

City of Detroit

OFFICE OF THE AUDITOR GENERAL



**Audit of the
Department of Administrative Hearings**

January 2007 – September 2010



City of Detroit
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LOREN E. MONROE, CPA
AUDITOR GENERAL

MEMORANDUM

DATE: October 11, 2011
TO: Honorable City Council
FROM: Loren E. Monroe, CPA
Auditor General *Loren E. Monroe*
RE: Audit of the Department of Administrative Hearings
C: Mayor Dave Bing
Medina D. Noor, Director
Cheryl Johnson, Group Executive/Finance Director

Attached for your review is our report on the audit of the Department of Administrative Hearings. This report contains our audit purpose, scope, objectives, methodology, and conclusions; background; status of prior audit findings; audit findings and recommendations; and the Department of Administrative Hearings responses.

Responsibility for the installation and maintenance of the system of internal control that minimizes errors and provides reasonable safeguards rests entirely with the Department of Administrative Hearings, and the Finance Department. Responsibility for monitoring the implementation of recommendations is set forth in Section 4-205 of the City Charter, which states in part:

Recommendations that are not put into effect by the department shall be reviewed by the Finance Director who shall advise the Auditor General and the City Council of the action being taken with respect to the recommendations.

We would like to thank the employees of the Department of Administrative Hearings for their cooperation and assistance extended to us during this audit.

Copies of all of the Auditor General's reports can be found on our website at www.detroitmi.gov/CityCouncil/LegislativeAgencies/AuditorGeneral/tabid/2517/Default.aspx.

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AGENCY RESPONSE

Department of Administrative Hearings

ATTACHMENT A

AUDIT PURPOSE, SCOPE, OBJECTIVES, METHODOLOGY, AND CONCLUSIONS

Audit Purpose

The Office of the Auditor General's (OAG) performed the audit of the Department of Administrative Hearings (DAH) in accordance with the OAG's Charter mandate to audit the financial transactions of all city agencies at least once every two years and report findings and recommendations to the City Council and the Mayor.

Audit Scope

The OAG performed an assessment of the DAH's internal controls for the period January 2007 through September 2010 and determined that there were certain weaknesses in the system of internal controls. We focused our audit on the weaknesses discovered during the assessment and the status of the prior audit findings. In February 2011, the Detroit News reported on ten private investors who own large parcels of Detroit property. We performed a review to determine whether any of the ten investors identified in the news report owes the City for unpaid blight judgments.

Our audit was conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States, except for the completion of an external peer review of the Office of the Auditor General within the last three years.

Audit Objectives

The objectives of the audit were:

- Evaluate the adequacy of the DAH 's internal controls over the DAH 's core processes;
- Evaluate the effectiveness and efficiency of the DAH 's collection of judgments and attendance at hearings;
- Determine if the DAH is complying with applicable Finance Directives, policies, plans, procedures, and
- Determine if the DAH has resolved the prior audit findings.

Audit Methodology

To accomplish the audit objectives, our audit work included:

- Review of prior audit reports, applicable Finance Directives, City ordinances, laws, policies and procedures and other pertinent information related to DAH;
- Interviews with appropriate DAH management and personnel to gain an understanding of the department's internal control structure;
- An evaluation of the DAH 's internal controls over its major financial systems;
- An examination of a sample of transactions that we considered satisfactory to achieve our objectives; and

- Determining the status of the findings and noncompliance issues cited in the prior audit report.

Conclusions

Based on our audit, we have concluded the following:

- With the exception of deficiencies with the FACE computer system, DAH has adequate internal controls over its core processes.
- The efficiency and effectiveness of the City's judgment collections and attendance at hearings is weak. Additionally, the independence and objectivity of the DAH is suspect due to its role in collections.
- The DAH complies with the applicable Finance Directives, policies, plans, and procedures.
- DAH has resolved five of the six prior findings.

BACKGROUND

The City of Detroit established the Department of Administrative Hearings (DAH) in January 2005 as an efficient and cost-effective manner to adjudicate blight violation cases in an impartial and independent forum.

The DAH incorporates the Municipal Ordinance Violations Bureau's (MOVB) collection process into its system, thereby establishing new procedures for the administration, adjudication and collection of blight violations into one framework. The Zoning, Environmental, and Property Maintenance branches of the MOVB are now adjudicated under the DAH.

