

AUDIT REPORT

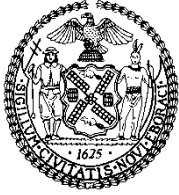


CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Queens Quality of Life Unit of The Department of Buildings

MG09-087A

July 14, 2009



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office has audited the Department of Buildings (DOB) to determine the adequacy of its Queens Quality of Life Unit's response to complaints.

The DOB is responsible for the safe and lawful use of more than 950,000 buildings and properties throughout the five boroughs by enforcing the City's Building Code, Electrical Code, Zoning Resolution, and other laws applicable to the construction and alteration of buildings. Audits such as this provide a means of ensuring that agencies are adequately addressing quality of life issues.

The results of our audit, which are presented in this report, have been discussed with DOB officials, and their comments were considered in the preparation of this report. Their complete written response is attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.
WCT/ec

Report: MG09-087A
Filed: July 14, 2009

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*The City of New York
Office of the Comptroller
Bureau of Management Audit*

**Audit Report on the
Queens Quality of Life Unit of the
Department of Buildings**

MG09-087A

AUDIT REPORT IN BRIEF

The audit determined the adequacy of the Department of Buildings (DOB) Queens Quality of Life Unit (the Unit) response to quality of life complaints – which refer exclusively to illegal conversions. DOB is responsible for the safe and lawful use of more than 975,000 buildings and properties throughout the five boroughs by enforcing the City’s Building Code, Electrical Code, Zoning Resolution, and other laws applicable to the construction and alteration of buildings. DOB’s main activities include performing examinations of building plans, issuing construction permits, inspecting properties, and the licensing of construction trades. It also issues Certificates of Occupancy and Place of Assembly permits.

In March 1997, DOB created the Unit to oversee the increasing problem of illegal building conversions in Queens. An illegal conversion is an alteration or modification of an existing building to create an additional housing unit without first obtaining approval from DOB.

Audit Findings and Conclusions

The Unit’s response to quality of life complaints is inadequate. The Unit’s inspectors were not able to gain access to almost 40 percent of the properties for which the Unit received complaints in Fiscal Year 2008. In fact, inspectors were unable to gain access to properties in approximately two-thirds of the field inspection attempts conducted during the year.¹ (The cost to the City of these nonproductive attempts was almost \$150,000 for the Unit’s inspectors alone.)

In addition, DOB requested access warrants for less than one percent of the properties to which inspectors could not gain access. For those properties in which inspectors were able to gain access, violations were issued to owners of 2,232 of them. During the year, DOB issued

¹ There can be more than one inspection per complaint.

vacate orders for 655 properties. However, DOB did not follow up with them to ensure that the properties remained vacated until the order was lifted.

Our audit did find that the Unit generally responded to quality of life complaints in a timely manner, closed complaints for adequate reasons, attempted to perform second inspections when required, and followed standard procedures when rescinding vacate orders. However, these positive aspects were mitigated by the fact that the inspection attempts were not successful and by the other deficiencies cited above.

Recommendations

To address these issues, we make 14, including that the Unit should:

- Work with DOB's legal staff to obtain authority to impose incremental fines on property owners who deny access and/or do not respond to the LS-4 forms
- Implement periodic inspection attempts on weekends and/or off-hours for properties that show clear evidence of an illegal conversion (i.e., more than one mailbox, door bell, or water or electric meter for a one-family home) and to which access has been refused various times
- Make a greater attempt to pursue access warrants for properties to which inspectors are unable to gain access
- Ensure there is a clear understanding of and adherence to department procedures regarding the performance of inspections conducted on vacated properties.

DOB should:

- Ensure that the Queens Borough Commissioner's office follows up with Unit officials to ensure that properties with vacate orders are periodically inspected and are not illegally reoccupied.

Agency Response

In its written response, DOB generally agreed with 12 of the 14 audit recommendations.

INTRODUCTION

Background

DOB is responsible for the safe and lawful use of more than 975,000 buildings and properties throughout the five boroughs by enforcing the City's Building Code, Electrical Code, Zoning Resolution, and other laws applicable to the construction and alteration of buildings. DOB's main activities include performing examinations of building plans, issuing construction permits, inspecting properties, and the licensing of construction trades. It also issues Certificates of Occupancy and Place of Assembly permits.

In March 1997, DOB created the Unit to oversee the increasing problem of illegal conversions in that borough.² Quality of life complaints refer exclusively to illegal conversions. An illegal conversion is an alteration or modification of an existing building to create an additional housing unit without first obtaining approval from DOB. Examples of illegal conversions include: adding an apartment in the basement, attic, or garage; creating a rooming house (known as Single Room Occupancy or SRO) from a one or two family home; and dividing an apartment into individual SRO units.

Illegal conversions reduce the quality of life in a neighborhood by causing overcrowding and by placing a strain on essential services. Most important, illegal conversions pose serious safety risks to residents as well as to the City's emergency responders by creating potentially unsafe living conditions and causing noncompliance with Building and Fire codes.

Reports of illegal conversions are classified as Priority B—non-emergency—complaints. According to DOB's procedures, inspections must be conducted within 40 business days after the receipt of a Priority B complaint. According to the Fiscal Year 2008 Mayor's Management Report, complaints regarding illegal conversions of residential space accounted for more than a quarter of the 92,509 Priority B complaints received by DOB during Fiscal Year 2008.

The Unit, which is overseen by a Borough Construction Chief and consists of an Assistant Chief, two supervisors, nine inspectors, and two clerks, receives quality of life complaints from the public, community boards, other City agencies, and from routine DOB inspections. Regardless of the source, all quality of life complaints are fielded to the Unit by a Borough Construction Triage Inspector,³ who reviews the initial complaints and determines whether a field inspection by the Unit is warranted or whether the complaint should be closed. A complaint is automatically closed without the need for a field inspection when the Triage Inspector determines that it is a duplicate complaint or that an inspection for the same condition was performed within the previous 90 days.

² DOB receives the most quality of life complaints for problems in the borough of Queens. The DOB Construction Units of the remaining boroughs are in charge of monitoring the quality of life complaints for their respective communities.

³ Triage Inspectors are part of the Queens Borough Construction Unit. They are responsible for researching all DOB-related complaints to determine whether an inspection is warranted and if so, sending the complaint to the appropriate unit for inspection.

According to DOB procedures, if an inspector cannot gain access to a property on the first inspection attempt, a second attempt is required to follow up. If there is no access to the property on the second attempt, the complaint is closed. DOB requests access warrants from the New York State Supreme Court for properties to which access was denied during inspection attempts at different times of the day and where inspectors found substantial visual evidence of an illegal conversion.⁴ During Fiscal Year 2008, DOB petitioned the Supreme Court for 16 access warrants and was granted 13 warrants.

