



The City of New York
Department of Investigation

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**DOI REPORT FINDS SERIOUS GAPS IN ENFORCEMENT AND COLLECTION
OF ENVIRONMENTAL CONTROL BOARD (ECB) FINES; ISSUES RECOMMENDATIONS FOR REFORM**

Margaret Garnett, Commissioner of the New York City Department of Investigation (“DOI”), announced findings from a DOI investigation into the City Environmental Control Board (“ECB”) summons enforcement and collection, which identified serious holes in the process that results in the City losing out on much-needed revenue. As part of its investigation, DOI issued six recommendations for reform. The investigation began after the City Council’s Committee on Oversight & Investigations requested that DOI investigate the City’s collection of ECB fines. A copy of the report follows this release and can be found on DOI’s website or by [clicking here](#).

As part of its investigation, DOI reviewed and analyzed policies and procedures of various City agencies that have a role in ECB debt collection or that issue a high proportion of the summonses that result in uncollected judgments. The investigation found that there are numerous gaps undermining the collection process and impeding the collection of valuable City revenue. As part of the investigation, DOI found that there were more effective uses of available City agency data and City regulatory schemes that could remedy the impediments DOI uncovered in the ECB collection process. During the investigation, DOI worked with the City Department of Finance (“DOF”) to determine ways to increase ECB debt collection, resulting in six recommendations for reform.

DOI Commissioner Margaret Garnett said, “New York City needs an effective and efficient collection system for its fines that govern our codes, rules, regulations and quality-of-life laws, particularly during these dire fiscal times. Instead, DOI found numerous gaps allowing millions of dollars to go uncollected, and worse yet, a tracking system riddled with problems making it difficult, if not impossible, to zero in on an exact figure of dollars lost to New York City. We urge the City to implement the six recommendations we issued at the end of our report, so the City can recoup fines it is rightly owed by those who flout City codes.”

Since 2008, the ECB has operated as a division of the Office of Administrative Trials and Hearings (“OATH”), and serves as the administrative tribunal for a number of City agencies that issue summonses to individuals and businesses for violations of New York City’s codes, rules, regulations, and quality-of-life laws. ECB’s jurisdiction covers a wide range of issues, including street cleanliness, waste disposal, water and air quality, street vendors, fire regulations, building and construction codes, hazardous substances, as well as landmark and historic preservation. The ECB does not establish enforcement policies, nor does it issue summonses. Rather, ECB adjudicates violations issued by numerous other City agencies, including: Department of Sanitation; New York City Police Department; Fire Department; Department of Buildings; Department of Parks and Recreation; Department of Transportation; and Department of Health and Mental

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Hygiene. When ECB adjudication results in a judgment with a monetary penalty, DOF is responsible for collecting on the ECB judgment. According to DOF's 2019 Annual Report on DOF Collection of ECB Judgment Debt, the outstanding ECB debt inventory totaled \$1,417,099,873, of which \$634,888,974 was categorized as "Allowance for Bad Debt," while active collection efforts continued on the remaining \$782,210,899. Once an ECB judgment is referred to DOF for collection, the governing statute permits DOF to attempt collection for up to eight years. After eight years have passed, the debt is canceled. While DOF's ECB debt collection increased in 2019, DOI found a number of impediments to the ECB collection efforts that could be remedied through more effective use of available City agency data and City regulatory schemes.

As a result of the findings discussed in the report, it is not possible to determine with any accuracy the true collectability of this debt, which in and of itself is problematic. DOI's investigation found serious problems in effectively collecting ECB debt as well as tracking ECB debt. The investigation's findings and recommendations included:

- The City should standardize and expand the use of a centralized database allowing all City agencies to efficiently share City-owned information that is relevant to the issuance and enforcement of ECB Summonses;
- City agencies should consider the existence of ECB debt before granting or renewing City licenses and permits;
- Existing ECB debt should be made a determining factor in evaluating vendor responsibility for all City contracts and purchasing decisions. All vendors should be informed that contract payments will not be made until outstanding ECB debt is either paid or satisfactorily resolved;
- Summons-issuing agencies should adopt a system to electronically issue summonses;
- Unenforceable summonses should be tracked by DOF and the Law Department, and the cause of the non-enforcement should be relayed to the issuing agency and to OATH. Issuing agencies should designate an employee or employees to track its unenforceable summonses and to ensure that guidance and training responsive to the issues identified is provided; and
- DOF should track the performance of Outside Collection Agencies (OCAs), which are used when DOF is unable to locate alternative contract information or assets, and make use of the data to identify collection process improvements.

Commissioner Garnett thanked DOF Commissioner Jacques Jiha, Ph.D., Commissioner and Chief Administrative Law Judge of OATH Joni Kletter, Corporation Counsel James E. Johnson, and their staffs, for their assistance and cooperation in this investigation.

This investigation was conducted by DOI's Office of the Inspector General for DOF, specifically Special Investigator Willy Gomez and First Deputy Inspector General Mary Kozlow, under the supervision of Inspectors General Ann Petterson and Clinton Daggan, Deputy Commissioner/Chief of Investigations Dominick Zarrella, and First Deputy Commissioner Daniel Cort.

DOI is one of the oldest law-enforcement agencies in the country and New York City's corruption watchdog. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City. DOI's strategy attacks corruption comprehensively through systemic investigations that lead to high-impact arrests, preventive internal controls and operational reforms that improve the way the City runs.

