

After the Rats Are Gone:

Substantial Delays in Processing Rodent Abatement Liens

City of New York
Office of the Comptroller
Office of Policy Management
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Introduction

The Mayor recently announced an aggressive expansion of the City's program to eradicate rats by targeting certain heavily infested areas in Bushwick, East Harlem and the South Bronx with increased inspections and exterminations. While these actions are necessary to control what has been an intractable condition for decades, efforts must also be made to improve the fiscal management of the City's pest control program, administered through the Office of Pest Control Services (PCS) in the New York City Department of Health and Mental Hygiene (DOHMH). Liens resulting from PCS activities often can have lingering financial impacts on property owners even after the rats are gone.

PCS identifies properties with rodent-related health hazards and takes corrective action when owners fail or refuse to abate the problem. These rodent abatement actions lead to liens on properties when owners do not pay for the work performed. The New York City Comptroller's Office received a number of complaints from new property owners who discovered liens for PCS work allegedly performed before they purchased their property, despite a lien search prior to closing. Accordingly, the Comptroller directed his Office of Policy Management to conduct an investigation to determine whether the City had been taking too long to process charges relating to PCS activities.

Methodology

The Comptroller's staff obtained computerized records from the Department of Finance (DOF), which bills property owners for rodent abatement work performed by PCS, acts as the City Collector, and maintains property lien records. These records provided details of property ownership and conveyances, lien charges and other financial transactions, as well as DOHMH abatement charge histories. We analyzed records for almost 2,500 private properties having more than 10,000 DOHMH liens resulting from rodent abatement work done by PCS between January 1997 and October 2002. We reviewed the location of the property and the amount of time it took for PCS charges to become liens.

In calculating the length of time taken to process these charges, we used the period between the date PCS actually conducted its abatement work and the date DOHMH forwarded the billing information to DOF. DOF processing time was calculated by comparing the date the DOHMH information was received by DOF with the date the information was actually posted to DOF's publicly-available FAIRTAX system. The FAIRTAX system is the computerized property tax database that tracks tax assessments and payments, and which is commonly used by title insurers and the general public to obtain lien information on specific properties. Staff reviewed DOF records related to liens originating with DOHMH and interviewed government representatives, title insurers and other participants in the process.

The Property Inspection, Rodent Abatement and Billing Processes

Once PCS has identified a property with a potential rodent problem, public health sanitarians inspect the property and note signs of rodents or conditions conducive to rodents. If the property is privately owned, the owner is issued a commissioner's order indicating that the conditions

must be abated within five days or the owner will be subject to a fine. The owner is also notified that inaction will result in abatement by the City for which the owner will be charged. PCS then conducts a compliance inspection in approximately 14 days. If the conditions still exist, the owner is issued a notice of violation, which is adjudicated in a civil proceeding, and the property is scheduled for abatement action. This process is outlined in Chart 1. These two parallel processes, the abatement work and the civil proceeding, are independent of each other. The abatement work is likely to be scheduled and completed before the administrative hearing is conducted. Fines assessed as a result of the administrative hearing are billed to the property owner directly by DOHMH, are not handled by DOF, do not result in liens and therefore are not a subject of this report.

In contrast to fines imposed through the administrative hearing, PCS does not send bills for abatement work to property owners – it sends only findings, commissioner’s orders and notices of actions. DOF does the billing and collection for PCS once DOHMH forwards the relevant information.

PCS fieldwork is organized by boroughs, with one field office in every borough except for Brooklyn, which has two offices. These field offices perform most of the administrative work for the abatement activities and then forward the details of the abatement actions to the central office located in Astoria, Queens, which calculates the total charges due. The central office then transmits this information to DOF, which bills the property owner and posts this information to its FAIRTAX computer system. Once posted on DOF’s system, the public has easy access to the information.