If it is determined upon inspection that a property does not comply with applicable laws, the inspector issues a notice of violation, which can result in civil penalties and even a criminal summons. If there is imminent danger to the life and safety of the occupants, a vacate order is issued for the illegally converted area of the property and the occupants are relocated. An illegal conversion may be corrected by either removing the unauthorized construction or by obtaining the necessary approvals and permits to make the construction legal. The Unit rescinds the vacate order upon correction and reinspection of the property. During Fiscal Year 2008, DOB issued 657 vacate orders and rescinded 49 orders.

All complaints and outcome data are entered in DOB's Buildings Information System (BIS) mainframe computer application. During Fiscal Year 2008, the Unit received 14,263 quality of life complaints. DOB reported that inspectors made a total of 23,410 field-inspection attempts in response to these complaints.

Objective

The objective of this audit was to determine the adequacy of the DOB Queens Quality of Life Unit response to complaints.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93 of the New York City Charter.

The scope of this audit was Fiscal Year 2008. To accomplish our objective and to obtain an understanding of the processing of and response to quality of life complaints, we interviewed officials from the Unit, including the Borough Construction Chief, Assistant Chief, Inspector Supervisors, clerical staff, as well as Triage Inspectors from the Queens Borough Construction Unit. We also interviewed officials from DOB's Internal Audits and Discipline Unit and from its

⁴ Examples of visual evidence of illegal conversions include more than one mailbox, door bell, or water or electric meter for a one-family home.

Borough Enforcement Unit. To familiarize ourselves with the Unit's day-to-day operations, we accompanied field inspectors to observe their daily work activities, which included attempting access to properties, conducting inspections, writing and serving violations, etc. We also determined whether the Unit rotated their inspectors among the 14 community boards in Queens in order to prevent corruption.

To obtain an understanding of the guidelines governing DOB quality of life inspections, we reviewed pertinent DOB policies and procedures, the Unit's organization chart, the Mayor's Management Report, and relevant information obtained from the DOB Web site and other sources. The following were used as audit criteria:

- "Current Work Flow for Execution of Quality of Life Inspections,"
- Complaint Category Descriptions,
- BIS Complaint Disposition Codes,
- "Standard Operating Procedures: Vacate Order Procedures," and
- Comptroller's Directive #1, "Principles of Internal Control."

DOB extracted from BIS an electronic file of 14,263 quality of life complaints, representing 8,345 properties received by the Unit during Fiscal Year 2008. To assess the reliability of this data, we performed several procedures. We reviewed a previous audit of BIS conducted by the Comptroller's Office, *Audit Report on the Buildings Information System of the Department of Buildings* (Audit Number 7A04-101, issued September 27, 2004), which found that BIS is secure and functions reliably. Additionally, for this audit, we conducted data-entry observations and reviewed documentation of record layouts and field names for the database.

We also performed limited testing of the accuracy, completeness, and reliability of information in the BIS database. We randomly selected a sample of 20 of the 14,263 complaints and obtained the corresponding manual inspection reports to determine whether essential information from the paper reports was accurately recorded in the BIS database.

To determine the timeliness of inspections, we sorted the database and checked whether the first inspection attempt for each complaint was performed within the required 40-day timeframe.

The Unit attempted to perform 23,410 inspections in response to the 14,263 quality of life complaints received. To determine the overall no-access rate for the Unit, we sorted the 23,410 inspection attempts by disposition codes and extracted the inspection attempts that resulted in no access. To calculate the approximate cost to the City of these no-access inspection attempts, we compared the average amount of time inspectors spent on a property where there was no access to the average amount of time spent on a property with access. We then reviewed the Fiscal Year 2008 salaries of the inspectors, as reported in the Payroll Management System, and calculated their fringe benefits to determine the cost to the City of the no-access inspections.

We sorted the 14,263 complaints and identified 2,078 (15%) complaints that were closed because a field inspection was not warranted. To determine whether these complaints were

closed for valid reasons, we randomly selected a sample of 25 of the 2,078 closed complaints and researched them in BIS to ascertain whether the reasons for the closures were because they were duplicate complaints or because field inspections had been performed within 90 days of the receipt of the complaint.

To determine whether the Unit attempted a second inspection for properties at which there was no access on the first attempt, we sorted the database and identified 8,743 (61%) of the 14,263 complaints that required a second inspection attempt. We randomly selected a sample of 25 of the 8,743 complaints that required a second inspection, researched them in BIS, and determined whether a second inspection had been attempted.

To determine whether required supervisory inspections were performed, we obtained and analyzed the records of Training Inspections⁵ and Quality Assurance Review Inspections⁶ performed during our scope period.

To determine whether the Unit followed established procedures when lifting vacate orders, we reviewed the electronic file listing the 49 vacate orders rescinded during our scope period. We randomly selected a sample of 20 of the 49 rescinded orders to ascertain whether the orders were properly lifted.

The results of the above tests, while not projectable to their respective populations, provided a reasonable basis to assess the adequacy of DOB compliance with applicable rules and regulations as they pertained to our audit objective.

Discussion of Audit Results

The matters covered in this report were discussed with DOB officials during and at the conclusion of this audit. A preliminary draft report was sent to DOB officials and discussed at an exit conference held on May 14, 2009. On May 20, 2009, we submitted a draft report to DOB officials with a request for comments. We received a written response from DOB officials on June 04, 2009.

In their response, DOB officials generally agreed with 12 of the 14 audit recommendations and disagreed with 2 recommendations that addressed forwarding the LS-4 form via certified mail to property owners and reassigning the Inspector Supervisor's clerical and administrative tasks to the Unit's office staff.

The full text of the DOB's response is included as an addendum to this report.

⁵ A Training Inspection is a direct observation of inspectors' field skills and techniques. The supervisor, using the route sheet as a guide, meets an inspector either by arrangement or unannounced to observe the completion of a field inspection.

⁶ A Quality Assurance Review Inspection is a follow-up inspection performed by the supervisor within 24 hours of the field inspection being completed by the Unit's inspectors.

FINDINGS AND RECOMMENDATIONS

The Unit's response to quality of life complaints is inadequate. The Unit's inspectors were not able to gain access to almost 40 percent of the properties for which the Unit received complaints in Fiscal Year 2008. In fact, inspectors were unable to gain access to properties in approximately two-thirds of the field inspection attempts conducted during the year.⁷ (The cost to the City of these nonproductive attempts was almost \$150,000 for the Unit's inspectors alone.) As a result, the Unit cannot consistently ascertain whether complaints of illegal conversions are valid.

In addition, DOB requested access warrants for less than one percent of the properties to which inspectors could not gain access. For those properties to which inspectors were able to gain access, violations were issued to owners of 2,232 of them. During the year, DOB issued vacate orders for 655 properties. However, DOB did not follow up with them to ensure that the properties remained vacated until the order was lifted. These deficiencies increase safety risks to the public.

