ECB and the Department of Finance have limited leverage to compel payment of outstanding fines. DOF does not generally invest in trying to collect smaller ECB violations. The city Comptroller has recommended selling outstanding ECB judgments to collection agencies.

Jurisdiction. In 2002, ECB received nearly 674,000 violations. Sanitation violations are the most common type of infraction handled by ECB. Examples of violations handled by ECB include street cleanliness, waste disposal, the cleanliness of the city's water supply; air, water and noise pollution; street peddling; fire prevention and building safety; and the misuse of city parks. The harm associated with violations adjudicated in ECB can range tremendously, from relatively minor quality-of-life violations to serious health and safety threats. Fines levied by the issuing agencies range widely, from as little as \$25 to as much as \$25,000 per day (although this upper limit is rarely imposed).

The number of violations and the number of payments on violations have both grown by about one-third since 1999, and fine revenue collection has grown by 48 percent.

Since 1999, ECB's budget and headcount have remained relatively constant. In 2002, ECB had 107 full-time employees, and a total budget of \$13.5 million. ECB also employs about 150 Administrative Law Judges who are not full-time employees of ECB; rather ECB will use between 70

and 80 of these judges on any given day to handle the caseload.

Enforcement Strategies. The board adjudicates a wide variety of violations. Loosely speaking, they fall into two broad categories. "A" violations do not require corrective action. "B" violations do generally require corrective action, or what ECB calls "ongoing compliance." These categories are generally consistent with our framework of two broad types of enforcement strategies: a punitive/deterrent strategy for transient or one-time violations that do not require corrective action (A violations), and a compliance strategy, in which the principal goal of enforcement is to correct a hazardous or unhealthy condition, and monetary penalty may be secondary (B violations).

Outcomes. Over the last five years, about 8 percent of adjudicated violations were dismissed by ECB. Another 4 percent were recorded as "cured," or corrected, without imposition of a penalty. Violations on publicly owned land requiring corrective action made up another 6 percent of cases, but ECB does not impose a fine in these instances. On average, 52 percent of adjudicated violations result in payment of the fine. The remaining 30 percent of cases were unresolved—that is, a default judgment has been entered and the file sent for collection, but no payment has yet been made.

Certain types of ECB violations have much higher—and others much lower—overall collection rates. From 72 percent to 85 percent of fines imposed for not following recycling regulations were collected during the period from 1998 through 2002. Another class of fines with relatively high collection rates (85 percent in 2002) is violations for disposal of canine waste. On the other end of the scale, food and general vending violations have never achieved collection rates higher than 19 percent since 1998.

Part of the explanation lays in the difference between A and B violations. Type B violations—including air emissions

violations, ongoing noise problems, building and fire code violations, and asbestos hazards—are resolved at a higher rate than type A violations. The resolution need not take the form of paying a penalty, however. For some B

	1998	1999	2000	2001	2002
Violations adjudicated	512,245	505,851	619,404	669,121	673,869
Dismissed	51,717	26,163	52,692	62,786	54,169
Number of payments received	268,241	264,349	302,679	345,493	350,089
Payments received (millions)	\$31.7	\$32.3	\$35.0	\$44.0	\$47.8

SOURCES: IBO; Environmental Control Board.

violations of the Building Code and the Fire Code, for instance, the respondent has the opportunity to cure the violation within 35 days from the date of the Notice of Violation. If the violation is cured, no payment of the imposed fine is required. As a result, the resolution rate for B violations is higher than that of A violations, while the inverse is true for the payment rate.

Type A violations are by far the most numerous—typically at least 80 percent of total violations. They are dismissed less frequently, and they are not subject to being cured, so that the rate at which fines are paid is higher—54 percent vs. 40 percent for B violations. The average payment is considerably higher for B violations—\$394, five times the average A violation fine of \$81. Average payments are higher because the penalty schedule is generally higher for larger scale, more harmful violations. As a result, although A violations are more numerous, they represent a much smaller fraction of total ECB collections.

notices to the violator and the fine has still not been paid, then ECB in most cases renders a default judgment and docketed it in civil court. ECB then forwards those cases to the Department of Finance for final collection efforts. Upon receiving a case from ECB, DOF sends one more request-for-payment notice and will make efforts to contact the violator by phone. DOF may locate an asset associated with the judgment and seize it. Respondents with outstanding docketed judgments generally will not qualify for conventional financing for real property.

According to a recent Comptroller's audit of DOF's efforts to collect on forwarded ECB cases, DOF's collection rate on these cases has been low. In the vast majority of cases, according to the Comptroller, DOF did not take significant collection steps on much of the debt, focusing on only the ongoing violations requiring compliance (B violations). For point-in-time (non-compliance) violations, DOF did not obtain the judgment records from ECB because of concerns about the resources necessary to perform collection work on the relatively small balance debt, so essentially no action was taken to collect the fine.