Legal Framework

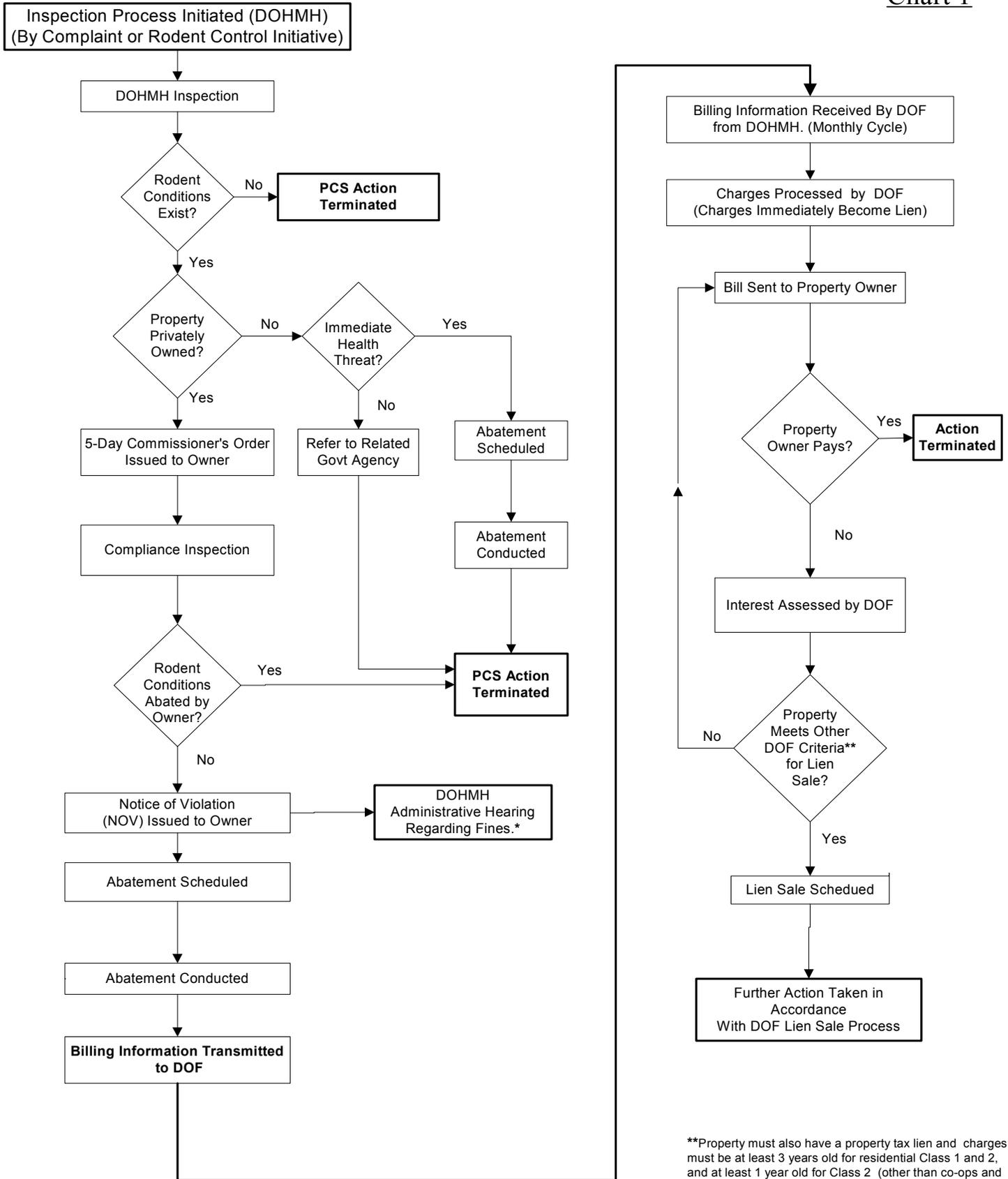
Under Section 17-151(a) of the New York City Administrative Code, within 30 days of issuance of a purchase or work order that causes rat abatement or other work to be performed on a property in the City, DOHMH must create a record of the work, maintained on a building-by-building basis and “accessible to the public during business hours,” which functions as legal notice to all parties. Under Section 17-151(b), once DOHMH has calculated a statement of account for the expenses it incurred as a result of the work, it must “cause to be filed” with DOF, which functions as the City Collector, an entry of that account into its records. At this point, the charge becomes a lien on the property where the work was done.

A lien is a legal claim to charges that are due and payable to the City as a result of non-payment of certain taxes and charges, such as abatement charges, real estate taxes, sewer surcharges, water rents, and charges for sidewalk repairs performed by the City, along with any interest and penalties. DOF regularly sells delinquent liens that meet certain age and other requirements.¹

¹These requirements vary according to tax class. To be eligible for a lien sale the property must also have a property-tax lien. The property-tax lien on Class 1 residential and Class 2 residential co-ops and condos must be at least 3 years old. For Class 2 (other than co-ops and condos), 3 and 4 commercial properties the property-tax lien must be at least one year old for other liens to be included in a lien sale.

New York City's Pest Control Inspection, Abatement and Billing Process

Chart 1



*This is a separate process and therefore not part of this report.

**Property must also have a property tax lien and charges must be at least 3 years old for residential Class 1 and 2, and at least 1 year old for Class 2 (other than co-ops and condos), 3 and 4.

The Administrative Code provides limited protection to good-faith purchasers and mortgagees who are faced with DOHMH charges based on work done before they acquired an interest in the property. Section 17-151(b) provides that these costs cannot be collected from a subsequent purchaser or mortgagee if DOHMH has not made a publicly-available record of the work within 30 days of the date the work order was issued and the property was sold or mortgaged before the record was actually made. However, this exemption is extremely narrow. Once DOHMH creates its own record, all charges will be enforceable against anyone acquiring a later interest in the property even if the charges have not been sent to DOF and converted into a lien. See 105th Street Development Corp. v. Commissioner of Dept. of Health, 730 N.Y.S.2d 420, 422 (N.Y. Sup. Ct. 2001).