Our audit did find that the Unit generally responded to quality of life complaints in a timely manner, closed complaints for adequate reasons, attempted to perform second inspections when required, and followed standard procedures when rescinding vacate orders. In addition, in an effort to prevent corruption, inspectors are rotated among the 14 Queens Community Boards. However, these positive aspects were mitigated by the fact that the inspection attempts were not successful and by the other deficiencies cited above.

The details of these findings are discussed in the following sections of this report.

Unit Procedures Not Effective in Ensuring That Inspection Attempts Are Successful

The Unit procedures are not effective in ensuring successful inspection attempts. As a result, the Unit was unable to gain access to 39 percent of the properties for which DOB received complaints of illegal conversions in Fiscal Year 2008. Overall, only one-third of the field inspection attempts conducted during the year resulted in inspectors gaining access. Failing to ensure access to properties for which complaints of illegal conversions are received increases the risk that hazardous conditions will remain concealed and uncorrected for long periods of time. Therefore, the Unit needs to find an effective approach to make better use of its resources and establish incentives and/or disincentives so that property owners allow access to inspectors to conduct inspections.

The Unit responds to quality of life complaints by sending inspectors to determine whether a violating condition exists. As stated previously, if the inspector does not gain access to a property after two inspection attempts, the complaint is closed. According to DOB procedures, unless another complaint is received against a given property to which access was

⁷ There can be more than one inspection per complaint.

not obtained, further inspection attempts are not made. When inspectors are not able to gain access to a property, they are required to leave a “Notice to Call for Inspection” (LS-4) form requesting that the property owner call the Unit and schedule an appointment for inspection. The LS-4 form is the primary method used by the Unit to reach absent property owners.

We found that the Unit attempted to inspect all 8,345 properties for which it received a complaint of an illegal conversion during Fiscal Year 2008. In addition, we found that the Unit attempted to perform inspections within the required 40-day timeframe in 96 percent of the 14,263 complaints received related to those properties. (Some properties received more than one complaint during the year.) However, the success of those attempts in determining whether the complaints were valid was poor. Of the 8,345 properties, inspectors were unable to gain access to 3,279 (39%) of them. Additionally, of the 23,410 inspection attempts related to these complaints, inspectors did not gain access in 15,740 (67%) instances. Table I below indicates the number of inspection attempts that resulted in no access for the 3,279 properties.

Table I

Number of Inspection Attempts for 3,279 Properties with No Access

Number of Inspection Attempts*	Number of Properties
2	2,571
3	74
4	434
5	38
6	94
7	14
8	23
9	5
10 +	26

*Some properties received more than two inspection attempts in relation to the same complaint.

As shown in Table I, 634 (19%) of the properties received four or more unsuccessful inspection attempts. Moreover, 10 of the 26 properties with more than ten inspection attempts had 17 to 29 inspection attempts per property, as indicated in Table II below.

Table II

Ten Properties with the Greatest Number of Inspection Attempts

Building	Number of Complaints per Building	Number of Inspection Attempts for All Complaints	Number of Inspections That Resulted in No Access
1	18	29	20 (69%)
2	11	23	23 (100%)
3	11	22	21 (95%)
4	14	21	10 (48%)
5	10	20	20 (100%)
6	12	19	13 (68%)
7	9	18	18 (100%)
8	9	18	18 (100%)
9	8	17	17 (100%)
10	8	17	17 (100%)
Total	110	204	

As shown in Table II, during Fiscal Year 2008, the Unit attempted 204 inspections for the 110 complaints received on these 10 properties. In response to our concern regarding the waste of resources and the efficiency of repeatedly sending inspectors to properties to which access has historically not been available, the Unit’s officials stated that they are required to attempt an inspection on every complaint received, even if the complaints are for properties not accessible in numerous previous attempts. In an effort to increase their access rate, the Unit officials stated that they attempt to use different methods to gain access, such as sending multilingual inspectors to communities where English is not the predominant language. Unit officials also stated that if an inspector is experiencing difficulties gaining access to a given property during regular hours (8:30 a.m. to 4:30 p.m.), they attempt to send an inspector to that property earlier in the day, prior to the inspector’s reporting to work at the office.

However, despite these attempts, without a clear set of incentives, a large number of property owners do not allow access to conduct inspections. During our field observations of the Unit’s inspectors, we witnessed a property owner asking: “Can’t you just leave the form as you usually do?” It was obvious that this particular property owner had clear disregard for the inspector’s authority to conduct an inspection of the premises and that this was not the first time that the owner refused access without being penalized for it. If a property owner is aware of the illegal conversion, there is nothing to compel the owner to allow the Unit access to the premises or to respond to the LS-4 form. It is apparent that there is a significant risk that illegal conversions exist for cases in which the Unit cannot complete the inspection because inspectors were refused access.

In addition to quality of life (and safety) issues, DOB’s current system results in a waste of resources. According to Unit officials, more than 80 percent of an inspector’s time is spent conducting inspections, including travel time. (The remaining time is spent performing administrative tasks.) As stated previously, during Fiscal Year 2008, 67 percent of all inspections resulted in no access. Unit officials estimate that inspectors spend an average of 1 hour and 10 minutes on regular inspections versus 15 minutes on inspection attempts that result in no access. Based on the above, we estimate that inspectors spent 24 percent of their overall time visiting properties for which they were unable to gain access, as shown in Table III below.

Table III

Percentage of Time Spent Conducting Inspections

Category of Inspection	Number of inspections A	Adjusted time factor* B	Adjusted number of inspections C (A x B)	% of time conducting inspections D	% of inspector's time conducting inspections E	% of time by category F (E x D)
No access	15,740	0.21	3,305	30.1%	80.0%	24.1%
Regular	7,670	1	7,670	69.9%	80.0%	55.9%
Total	23,410		10,975			80.0%

*A no access inspection averages 21% (15min ÷ 70min) the amount of time of a regular inspection

According to Payroll Management System data, the City expended nearly \$620,000 in salary and fringe benefits during Fiscal Year 2008 for the Unit’s inspectors alone. Consequently, we estimate that the cost to the City of these no-access inspections was more than \$149,000 (24.1% multiplied by \$620,000). If we were to factor in the administrative time spent by supervisors and other personnel, the cost to the City was even greater.

We contacted officials from the Construction Code Enforcing Agency for the City of Newark and from the Department of Buildings and Safety for the City of Los Angeles and inquired about their procedures with regards to properties for which inspectors could not gain access. The City of Newark uses an “Order to Permit Entry” form (equivalent to the Unit’s LS-4 form), which states, among other things, that failure to permit entry to the inspector will result in a penalty of \$250 and that the agency will immediately seek an access warrant. Likewise, the City of Los Angeles has an “Official Notice to Gain Entry” form that requires inspectors to gain access at a date and time already specified by them and that gives the property owner an option to reschedule if necessary. Officials from both cities stressed that in addition to posting the form during the initial attempt to gain access, they also send it via certified mail to ensure receipt of the form. Officials in both cities added that all of these steps have helped increase their access rates.