The Property Maintenance Division hears cases filed by the Buildings, Safety Engineering and Environmental Department (B&SEED). The blight violation notices are issued by building and health inspectors and by police officers. Violations include but are not limited to the following:

- Failure to obtain certificate of compliance
- Failure to obtain a certificate of rental registration
- Rat infestation or other rodent problems
- Failure to remove snow and ice
- Inoperable vehicles
- Failure to maintain exterior of property
- Failure to comply with emergency orders

The Zoning Division hears cases filed by B&SEED. Building inspectors are the people that issue blight violation notices. Violations include but are not limited to the following:

- Violations of special land use grants
- Change of land use without a permit
- Change of building use without a permit
- Failure to obtain the required certificate of maintenance of grant conditions

The Illegal Dumping and Solid Waste Division hear cases filed by B&SEED. Health and environmental inspectors, police officers and Neighborhood City Hall managers issue blight violation notices. Violations include but are not limited to the following:

- Early or late placement of curbside containers at the curb
- Improper set-out of bulk waste
- Improper storage of solid waste
- Animal and fowl excrement violations
- Illegal dumping

The following table shows the budgeted appropriations, revenues, and number of staff of the DAH, a general fund agency, for fiscal years 2007-2008 and 2009-2010:

	Fiscal Years Ended June 30			
	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Expenditures	\$ 2,233,976	\$ 2,199,607	\$ 2,207,840	\$ 2,172,847
Revenues	<u>1,115,941</u>	<u>887,067</u>	<u>886,982</u>	<u>2,172,847</u>
Net Tax Cost	<u>\$ 1,118,035</u>	<u>\$ 1,312,540</u>	<u>\$ 1,320,858</u>	<u>\$ 0</u>
Number of Staff	6	6	6	6

Medina D. Noor was the initial and current Director of DAH. Miriam Blanks-Smart was the Director of DAH from January 2008 through May 2009.

STATUS OF PRIOR AUDIT FINDINGS

The prior audit of the Department of Administrative Hearings for the audit period January 2005 through December 2006, by the Office of the Auditor General, included the findings listed below. Of the six prior audit findings listed, one finding was not resolved.

1. The Computer System is Inadequate
This finding has not been resolved and is discussed in Finding 1 on page 6 of this report.
2. Controls Over the Cash Receipts Are Weak
This finding has been resolved.
3. The DAH Lacks Procedures for Handling Non-sufficient Fund (NSF) Checks
This finding has been resolved.
4. Gas Bills Were Paid in Error
This finding has been resolved.
5. Non-compliance with the Finance Department's Capital Asset Policy
This finding has been resolved.
6. Non-compliance with the Finance Department's Year-end Closing Procedures
This finding has been resolved.

AUDIT FINDING AND RECOMMENDATIONS

1. Computer System Deficiencies

The Department of Administrative Hearings (DAH) uses the computerized ticket processing system, For A Clean Environment (FACE). FACE is not an accounting system. FACE is used to record blight violation notices, schedule hearings and track ticket payments. We noted the following deficiencies with FACE:

- FACE does not interface with the City of Detroit's Detroit Resource Management System (DRMS) Accounts Receivable module. This makes it difficult to efficiently document the receipt of any past due amounts in the FACE system.
- The IT contractor has access to the FACE system's production code and to the real-time data.

Internal controls are strengthened when adequate controls over billing, collection and accounts receivable procedures are present. In addition, well-designed control systems require separation of the computer programming and production data set functions.

The inability of the FACE system to interface with the City's DRMS Accounts Receivable module may cause the financial information, specifically the past due payments outstanding, in the FACE system to be misstated. Allowing the IT contractor control over the production code and the real-time data increases the risk that the integrity of the data may be compromised.

According to DAH staff, the IT contractor has access to both the production code and real-time data because the contractor is the only person with the knowledge to correct any processing errors. The lack of an interface between FACE and the DRMS Accounts Receivable module is due to a lack of real-time data concerning outstanding violations.

Recommendations

We recommend the DAH:

- Interface the FACE system with the DRMS Accounts Receivable module so that recently collected receivables may be recorded efficiently.
- Limit the IT contractor's access to either the production code or the real-time data.