Findings

1. Department of Health Practices Differ From the Framework Contemplated by the Administrative Code

By its terms, the Administrative Code presumes that DOHMH maintains a record keeping system that provides meaningful access to property owners, prospective purchasers, banks and others seeking information about work performed by DOHMH on individual properties. However, DOHMH's record keeping system, including its computerized pest control database, is designed for internal use and does not provide the public with consistent access to clear and reliable information.

According to interviews with DOHMH staff, once a PCS compliance inspection is conducted and it is determined that abatement work is needed, work order forms are generated from the pest control database, which are used by the PCS supervisor to schedule the required field work. The date of the work scheduled by the supervisor is not entered into the database, although the database stores the date the form was printed. Details of the abatement work, including its scope and duration, are entered upon completion of the work, which can take anywhere from several days to months, according to the severity of the rodent problem.²

The work order forms, although kept on a building-by-building basis, are for PCS internal use only and are not readily available to the public. According to DOHMH staff, people seeking information about a property may be able to obtain different information depending on their relationship to the property. We were told that property owners are more likely to be able to receive abatement information than other interested parties, including prospective purchasers. However, it appears that DOHMH has no consistent policy in this respect, since we were given different answers depending on the staff member with whom we spoke. For example, in separate conversations, we were told that a potential buyer or property owner may be given information

² It is not clear which of these events constitutes the "issuance of a work or purchase order to cause . . . work to be done," triggering the 30 day period under the Administrative Code for DOHMH to create a publicly-available record of the work. In our analysis, we conservatively used the date the work was completed as the starting point to measure processing time since that was the only relevant date reflected in the FAIRTAX data we obtained from DOF. This date necessarily is later than the date the work order was issued, which means that our analysis understates the total amount of time it took DOHMH to process these charges.

about charges over the telephone, or instructed to make a Freedom of Information Law (FOIL) request through DOHMH's legal department, or be directed to the central or borough offices.³ In some cases the records are unavailable or incomplete. We were also told by DOHMH staff that information concerning PCS work on a particular property may be provided by DOHMH on a case-by-case basis over the telephone, but that written records of PCS work are generally not made available to the public in the absence of a formal FOIL request.

Moreover, the supposed availability of PCS's records is generally unknown to the public. As a practical matter, people rely on the FAIRTAX system for information and not on DOHMH's pest control database. Because of the difficulties in obtaining reliable information from DOHMH about PCS charges prior to their posting on FAIRTAX, members of the New York State Land Title Association we interviewed told us that title insurers exclude from coverage any charges that may exist in DOHMH records but that are not posted to the FAIRTAX system at the time the title search is conducted.⁴ This is particularly disturbing given the requirement of Section 17-151(a) that DOHMH must create a publicly available record of such work on a building-by-building basis.

2. Delays In Processing Rodent Abatement Charges Were Extensive and Chronic and May Affect New York City's Cash Flow

The difficulty of obtaining PCS information from DOHMH and the sheer number and dollar value of the PCS charges makes the timely posting of these charges to FAIRTAX particularly important. However, our analysis of the processing of DOHMH rodent abatement charges showed that there were substantial overall delays.

Measuring processing time from the date the abatement work was done to the date the charges were posted to the FAIRTAX system, we found that only 8% of rodent abatement charges were posted to the DOF FAIRTAX system within 30 days of the completion of the work. Furthermore, almost 10% of DOHMH charges were not posted to the FAIRTAX system even after six months. See Chart 2.