Considering current limited agency resources, the Unit needs to ensure that it is fully using all the tools at its disposal. Failure to do so wastes resources, diminishes the effectiveness

of the program, and increases the risk that illegal conversions will remain undetected. Although there is a significant risk that a property owner who has an illegal conversion will not respond to the LS-4 form, it is likely that a property owner will make no effort to contact the Unit if there is no record trail to document that the owner actually received the form and if there is no penalty for not responding to the request to call and schedule an inspection.

Therefore, in addition to the current method of posting the form at the premises, the Unit must enhance its tracking of the LS-4 forms. One option would be to forward them via certified mail. In addition, the Unit should work with DOB's legal staff to obtain legal authority to impose incremental fines on property owners that do not respond to the LS-4 forms. Furthermore, the Unit must modify the language used in the current form to state more strongly the department's authority to inspect properties and should collect penalties for a property owner's failure to respond to the form or allow access for inspections.

Moreover, to increase the likelihood of obtaining access, the Unit should ensure that second inspection attempts are made at a time of day that is different from the first failed inspection. The Unit should also implement periodic inspection attempts on weekends and/or off-hours for those properties that show clear evidence of an illegal conversion (i.e., more than one mailbox, door bell, or water or electric meter for a one-family home) and to which access cannot otherwise be obtained.

During the exit conference, DOB officials stated that unsuccessful inspection attempts should not be viewed as a waste of resources. They told us that during these inspections, inspectors attempt to determine whether they can see signs of illegal construction or conversion without gaining access to the premises. Nevertheless, the fact remains that when inspections result in no access, inspectors are unable to complete the task to which they were assigned, i.e., determining whether an illegal conversion exists. We believe that performing repeated unsuccessful inspection attempts is not an efficient use of resources.

DOB Response: "The report indicates that resources are being wasted by the Department's repeatedly sending inspectors to properties to which access has not been available. As we made clear in our exit conference, we do not view repeated attempts to inspect as a waste of resources. First, the Department's policy is to attempt an inspection on all complaints despite having been unable to gain access on previous attempts, as one cannot predict accessibility or outcome prior to going to the site. Second, while visiting even the outside of a site, the inspector can gather evidence necessary for an application for an access warrant and can also write any other appropriate violations if conditions warrant. Such reconnaissance is hardly a waste of resources."

Auditor Comment: As the report states, the Unit was unable to gain access in approximately two-thirds of inspection attempts in Fiscal Year 2008. Consequently, investigators were unable to perform the task for which they were sent. While DOB claims that inspectors can gather evidence necessary for an application for an access warrant during the numerous inspection attempts, the fact remains that DOB

requested access warrants for just 16 (0.5%) of the 3,279 properties to which inspectors could not gain access during the fiscal year. Therefore, the Unit did not use even that option fully. Assigning inspectors to make multiple unsuccessful visits to the same property is an inefficient use of resources.

DOB Response: “You suggest in your report that in the event of an unsuccessful inspection attempt, the second attempt be made at a different time of day. This is currently Department practice. The Quality of Life inspectors go out on week-ends and off-hours in anticipation of being able to gain access. . . . This off-hours inspection is a requirement for gathering evidence necessary for an application for an access warrant. It is also unlikely that after an LS-4 form has been left at a premises that a property owner with a violating condition will call for an inspection. Therefore, the LS-4 form, while required, does not typically result in increased access nor is the occupant/owner required by law to respond to it. . . .

“In the absence of an emergency, the Department has no legal right to compel access to a building that is not under construction. Nor can the Department penalize someone for exercising their constitutional right to deny access.”

Auditor Comment: Weekend and off-hour inspections are not “currently Department practice.” During the course of our audit, we were informed by DOB officials that due to budget cuts, weekend and off-hour inspections were severely restricted. As a result, weekend and off-hour inspections are now reserved only for those inspections by the inspectors that are intended to obtain access warrants.

In addition, even DOB agrees with us that it is unlikely that a property owner with a violating condition will call for an inspection, which is precisely why we are suggesting that it modify the language in the LS-4 form and work with its legal staff to obtain legal authority to impose a penalty on non-responsive property owners.

Recommendations

The Unit should:

1. Forward the LS-4 form via certified mail to property owners in addition to posting the form at the property.

DOB Response: “The Department performs this type of notification already, yet your report does not include this information. As discussed in the exit conference, your recommendation fails to account for current Department practice of sending a letter by regular mail following a second unsuccessful attempt to gain access to a premise. Any additional benefit sought to be achieved by sending the letter by certified mail is offset by the added cost.

“When our inspector cannot access a property, an LS-4 is left at the premises asking

the recipient or other responsible party to call for an inspection. After a second unsuccessful attempt, a computer-generated letter is automatically mailed to the property owner's address on record at the Department of Finance to increase the likelihood that an owner who does not live at the premises will receive the notice."

Auditor Comment: DOB's statement that it already performs this type of notification is not correct. We are recommending that DOB forward the LS-4 forms via certified mail so as to track their delivery and confirm that property owners are duly notified, whereas DOB is referring to forwarding the forms via regular mail, which has no tracking system. Additionally, DOB has provided us with no evidence that this practice is performed.

Regarding DOB's statement that the benefits of sending the forms via certified mail may be offset by the added costs, we suggest that DOB perform a cost-benefit analysis comparing the expense of sending the LS-4 form via certified mail to the expense of repeatedly sending inspectors to conduct unsuccessful inspection attempts and determine whether the use of certified mail increases the access rate at a lower cost.

2. Work with DOB's legal staff to obtain authority to impose incremental fines on property owners who deny access and/or do not respond to the LS-4 forms.

DOB Response: "We agree that in service of obtaining access, the Department might consider legislative remedies for imposing incremental fines on property owners or occupants who fail entirely to respond to the LS-4 form. However . . . we disagree that the Department has authority to penalize a property owner or occupant for failing to provide access."

Auditor Comment: We are fully aware that DOB currently lacks authority to impose such fines. It is precisely for that reason that we urge DOB to take the necessary steps to work with its legal staff and obtain legal authority for imposing incremental fines on property owners who deny access and/or do not respond to the LS-4 forms. If necessary, DOB should consult with the City's Law Department and seek a change in legislation to allow it to impose fines on unresponsive property owners. Having the ability to enforce such penalties would be an incentive for property owners to allow access more readily, thereby discouraging illegal conversions.

3. Modify the language used in the LS-4 form to state more strongly the department's authority to inspect properties and the accrual of fines for no access.

DOB Response: "The Department agrees and has already taken steps to strengthen the language used in the LS-4 form to affirm the Department's authority to inspect properties. However, as stated above, there is no legal basis for threatening accrual of penalties for failure to provide access."

Auditor Comment: We understand that DOB cannot modify the language of the LS-4 form to state accrual of fines for no access until the department obtains authority to impose such penalties, which is why we recommend the assistance of DOB’s legal staff.