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New York City Department of Investigation

**Environmental Control Board Summons Enforcement & Collection:
DOI Investigation Identifies Serious Gaps and Issues Recommendations for Reform**

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I. Executive Summary

In September 2018, the City Council’s Committee on Oversight & Investigations requested that the Department of Investigation (DOI) investigate the City’s collection of Environmental Control Board (ECB) fines. In the request, Committee Chair Ritchie Torres stated that the City has failed to collect on more than \$1.5 billion in ECB judgment debt, and suggested that the City could reclaim this debt with increased enforcement action against those who owe money to the City. To conduct its investigation, DOI reviewed and analyzed policies and procedures of various City agencies that have a role in ECB debt collection or that issue a high proportion of the Summonses that result in uncollected judgments.

The system for the issuance and adjudication of ECB Summonses, and the collection of the judgments that result from these Summonses, is riddled with holes, each of which represents a place where revenue to the City from ECB fines drains away. Improving these processes to increase the collection of this revenue is particularly important at present, as the City endures what is likely to be a prolonged fiscal crisis. In addition, many ECB Summonses are issued for quality-of-life matters like the cleanliness of the City’s streets and the safety of residential construction; in a budget-cutting era it is vital that the City use all available tools to effectively deter such conduct.

During the course of this investigation, DOI collaborated with the Department of Finance (DOF) to determine ways to increase ECB debt collection. While DOF’s ECB debt collection increased in 2019, DOI found a number of impediments to the ECB collection efforts that could be remedied through more effective use of available City agency data and City regulatory schemes. Our findings and recommendations are set forth in more detail below.

II. ECB Overview

Since 2008, the ECB has operated as a division of the Office of Administrative Trials and Hearings (OATH),¹ and serves as the administrative tribunal for a number of City agencies (collectively, the “City ECB agencies”) that issue Summonses to individuals and businesses for violations of New York City’s codes, rules, regulations, and quality-of-life laws. ECB’s jurisdiction covers a wide range of issues, including street cleanliness, waste disposal, water and air quality, street vendors, fire regulations, building and construction codes, hazardous substances, as well as landmark and historic preservation.² The ECB does not establish enforcement policies, nor does it issue any Summonses. Rather, ECB adjudicates violations issued by numerous other City agencies, including:

- Department of Sanitation (DSNY);
- New York City Police Department (NYPD);
- Fire Department (FDNY);
- Department of Buildings (DOB);

¹ N.Y.C. Local Law 35 (Nov. 3, 2008); NY City Charter §1049-a (a).

² NY City Charter §1049-a (c)(1).

- Department of Parks and Recreation (DPR);
- Department of Transportation (DOT); and
- Department of Health and Mental Hygiene (DOHMH).

When ECB adjudication results in a judgment with a monetary penalty, DOF is responsible for collecting on the ECB judgment. According to DOF’s 2019 Annual Report on DOF Collection of ECB Judgment Debt, the outstanding ECB debt inventory totaled \$1,417,099,873,³ of which \$634,888,974 was categorized as “Allowance for Bad Debt,” while active collection efforts continued on the remaining \$782,210,899.⁴ Once an ECB judgment is referred to DOF for collection, the governing statute permits DOF to attempt collection for up to eight years. After eight years have passed, the debt is canceled.⁵ Therefore, it is crucial that DOF uses every method available to identify the respondents and collect on debts in a timely manner.

III. The City’s Process for Collecting ECB Fines

A. The Issuance of Summonses

A Summons for an ECB violation that is adjudicated at OATH (a “Summons”) notifies an individual or entity (the “respondent”) of the specific violations or infractions committed. Summonses are issued by approximately 20 City agencies that enforce the City’s quality-of-life laws. Summonses can be issued for conditions or actions such as littering and illegal dumping, building occupancy permit violations, unauthorized use of the sidewalk, noise pollution, and fire safety violations. A Summons may be either a “Compliance” or “Non-compliance” Summons. Compliance Summonses require some corrective action on behalf of the respondent, and tend to have higher fines. Common Compliance Summonses include failure to file a certificate of correction with DOB and failure to comply with the DOB building code. Non-compliance Summonses do not require a corrective action, and are usually satisfied when the outstanding balance is paid in full. Common Non-compliance Summonses include failure to remove snow and ice from the public walkways, and abandoned vehicles. According to DOF, because Compliance Summonses require responsive action from the respondents, for some agencies, the collection rate tends to be higher than the collection rate on Non-compliance Summonses. In many cases, respondents simply ignore the Non-compliance Summons they are issued.

When an infraction or violation is observed, an inspector or duly authorized officer issues a Summons and serves that Summons in the manner prescribed by law.⁶ Summonses can be hand-written or electronically issued. Summonses that are electronically issued can be directly uploaded

³ For the reasons discussed in this report, it is not possible to determine with any accuracy what portion of this debt is reasonably collectible.

⁴ Due to the economic impact of the COVID-19 pandemic, DOF has limited enforcement efforts.

⁵ NY City Charter §1049-a (d)(1)(i).

