



City of New York

OFFICE OF THE COMPTROLLER

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MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Follow-up Audit Report on the
Queens Quality of Life Unit of the
Department of Buildings

MJ12-102F

February 21, 2013

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
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February 21, 2013

Dear Residents of the City of New York:

My office has audited the Department of Buildings' (DOB) efforts to implement the 14 recommendations made in a prior audit, *Audit Report on the Queens Quality of Life Unit of the Department of Buildings* (Audit No. MG09-087A), issued July 14, 2009. We perform follow-up audits of City operations as a means of increasing accountability and ensuring that City resources are used effectively, efficiently, and in the best interest of the public.

Of the 14 recommendations made in the prior audit, one was no longer applicable and we were unable to determine the implementation status of another. Of the remaining 12 recommendations, DOB implemented two, partially implemented six, and did not implement four others. Of the conditions disclosed in the previous audit, this audit found that many remain unchanged. For example, DOB still has not sought the authority to impose fines on property owners who deny DOB inspectors access to their properties. In addition, DOB has also not routinely pursued access warrants for vacated properties for which new complaints are received and inspectors are unable to gain access to re-inspect. Finally, DOB does not consistently re-inspect vacated properties within approximately 30 days of posting the official vacate order.

To address these weaknesses, the audit made five recommendations, including that DOB should: (1) seek the assistance of DOB's legal department, the City's Law Department, and/or City legislators to attain the legal authority to impose incremental fines on owners who deny DOB inspectors access to their properties; (2) continue to work toward increasing the number of access warrants petitioned from the court for properties with numerous failed inspection attempts; and (3) be proactive in promptly carrying out re-inspections of properties where vacate orders remain in effect.

The results of the audit have been discussed with DOB officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,



John C. Liu

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Follow-up Audit Report on the Queens Quality of Life Unit of the Department of Buildings

MJ12-102F

AUDIT REPORT IN BRIEF

This audit determined whether the Department of Buildings (DOB) implemented the 14 recommendations made in the prior audit report, *Audit Report on the Queens Quality of Life Unit of the Department of Buildings* (Audit No. MG09-087A), issued on July 14, 2009.

DOB is responsible for the safe and lawful use of more than 975,000 buildings and properties throughout the five boroughs by enforcing laws and regulations applicable to the construction, alteration, and occupancy of buildings. DOB's main activities include examining building plans, inspecting properties, licensing the construction trades, and issuing construction permits.

In March 1997, DOB created the Queens Quality of Life Unit (QOL Unit) to oversee the increasing problem of illegal conversions in the borough.¹ Quality of life complaints refer exclusively to the illegal conversion (alteration or modification) of an existing building to create an additional housing unit without first obtaining approval from DOB. Examples of an illegal conversion include: adding an illegal basement, attic, or garage apartment; 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.

The prior audit found that DOB's response to quality of life complaints was inadequate. Specifically, that audit found that QOL Unit inspectors did not gain access to nearly 40 percent of the properties for which the Unit received complaints in Fiscal Year 2008 and nearly two-thirds of all the Unit's field inspection attempts for the same year resulted in the inspectors being unable to gain access to the properties. Overall, the QOL Units' rate of failed inspection attempts more than doubled from the time of the prior audit. Further, DOB had requested access warrants for less than 1 percent of the properties to which inspectors could not gain access and did not follow up to ensure that the properties for which it obtained vacate orders

¹ DOB receives the most quality of life complaints 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.

remained vacated until violations were removed and the orders lifted. In this report, we discuss the recommendations from the prior audit as well as the current implementation status of each of those recommendations.

Audit Findings and Conclusions

This audit concluded that since the prior audit, DOB has made little progress in improving its response to quality of life complaints. Of the 14 recommendations made in the prior audit, DOB implemented two (#13 and #14), partially implemented six (#4, #5, #6, #7, #8, and #9), and did not implement four others (#1, #2, #3, and #10). One (#12) of the prior recommendations was no longer applicable because DOB modified its procedure and one other (#11) we were unable to determine the implementation status because DOB did not have sufficient evidence for us to base a conclusion.