4. Modify procedures to require that in the event of a first unsuccessful inspection attempt, the second attempt be made at a different time of day.

DOB Response: “The Department’s existing program meets the objective. Currently, the Department makes every effort to inspect ‘illegal conversion’ complaints at different times of the day.”

Auditor Comment: During the course of the audit, DOB officials told us during several meetings that second inspection attempts during different times of the day were performed only in instances in which the inspectors were seeking to obtain access warrants. We urge DOB officials to continue making efforts to perform second inspection attempts during different times of day, and we ask them to include this practice for *all* failed inspections.

5. Implement periodic inspection attempts on weekends and/or off-hours for properties that show clear evidence of an illegal conversion (i.e., more than one mailbox, door bell, or water or electric meter for a one-family home) and to which access has been refused various times.

DOB Response: “See Department’s response to Recommendations 2 and 4.”

The response to Recommendation 2 includes the following:

“The Quality of Life Unit will continue to work with Department legal staff to assemble evidence sufficient to support an application for an access warrant. . . . However, such an application must be supported by a showing of a reasonable basis to believe an illegal conversion exists at the premises. . . . The application must also demonstrate prior unsuccessful attempts to gain access. . . . The Department’s existing protocol requires that two unsuccessful inspection attempts have been made on different days at different times, one of which must have been between 8:00 AM - 6:00 PM on a Saturday or Sunday, or after 7:00 PM on a weekday. There must be at least a four hour time difference between the first attempted inspection and the second. The two inspection attempts must be contained within a few weeks’ time-frame or a third attempt must be made.”

The response to Recommendation 4 includes the following:

“The Department reserves a time each month for the Quality of Life inspectors to go out on weekends and after regular hours to increase the probability of gaining access.”

Auditor Comment: According to DOB, its “existing protocol” with respect to conducting inspections during weekends and off-hours is that they are conducted for the purpose of obtaining access warrants. We are recommending that these inspections be performed for any properties for which access has been refused various times, regardless of whether or not inspectors are seeking to obtain an access warrant.

**DOB Does Not Generally Use Access Warrants
For Inspectors To Gain Access**

During Fiscal Year 2008, DOB requested access warrants for just 16 (0.5%) of the 3,279 properties to which inspectors could not gain access. It is especially disturbing that DOB does not use warrants more often since Unit inspectors were unable to gain access to nearly 40 percent of the properties that they attempted to inspect that year.

According to a Unit official, the Unit regularly submits written requests to DOB’s legal staff for access warrants. However, the Unit does not maintain records of the evidence submitted to support the requests. The official stated that DOB’s legal staff informed the Unit that most of the requests are not accepted because there is not enough evidence or merit to support them. DOB officials stated that once DOB’s legal staff approves the request for a warrant and submits it to the court, a warrant is granted in most instances. (In Fiscal Year 2008, the court granted 13 [81%] of the 16 warrants submitted by DOB.)

According to DOB, obtaining the access warrant is a tedious effort that involves such requirements as specific visual evidence and assurance that several unsuccessful inspection visits were conducted during different times of day and the preparation of an affidavit. DOB officials stated that processing all of the warrant requests involves resources that DOB lacks. However, since the inspectors do not maintain evidence of their requests for access warrants, we were unable to determine the number of requests they submitted during Fiscal Year 2008. We were also unable to ascertain the reasons DOB accepted 16 requests for access warrants, but rejected the remaining requests.

As stated previously in the report, there is little incentive on the part of a homeowner to allow the Unit access to the premises, especially if the homeowner is aware that the condition has not been corrected. Accordingly, DOB’s limited use of access warrants for inaccessible properties diminishes the effectiveness of the program and increases the risk that hazardous conditions will remain uncorrected. Considering the potential risk to the public, DOB must make a greater effort to obtain access warrants. In addition, Unit personnel should maintain the documents supporting their requests for access warrants and review them with DOB legal to identify the reasons for denials so that more future requests will be approved.

Recommendations

DOB should:

6. Make a greater attempt to pursue access warrants for properties to which inspectors are unable to gain access.

DOB Response: “We note that every time the Department, through the Law Department, has made an application for an access warrant, it has been granted, and violations issued following the inspection. Warrants are not sought when there is no legal basis upon which to make a request to the court.”

Auditor Comment: Our concern is not solely the percentage of applications granted by the court, but also the number of attempts made by DOB to obtain access warrants. As we state in the report, of the 3,279 properties to which inspectors could not gain access, DOB requested only 16 (0.5%) access warrants. Although we understand that warrants cannot be frivolously sought, nor should they be sought without merit, we nevertheless believe that DOB can identify more than 0.5 percent of no-access properties for which pursuing an access warrant is justified.

7. Ensure that the Unit inspectors document their warrant requests and meet with DOB’s legal staff on a regular basis so that the Unit can better prepare warrant requests and succeed in obtaining warrants.

DOB Response: “The Department agrees that Unit investigators can and should better document their transmissions to Legal of requests for access warrants. However, the Department otherwise contends that its existing practice meets this objective. The Department Legal staff in the Enforcement Unit meets regularly with the Chiefs and all the Inspectorial Units that request access warrants, including QOL, and discuss access warrants and their criteria.”

Auditor Comment: While regular meetings between DOB’s legal staff and the Unit inspectors may take place, the meetings are by no means a substitute for maintaining evidence of requests. DOB needs to ensure that Unit inspectors document the requests for access warrants submitted to the Enforcement Unit so that they can keep track of the number of requests made and better identify the reasons requests are declined by DOB’s legal staff.

The Unit Does Not Monitor Vacated Properties

The Unit does not monitor vacated properties pertaining to illegal conversions to ensure that they remain vacated until violating conditions are corrected and vacated orders are lifted. The Unit issued 657 vacate orders during Fiscal Year 2008. However, there are no records showing that *any* of these properties were periodically inspected to ensure that the premises were not illegally reoccupied. Residing in the premises prior to the correction of violating conditions constitutes a public hazard.

The Administrative Code of the City of New York gives the DOB Borough Commissioner authority to vacate buildings, structures, places, or premises deemed imminently perilous or immediately dangerous to the life or property of the occupants until violating

conditions are remedied to the satisfaction of the Department.

The “Vacate Monitoring” section of DOB’s Vacate Order Procedures states:

“All vacate orders shall be monitored by the Department for compliance. At the minimum, the borough will make two inspections following the initial verbal vacate order. One of the two inspections can be made when the official sealed copy of the vacate order is posted on the premises...; the other inspection must be made approximately 30 days from the date of the posting of the official vacate order. . . . Re-inspections of open vacate orders shall be made in a timely manner.

“In instances in which the vacate order has been violated and the premises reoccupied, the Department has the authority to issue a DOB violation . . . and an immediate criminal court summons. If this does not result in compliance, the Department may request the assistance of the NYPD whom can effectuate the arrest of those violating the vacate order.”