⁶ NY City Charter §1049-a (d)(2) (setting forth the various methods of acceptable service for different types of Summonses, such as delivery to an employee of the respondent, affixing the Summons in a conspicuous place at the premises where the violation occurred, or sending by certified mail).

to OATH's Automated Information Management System (AIMS). Hand-written Summonses are sent to OATH by the issuing agencies; OATH forwards these Summonses to FedCap, a third-party vendor, to be scanned and entered into the AIMS database.⁷

B. The Adjudication of Summonses

Once a Summons has been served, a respondent can either pay the fine prescribed by the Summons or request an administrative hearing. If requested, the administrative hearing is conducted by a Hearing Officer at OATH. Following the hearing, the Hearing Officer will issue an order setting forth the Hearing Officer's recommendation and any resulting fine. If the relevant issuing agency accepts the Hearing Officer's recommendation but OATH does not receive payment of an ordered fine within 90 days of the order, then a judgment is entered for the amount of the fine.

OATH also has the authority to enter a default judgment when a respondent fails to appear at a scheduled hearing or when a respondent fails to plead within the time allowed by the rules of the ECB board.⁸ In practice, however, according to OATH officials, if a respondent does not appear at the first scheduled hearing, OATH does not immediately enter a default judgment, but rather affords a grace period to allow for the processing of mailed checks and response time for two separate notifications of default. If the respondent fails to respond to the second notice, OATH then enters a default judgment against the respondent. Default judgments entered against respondents typically contain significantly higher penalties than the original amounts of the fine because the City Charter allows OATH to levy the maximum penalty allowable by law for each individual violation.⁹ Respondents must be notified by mail that a default judgment has been entered, told the amount of the penalty, and advised that they may request a stay of default for "good cause" if they request a hearing or enter a plea within thirty days of the mailing of the notice of default.¹⁰

In interviews with DOI, OATH officials stated that it is common practice for OATH to vacate default judgments and set new hearing dates upon applications by respondents after judgments have been entered, as long as the respondents provide a credible explanation showing "good cause." These requests must be filed within one year of the date of the default decision. OATH officials emphasized that their Agency's mission is to ensure that OATH conducts fair and impartial hearings; the effectiveness of the collection of Summons fines is not OATH's responsibility.

⁷ One consequence of the lapses in data tracking discussed in this report is the difficulty obtaining accurate statistics on even simple matters, such as how many Summonses are issued in a given year. For example, DOF's annual report states that 620,000 ECB Summonses were issued in FY 2019, OATH reports that 699,099 ECB Summonses were issued in FY 2019, and DOI's own efforts to confirm those numbers (relying primarily on information in NYC OpenData Portal), produced a figure of approximately 650,000 ECB Summonses issued in FY 2019.

⁸ NY City Charter §1049-a (d)(1)(d).

⁹ NY City Charter §1049-a (d)(1)(d).

¹⁰ NY City Charter §1049-a (d)(1)(h).

ECB judgments (whether following a hearing or by default) that are \$25,000 or less can be docketed with the Civil Court of the City of New York and enforced without further court proceedings, in the same manner as money judgments entered in other civil actions.¹¹ Each month OATH transmits ECB judgments that are \$25,000 or less to the Civil Court for processing. These judgments are “auto-docketed.”¹² If an ECB judgment is in excess of \$25,000 or if the Summons was facially valid but deemed to have not been written or served properly, OATH cannot auto-docket the ECB judgment. Docketing an ECB judgment allows DOF to begin the collection process.

OATH refers all auto-docketed ECB judgments to DOF. Due to the Civil Court’s \$25,000 jurisdictional limit, debts in excess of \$25,000 cannot be automatically docketed in Civil Court. OATH sends judgments that cannot be auto-docketed to the Law Department for docketing in Supreme Court. In addition to overseeing the manual docketing of these judgments, the Law Department conducts collection enforcement efforts on the ECB judgments they receive. ECB judgments referred to the Law Department are not included in the current outstanding \$1.417 billion ECB debt discussed in DOF’s 2019 Annual Report.

C. The Collection of ECB Judgments

1. Post-Judgment Collection Efforts by DOF

When DOF receives a docketed ECB judgment, DOF mails a notice to the respondent stating that a debt is owed to the City. If the respondent fails to respond within 30 days of the mailing, DOF selects debt with the highest dollar value for further research. All remaining debt is referred to an Outside Collection Agency (OCA). DOF’s internal research includes investigative search engines such as Lexis-Nexis to confirm the respondent’s address and determine if the respondent has any available assets. If assets or alternative contact information are found, DOF internally refers the judgment to its Legal Division and/or the NYC Sheriff’s Office for collection of the judgment debt. When appropriate, this process also involves the NYC Marshals.

Debt that is referred to an OCA goes through three collection cycles. DOF initially refers the debt to a primary OCA, which is given six months to collect. If the primary OCA fails to collect, the debt is referred to a secondary OCA, and after an additional six months the remaining uncollected debt is referred to a third OCA.¹³ The third OCA also has a six month collection period, after which the remaining debt is relegated to the “Allowance for Bad Debt” account.

OCA collection efforts include searches for respondent assets, and sending letters and making phone calls to respondents. OCAs do not have the ability to negatively impact the

¹¹ NY City Charter §1049-a (d)(1)(g).

¹² “Auto-docketing” an ECB judgment debt allows and authorizes ECB Summonses to be treated as judgments without further legal action, thus expediting DOF’s collection process.