Of the conditions disclosed in the previous audit, this audit found that many remain unchanged. For example, DOB still has not sought the authority to impose fines on property owners who deny DOB inspectors access to their properties to investigate a complaint of an illegal conversion. In addition, DOB has not optimized the pursuit of and, therefore, has not routinely obtained access warrants for vacated properties for which new complaints are received and inspectors are unable to gain access to reinspect. Finally, DOB does not consistently adhere to the procedural requirement that vacated properties must be re-inspected within approximately 30 days of posting the official vacate order.

Audit Recommendations

To address these weaknesses, the audit made eight recommendations, including that DOB should:

- Seek the assistance of DOB's legal department, the City's Law Department, and/or City legislators to attain the legal authority to impose incremental fines on owners who deny DOB inspectors access to their properties and/or who do not respond to the LS-4 forms.
- Continue to work toward increasing the number of access warrants petitioned from the court for properties with numerous failed inspection attempts, particularly for properties with strong evidence of an illegal conversion to which inspectors continuously are unable to access to inspect and investigate complaints.
- Be proactive in promptly carrying out re-inspections of properties where vacate orders remain in effect to ensure that subject properties remain vacated until conditions are corrected.
- Ensure that, given its current level of resources, protocols and controls are implemented to ensure that established procedures are promptly put into practice and consistently carried out.

Agency Response

Of the eight recommendations made in this current audit, DOB generally agreed with four, partially agreed with one, disagreed with two, and did not directly address the one other.

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, alteration, and occupancy of buildings. DOB's main activities include examining building plans, inspecting properties, licensing the construction trades, and issuing construction permits.

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

Reports of illegal conversions are classified as Priority B (non-emergency) complaints. DOB must conduct an inspection within 40 business days after the receipt of a Priority B complaint. In Fiscal Year 2011, the QOL Unit received 9,561 total quality of life complaints (associated with 6,994 properties). To address these complaints, the QOL Unit made 17,746 inspection visits. If inspectors are continuously denied or unable to gain access to a property to investigate a complaint, DOB may seek to obtain an access warrant.³ To do so, DOB must demonstrate evidence of the illegal condition and prior unsuccessful attempts to gain access.

As of September 2011, the QOL Unit is organized under the Borough Enforcement Inspections Division of DOB Enforcement Bureau. The unit is overseen by a Chief and an Assistant Chief and staffed with two supervising inspectors, approximately six field inspectors, and two clerks. Quality of life complaints are forwarded to the QOL Unit from the public through the City's 311 Call Center, community boards, other City agencies, and routine DOB inspections. Regardless of the source, all quality of life complaints are fielded to the QOL Unit supervisors who, in turn, assign them to inspectors. All complaints and outcome data are entered in DOB's Buildings Information System (BIS) mainframe computer application.

A prior audit report, *Audit Report on the Queens Quality of Life Unit of the Department of Buildings* (Audit No. MG09-087A), issued on July 14, 2009, found that DOB's response to quality of life complaints was inadequate. Specifically, the audit found that QOL Unit inspectors did not gain access to nearly 40 percent of the properties for which the Unit received complaints in Fiscal Year 2008 and nearly two-thirds of all the Unit's field inspection attempts for the same year resulted in the inspectors being unable to gain access to the properties.⁴ Overall, the QOL Units' rate of failed inspection attempts more than doubled from the time of the prior audit. Moreover, the prior audit found that DOB requested access warrants for less than 1 percent of the properties to which inspectors could not gain access. The audit also found that DOB did not

² DOB receives the most quality of life complaints 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 An access warrant is an order signed by a New York State Supreme Court Judge to conduct an administrative search of the named property.

⁴ There can be more than one inspection per complaint.

follow up to ensure that the properties for which it obtained vacate orders remained vacated until violations were removed and the orders lifted.

This report is based on a follow-up audit we conducted to determine whether DOB had implemented the recommendations made in the previous audit. In this report, we discuss the recommendations from the prior audit as well as the current implementation status of each of those recommendations.