Throughout the course of our audit, we had numerous meetings and correspondence with DOB officials to determine who had ultimate responsibility for ensuring that the properties associated with the 657 vacate orders issued during Fiscal Year 2008 remained vacated until the vacate orders were lifted. However, we were given conflicting information in all of the responses received regarding monitoring responsibility and the date that the vacate order procedures were placed in effect.

During a meeting on October 2, 2008, the Unit’s officials stated that although it is DOB’s responsibility to monitor vacated properties, it is not the Unit’s direct responsibility to do so. Unit officials also added that formal vacate order procedures were not in effect, but that they believed there was a draft being prepared.

In an e-mail dated November 7, 2008, officials from DOB’s central office responded that “Queens’s Quality of Life try to check Vacates [properties with vacate orders] every 3 months but FDNY also inspects QQL vacates.” When we requested a list of the follow-up inspections conducted to monitor compliance with the Unit’s vacate orders, DOB’s central office responded on December 18, 2008, via another e-mail, stating, “There is no list for the follow-up efforts/inspections conducted for the 657 properties that were vacated for FY 2008. Vacates are not re-inspected by Queens Quality of Life Unit, all vacates have hazardous violations and all hazardous violations are re-inspected by DOB Enforcement unit, all vacates are faxed to FDNY and they also go out and re-inspect.”

Moreover, during a meeting on February 5, 2009, with the Unit’s upper management, we were told that it is mainly up to the Police Department to monitor vacated properties. However, if the Unit’s inspectors pass a vacated property on their regular route, they make an effort to inspect the site to ensure that it is still vacated. When we brought this issue to the attention of DOB officials, they sent a written response on March 12, 2009, stating, “Owners are responsible for ensuring that vacated properties remain vacated, however Queen’s Quality of Life performs

follow-up inspections every 3 months, when necessary assisted by NYPD. FDNY also monitor these vacated properties.” They also informed us that the procedures relating to vacate orders, which as of October 2, 2008, were still believed to be in the draft stage by the Unit officials, were made effective as of May 12, 2008.

Notwithstanding DOB’s assertion that NYPD and FDNY both monitor vacated properties, the responsibility for monitoring properties to ensure that they comply with building regulations falls on DOB, and the Unit is not adhering to the existing procedures that are in place to monitor property owners’ compliance with vacate orders. The lack of follow-up inspections of vacated properties increases safety risks and sends the wrong message to the general public about the Unit’s efficiency with regards to enforcing vacate orders. Accordingly, when the Unit issues a vacate order, it should also ensure that the properties remain vacated until the violating conditions are corrected and the order is lifted. In addition, the Unit should work with DOB’s legal staff to obtain access warrants within a specified period of time for those vacated properties for which related complaints are received and inspectors are not able to gain access during reinspections.

DOB officials claimed during the exit conference that all of their inspectors had a copy of, and were familiar with, DOB’s Standard Operating Procedures. However, that is contradictory to what we found during the course of our audit. DOB officials also stated that they did not have the resources to inspect all of the vacated properties. Instead, officials claimed that if an inspector passed a vacated property in the course of normal activities or en route to a different inspection, the inspector would stop to inspect the vacated property. However, there are no formal records of these inspections, so DOB is unable to demonstrate that these impromptu inspections took place. Moreover, this random method does not ensure that all vacated properties are monitored to make certain that they remain vacated until the vacate order has been lifted.

Recommendations

The Unit should:

8. Ensure there is a clear understanding of and adherence to department procedures regarding the performance of inspections to monitor vacated properties.

DOB Response: “The Department agrees and will continue to enhance its efforts to improve the vacate follow-up process. A new procedure was implemented and has been in effect since May 2008. The Department will continue to refine the process and train personnel on it to enhance accountability.”

9. Monitor and keep track of all inspections conducted on vacated properties.

DOB Response: “The Department contends that the existing program meets this objective. The Department monitors and keeps track of vacated properties. We re-inspect all hazardous conditions three months after the original violation is issued in order to determine if the violating condition has been corrected, regardless of results

at an ECB hearing. As indicated in our exit conference, the Department contends that only property owners and other responsible parties can ultimately ensure that all violations are resolved and that vacated properties remain vacated until such time as the violation has been corrected.”

Auditor Comment: DOB officials provided no evidence of its monitoring and tracking of vacated properties every three months. In fact, throughout the course of our audit, DOB officials stated that vacated properties are not reinspected.

It is of concern to us that DOB officials are passing off their responsibility to monitor vacated properties and the correction of the violating conditions to property owners who have no incentive to collaborate with the department. We reiterate our recommendation that DOB needs to ensure that it inspects all vacated properties on a regular basis to make certain that they remain vacated until the vacate order has been lifted.

10. Work with DOB’s legal staff to obtain access warrants within a specified period of time for those vacated properties for which related complaints are received and inspectors are not able to gain access during reinspections.

DOB Response: “See Department’s response to Recommendation 2.”

The response to Recommendations 2 includes the following:

“The Quality of Life Unit will continue to work with Department legal staff to assemble evidence sufficient to support an application for an access warrant. . . .”

DOB should:

11. Ensure that the Queens Borough Commissioner’s office follows up with Unit officials to ensure that properties with vacate orders are periodically inspected and are not illegally reoccupied.

DOB Response: “We note that the Queens Borough Commissioner meets twice per month with the senior inspectoral team from the borough, including QOL, to discuss any inspectorial problem, including vacates.”

Auditor Comment: We are pleased to note the meetings held with the Queens Borough Commissioner to discuss issues pertaining to inspections. However, as part of the bi-monthly meetings, we urge the Borough Commissioner to ensure that properties with vacate orders are periodically inspected and are not illegally reoccupied.

The Unit's Supervisors Do Not Consistently Perform Supervisory Inspections

The Unit's supervisors are not consistently performing the Training Inspections and Quality Assurance Review Inspections required by the Quality Assurance Inspections Guidelines. According to DOB records, the supervisors performed only five Training Inspections and six Quality Assurance Review Inspections during Fiscal Year 2008. Without sufficient supervision and oversight, there is a very real risk that inspectors may not be performing their responsibilities adequately.

Inspector supervisors are required to conduct two monthly supervisory inspections (one Training Inspection and one Quality Assurance Review Inspection for each of the Unit's nine inspectors—a total of 216 quality of life inspections for Fiscal Year 2008. Training Inspections provide feedback to the inspectors regarding their performance and assist the supervisors in identifying training or performance improvement opportunities. Quality Assurance Review Inspections allow supervisors to evaluate work completed in the field, obtain customer feedback, and build best inspection practices into the process.