Performance Review
Department of Administration Hearing's (DAH's) Role in the Blight Violation Process, Collection of Judgments and Attendance at Hearings

There are three chronic issues associated with the blight violation process: DAH's role in the process, poor collection of judgments and a low number of respondents who attend hearings.

DAH's Role in the Blight Violation Process

Under State of Michigan laws and the City of Detroit's ordinances, the DAH is responsible for the adjudication and the imposing of sanctions for blight violations. The State statute considers the judgments rendered by the DAH's Hearing Officers enforceable in the same manner as a judgment entered by a court of competent jurisdiction. This means that a DAH judgment is comparable to a judgment rendered in 36th District Court for a similar type of case. Like 36th District Court, DAH is the repository for respondents to pay their fines.

In fiscal year 2008-2009, DAH, with the approval of the Budget Department, instituted the Judgment Responsibility Program (JRP). The JRP is a collection program wherein DAH sends respondents a written notice ten days after the hearing and a second written notice ten days later if the judgment remains unpaid. Eventually, DAH forwards all outstanding accounts to Municipal Service Bureau (MSB), the collection agency contracted by the Finance Department. Any collections made before the hearing date or the first ten days after the hearing are divided accordingly: fines and judgments are paid to the agency that issued the blight violation notice, DAH receives an administrative fee and any late fees, and the State of Michigan receives a \$10 assessment fee. DAH keeps all proceeds collected after the initial ten days, with the exception of the \$10 fee to State of Michigan.

We question DAH's role as the agency responsible for collecting judgments that have not exceeded thirty days. In our opinion, the DAH's independence and objectivity is breached when the department also assumes a collection role for the City and/or receives the very revenue from the judgments it pronounces.

The Department of Public Works (DPW), the Detroit Police Department (DPD), and the Buildings and Safety Engineering and Environmental Department (B&SEED) issue the blight violation notices, present evidence in cases against respondents at the DAH hearings, and receive the fines imposed on respondents by DAH Hearing Officers.

According to Section 18-6-3 of the City Code, departments are to make a diligent effort to collect on receivables for a period not to exceed thirty days after which, the receivable becomes the responsibility of the Finance Department Treasury Division. In our opinion, DPW, DPD, and B&SEED should be the departments responsible for collecting fines imposed by the DAH for the thirty days subsequent to when the DAH's rendered its judgment as stated in the City Code.

We recommend the departments that issued the blight violations (DPW, DPD, and B&SEED) make the effort to collect the fines imposed by the DAH in accordance with

Section 18-6-3 of the City Code. We also recommend the DAH cease collection activity that may call the department's objectivity and independence to be questioned.

Poor Collection of Judgments

We analyzed revenue generated from judgments, collected and outstanding during the audit period. The FACE computer system supplied the data. Although FACE is not an accounting system, it can identify the fiscal year in which judgment revenue was generated. The system can also identify which collected amounts were attributed to a judgment for any fiscal year. Our analysis of the system data revealed that only 12.6% of judgment revenue is collected through the department. However, the City has the potential to collect \$38.8 million in outstanding judgment revenue.

Below is a schedule of judgments generated, the amounts collected through fiscal year 2010, and the uncollected balance in the FACE system¹.

Fiscal Year	Judgments Generated	Judgments Collected	Judgments Uncollected
2006-2007	\$ 13,066,555	\$ 1,678,374	\$ 11,388,181
2007-2008	12,946,085	1,810,616	11,135,469
2008-2009	10,747,820	1,338,948	9,408,872
2009-2010	<u>7,590,890</u>	<u>769,538</u>	<u>6,821,352</u>
Total	<u>\$ 44,351,350</u>	<u>\$ 5,597,476</u>	<u>\$ 38,753,874</u>

In February 2011, the Detroit News reported on ten private investors who own numerous parcels of Detroit property. In analyzing City's poor judgment collections rate, we questioned whether any of the ten investors named in the news report have outstanding blight judgments. Based on DAH records, seven of the ten investors owe a total of \$265,760. The following schedule identifies the investors and the number and amount of unpaid judgments²

Private Investor³	Number of Unpaid Judgments	Amount of Unpaid Judgments
Michael G. Kelly	80	\$ 69,175
Matt Tatarian	62	55,940
Thor Real Estate	51	39,200
Northwest Detroit Development Corporation	30	34,810
Theodore L. Jackson	63	29,665
Jonas O. Mbonu	39	28,120
Bert W. Dearing, Jr.	20	8,850
Total	<u>345</u>	<u>\$ 265,760</u>

¹ The collected and uncollected judgments balances do not include \$537,376 that was collected by MSB. The total collected by MSB was not entered into the Face system.