In response to this audit, DOF stated that it intends to work with ECB to improve the enforceability of the fines by applying some of the strategies that DOF has used in collection of parking violations. While there have been problems with the initial identification of violators, DOF feels there is a considerable potential for improved collections. In recent months DOF has received additional cases from ECB and is preparing to take additional collection

Disposition of ECB Violations, 1998-2002			
<i>Percent of all violations cited</i>			
	"A" violations	"B" violations	All violations
Resolved			
Cured	n.a.	23.7%	4.2%
Dismissed	7.6%	11.4%	8.3%
Paid	53.8%	40.2%	51.4%
Subtotal, Resolved	61.4%	75.4%	63.9%
Unresolved	38.6%	24.6%	36.1%
Memo: Number of violations cited (1998-2002)	2,451,765	528,725	2,980,490
Average payment	\$81	\$394	\$125

SOURCE: IBO.
NOTE: Unresolved also includes violations placed against publicly owned property, which are resolved without a fine. This averages about 6 percent of total cases.

Adjudication Processes. A Notice of Violation from an agency for a type of violation under ECB's purview must be answered in one of three ways: where permitted, the respondent may pay the mail-in penalty amount as indicated on the notice; appear in person before the ECB to present a defense to the violation; or, mail a written statement of the defense. If a defense is presented, and the respondent is unhappy with the result, the decision may be appealed to ECB's Appeals Unit within 30 days after the final decision. All ECB violations are docketed except for air and noise violations.

Collection. ECB makes the initial attempts to collect the assessed fines for violations within its purview. However, if after ECB has mailed out at least three request-for-payment

steps, including the assignment of some cases to an outside collection agency. DOF has continued performing in-house collection efforts on the larger balance of ongoing (compliance) violations. These activities include telephone contact, correspondence demands, asset location, and other actions.

Conclusion. A key factor in ECB's collections problems has been the tribunal's lack of effective collection powers. In many instances an outstanding ECB judgment has little adverse impact, and the board and the Department of Finance lack leverage over delinquent violators. For example, while an outstanding buildings department fine will prevent you from getting a permit for future work, generally payment of ECB

finer is not required to get or renew a permit or license.

In addition, the Department of Finance has not invested in pursuing outstanding A type violations, which, although numerous, have a much lower yield per violation. The city Comptroller has recommended selling outstanding ECB judgments to collection agencies, as the Department of Health does with some of its unpaid fines.

END NOTES

¹ The majority of administrative law judges are part-time employees and are not captured in this total.

² See, for example, Randy Kennedy "Fines Rise, Eyes Roll (Trucks Don't)." *New York Times*, October 2, 2002; William Sherman "Scofflaw Firms Owe \$1.2M." *New York Daily News*, December 29, 2002.

³ Melanie L. Cash, "Fees and fines increased; will add \$296 million in FY 2004," *City Law 9*, no. 2 (May/June 2003).

⁴ In some instances an administrative agency is empowered to set fine amounts—for example, the Board of Health. In a few instances state authorizing legislation is required.

⁵ A tax lien is a legal claim against real property for unpaid real estate taxes and other property charges and interest due to the city. Pursuant to Local Law 26 of 1996, the city may sell its right to collect these amounts to a private, third party entity. Once Finance sells a tax lien, the City no longer owns or controls the collection of the outstanding debt. The full value of the arrears must be paid within one year of the sale date. The new lien holders have the right to file a foreclosure action on the property if the lien is not paid in full within one year of the sale, if the interest is not paid semi-annually, or if the payment agreement, if any, is in default. (See the Department of Finance website, <http://www.nyc.gov/html/dof/html/ctd305.html>.)

⁶ See Council of the City of New York, *Fiscal 2004 Preliminary Budget Response: Part I: Comment on the Fiscal 2004 Preliminary Budget* (April 2003), pp. 14-15.

⁷ The New York City Traffic Rules provide that delivery and service vehicles may park in No Parking areas, and double park where parking is otherwise legal at the curb but occupied, if they are engaged in expeditious delivery or service activity. Often they are ticketed in such circumstances because such activity is not apparent to the patrolling agent. The Department of Finance hears defenses for many delivery vehicles through its commercial adjudication unit, resulting in the reduction or dismissal of many violations. Because dismissals are common and adjudicating these tickets costs about \$1 million a year, Finance, in consultation with the Department of Transportation, is considering a program to sell decals that would allow commercial vehicles to park in spots that would provide the intended access to delivery without impeding traffic flow or safety.

⁸ The Sheriff's office is the chief civil law enforcement agency for the City of New York. Sheriff's may be used—generally as a last resort—to help collect moneys

owed to the city, including unpaid taxes, ECB fines, and parking summonses. They may identify and seize assets pursuant to court order in order to do so. The Scofflaw program in particular seizes automobiles of judgment debtors with large outstanding arrears. City Marshalls are not city employees, but are appointed by the Mayor to perform certain tasks in Civil Court cases, including the enforcement of judgments. City marshals charge fees for their services and receive a percentage of the money they collect.

⁹ Fifty percent of judgments need not equal 50 percent of the total value of the judgments levied. In practice, the value of the default judgment is virtually always reduced by the court. For example, the housing court may levy a judgment of \$1,000 on a landlord. During the collection process, the court may reduce this to \$250. If HPD receives this \$250, they have collected only 25 percent of the original value, but the case is considered closed.

¹⁰ Although the New York City Charter currently stipulates a maximum fine of \$1,000 for violations of the public health laws and regulations, DOHMH has established the legal basis for imposing fines up to the \$2,000 maximum in the Health Code.

¹¹ "Testimony of Gretchen Dykstra, Commissioner, Department of Consumer Affairs, Regarding FY 2004 Executive Budget, Before the New York City Council Committees on Consumer Affairs and Finance," May 7, 2003.

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