During Fiscal Year 2008, supervisors conducted only 11 (5%) of the required 216 supervisory inspections. Moreover, only six of the Unit's nine inspectors received supervisory inspections, whereas the remaining three inspectors received none during our scope period. Of the 11 supervisory inspections, three Quality Assurance Review Inspections resulted in unsatisfactory ratings,⁸ two of the three unsatisfactory ratings being given to one inspector. The first unsatisfactory rating was given to the inspector upon the supervisor's observation that the inspector was not able to find the given property, and the second unsatisfactory rating was given to that same inspector upon the supervisor's determination that the inspector had gone to the wrong address. For the remaining unsatisfactory rating, a supervisor determined that the inspector should have requested a vacate order for the property's occupied cellar. Performing the required supervisory inspections throughout the year would have allowed supervisors to provide additional constructive feedback so as to ensure greater success in future attempts to access properties.

Comptroller's Directive #1 states that a sound internal control system must be supported by monitoring ongoing activities at various organizational levels and in the course of normal operations. The Directive stresses that agency management must perform continual monitoring of activities and programs. Failing to perform the required supervisory inspections increases the risk of fraud by not ensuring that inspectors are complying with their assigned inspections. In addition, it also increases safety concerns since there is no assurance that inspectors are performing adequate or thorough inspections.

The Unit's officials argued that they do not have the resources or manpower to routinely conduct these supervisory inspections. They stated that along with performing inspections, they have other responsibilities within the office, such as preparing the inspector's daily route sheets.

⁸ The remaining seven inspections resulted in satisfactory ratings, and one was not ratable because the homeowner did not keep the appointment and there was no access to the property.

It appears that upper management, including the Queens Commissioner's Office, was unaware of the inadequate monitoring of the Unit's inspectors until November 2008, the time that we requested the data for supervisory inspections. Since then, DOB officials stated that supervisors conducted 43 inspections from November 2008 through February 2009. Although this is a marked improvement to the 11 supervisory inspections conducted for the entire 2008 Fiscal Year, it is still nevertheless 21 inspections short of the 64 that should have been conducted for the four month period.⁹

Supervisory reviews are an integral part of internal controls whereby management can ensure that goals and objectives are achieved and that personnel understand their responsibilities and obtain feedback about their performance. Supervisory reviews are all the more essential given the low access rate for inspections. A system of supervisory review would allow supervisors the opportunity to monitor the inspectors and identify weaknesses that may require improvement. The Unit should therefore make every effort to use all its available resources and improve supervisors' productivity by taking steps to increase the proportion of time supervisors spend in the field performing the required inspections. Moreover, as part of its oversight function, the Queens Borough Commissioner's Office must ensure that Unit inspectors are being properly supervised and that Unit personnel are being utilized in an efficient manner.

Recommendations

The Unit should:

12. Prioritize the supervisors' responsibilities and reassign its clerical and administrative tasks to the Unit's office staff.

DOB Response: "The Department disagrees. The clerical staff cannot be dedicated exclusively to QOL, nor can it be assigned duties typically discharged by a supervisor, such as routing and research, as staff does not have a construction background."

Auditor Comment: We are not asking the clerical staff to be "dedicated exclusively to QOL," nor are we asking them to undertake roles that require a construction background. We are, however, asking DOB to use all its available resources and improve supervisors' productivity. One way of accomplishing this objective is to prioritize the supervisors' responsibilities and reassign their clerical and administrative tasks to the Unit's office staff.

13. Ensure that supervisors are conducting the required Training Inspections and Quality Assurance Review Inspections of all its inspectors.

⁹ As of Fiscal Year 2009, there were only eight inspectors. Supervisors were required to perform 16 inspections per month (two types of inspections for each of the eight inspectors) for a total of 64 inspections for the four-month period.

DOB Response: “In November 2008 the Department better defined the Quality Assurance inspection targets. Previously the targeted number of inspections was set at a unit level rather than at the inspector level. The Standard Operating Procedure was revised to reflect that all units are held accountable at the individual inspectorial level. We expect this modification to result in tighter supervision through Training Inspections and Quality Assurance Review Inspections.”

DOB should:

14. Ensure that the Queens Borough Commissioner’s Office follows up periodically with Unit officials to ensure that Unit inspectors are being properly supervised and that Unit personnel are being utilized in an efficient manner.

DOB Response: “See Department’s response to Recommendations 11. . . .”

The response to Recommendations 11 includes the following:

“. . . we note that the Queens Borough Commissioner meets twice per month with the senior inspectorial team from the borough, including QOL, to discuss any inspectorial problem. . . .”

Auditor Comment: As part of the bimonthly meetings, we recommend that the Borough Commissioner ensure that the Unit takes steps to make certain that supervisors are indeed conducting the required Training Inspections and Quality Assurance Review Inspections of all their inspectors.



Robert D. LiMandri
Commissioner

June 3, 2009

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New York, New York 10007-2341

RE: Final Audit Report Draft (MG09-087A)
Audit on the Queens Quality of Life Unit
Department of Buildings

Dear Mr. Graham:

Thank you for the opportunity to respond to the findings and recommendations of the above-mentioned final audit report. While we view your input as assistance in furthering our commitment to providing quality public service while maximizing our resources, we disagree with several of your findings and recommendations.

As your report indicates, the objective of the audit was to determine whether the Queens Quality of Life Unit is adequately responding to complaints of infractions of the building code that are related to quality of life issues. The audit resulted in fourteen (14) recommendations.

Below is the Department's response to the fourteen (14) recommendations, as well as clarifying comments in reference to points that were addressed during the audit process and during the exit conference with your team.

Clarifying comments:

A. Wasted Resources

The report indicates that resources are being wasted by the Department's repeatedly sending inspectors to properties to which access has not been available. As we made clear in our exit conference, we do not view repeated attempts to inspect as a waste of resources. First, the Department's policy is to attempt an inspection on all complaints despite having been unable to gain access on previous attempts, as one cannot predict accessibility or outcome prior to going to the site. Second, while visiting even the outside of a site, the inspector can gather evidence necessary for an application for an access warrant and can also write any other appropriate violations if conditions warrant. Such reconnaissance is hardly a waste of resources.

Mr. John Graham
June 3, 2009
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B. Unsuccessful Inspection Attempts – Unit does not do enough to ensure access is obtained.

You suggest in your report that in the event of an unsuccessful inspection attempt, the second attempt be made at a different time of day. This is currently Department practice. The Quality of Life inspectors go out on weekends and off-hours in anticipation of being able to gain access. In addition, this off-hours inspection is a requirement for gathering evidence necessary for an application for an access warrant. It is also unlikely that after an LS-4 form has been left at a premise that a property owner with a violating condition will call for an inspection. Therefore, the LS-4 form, while required, does not typically result in increased access nor is the occupant/owner required by law to respond to it.

As noted at our exit conference and contrary to the audit's suggestion, in the absence of an emergency, the Department has no legal right to compel access to a building that is not under construction. Nor can the Department penalize someone for exercising their constitutional right to deny access.