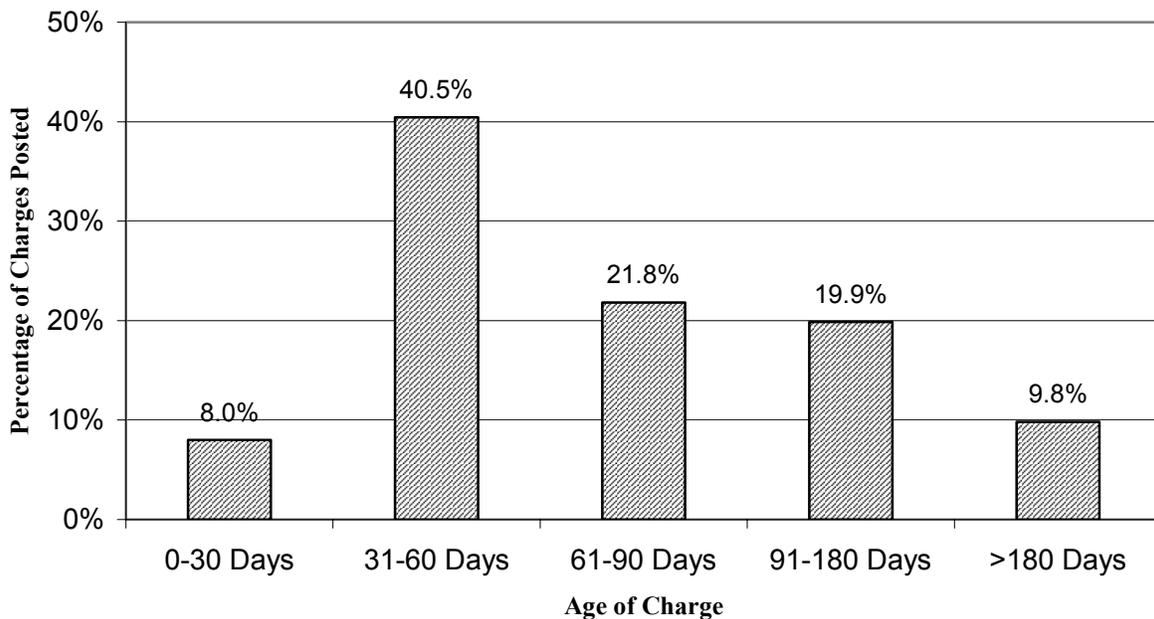
These delays undermine the intent of the Administrative Code, which is to ensure that information about liens is available to the public in a reasonable and timely manner. They also function as inordinately long grace periods for property owners who have failed or refused to clean up rodent-related health hazards, since the City does not assess interest on PCS charges until 30 days after they are posted on FAIRTAX, if the property owner does not pay by that time. These delays also can affect the City's cash flow, since the City is not reimbursed for the clean-up costs it has incurred until the property owner is billed by DOF. In fact, the nearly 10,000

³ Telephone interviews with DOHMH staff, January 31, 2003, February 25, 2003, March 12, 13, 24, 25, 2003.

⁴ Telephone interviews with New York State Land Title Association representatives, September 11, 2002, April 2, 2003. The American Land Title Association's standard form title insurance policy contains a clause excluding from coverage any charges not "recorded in public records" as of the date of the policy, and defines "public records" as those "established under state statutes . . . for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge." We have not found any court decisions holding that this provision, in fact, excludes liability for claims that were reflected in DOHMH records but not posted on FAIRTAX prior to a title search

liens we examined for this report collectively represented \$2.9 million in costs for which the City had not yet been reimbursed. There is no excuse for these delays, particularly during these times of fiscal austerity.

Chart 2: Percentage of DOHMH Charges Posted to FAIRTAX System, By Age of Charge Citywide



3. Processing Delays Were Mostly Attributable to DOHMH

There was great variability in the performance of DOHMH and DOF regarding processing times. Delays attributable to DOHMH were significantly greater and more frequent than those attributable to DOF. As Chart 3 shows, 69.8% of PCS charges were posted to the FAIRTAX database on the same day that they were received from DOHMH, and 98.8% were processed within 30 days. In contrast, virtually no charge was sent by DOHMH to DOF within 10 days of the date the work was completed and only 9.7% of these charges were sent to DOF within 30 days. Astonishingly, almost one in ten of these charges were not sent to DOF by DOHMH even after 180 days. The median processing time for DOF was one day, while for DOHMH it was 60 days.

Chart 3. Comparison of DOHMH and DOF Processing Times

Processing Time (Days)	PCS Charges Processed	
	DOHMH Processing Time*	DOF Processing Time**
Within 1 Day	< 0.1%	69.8%
2 to 10 days	< 0.1%	28.20%
11 to 30 days	9.7%	0.8%
31 to 60 days	41.0%	0.4%
61 to 90 days	21.7%	0.1%
91 to 180 days	18.6%	0.2%
More than 180 days	9.0%	0.6%
Mean	83 days	3.7 days
Median	60 days	1 day