² According to DAH, some investors use several entity names to purchase properties. Therefore, amounts reported may not include all the blight judgments issued to the investors.

³ The primary addresses of the property owners were used as the key field to determine the totals included in this report.

Administrative Fees, Late Fees and NSF Check Fees

As stated in the background section of this report, DAH receives an administrative fee and any late fees or NSF check fees. We reviewed the Department's DRMS Revenue/Expenditure Reports for the audit period. The reports indicate the following budgeted and actual revenue:

Fiscal Year	Budget	Actual	Outstanding	Percentage of Outstanding to Budget
2006-2007	\$ 1,115,941	\$ 235,661	\$ (880,280)	(78.9)%
2007-2008	\$ 887,607	\$ 177,054	\$ (710,013)	(80.0)%
2008-2009	\$ 886,982	\$ 255,867	\$ (631,115)	(71.2)%
2009-2010	\$ 2,172,849	\$ 1,356,096	\$ (816,753)	(37.6)%

The above table denotes that for fiscal years 2006-2007 through 2008-2009, DAH collected less than half of its budgeted revenue. In the aforementioned period, DAH's revenue stream was limited to administrative fees, late fees, and NSF check fees. According to DAH staff, the increase in revenues for fiscal year 2009-2010 was due to the new JRP program along with Finance Department's collection activity.

Although Section 8.5-2-18 and Section 8.5-2-19 of the City Code allows the City to use attachments, garnishments, and liens to collect fines, fees and judgments against respondents, the City currently refers all unpaid fines to a collection agency for action.

We sent a ten-question survey to 613 recipients using the Association of Local Government Auditors (ALGA) email service to aid in developing best practices that the City of Detroit could consider implementing. Two cities and one county responded to the survey: Seattle Washington, Cleveland Ohio and Clark County Nevada.

The survey responses offered different methods used to collect outstanding fines and judgments. In Seattle Washington, the City refers unpaid violation notices to the City Attorney's Office. The City Attorney's Office will bring civil penalties against the violator in Municipal Court. The penalties range from \$150 per day for the first ten days increasing to \$500 per day after thereafter.

In Clark County Nevada, the County will abate the nuisance and apply the costs to the property taxes as a special assessment. In other cases, the County will levy a fine of \$1,000 per day at thirty-day intervals with no assessment limit. The County records the fines as a lien against the property. In cases where the County has assessed civil penalties against a property owner, the County must adjudicate these fines through the civil process. The District Attorney's Civil Division handles these cases.

In Cleveland Ohio, the City can bring criminal misdemeanor charges, which it rarely does, or the City can bring minor misdemeanor complaints. The minor misdemeanor complaints are punishable with fines of \$95 for a person and \$500 for a business. If the violator appears in Court, the court costs are \$150 for a person and \$1,000 for a business. When a respondent does not pay the fine, the Court will issue a "time to pay capias" warrant. The warrant allows the respondent to be arrested unless the Court

finds the respondent to be indigent. If the respondent will not pay, the Court can order the respondent confined to the workhouse with a daily credit of \$50. Presently, the Court lacks the staff to arrest people, but the respondent can be arrested if they are caught committing another offense.

In the aforementioned municipalities, they use multiple agencies to enforce the laws and collect the appropriate judgments.

We recommend the following:

- The City develop a plan using the Finance and Law Departments to collect outstanding judgments including the use of collection remedies outlines in Section 8.5-2-18 and Section 8.5-2-19 of the City Code to collect delinquent fines, which includes the use attachments, garnishments, and liens.
- The City Council in concert with the State, strengthen the applicable ordinances and State laws governing blight violation to prevent investors who owe blight violation fines from purchasing additional City properties.