Objective

To determine whether DOB implemented the 14 recommendations made in the prior audit report.

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 audit scope covered Fiscal Year 2011 (July 1, 2010, through June 30, 2011). To accomplish our objective, we carried out various audit procedures. Please refer to the Detailed Scope and Methodology section at the end of this report for the specific procedures and tests that were conducted.

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 on November 16, 2012, and discussed at an exit conference held on December 11, 2012. On January 3, 2013, we submitted this draft report to DOB officials with a request for comments. We received a written response from DOB officials on January 23, 2013. In their response, DOB officials generally agreed with four of this current audit's eight recommendations, partially agreed with one, disagreed with two, and did not directly address the one other.

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

RESULTS OF FOLLOW-UP AUDIT

This audit concluded that since the prior audit, DOB has made little progress in improving its response to quality of life complaints. We determined that of the 14 recommendations made in the previous audit, DOB implemented two (#13 and #14), partially implemented six (#4, #5, #6, #7, #8, and #9), and did not implement four others (#1, #2, #3, and #10). One (#12) of the prior recommendations was no longer applicable because DOB modified its procedure and one other (#11) we were unable to determine the implementation status because DOB did not have sufficient evidence for us to base a conclusion.

Previous Finding: “Unit Procedures Not Effective in Ensuring that Inspection Attempts are Successful”

The previous audit disclosed that the Unit procedures were 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 needed 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.

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

Previous 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.”

Current Status: NOT IMPLEMENTED

DOB has not modified its procedures to require that the LS-4 form is sent via certified mail to property owners in addition to posting the form at the property. DOB officials maintain that it would be too costly to send the LS-4 forms via certified mail. Instead, DOB continues to send computer-generated notification letters to property owners via regular mail following a second unsuccessful attempt to gain access to a premises.

DOB QOL Unit records indicated that the percentage of unsuccessful attempts to inspect properties associated with QOL complaints received has increased. The Unit’s records showed

that in Fiscal Year 2011, inspectors did not gain access to 80 percent of the 6,994 properties for which illegal conversion complaints were received – more than double the rate of 39 percent in Fiscal Year 2008. Further, the rate of field inspection attempts resulting in no access increased to 72 percent in Fiscal Year 2011 from 67 percent in Fiscal Year 2008, respectively.

DOB officials contended that as a means of avoiding (1) violations, (2) the loss of revenue from illegal tenants, and (3) the cost of remediating the illegally converted property, owners of illegally converted properties are more vigilant in barring DOB inspectors' access to their properties. Considering this information and the likelihood that a property owner may not contact the QOL Unit if there is no trail to document that the owner actually received the form, we are perplexed that DOB has not adopted the recommendation. In addition to posting the LS-4 form at the property, if the form were sent by certified mail to the property owner's address on record at the Department of Finance, DOB would increase the likelihood that the owners will receive the notice. It would also provide an acknowledgement of the property owner's receipt of the form, which may assist DOB in the event it seeks to take further enforcement action against a property owner for continued non-compliance.

Previous 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 form (letter)."

Previous 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."

Current Status: NOT IMPLEMENTED

DOB officials told us that no action had been taken to address the prior recommendation insofar as the QOL Unit working with DOB's legal department or any other internal or external counsel or legislative entities to seek authority to impose fines on property owners who deny DOB inspectors access to their properties to investigate a complaint of an illegal conversion. Further, they presented no evidence to show whether they had taken any action to seek legislative authority to impose such fines.

DOB officials asserted that legislation to impose fines would not pass constitutional standards. Further, they stated their belief that judges, especially those in New York State, tend to be more protective of owners' Fourth Amendment rights. However, DOB officials did not provide any precedent to support their viewpoints. Rather than merely speculating, we ask DOB to attempt to better equip itself with an incentive to encourage property owners to comply with inspection requests.