¹³ The current primary OCA, “IC Systems”, receives a 6.00% commission on collected debt. The commission rates for the secondary OCA, “RTR Financials,” and the tertiary OCA, “Penn Credit Corp,” is 7.25% and 9.68%, respectively.

respondent's credit score. Additionally, under State law, the City cannot convert ECB penalties to tax liens, which would be a highly effective measure in the debt collection process as property cannot be sold or transferred until a tax lien is satisfied. Some ECB penalties against property owners become judgment liens against the property, but these liens are secondary to prior mortgages and judgments, and to federal and State tax liens. Moreover, the property liens have an eight-year statute of limitations, compared to other judgments that can create liens that last as long as 20 years. Additionally, property owners are often able to conceal their personal identities using various corporate structures, such as Limited Liability Corporations (LLCs), that also make collection of judgments and judgment liens difficult.

Uncollected debt remaining after completion of the eighteen-month rotation among OCAs is placed in the "Allowance for Bad Debt" account. Debt not collected within eight years is canceled, with the City no longer attempting to collect it nor having the authority to attempt to collect it. In 2019 alone, \$136,654,761 in ECB debt was canceled due to the expiration of the eight-year statutory collection period.

DOF has indicated that problems with Summons service are a significant impediment to the collection of ECB fines. In order for ECB to obtain jurisdiction over a respondent, service of the Summons must be made in full compliance with the applicable provisions of either the Civil Procedure Laws and Rules (CPLR) or the New York City Charter. According to DOF officials involved in the ECB debt collection process, in many cases where ECB debt remains uncollected, the agencies that issued the initial Summons failed to properly record the correct legal name of the entities upon which Summonses were served. For example, if property ownership is layered or in the name of a Limited Liability Corporation (LLC), the agency issuing the Summons may identify the respondent in a manner that differs from the respondent's legal identity.

In addition, according to DOF officials, the manner of service for Summonses with such problems is sometimes improper or there are insufficient affidavits of service to attest to the proper completion of service. According to OATH, if a Summons is facially defective—for example, if all the items on the Summons are not filled in and items such as a description of the violation or the location of the violation are missing, or if the handwriting is totally illegible—the Summons is dismissed. OATH does not review Summonses for accuracy, and as long as the Summons and affidavit of service are facially valid and submitted prior to the hearing date, the service is deemed appropriate.¹⁴ If the respondent fails to appear at OATH's scheduled hearing, then a default judgment is entered against the respondent.

¹⁴ A Summons may be facially valid and thus suffice for the entry of a judgment at OATH, but underlying service issues or other defects may nonetheless pose a barrier to collection by DOF or the Law Department.

In summary, DOF informed DOI that although they have various collection processes in place, their efforts to collect on ECB judgments are hindered for the following recurring reasons:

- Respondent companies are no longer in business or have declared bankruptcy;
- Individual respondents have died;
- Property owner respondents have relocated;
- Properties held by LLCs make it difficult for DOF to aggregate the overall outstanding debt;
- OCAs lack legal enforcement authority to effectively collect on the debt;
- Summonses are written illegibly; and
- Summonses are not properly served on the respondent.

Finally, approximately 80% of Summonses referred to DOF for collection arise from default judgments, *i.e.* Summonses where the respondent has failed to appear at any scheduled OATH proceeding. Default judgments have larger penalties and may reflect either scofflaw respondents already disinclined to pay their ECB fine, or underlying issues with service such that the true responsible party is unaware of the Summons.

2. Post-Judgment Collection Efforts by the Law Department

Judgments that cannot be auto-docketed are referred by OATH to the Law Department monthly. The Law Department has contracts with three third-party law firms to collect on such judgments. The contracts specify fees ranging from 20 percent to 25 percent of the total amount collected. These law firms initiate court actions to have the ECB judgment docketed in Supreme Court. Once docketed, the law firms commence collection efforts including negotiation, depositions of principals, executions, garnishments of income and property, and litigation to recoup money from respondents.

Law Department officials told DOI that they do not routinely track the collection law firms' collection rate. The Law Department does maintain internal tracking of how much money is collected for all ECB judgment debt that has been referred. The Law Department reported that in calendar years 2018 and 2019, OATH forwarded undocketed claims totaling \$27,157,227.29 and \$24,050,564.95, respectively. For those years, the outside law firms collected \$4,836,383.77 (approximately 17%) and \$2,088,732.73 (approximately 8%) of undocketed ECB debt, respectively, before any fees due to the law firms. These percentages do not reflect total recoveries for undocketed ECB debt, which may be achieved over many years of litigation and collection activity. The Law Department does monitor the collection law firm activity on all referred matters through near daily interaction with the firms, semi-annual case reviews, review and approval of settlements, and monthly tracking of case activities by the collection law firms.

IV. Summary of DOI's Findings¹⁵

Based on the limited data provided by DOF, OATH, and the Law Department, DOI was not able to perform an exhaustive analysis into the challenges of collecting ECB judgments. None of the agencies maintain detailed records indicating why Summonses were not enforceable or why ECB judgments were not collectible. For example, there is no data on what percentage of Summonses had which common problem (*e.g.* illegible information, closed business, property owner out of state). Without examining and categorizing every individual dismissed Summons or uncollected ECB judgment, DOI had to rely on the anecdotal experience of OATH, DOF, and Law Department employees involved in these matters to identify procedural failures or vulnerabilities that may be contributing to the City's failure to realize a significant portion of the potential revenue from Summonses. DOI made the following observations based on the available data:

A. Lack of Information Sharing Among City Agencies

1. Need for a Centralized Database

A pervasive issue throughout this investigation was the lack of information-sharing between City agencies. One of the impediments to more effective ECB collections is the inability to determine aggregate debt owed to the City by a given individual or entity. The Law Department cited instances in which several agencies issue Summonses to a single respondent; however, due to slight variations in the spelling of the respondent's name, the collective ECB debt goes undetermined. DOF stated that their outdated databases make it challenging for them to track and collect on the debt.