*Period from date work is completed to date charge is sent to DOF

**Period from receipt of charge from DOHMH to posting on FAIRTAX system

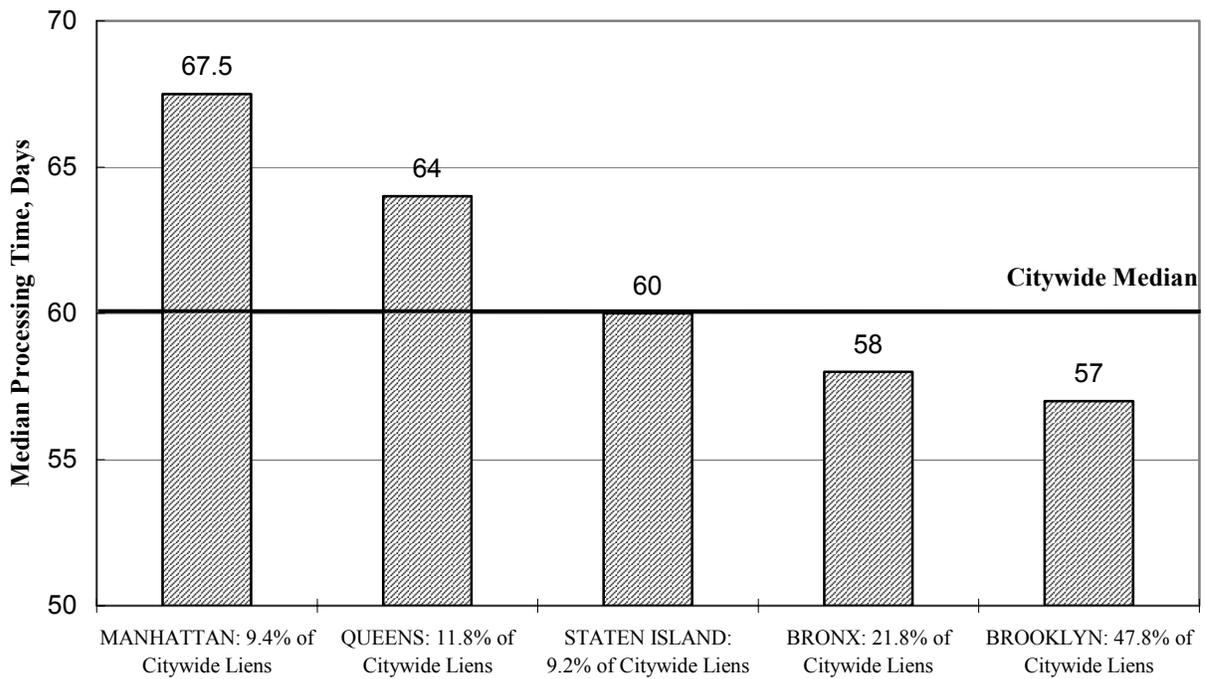
4. Department of Health Delays Varied Greatly by Geography

PCS field operations are conducted from borough offices that report to a central office. As demonstrated by Chart 4, our analysis showed a distinct difference among the boroughs in terms of how quickly PCS charges were processed. Manhattan was the worst performer, with charges taking a median of 67.5 days before they were sent to DOF, while Brooklyn was the best performer, with charges taking a median of 57 days before they were sent to DOF. Both Brooklyn and the Bronx performed better than the Citywide median (60 days) while both Manhattan and Queens performed worse than the Citywide median. When borough processing times are compared with the percentage of Citywide liens originating in each borough, there appears to be somewhat of an inverse ranking between workload and performance, i.e., the borough offices with the highest workload tended to perform better than those with a lower workload.⁵ See also Appendix A and Appendix B for the median processing times for each community district.

Although rodent problems occur Citywide, rodent abatement activity is highly localized. In our analysis we looked at the top 15 community districts with the highest number of liens resulting from rodent abatement activities. The five community districts with the greatest number of PCS liens (with one exception) are in Brooklyn. In fact, 47 % of the liens generated by PCS activities occur in Brooklyn. This is more than twice that of any other borough. Appendix C shows the percentage of liens for the 15 community districts. See also Appendix D for the distribution of PCS liens by community district.

⁵ Staten Island is an exception.

Chart 4: DOHMH Median Processing Times, By Borough



5. The Long Processing Delays by the Office of Pest Control Services Creates The Risk That Innocent Purchasers Will Be Responsible For Preexisting Charges They Knew Nothing About

The City’s failure to process rodent abatement records timely can have serious ramifications. In our review, we found forty-eight properties with a collective eighty DOHMH charges, totaling \$155,000, that were sold after abatement work on the property was completed but before the date the charges were posted to the FAIRTAX system. The median length of time it took DOHMH to process the charges on these properties was 85 days as compared with 60 days for all properties considered in our analysis – nearly 42 % longer. Under the Administrative Code, most of these purchasers are technically responsible for paying these charges even though they likely were unaware that they existed since they would not have appeared in a title search. This represents a risk that the City has, in effect, put on the shoulders of unwitting prospective purchasers and mortgagees.