Considering that the "no access" rate has dramatically increased since the previous audit, we continue to urge DOB officials to seek legislative means, such as imposing incremental fines, to compel owners to provide access to their properties so that inspectors can do their job of inspecting properties with quality of life complaints. Moreover, such fines may serve as an added deterrent to property owners who may be illegally converting their properties.

Previous 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.”

Previous 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.”

Current Status: NOT IMPLEMENTED

Despite DOB’s prior response to the recommendation, we found that no modifications were made to the language in the LS-4 form used in Fiscal Year 2011 from the form used in Fiscal Year 2008. Upon discussing these results with DOB officials, they conceded that changes to the LS-4 form were last made sometime in 2005. However, they reiterated their position that DOB does not have the authority to impose fines against property owners who deny DOB inspectors access to their property when investigating a complaint. Accordingly, DOB officials see no need to modify the language used in the LS-4 form.

Nevertheless, the fact remains that DOB has the authority to inspect properties for which quality of life complaints are made. Therefore, rather than generalizing what the courts may or may not allow, at minimum, DOB should research the real possibility of seeking the authority to expand its enforcement efforts by imposing fines on property owners who bar access to DOB inspectors responding to a complaint, particularly when there is strong evidence of a potential illegal conversion.

Previous 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.”

Previous 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.”

Current Status: PARTIALLY IMPLEMENTED

The QOL Unit has made some progress in attempting to conduct inspections at different times of the day. For example, our review of documentation for 25 sampled properties with multiple no-access inspection attempts in Fiscal Year 2011 revealed that for 10 (40 percent) of 25 second inspection attempts, there was at least a four-hour time difference between the first attempted inspection and the second. (The 25 sampled properties were selected from a population of 737 properties with four or more no-access inspection attempts and for which access warrants were not previously obtained).

However, these were not directly the result of a change in routing practices and procedures. Rather, they were primarily attributed to DOB addressing backlogs and in situations where the QOL Unit sought to obtain an access warrant. We urge QOL Unit supervisors to continue to schedule second inspection attempts at different times of the day and to make it a practice for *all* failed inspection attempts.

Previous 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.”

Previous 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.’”

Current Status: PARTIALLY IMPLEMENTED

The QOL Unit has made some progress in attempting to conduct inspections on weekends and/or off-hours for properties that show clear evidence of an illegal conversion and to which access has been refused various times. For example, our review of inspection attempts for 25 sampled properties to which access has been refused several times found that three (12 percent) of the visits were conducted on Saturdays. Again, however, these results were not directly the result of a change in inspector routing practices and procedures, but can be primarily attributed to DOB addressing backlogs and in situations where the QOL Unit sought to obtain an access warrant.

Considering that the rate of no access inspection attempts has increased significantly, if the QOL Unit made it a practice to purposefully schedule inspection visits at an alternative time or on weekends and/or off-hours for properties with strong evidence of an illegal conversion to which they were previously unable to gain access, it could be more prompt and effective in collecting and documenting evidence necessary to obtain an access warrant should one be needed.

Previous Finding: “DOB Does Not Generally Use Access Warrants for Inspectors to Gain Access”

DOB will pursue an access warrant when prior attempts to inspect a property were unsuccessful and there is strong evidence (“probable cause”) that the property has been illegally converted. Such evidence may include multiple entrances, satellite dishes, door bells, intercoms, mailboxes, and/or utility meters. Inspectors may also obtain witness statements and must document their observations and take photographs of the property and evidence on the site. To obtain an access warrant, DOB must petition the New York State Supreme Court. The previous

audit noted that DOB requested access warrants for just 16 (0.5 percent) of the 3,279 properties to which inspectors could not gain access. Of the 16 requested, 13 access warrants were obtained. The Unit did not maintain records of the evidence submitted to support the requests.

Previous Recommendation #6: “Make a greater attempt to pursue access warrants for properties to which inspectors are unable to gain access.”

Previous 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.”