To combat the informational shortfall, DOF has begun implementing an Oracle platform named "DataBridge," which is managed by the Department of Information Technology & Telecommunications (DOITT). When fully engaged, this platform will serve as a library of information comprised of various datasets that can be shared among approved stakeholders. This comprehensive platform will provide City agencies the ability to share pertinent information through a singular source that all agencies can access.

DOF has already used DataBridge to increase its property tax collections. DOF officials stated that the non-integration of data between different sources, particularly from DOF, DOB and Department of City Planning databases, caused a gap in property valuations. For example, DOF obtained a listing of City properties with a "Certificate of Occupancy" from DOB. Comparing this data set with property photos taken by City vendor Cyclomedia Technology Inc., DOF found that many properties were improperly listed on DOF and DOB systems as vacant land, when in fact, the property included housing or buildings containing functional businesses. Through this

¹⁵ As part of an initiative to assess and improve DOF's collection processes, DOF entered into a \$1.2 million contract for the management consulting services of McKinsey & Company (McKinsey) in 2018. Despite many discussions with DOF regarding ECB collection processes, DOI was not informed that McKinsey was conducting a similar review. DOI found that many of the recommendations made by McKinsey mirror DOI's findings.

initiative, DOF realized \$22.9 million in additional real estate tax revenue during fiscal year 2019. DOF will continue to use DataBridge with other internal units to enhance City debt collection.

DOI discussed with DOITT the feasibility of sharing ECB debt-related data among City agencies. DOI learned that DOITT and the Mayor's Office of Data Analytics (MODA) are contemplating a City-wide platform upgrade which, among other benefits, would allow for the integration of data from many City agencies. DOITT advised that while information sharing is technologically possible, the legal ramifications of privacy issues are a larger obstacle to sharing data.

If approval to use the DataBridge platform were extended to all City agencies that issue ECB Summonses, informational gaps could be eliminated or significantly reduced. Unlike the City's OpenData platform, which provides the public with transparency and access to a host of data from various sources across City agencies, DataBridge can serve as the repository of raw non-public data that can be shared among City agencies and approved external entities. Some of the benefits DataBridge can provide include: (1) the sharing of permit and license information that could be used by DOF to leverage the rules set forth in Local Law 47 (LL47) of 2016 which permits administrative action against City permit holders who also have outstanding ECB debt; (2) the seamless sharing of data across multiple City agencies; and (3) the identification of ECB debtors who have active contracts with the City.

DOI will continue to coordinate efforts with DOF, DOITT, and other City ECB agencies to promote access to the DataBridge platform.

B. Consideration of Existing ECB Debt

1. Existing ECB Debt as a Factor When Granting or Renewing Licenses and Permits

Pursuant to LL47 of 2016, Section 1049-b of the New York City Charter provides that the 13 City agencies that issue licenses, permits, or registrations have the ability to suspend, terminate, or revoke any licenses, permits, or registrations based on the failure of a respondent to timely pay their civil penalties. At the onset of this investigation, DOI determined that while some of the 13 agencies cited in LL47 were unaware of this law, others, due to technological limitations, had not promulgated rules pursuant to LL47. Recently, DOI discussed with DOF the impact LL47 has had on DOF collection efforts.

DOF has been working with DOT, DOB, and the Department of Consumer and Worker Protection (DCWP)—formerly known as the Department of Consumer Affairs—to forge a data sharing initiative that includes sharing permittee or licensee information so DOF can identify respondents who currently owe ECB judgment debt. The following is a summary of these efforts:

- DOT sends a monthly feed of its active permits to facilitate a DOF cross match against outstanding ECB debt. DOF stated that since September 2019, it has successfully collected \$8,429,958 in revenue related to DOT permit suspensions.

- DOB’s authority to withhold permits until City debt is satisfied predates LL47, and DOB has successfully collected City debt for the past eight years. Since 2018, DOB has provided DOF with two random samples consisting of 25% of the active permits that are issued by DOB. DOF has taken these samples and performed a match against the list of outstanding ECB judgment debt. In turn, DOB sent letters to permittees who had outstanding ECB judgment debt and informed them to resolve their debt or face permit revocation. According to DOF, they have collected \$1,407,245 in revenue since the start of this data initiative.
- DOF has been in communication with DCWP to share permittee and licensee information. However, the DCWP database does not allow automated transmittal of this information to DOF. DCWP stated that they have to manually and physically review files in order to provide DOF with an accurate headcount of active permits and licenses. DOF estimated that if DCWP information was automated, \$9,600,000 in ECB debt could be collected as a result of DCWP license suspensions and non-renewals.

DOI initiated discussions with DCWP, DPR, and FDNY regarding implementation of DataBridge. The respective parties were receptive to information sharing as a means to implement LL47 driven enforcement. Additionally, DOI discussed ways to incorporate ECB debt data with the FDNY data analysts responsible for the development of FDNY’s new software upgrade. DOI will continue to encourage City ECB agencies to leverage LL47 rules as a cost-effective measure that would enhance ECB debt collection.