Recommendations

DOHMH's failure to comply with the spirit of the Administrative Code and make its records meaningfully available to the public, combined with its significant delays in processing PCS charges, raises serious concerns. These apparent bureaucratic inefficiencies deprive the public of an important source of information prior to the posting of charges on FAIRTAX, create a risk of liability for purchasers and mortgagees who unknowingly obtain an interest in properties subject to abatement actions with outstanding paperwork, and ultimately undercut the public's confidence in government. Moreover, processing delays work in favor of delinquent property owners and to the City's detriment, since the owners are not charged interest on abatement costs during the delay period. Indeed, if the property is sold during the delay period to an innocent purchaser within the Administrative Code's safe harbor, the City may never receive reimbursement for these costs at all. Accordingly, we make the following recommendations:

1. Amend the Administrative Code and DOHMH Procedures to Ensure that PCS Records are Reasonably Available to the Public.

DOHMH should immediately put into place procedures to ensure that its system is meaningfully available to the public. Although rodent abatement charges are technically available to the public before being posted to the FAIRTAX system, on too many occasions interested parties have to navigate bureaucratic obstacles to get to the records. The public should be able to visit or call the PCS central and/or borough offices and be able to view abatement records within 30 days of the issuance of work orders. This could be easily achieved by minor modifications to the existing pest control database and the addition of a few public access terminals at PCS locations.

The importance of these changes also calls for clarification of the Administrative Code to ensure that the public is granted full and meaningful access. For example, the apparent practice by some DOHMH staff of requiring members of the public to make a formal FOIL request before releasing PCS information certainly violates the spirit, if not the letter, of the Administrative Code requirement that DOHMH records "shall be accessible to the public during business hours." Section 17-151(a) of the Administrative Code should be amended, therefore, to make clear that all members of the public, regardless of whether they own the parcel about which they are inquiring, are entitled to reasonable access to these records upon written or verbal request.

2. Eliminate Processing Delays

DOHMH should monitor the processing of PCS abatement work records to ensure that charges are processed in a timely manner. The fact that some borough offices appear to perform better than others, even with a much greater workload, may be useful to PCS in trying to achieve operational improvements.

3. Amend the Administrative Code to Set a Benchmark for DOHMH Processing Time

The Administrative Code should be amended to specify a period of 30 days after the completion of abatement work within which DOHMH must forward the relevant records to DOF for posting on its FAIRTAX system. In this way, the process will become more certain and interested parties will have access to DOHMH lien information in a more timely manner.

4. Add PCS Performance Measurement to the Mayor's Management Report

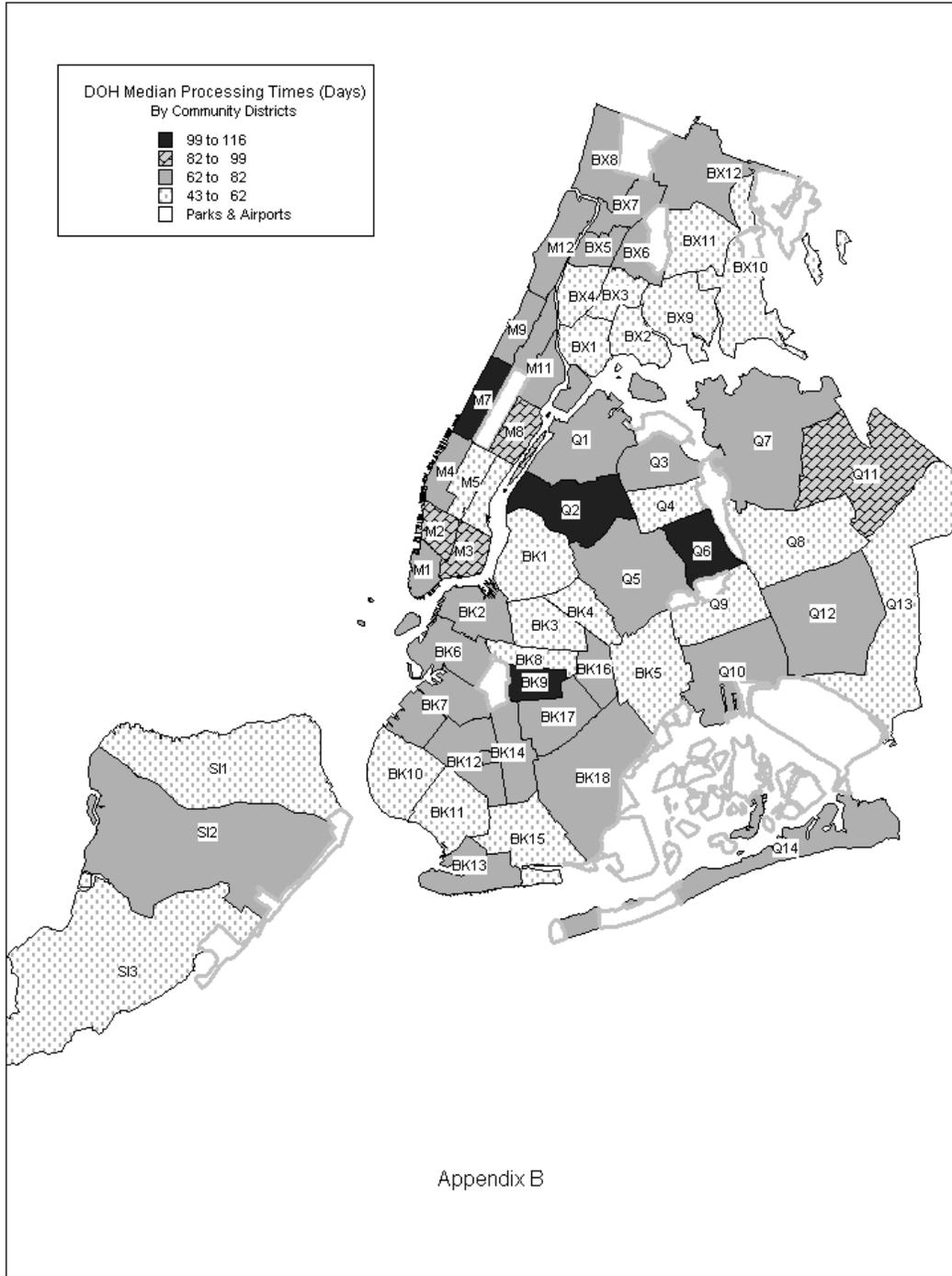
DOHMH should report in the Mayor's Management Report on the number of days that it takes to process rodent abatement records and forward them to DOF. Disclosure of this information will allow the Mayor and other elected officials to evaluate DOHMH's progress in making its operations more efficient and responsive to the public's need for timely posting of PCS charges on DOF's FAIRTAX system.