Current Status: PARTIALLY IMPLEMENTED

Our review showed that DOB has made some improvements in its efforts to pursue access warrants for properties that QOL inspectors were unable to access and inspect. During Fiscal Year 2011, DOB petitioned for and was granted 80 access warrants for properties in Queens County. This represented an improvement over the total of 13 access warrants obtained by DOB in Fiscal Year 2008. DOB officials attributed the increase in access warrants to better training of inspectors in obtaining evidence and detecting properties for which there is a potential for obtaining access warrants. Nevertheless, the 80 access warrants still account for less than 2 percent (1.43 percent) of the 5,577 properties to which inspectors could not access during that year.

According to DOB records, QOL inspectors executed 76 (95 percent) of the 80 access warrants obtained in Fiscal Year 2011. All but one of the owners of the related properties were issued violations for illegal conditions. As denoted in BIS, three of the remaining warrants were never executed and inspection attempts occurred well after the expiration of the warrants. (Access warrants expire within 30 days of being signed by the court.) The status of one other warrant was indeterminable because the disposition of the warrant was not recorded in BIS.

On September 18, 2012, we presented this information to DOB officials and asked for an explanation regarding the above-mentioned four warrants. DOB responded that inspectors had made four to six attempts to inspect each of the above-mentioned three properties in question (14 attempts in total) and execute the warrants within 30 days of them being granted in 2011. According to officials, the inspectors had been unable to access the properties because no one answered the door when the inspector called or the owner denied them access. In instances where access is denied, DOB may solicit the Police Department, Fire Department, Department of Housing Preservation and Development, or other entity named in the warrant, to “aid and assist⁵” with the inspection. According to DOB, the agency does not routinely call on any of the above-mentioned agencies for assistance in servicing access warrants and gaining access to properties, and none was sought for the aforementioned three warrants. Instead, according to DOB officials, if an inspector is unable to serve an access warrant and obtain access to inspect the property, additional (three or four) attempts will be made while the warrant remains in effect. If the access warrant is slightly past its expiration date, the inspector may leave the warrant at the property. Otherwise, the inspectors do not leave a notice at the property during the additional inspection attempts.

⁵ DOB procedures states: “The warrant provides NYPD, FDNY and HPD . . . the authority to ‘aid and assist’ with the inspection. It does not allow forcible entry or the authority to arrest if access is denied. The remedy for failure to comply is a contempt proceeding brought by the New York City Law Department in consultation with DOB.”

DOB updated its records in BIS on September 24, 2012—after we brought this issue to the agency’s attention—to reflect the above-mentioned 14 inspection attempts. Officials asserted that because of clerical or administrative errors, the 14 inspection attempts to serve the warrants on the three properties had not been recorded in BIS during the period of time that the inspections were performed.

DOB should continue to maximize its efforts to obtain a greater number of access warrants, where applicable, as the warrants serve as the most effective means of accessing for inspection those properties for which there is strong evidence of being illegally converted.

Previous Recommendation #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.”

Previous 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.”

Current Status: PARTIALLY IMPLEMENTED

The Borough Enforcement unit maintains a record reflecting the number of (1) access warrant requests submitted to the Law Department, (2) access warrants obtained, and (3) access warrants executed by QOL Unit inspectors. However, QOL Unit inspectors do not track the number of access warrant requests that they each submit to the Enforcement Unit.

While the Enforcement Unit works with the QOL Unit inspectors and supervisors regarding matters concerning access warrants, there remains no means by which to track the actual number of requests made by each inspector. By tracking individual inspector access warrant requests, the QOL Unit could better identify where training may be required and create greater efficiencies in compiling evidence for access warrant requests. Moreover, it can assist the QOL Unit in tracking the turnaround time for such requests from submission to approval or rejection.

Previous Finding: “The Unit Does Not Monitor Vacated Properties”

The previous audit disclosed that the Unit did not monitor properties vacated because of illegal conversion violations to ensure that the properties remained vacated until violating conditions were corrected and vacate orders were lifted. Of the 657 vacate orders issued in Fiscal Year 2008, DOB had no records showing that any of these properties were periodically inspected to ensure that the premises had not been illegally reoccupied.

