

## **Fines everywhere: but not where needed**

I found a lot in this Crains article but the complaint from a builder - which I bolded for your convenience below – really screams at me for comment. This developer used the story to complain that too many 3-1-1 calls result in violations to the industry. We only wish. So I shared this article with Queens Civic Congress officers and the general consensus was:

“Astounding! DOB responding to 311 calls. Not in my nabe.”

The point remains that the City seems to focus its enforcement efforts despite its denials on cheap hits on small businesses, residents, and community members: From frivolous parking tickets to false ones that you cannot rebut (maybe proposed legislation requiring ticketing agents to use hand-held digital cameras will change that) to overzealous hits on storekeepers when the wind blows a gum wrapper in front of their premises after they swept.

The question largely becomes whether the goal of enforcement is compliance or revenue. Too many New Yorkers would agree: **revenue**.

And since Building complaints if addressed just may slow the wanton development that City Hall appears to favor, the false cries of those who prey on our neighborhoods appear nothing more than an attempt to lull the civic-minded to inaction because if they claim 3-1-1 is working and they get violated, it must be so. Let us not be lulled by these distractions.

<http://www.crainsnewyork.com/article/20090614/SMALLBIZ/306149964>

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### **Small businesses are getting fined to death**

City plans to issue more violations to raise revenue, even as it promises to cut red tape.

By **[Daniel Massey](#)**

They fought hard to defeat Mayor Michael Bloomberg's ban on smoking in restaurants, and when they

lost that battle in 2003, Staten Island's restaurant and tavern owners, bruised and battered, disbanded their trade association.

But the borough's restaurateurs are making noise again. More than three dozen owners recently met with top officials from the Department of Health and Mental Hygiene to complain that city inspectors are routinely hitting them with fines—starting at \$200 a pop—for what they consider nitpicky violations, like improperly storing silverware or stocking dented cans in a pantry.

“We've become very jaded with the concept that the Health Department is there to protect the public and to educate businesspeople on the proper way to handle food,” says Ken Tirado, owner of Killmeyer's Old Bavaria Inn. “It is so clear that they are just generating income for the city.”

### **Relief in sight?**

City Hall increasingly depends on fines to pad municipal coffers. But business owners like Mr. Tirado hope to find a bit of relief through a new mayoral panel tasked with stripping away some of the rules and red tape that can make it hard to be an entrepreneur in New York.

While Mayor Michael Bloomberg has yet to formally announce the panel's members and mission, there's certainly no shortage of material to study: An estimated 70,000 small businesses spanning 55 categories are licensed by the city's Department of Consumer Affairs alone. And untold numbers of regulations affecting companies small and large are enforced by other agencies ranging, from the Department of Health to the Department of Buildings.

### **Fine-tooth comb**

“We have to go one by one through the regulations that small businesses are subject to and ask the question, 'Is there a public value served here?’ “ says Councilman David Yassky, D-Brooklyn, who will sit on the panel. “If not, we have to eliminate them.”

Mr. Yassky points to a furniture dealer in his district who was recently fined thousands of dollars for operating without a license to sell used goods. The requirement is intended to prevent the fencing of stolen items, but Mr. Yassky believes that existing fraud laws should suffice.

“There should be some special reason the government has to demand that a business get a license,” he says. “If there's no special reason, we shouldn't impose the cost and burden of a license.”

**Brooklyn-based home renovator Alistair Economakis says Building Department regulations especially deserve rethinking. The department's permitting process is needlessly laborious, he says, and once construction starts, inspectors are sent every time anyone phones in a complaint to 311, often delaying projects.**

**City stop-work orders, which can take months to lift, even for small violations, are the most disruptive, “When work stops,” Mr. Economakis explains, “contractors don't get paid and workers get laid off.”**

The most fertile ground for complaints could well be restaurants. Frustrated owners say they don't

always understand how inspectors come up with the violations they cite.

“We're talking about dented cans and flies causing some of these fines,” says James McBratney, owner of Jimmy Max on Staten Island and president of the borough's restaurant association. “I recently received a violation for presoaking my silverware as recommended by the manufacturer.”

Department of Health Associate Commissioner Elliott Marcus denies any spike in violations on Staten Island. “There is no agenda on our part to raise revenue for the city,” he says.

Councilman James Oddo, R-Staten Island, thinks otherwise. “When I have owners of a local pizzeria, a large restaurant and the premier hotel on Staten Island complain to me about the Health Department in a span of three weeks, there's something wrong,” he says.

The city's dismal fiscal outlook could crimp any anti-regulation effort. Even as the mayor calls for cutting red tape, he plans to generate almost \$900 million in revenue from fines in fiscal 2010.

### **The reason for red tape**

“Red tape exists for a specific reason—it's the way the city exercises a piece of its power and the way the city collects a piece of its revenue,” says Patrick Siconolfi, executive director of the Community Housing Improvement Program, a coalition of city landlords. “Unless you're willing to get rid of the underlying reasons, you're never going to get rid of the red tape.”

The city plans to take in \$894 million in fines in fiscal 2010, up \$112 million from the previous year, according to the mayor's executive budget. A spokesman for the mayor says most of the increase will be generated by additional cameras at traffic lights, tougher enforcement of “blocking the box” traffic rules, and a new data-mining system that will catch scofflaws that haven't paid city fines and fees.

The Department of Health anticipates collecting an extra \$8.4 million, according to its preliminary fiscal 2010 budget. The increase will come from more frequent inspections of restaurants with persistent unsanitary conditions, Mr. Marcus says, insisting that restaurants with good sanitary conditions won't face additional burdens.

“If your restaurant is clean,” he says, “you won't get a violation.”