Ranking of Community Districts, By Median Processing Time

Rank, by Longest Processing Time	Community District	Borough	Number of Liens	Percent of Citywide Total	Median Processing Time (Days)
1	M7	Manhattan	16	0.2	116
2	Q6	Queens	5	< 0.1	110
3	BK9	Brooklyn	77	0.8	105
4	Q2	Queens	16	0.2	100
5	M8	Manhattan	4	< 0.1	97*
6	M2	Manhattan	6	0.1	92.5
7	Q11	Queens	3	< 0.1	83*
8	M3	Manhattan	33	0.3	83
9	BK12	Brooklyn	50	0.5	81
10	Q3	Queens	100	1	77.5
11	M1	Manhattan	9	0.1	76
12	Q7	Queens	86	0.9	74
13	BX7	Bronx	102	1	72
14	BK2	Brooklyn	209	2.1	72
15	BK18	Brooklyn	78	0.8	70.5
16	BX8	Bronx	15	0.1	70
17	M10	Manhattan	464	4.6	69
18	BK16	Brooklyn	587	5.8	69
19	M12	Manhattan	115	1.1	68
20	M9	Manhattan	72	0.7	66.5
21	Q12	Queens	373	3.7	66
22	BX6	Bronx	358	3.6	65.5
23	M4	Manhattan	17	0.2	64
24	Q1	Queens	20	0.2	64
25	BK14	Brooklyn	61	0.6	64
26	BK6	Brooklyn	160	1.6	63.5
27	BK13	Brooklyn	56	0.6	63
28	SI2	Staten Island	87	0.9	63
29	Q10	Queens	130	1.3	63
30	M11	Manhattan	213	2.1	63
31	BK17	Brooklyn	132	1.3	62.5
32	BK7	Brooklyn	68	0.7	62
33	Q5	Queens	84	0.8	62
34	BX12	Bronx	114	1.1	62
35	BX5	Bronx	139	1.4	62
36	Q14	Queens	277	2.7	62
37	BK11	Brooklyn	8	0.1	61
	Citywide		10,083	100	60
38	BX11	Bronx	32	0.3	59.5
39	Q13	Queens	60	0.6	59.5
40	BK5	Brooklyn	749	7.4	59
41	SI1	Staten Island	760	7.5	59
42	Q8	Queens	13	0.1	58
43	Q4	Queens	11	0.1	57
44	SI3	Staten Island	49	0.5	57
45	BX2	Bronx	230	2.3	57
46	BK1	Brooklyn	228	2.3	56
47	BX4	Bronx	443	4.4	56
48	Q9	Queens	17	0.2	55
49	BX9	Bronx	44	0.4	55
50	BX1	Bronx	376	3.7	55
51	BK4	Brooklyn	705	7	55
52	BK15	Brooklyn	37	0.4	54
53	BX3	Bronx	335	3.3	54
54	BK8	Brooklyn	424	4.2	54
55	BK3	Brooklyn	1,195	11.9	51
56	BX10	Bronx	26	0.3	48
57	M6	Manhattan	1	< 0.1	47*
58	BK10	Brooklyn	3	< 0.1	44*
59	M5	Manhattan	1	< 0.1	43*

*The summary statistic may not be meaningful because of the small number of cases.