2. Existing ECB Debt and City Contracts and Vendors

DOI also recommends that City agencies consider outstanding ECB debt as part of the vetting process for all City contracts. DOI found that City agencies did business with vendors that had defaulted on a substantial amount of unpaid ECB debt. A number of these vendors continued to receive payments from the City without regard to their outstanding ECB debt. DOI also found that DOF was not leveraging contract payment information to collect on the outstanding ECB debt owed by active or inactive City vendors.

To evaluate the potential benefits of this recommendation, DOI obtained from DOF a listing of respondents with ECB debt categorized under the “Allowance for Bad Debt” for the time period of January 1, 2010 to October 15, 2018. DOI cross-referenced this list of debtors against a list of City vendors found on the public website Checkbook NYC, which provides information regarding City contracts. Among the 187,367 ECB debtors with debt categorized under the “Allowance for Bad Debt,” DOI was able to identify 110 vendors that received violations prior to or during the terms of a City contract. Among these 110, DOI focused its review on the following 10 City vendors:¹⁶

¹⁶ These 10 vendors had the largest “bad debt” amounts among vendors that DOI was able to confirm were the “true” respondents or responsible parties. These vendors may also have additional ECB debt currently in the collection cycle.

Vendor	Contracting City Agency	ECB Debt Owed¹⁷	Paid to Vendor After First Violation¹⁸	Violation During or Prior to City Contract
Adayad Inc	Housing Preservation and Development	\$119,484	\$230,952	Violation during City contract
Plaza Homes LLC	Housing Preservation and Development	\$70,906	\$268,541	Violation during City contract
CG Enterprise 1 Corp	City Council	\$35,913	\$264,040	Violation during City contract
HSL Lessee SNYT LLC	Department of Education; Department of Emergency Management	\$21,216	\$278,730	Violation prior to City contract
Yeshivah Ohel Moshe	Department of Education	\$21,127	\$22,194	Violation during City contract
Wolet Enterprises	Administration for Children's Services	\$20,644	\$459,224	Violation during City contract
1440 Story LLC	Department of Education	\$19,584	\$12,020,939	Violation during City contract
Grace Episcopal Church	Department of Social Services	\$15,052	\$31,594	Violation prior to City contract
Flatbridge Parking Corp	Police Department	\$13,691	1,209,814	Violation during City contract
90-100 Trinity Owner LLC	Department of Education	\$7,951	36,743,948	Violation during City contract

Adayad Inc received 11 violations between September 3, 2010 and June 27, 2011. These violations included cleanliness failures as well as failures to comply with the initial cleanliness orders. Before and at the time the violations were issued, Adayad Inc maintained a contract with the City through the Department of Housing Preservation and Development. Despite Adayad Inc's ongoing failure to pay the fees associated with the violations, the City paid out \$230,952 to the entity between the violation date and April 25, 2014, the final payment date of Adayad Inc's final City contract.

Adayad Inc receiving funds as a City vendor while also maintaining ECB debts is not an isolated case. The table above includes a number of other City vendors that received violations and failed to pay their ECB debt while continuing to receive payments from City contracts.

¹⁷ ECB Debt Owed includes the initial violation fee as well as accrued interest and penalties as of October 15, 2018.

¹⁸ The amount paid to the vendor following the vendor's first violation includes contract payments made until October 15, 2018.

In one of the most troubling cases from the above table, Wolet Enterprises was cited for multiple fire protection systems violations that it failed to pay while it continued to receive funding from the Administration for Children's Services.

Additionally, in a number of cases the City has granted new contracts to vendors with outstanding ECB Debt; the above table includes HSL Lessee SNYT LLC as such an example. In the case of HSL Lessee SNYT LLC, the entity received a violation on January 3, 2011 which was never paid and due to accrued interest and penalties amounted to \$21,216 as of October 15, 2018. While that violation remained unpaid, the City's Department of Education (DOE) began paying HSL Lessee SNYT LLC. Total payments from DOE to the entity between the violation date and October 15, 2018 amounted to \$178,730. While HSL Lessee SNYT LLC continued to maintain ECB debt, the City's Office of Emergency Management also entered into a contract with the entity. This contract paid HSL Lessee SNYT LLC \$100,000 on April 16, 2018.

As shown, these City vendors have received a substantial amount of contract payments from various City agencies while maintaining ECB debt. DOF has been unable to collect, and some of this debt has statutorily expired or will soon expire. The majority of City vendors self-report their bank account information in order to be paid via Electronic Fund Transfer (EFT) method, while some choose to get paid via paper check. While DOF has access to the EFT data and can obtain check information for each vendor, DOI found that DOF has not used this payment information as an enforcement tool to collect the outstanding debt. DOI discussed this issue with DOF, and DOF has verbally accepted DOI's recommendation that all available vendor bank account information should be used in DOF's debt collection processes.

DOI also found that there is no universal identifier for respondent information that can be used for data matching purposes. Employer Identification Numbers (EINs) or address information is not available for all ECB violation Summonses. Given these constraints, DOI recommends that DOF periodically perform a wildcard search of all City vendors, licensees, and permittees that is cross-matched against the list of ECB judgment debtors. DOI also notes that the list of cross-referenced ECB judgments should not be limited to debt in active collection status but should be inclusive of debt that has been relegated to the "Allowance for Bad Debt" account.