The responsibility for monitoring properties to ensure that they comply with building regulations falls on DOB; the Unit did not adhere to the existing procedures that were in place to monitor property owners’ compliance with vacate orders. The Department provided no evidence of its monitoring and tracking of vacated properties.

Previous Recommendation #8: “Ensure there is a clear understanding of and adherence to department procedures regarding the performance of inspections to monitor vacated properties.”

Previous 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.”

Current Status: PARTIALLY IMPLEMENTED

Based on our review of DOB’s Vacate Order Procedures and interviews with relevant officials and staff of the QOL Unit, we concluded that there is a clear understanding of departmental procedures governing the monitoring of vacated properties. However, as discussed below, we found that the QOL Unit does not consistently adhere to DOB’s procedural requirement that vacated properties must be re-inspected within approximately 30 days of posting the official vacate order.

Previous Recommendation #9: “Monitor and keep track of all inspections conducted on vacated properties.”

Previous 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.”

Current Status: PARTIALLY IMPLEMENTED

DOB’s Vacate Order Procedures states that “all vacate orders shall be monitored by the Department for compliance.” The procedures establish that two inspections must be made following an 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 and the other inspection must be made approximately 30 days from the date of the posting of the official vacate order. QOL Unit officials stated that some of the vacated properties may be inspected within 30 days of posting of the official vacate order, but the QOL Unit does not have the personnel resources needed to meet this requirement. However, a number of the sampled properties we reviewed were inspected well beyond the 30-day requirement.

Our review of documentation for 10 of the 36 properties for which DOB obtained full vacate orders⁶ in Fiscal Year 2011⁷ determined that the QOL Unit had re-inspected all 10 of the properties. However, only one of the properties was re-inspected within 30 days of the vacate order posting. The remaining nine properties were visited on average 275 days (ranging from 35 days to 764 days) after the vacate orders were issued. For two of these properties, the re-inspections were merely a response to subsequent complaints, not a required re-inspection to ensure that the property remained vacated.

⁶. A full vacate order is issued when conditions at the property create an “imminent peril or immediate danger to life or property of the occupants.” A partial vacate order may be issued when only a portion of the property poses immediate danger.

⁷. During Fiscal Year 2011, DOB obtained 912 vacate orders of which 36 were full and 876 were partial vacate orders.

DOB's Vacate Order Procedures also state: "Supervisors shall be responsible for routing the inspectors to monitor compliance with vacate orders." When we asked QOL Unit officials how properties with vacate orders were monitored, they asserted that beginning in May 2012, they implemented a procedure to ascertain when to send an inspector to re-inspect a vacated property. They stated that the procedure consists of a weekly Active Vacate report (Excel spreadsheet) being generated that is used to assess how long a vacate order remains open. The report is to be forwarded to the inspection supervisor who must assign one or two vacated properties to each inspector's route sheet on a daily basis. These open vacates are then routed with the inspectors' work schedules on a weekly basis. After the inspector visits the vacated property, he/she is to draft a report with the results of the visit and email it to his/her supervisor. The inspection results are also supposed to be entered into BIS. If the property is found to be occupied, a new complaint is generated and a violation issued.

As described, this procedure is the same procedure spelled out in section 5, "Vacate Monitoring" of DOB's Vacate Order Procedure (issued January 2008). We find it disconcerting that although the procedure has been in place for several years, it was not put into practice until May 2012, after this current audit was initiated. Moreover, because it was only recently implemented, there is insufficient data available to assess overall compliance with this procedure.

Notwithstanding, considering that vacate orders are issued when existing conditions pose an immediate danger to human life, DOB must be proactive in carrying out re-inspections promptly to ensure that subject properties remain vacated until hazardous conditions are corrected and the property is brought into compliance by the owner.

Previous 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 reinspections."

Previous 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. . . .'"