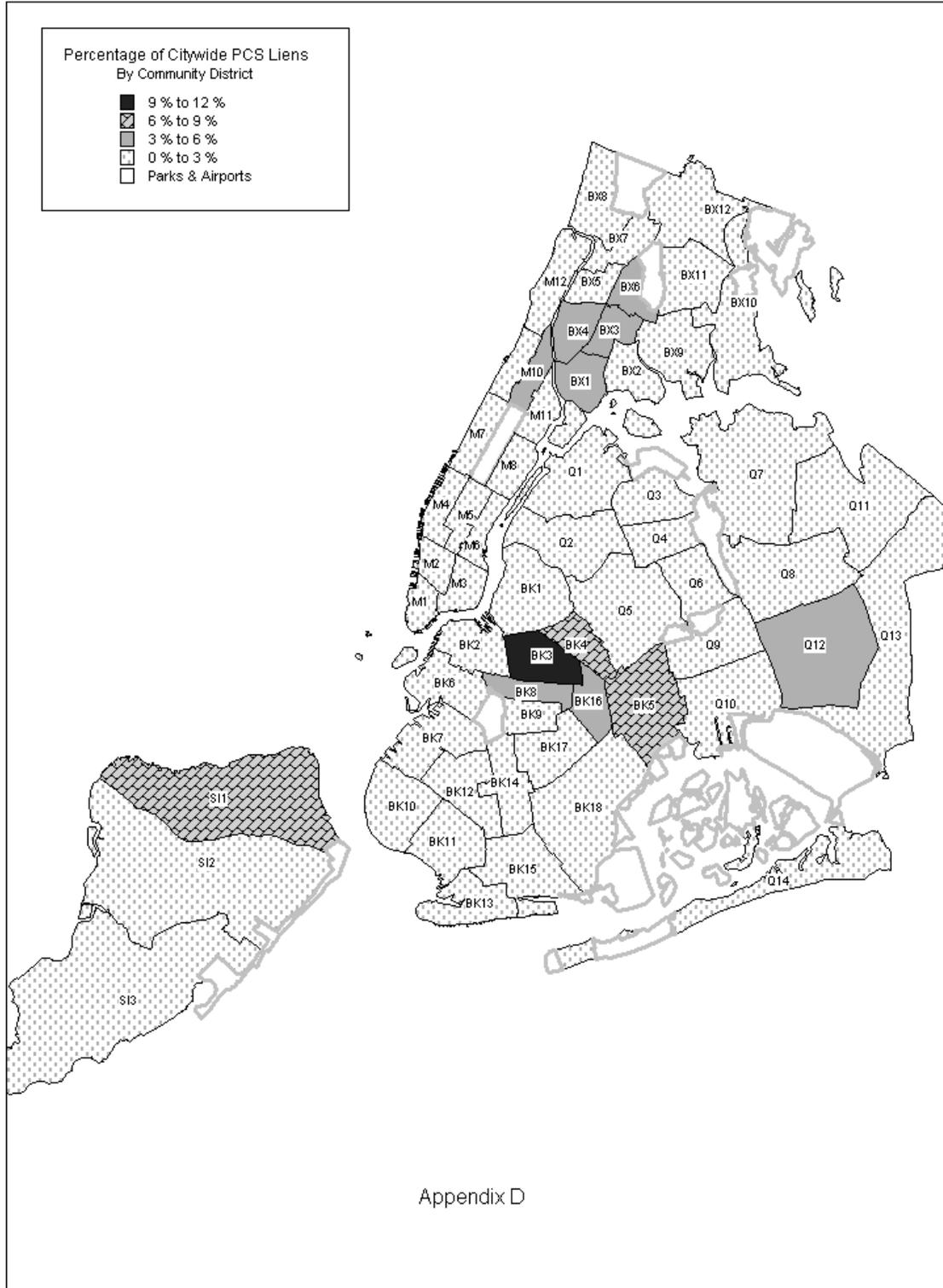
Appendix B, MapInfo Map of DOHMH Mean Processing Delays



The Top 15 Community Districts Affected By Liens Resulting From Rodent Abatement Activities

Rank	Community District	Borough	Number of Liens	Percentage of Citywide Total
1	BK3	BROOKLYN	1,195	11.9
2	SI1	STATEN ISLAND	760	7.5
3	BK5	BROOKLYN	749	7.4
4	BK4	BROOKLYN	705	7
5	BK16	BROOKLYN	587	5.8
6	M10	MANHATTAN	464	4.6
7	BX4	BRONX	443	4.4
8	BK8	BROOKLYN	424	4.2
9	BX1	BRONX	376	3.7
10	Q12	QUEENS	373	3.7
11	BX6	BRONX	358	3.6
12	BX3	BRONX	335	3.3
13	Q14	QUEENS	277	2.7
14	BX2	BRONX	230	2.3
15	BK1	BROOKLYN	228	2.3
Citywide			10,083	

Appendix D, MapInfo Map of Percent of Citywide PCS Liens, By CD



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