DOF also started a proactive effort with the Mayor's Office of Contracting Services (MOCS) in which the EIN of vendors that register to do business with the City are cross-referenced with the available EIN information of ECB debtors.¹⁹ DOF proposes that all City agencies be required to notify vendors that any outstanding ECB debt owed to the City must be satisfied prior to the execution of any contract with the City.

Finally, DOI further recommends that a "caution" notice indicating a vendor has unpaid ECB debt be entered into the City's Procurement and Sourcing Solutions Portal (PASSPort) system. A review of these caution notices, as well as the vendor application, which includes an

¹⁹ As discussed elsewhere in this report, these matches are currently limited to EIN, which fails to capture much of the Summons universe. Moreover, the City's PASSPort system for contracts and vendors (where the current DOF cross-reference program is housed) is only required for aggregate contract awards of over \$250,000 within the previous 12 months.

attestation as to whether the vendor has any outstanding debt owed to the City, should be part of the responsibility determination conducted by City agency contracting staff for potential contractors.

C. Summons Service

1. Handwritten Summonses

Many Summonses are unenforceable due to inaccuracies in handwritten Summonses or errors in processing the handwritten Summonses. For example, illegible handwriting has hindered OATH's ability to confirm the identity of a respondent or has led to improper coding of the violation. DOI recommends all issuing agencies transition from handwritten Summonses to the use of electronic devices to issue Summonses.

The Department of Sanitation has successfully implemented an electronic issuance system named the "Notice of Violation Administrative System" (NOVAS) to issue Summonses. NOVAS connects directly to various City databases, which allows the Summons issuer to research and confirm respondent information (such as registered property owner of a given address) at the time of issuance.

Building on DSNY's electronic issuance system, DOI recommends that all City agencies that issue Summonses develop a program to do so by portable electronic device. Any such device should, at a minimum, (1) include a list of violation codes, and (2) provide real-time access to relevant City databases, such as the Buildings Information System (BIS) and Automated City Register Information System (ACRIS), to facilitate validation of respondent information.

2. Accountability for Unenforceable Summonses and Training in Summons Issuance and Service

DOI recommends that DOF and the Law Department—the two agencies charged with collecting ECB debt—notify both OATH and the issuing agencies when a judgment is deemed to be unenforceable due to the manner in which the Summons was written or served. Each issuing agency should designate an appropriate individual to receive these notifications. This data should then be used routinely by the issuing agency to provide guidance and responsive training to employees charged with issuing Summonses.

Illegibility of hand-written Summonses appears to be the most common recurring cause of difficulty enforcing or collecting on Summonses. Given that, in the absence of the recommended electronic Summons system, DOI recommends that all issuing agencies conduct staff training and quality control exercises to reduce the number of Summonses deemed unenforceable for this reason.

D. The Performance of Outside Collection Agencies (OCAs)

In order to maximize the success of OCA referrals, DOI recommends that DOF track the performance of the OCAs' ECB debt collection efforts. Currently, OCAs do not provide DOF with detailed reporting describing the actions taken during the collection process. The OCAs provide DOF with revenue statistics demonstrating the amount of debt collected and the respective fees due to the OCAs. DOI recommends that the OCAs provide a listing of debt determined to be uncollectible, the collection actions taken, and the reason for the determination. This information could assist DOF in the evaluation of current processes and the development of new strategies to eliminate a number of the collection difficulties faced by OCAs. When the challenges of collecting ECB judgment debt originate with the issuing agency, DOF should report relevant information to the issuing agency in accordance with the procedure recommended in Section IV.C.2, above.

V. Conclusion

Based on the foregoing, DOI makes the following six policy and procedure recommendations designed to increase the debt collection rate and thereby bring more money into the City treasury, a vital goal in a time of fiscal crisis, as well as effectively deter violations that diminish quality of life for all New Yorkers. A chart showing which recommendations are issued to which City agencies is attached to this Report as Appendix A.

1. The City should standardize and expand the use of a centralized database allowing all City agencies to efficiently share City-owned information that is relevant to the issuance and enforcement of ECB Summonses.
2. City agencies should promulgate rules pursuant to LL47 of 2016 and should consider the existence of ECB debt before granting or renewing City licenses and permits.
3. Existing ECB debt should be made a determining factor in evaluating vendor responsibility for all City contracts and purchasing decisions. All vendors should be informed that contract payments will not be made until outstanding ECB debt is either paid or satisfactorily resolved.
4. Summons-issuing Agencies should adopt systems to electronically issue Summonses.
5. Unenforceable Summonses should be tracked by DOF and the Law Department, and the cause of the non-enforcement should be relayed to the issuing agency and to OATH. Issuing agencies should designate an employee or employees to track its unenforceable Summonses and to ensure that guidance and training responsive to the issues identified is provided.
6. DOF should track the performance of OCAs and make use of the data to identify collection process improvements.

The City needs a robust collection system now more than ever. Enhanced enforcement of ECB debt collection can increase revenue to the City and improve both enforcement as well as deterrence of quality-of-life and safety violations.