Low Number of Respondents Who Attend Hearings

When a blight violation notice is issued and entered into the FACE computer system, a hearing date is automatically scheduled to allow the respondent an opportunity to contest the charges. At the hearing, the respondent has the opportunity to present evidence to convince the Hearing Officer to find the respondent not responsible for the infraction. Most respondents do not appear at their scheduled hearings. We reviewed the actual no-show attendance percentages for hearings held from fiscal year 2006-2007 through fiscal year 2008-2009. We noted the no show percentage was 50% in fiscal year 2006-07 and increased to 58% in fiscal years 2007-2008 and 2008-2009. In addition, we observed the 10:30 am hearing docket on September 24, 2010. **Of the twenty-nine scheduled hearings, only four respondents appeared.**

In State of Michigan Act 279 of 1909 – The Home Rule City Act, Section 117.4q(8)(c) states, “If the alleged violator fails to appear, a decision and order of default may be entered.” Therefore, the Hearing Officer will enter a default judgment against the respondent when a respondent fails to appear at the hearing. In addition, Section 117.4q(9) states,

If an admission of responsibility is not made and the civil fine and costs, if any, prescribed by charter or ordinance for the violation are not paid at the administrative hearings bureau, and the alleged violator fails to appear at a hearing scheduled in accordance with this section, a final decision and order of responsibility in the amount of the prescribed civil fine and costs may be issued by the administrative hearings bureau.

The results of our survey indicate that Clark County Nevada and Seattle Washington declare default judgments and impose fines when respondents do not appear for their hearings. This is similar to DAH. Cleveland Ohio uses a housing court to hear its blight violations. The respondent must appear for the hearing or the court will file contempt of court charges against the respondent.

We recommend DAH work with the City Council and the State to change the governing ordinance and State laws to allow DAH to file contempt charges against respondents that fail to attend hearings without justifiable cause.

ADDITIONAL BENCHMARK INFORMATION

Seattle Washington

Seattle has two entities responsible for hearing blight violation cases. The Seattle Municipal Court is responsible for hearing cases related to citations and tickets. The Seattle Police Department and the Seattle Parks Department Rangers can issue citations for littering. The Seattle Police Department can also issue citations for the dumping and the accumulation of solid waste, and they can arrest individuals for defacing property with graffiti.

The other entity is Seattle Office of Hearing Examiners. They are responsible for hearing the appeals of notices of violation. The Department of Planning and Development Housing and Zoning Code Enforcement Unit is responsible for issuing notices of violation, which include junk storage and rental properties that do not meet the minimum housing code.

Cleveland Ohio

The Cleveland Housing Court hears initial blight violation cases. Department of Building and Housing, Department of Health, Department of Public Safety, Division of Fire Prevention, and Department of Public Service, Division of Sanitation and Division of Streets issue blight violations. In rare instances, the Ohio Department of Agriculture through the Ohio Attorney General and the Ohio EPA through the Ohio Attorney General issue blight violations.

The City of Cleveland has two administrative appeals boards: the Cleveland Board of Zoning Appeals (BZA) and the Cleveland Board of Building Standards and Building Appeals (BBS). The BBS hears only appeals from notices from the Department of Building and Housing. The BZA hears mostly variance requests along with Health notices.

Clark County Nevada

The Department of Administrative Services Public Response Office (Public Response Office) is the code enforcement unit and is responsible for overseeing the issuance of notices of abatement, notices and declarations of imminent danger, notices of graffiti, rehabilitation notices and illegal signs. The Public Response Office uses Clark County Justice Court Judge Pro Tems who are hired as hearing officers to hear the appeal on nuisance cases.



ATTACHMENT A

September 21, 2011

Loren E. Monroe, Auditor General
Office of the Auditor General
2 Woodward Avenue
Coleman A. Young Municipal Center, Room 2008
Detroit, Michigan 48226

**Delivered: Via
Hand Delivery**

Dear Mr. Monroe:

The following is the Department of Administrative Hearings' (DAH) response to the indicated findings and recommendations in the July 2004 through June 2006 audit as prepared by the Office of the Auditor General.

Status of Prior Audit Findings

Finding No. 1: Computer System Deficiencies

- FACE does not interface with the City of Detroit's Detroit Resource Management System (DRMS) Accounts Receivable module. This makes it difficult to efficiently document the receipt of any past due amounts.
- The IT Contractor has access to the FACE system's production code and to the real-time data.