RESPONSE TO RECOMMENDATIONS:

Queens Quality of Life Unit Should:

Recommendation 1: *Forward the LS-4 form via certified mail to property owners in addition to posting the form at the property.*

Agency Response: The Department performs this type of notification already, yet your report does not include this information. As discussed in the exit conference, your recommendation fails to account for current Department practice of sending a letter by regular mail following a second unsuccessful attempt to gain access to a premise. Any additional benefit sought to be achieved by sending the letter by certified mail is offset by the added cost.

When our inspector cannot access a property, an LS-4 is left at the premises asking the recipient or other responsible party to call for an inspection. After a second unsuccessful attempt, a computer-generated letter is automatically mailed to the property owner's address on record at the Department of Finance to increase the likelihood that an owner who does not live at the premises will receive the notice.

Recommendation 2: *Work with DOB's legal staff to obtain authority to impose incremental fines on property owners who deny access and/or do not respond to the LS-4 forms.*

Agency Response: We agree in part and disagree in part. The Quality of Life Unit will continue to work with Department legal staff to assemble evidence sufficient to support an application for an access warrant in the event a property owner or occupant denies access or does not respond to the LS-4 form. However, such an application must be supported by a showing of a reasonable basis to believe an illegal conversion exists at the premises, such as: separate gas or electric meters, separate mailboxes, separate doorbells, numerous intercoms, several outside entry doors, or through a complainant's affidavit if the complainant has recent, personal knowledge of the interior condition of the premises. The application must also demonstrate prior unsuccessful attempts to gain access. Since the Department is aware that inspection

attempts must be made when it is reasonably likely that access can be obtained, the Department's existing protocol requires that two unsuccessful inspection attempts have been made on different days at different times, one of which must have been between 8:00 AM - 6:00 PM on a Saturday or Sunday, or after 7:00 PM on a weekday. There must be at least a four hour time difference between the first attempted inspection and the second. The two inspection attempts must be contained within a few weeks' time-frame or a third attempt must be made.

We agree that in service of obtaining access, the Department might consider legislative remedies for imposing incremental fines on property owners or occupants who fail entirely to respond to the LS-4 form. However, for the reasons stated above, we disagree that the Department has authority to penalize a property owner or occupant for failing to provide access.

Recommendation 3: *Modify the language used in the LS-4 form to state more strongly the Department's authority to inspect properties and the accrual of fines for no access.*

Agency Response: The Department agrees and has already taken steps to strengthen the language used in the LS-4 form to affirm the Department's authority to inspect properties. However, as stated above, there is no legal basis for threatening accrual of penalties for failure to provide access.

Recommendation 4: *Modify procedures to require that in the event of a first unsuccessful inspection attempt, the second attempt be made at a different time of day.*

Agency Response: See Department's response to Recommendation 2. The Department's existing program meets the objective. Currently, the Department makes every effort to inspect "illegal conversion" complaints at different times of the day. The Department reserves a time each month for the Quality of Life inspectors to go out on weekends and after regular hours to increase the probability of gaining access.

Recommendation 5: *Implement periodic inspection attempts on weekends and/or off-hours for properties that show clear evidence of an illegal conversion (i.e., more than one mailbox, door bell, or water or electric meter for a one family home) and to which access has been refused various times.*

Agency Response: See Department's response to Recommendations 2 and 4.

Department of Buildings Should:

Recommendation 6: *Make a greater attempt to pursue access warrants for properties to which inspectors are unable to gain access.*

Agency Response: See Department's response to Recommendations 2 and 4. We note that every time the Department, through the Law Department, has made an application for an access warrant, it has been granted, and violations

issued following the inspection. Warrants are not sought when there is no legal basis upon which to make a request to the court.

Recommendation 7: *Ensure that the Unit investigators document their warrant requests and meet with DOB's legal staff on a regular basis so that the Unit can better prepare warrant requests and succeed in obtaining warrants.*

Agency Response: The Department agrees that Unit investigators can and should better document their transmissions to Legal of requests for access warrants. However, the Department otherwise contends that its existing practice meets this objective. The Department Legal staff in the Enforcement Unit meets regularly with the Chiefs and all the Inspectorial Units that request access warrants, including QOL, and discuss access warrants and their criteria.

Queens Quality of Life Unit should:

Recommendation 8: *Ensure there is a clear understanding of and adherence to Department procedures regarding the performance of inspections conducted on vacated properties.*

Agency Response: The Department agrees and will continue to enhance its efforts to improve the vacate follow-up process. A new procedure was implemented and has been in effect since May 2008. The Department will continue to refine the process and train personnel on it to enhance accountability.

Recommendation 9: *Monitor and keep track of all inspections conducted on vacated properties.*

Agency Response: The Department contends that the existing program meets this objective. The Department monitors and keeps track of vacated properties. We re-inspect all hazardous conditions three months after the original violation is issued in order to determine if the violating condition has been corrected, regardless of results at an ECB hearing. As indicated in our exit conference, the Department contends that only property owners and other responsible parties can ultimately ensure that all violations are resolved and that vacated properties remain vacated until such time as the violation has been corrected.

Recommendation 10: *Work with DOB's legal staff to obtain access warrants within a specified period of time for those vacated properties for which related complaints are received and inspectors are not able to gain access during re-inspections.*

Agency Response: See Department's response to Recommendations 2.

Department of Buildings should:

Recommendation 11: *Ensure that the Queens Borough Commissioner's office follows up periodically with Unit officials to ensure that properties with vacate orders are periodically inspected and not illegal reoccupied.*

Agency Response: See Department's response to Recommendation 9. Beyond that response, we note that the Queens Borough Commissioner meets twice per month with the senior inspectorial team from the borough, including QOL, to discuss any inspectorial problem, including vacancies.

Queens Quality of Life Unit Should:

Recommendation 12: *Prioritize the supervisors' responsibilities and reassign its clerical and administrative task to the Unit's office staff.*

Agency Response: The Department disagrees. The clerical staff cannot be dedicated exclusively to QOL, nor can it be assigned duties typically discharged by a supervisor, such as routing and research, as staff does not have a construction background.

Recommendation 13: *Ensure that supervisors are conducting the required Training Inspections and Quality Assurance Review Inspections of all its inspectors.*

Agency Response: In November 2008 the Department better defined the Quality Assurance inspection targets. Previously the targeted number of inspections was set at a unit level rather than at the inspector level. The Standard Operating Procedure was revised to reflect that all units are held accountable at the individual inspectorial level. We expect this modification to result in tighter supervision through Training Inspections and Quality Assurance Review Inspections.

Department of Buildings Should:

Recommendation 14: *Ensure that the Queens Borough Commissioner's office follows up periodically with Unit officials to ensure that Unit inspectors are being properly supervised and that Unit personnel are being utilized in an efficient manner.*

Agency Response: See Department's response to Recommendations 11 and 13.

Thank you, once again, for giving us the opportunity to respond to the draft report. We look forward to receiving your final version.

Very truly yours,

Robert D. LiMandri
Commissioner

cc: George Davis III
Marilyn King Festa
Kanda Gordon
Benjamin Jones
Richard Bernard