VI. Appendix A: City Agencies PPR Distribution List

Agency Name	Issue ECB Summons	Issue Permits, Licenses or Registrations	Procurement of Contracts	PPR's to Issue
Administration for Children's Services / Department of Youth and Family Justice	No	No	Yes	1,3
Board of Correction	No	No	Yes	1,3
Board of Elections	No	No	Yes	1,3
Board of Standard & Appeals	No	No	Yes	1,3
Bronx Borough President	No	No	Yes	1,3
Brooklyn Borough President	No	No	Yes	1,3
Brooklyn Public Library	No	No	Yes	1,3
Business Integrity Commission	Yes	Yes	Yes	1,2,3,4,5
Campaign Finance Board	No	No	Yes	1,3
City Civil Service Commission	No	No	Yes	1,3
City Clerk	No	No	Yes	1,3
City Council	No	No	Yes	1,3
City University of New York	No	No	Yes	1,3
Commission on Human Rights	No	No	Yes	1,3
Conflicts of Interest Board	No	No	Yes	1,3
Department for the Aging	No	No	Yes	1,3
Department of Buildings	Yes	Yes	Yes	1,2,3,4,5
Department of City Planning	No	No	Yes	1,3
Department of Citywide Administrative Services / Division of Municipal Supply Service	Yes	No	Yes	1,3,4,5
Department of Consumer & Worker Protection	Yes	Yes	Yes	1,2,3,4,5
Department of Correction	No	No	Yes	1,3
Department of Cultural Affairs	No	No	Yes	1,3
Department of Design and Construction	No	No	Yes	1,3
Department of Education	No	No	Yes	1,3
Office of Emergency Management	No	No	Yes	1,3
Department of Environmental Protection	Yes	Yes	Yes	1,2,3,4,5
Department of Finance / Office of the Sheriff	No	No	Yes	1,2,3,5,6
Department of Health and Mental Hygiene	Yes	Yes	Yes	1,2,3,4,5
Department of Social Services (Department of Homeless Services / Human Resources Administration)	No	No	Yes	1,3

Agency Name	Issue ECB Summons	Issue Permits, Licenses or Registrations	Procurement of Contracts	PPR's to Issue
Department of Information Technology and Telecommunications	Yes	Yes	Yes	1,2,3,4,5
Department of Parks and Recreation	Yes	Yes	Yes	1,2,3,4,5
Department of Probation	No	No	Yes	1,3
Department of Records and Information Services	No	No	Yes	1,3
Department of Sanitation	Yes	Yes	Yes	1,2,3,4,5
Department of Small Business Services	Yes	Yes	Yes	1,2,3,4,5
Department of Transportation	Yes	Yes	Yes	1,2,3,4,5
Department of Veterans' Services	No	No	Yes	1,3
Department of Youth and Community Development	No	No	Yes	1,3
District Attorney - Bronx County	No	No	Yes	1,3
District Attorney - New York County	No	No	Yes	1,3
District Attorney - Queens County	No	No	Yes	1,3
District Attorney -Kings County	No	No	Yes	1,3
District Attorney -Richmond County	No	No	Yes	1,3
Economic Development Corporation	No	No	Yes	1,3
Equal Employment Practices Commission	No	No	Yes	1,3
Financial Information Services Agency / Office of Payroll Administration	No	No	Yes	1,3
Fire Department	Yes	Yes	Yes	1,2,3,4,5
Health and Hospitals Corporation	No	No	Yes	1,3
Housing Authority	No	No	Yes	1,3
Housing Preservation and Development	No	No	Yes	1,3
Housing Development Corporation	No	No	Yes	1,3
Independent Budget Office	No	No	Yes	1,3
Landmarks Preservation Commission	Yes	Yes	Yes	1,2,3,4,5
Law Department	No	No	Yes	1,3,5
Manhattan Borough President	No	No	Yes	1,3
Mayor's Office	No	No	Yes	1,3
Mayor's Office of Contracting Services	No	No	Yes	1,3
New York Police Department	Yes	Yes	Yes	1,2,3,4,5
New York Public Library / New York Research Libraries	No	No	Yes	1,3
NYC Employee's Retirement System / Pension Contributions	No	No	Yes	1,3

Agency Name	Issue ECB Summons	Issue Permits, Licenses or Registrations	Procurement of Contracts	PPR's to Issue
Office of Administrative Tax Appeals	No	No	Yes	1,3,5
Office of Administrative Trials and Hearings	No	No	Yes	1,3,5
Office of Chief Medical Examiner	No	No	Yes	1,3
Office of Collective Bargaining	No	No	Yes	1,3
Office of Labor Relations	No	No	Yes	1,3
Office of Management and Budget	No	No	Yes	1,3
Office of the Actuary	No	No	Yes	1,3
Public Administrator-Bronx County	No	No	Yes	1,3
Public Administrator-Kings County	No	No	Yes	1,3
Public Administrator-New York County	No	No	Yes	1,3
Public Administrator-Queens County	No	No	Yes	1,3
Public Administrator-Richmond County	No	No	Yes	1,3
Public Advocate	No	No	Yes	1,3
Queens Borough President	No	No	Yes	1,3
Queens Borough Public Library	No	No	Yes	1,3
School Construction Authority	No	No	Yes	1,3
Staten Island Borough President	No	No	Yes	1,3
Taxi and Limousine Commission	No	No	Yes	1,3

This appendix has been updated to note necessary corrections. Community Boards were removed because PPRs were sent to the Borough Presidents for any necessary follow up with Community Boards; City Marshals were removed because they are not employees of the City and do not procure goods on behalf of the City. Several agencies were inadvertently listed twice on the original appendix and have been combined on this appendix. Furthermore, several additional PPRs were issued to the Housing Development Corporation, the Law Department and the Office of Administrative Tax Appeals.