Department's Response:

DAH's General Response: The FACE system, which was created by the City of Detroit's Information Technology Department in 2004, was not created as an accounting system. Rather, FACE was created as a ticket processing and docket management system. For the past 16 months, the DAH has been working with Compuware to assess the DAH's business requirements and to build a system to address the deficiencies in FACE. This will enhance and improve upon the services we provide here at the DAH. This new software system will be launched in the fall of 2011 and is an adjunct to the "compliance" system that Compuware is building for the Buildings Safety Engineering and Environmental Department. The "to be" software system for blight processing will include ticket processing, docket management, adjudication, litigation, collections, accounting, and other functions. It will also provide an interface with the City's DRMS General Ledger and Accounts Receivable systems.



DAH's Specific Responses:

- **FACE does not interface with the City of Detroit's Detroit Resource Management System (DRMS) Accounts Receivable module. This makes it difficult to efficiently document the receipt of any past due amounts.**

DAH's Response: As stated more fully above, the "to be" software system that Compuware is building for blight ticket processing and adjudication will include an interface with the DRMS Accounts Receivable module. Currently, the DAH's FACE system includes an interface with the DRMS General Ledger module. The interface between FACE and DRMS General Ledger was launched in March 2009 and was important because for the first time it allowed the DAH to have an automatic posting of payments received on a daily basis. The link eliminated the need for manual journal entries and eliminated the human error rate inherent in manual data entry. Further, the Finance Department and the DAH have been working in earnest for the past 18 months to produce and test a FACE-to-DRMS Accounts Receivable interface. In light of the Compuware "to be" system, Compuware has now taken the lead in creating the much needed bridge between the DAH and DRMS Accounts Receivable.

- **The IT Contractor has access to the FACE system's production code and to the real-time data.**

DAH's Response: As stated more fully above, within the next 90 days, a new software system built by Compuware will be launched that will take the place of FACE. The DAH required Compuware to address the production code and real time data access issues in the new "to be" system. The Compuware team has assured the DAH that these access issues have been effectively eliminated. To wit, Compuware programmers have asserted the following particulars directly addressing the issues:

"When the new DAH online application is deployed the following will be in-play:

1. Application code will not be made readily available to any DAH user;
2. Application's executable code will be deployed on a central server with limited or no direct manual access;
3. Data will be stored on a centrally located database server with limited or no direct manual access;
4. Application code changes and data changes will be controlled through a change request & approval process; and



5. Direct manipulation of code & data by a DAH user will be non-existent.”

Performance Review

Finding No. 2: DAH's Role in Blight Violation Process:

- The Auditor recommends that the departments that issued the blight violations (DPW, DPD, and BSEED) make the effort to collect the fines imposed by the DAH in accordance with Section 18-6-3 of the City Code.
- The Auditor recommends that the DAH cease collection activity that may call the department's objectivity and independence to be questioned.

Department's Response: The DAH's role in collections is limited. The Finance Department has taken on the task of the collection of unpaid blight judgments and this function is currently being carried out by vendor Municipal Services Bureau (MSB). The DAH, like other courts, does send out two, timed reminder notices once a blight judgment remains unpaid after 10 days of entry and then 10 days thereafter if it remains unpaid. The DAH's "unpaid judgment noticing" program, called the Judgment Responsibility Program (JRP), was implemented in January 2008 and has increased voluntary payments. As indicated in a previous response, the DAH is also currently working with Compuware and the Finance Department to implement a direct DAH-to-DRMS Accounts Receivable interface. The interface will allow the Finance Department to begin noticing respondents who fail to pay blight judgments after 30 days. The DAH will continue to work with the Blight Working Group (DPW, BSEED, DPD, and Law & DAH) to create processes and implement strategies to increase payments on blight judgments.

Finding No. 3: Poor Collection of Judgments

- The Auditor recommends that the City develop a plan using the Finance and Law Departments to collect outstanding judgments including the use of collection remedies outlined in Sections 8.5-2-18 and 19 of the City Code to collect delinquent fines, which includes the use of attachments, garnishments, and liens.
- The Auditor recommends that the City Council in concert with the State, strengthen the applicable ordinances and State laws governing blight violations to prevent investors who owe blight violation fines from purchasing additional City properties.