Current Status: NOT IMPLEMENTED

While the QOL Unit does work with DOB's legal staff to obtain access warrants, we found no evidence that the unit routinely pursues access warrants for vacated properties for which new complaints are received and inspectors are unable to gain access to reinspect. In fact, the new complaint may likely be closed with no further action. Even if a vacate order remains on a specific property and a new complaint is subsequently received, if two attempts to investigate the complaint result in the inspector(s) being unable to gain access, in accordance with DOB procedures, the complaint will be closed with no further action.

In response to our queries regarding the prior recommendation, as in the prior audit, DOB officials were vague and ambiguous in their response, failing to directly address the issue. Instead, they summarily explained DOB's standard vacate order procedures. DOB officials also stated that if a vacate order remains in effect and a new complaint is received that pertains to

the area included in the vacate order, the inspectorial unit could just use the vacate order to re-vacate that area of the premises so that a warrant application is unnecessary. While this statement is sensible, if in response to a new complaint an inspector is unable to access the property to determine whether it has been reoccupied, he may not be able to gain access to confirm that the property had been illegally reoccupied and the vacate order violated.

Based on various meetings and communications with officials concerning this topic, it appears that DOB continues to disagree that it should do more to ensure that vacated properties remain unoccupied until all hazards are removed and the occupancy made legal or returned to its original state. Therefore, as an alternative, DOB should ensure that if a vacate order remains in effect and an inspector is unable to access the property to investigate a new complaint, the inspector should immediately contact the police department for assistance to ensure that the property has not been illegally reoccupied.

Previous Recommendation #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.”

Previous DOB 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 vacates.”

Current Status: UNABLE TO DETERMINE

There is insufficient information to determine whether the Deputy Commissioner’s Office actively follows up with QOL Unit officials to ensure that properties with vacate orders are appropriately inspected and are not illegally reoccupied. Since the previous audit, DOB has implemented certain organizational changes which took effect in late 2011. Based on DOB officials and as reflected in an organization chart provided to the audit team, the QOL Unit is organized under the Borough Enforcement Inspection Division of the DOB Enforcement Bureau. The Division is overseen by the Deputy Commissioner and Assistant Commissioner for Enforcement.

We learned that the Chief Inspector, on a monthly basis, meets separately with (1) the QOL Unit inspectors and inspection supervisors and (2) his superiors-- specifically, the Assistant Commissioner for Enforcement. In this manner, there is a direct communication link between senior management and the QOL Unit. We requested minutes and agendas from these monthly meetings for September 2011 through July 2012. DOB provided us with agendas; however, officials said that minutes of the meetings were not kept. Further, there was insufficient information contained in the agendas from which we could derive the extent and degree to which listed topics were discussed and matters addressed during such meetings.

Previous Finding: “The Unit’s Supervisors Do Not Consistently Perform Supervisory Inspections”

The previous audit noted that the Unit’s supervisors were not consistently performing the Training Inspections and Quality Assurance Review Inspections required by the Quality Assurance Inspections Guidelines. The supervisors performed only five Training Inspections and six QA Review Inspections for FY 2008. The Unit’s officials argued that they did not have resources or manpower necessary to routinely conduct these supervisory inspections.

Previous Recommendation #12: “Prioritize the supervisors’ responsibilities and reassign its clerical and administrative tasks to the Unit’s office staff.”

Previous 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.”

Current Status: NO LONGER APPLICABLE

At the time of the previous audit, inspection supervisors were required to conduct one Training inspection and one Quality Assurance Review inspection each month for each inspector. DOB changed its procedures concerning the frequency of Training and Quality Assurance Review inspections. Consequently, supervisors were able to complete the required inspections without having to divert the duties of administrative and clerical staff.

According to QOL officials, effective November 1, 2009, DOB changed its procedures to require supervisors to conduct one Training Inspection and one Quality Assurance Review Inspection every two months for each inspector. Because of the change in frequency as well as a reduction in the number of inspectors from nine in 2008 to seven in 2011, Inspection Supervisors were able to consistently perform all the required Training and Quality Assurance Review Inspections for the seven inspectors employed by the QOL Unit during Fiscal Year 2011.

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

Previous 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.”

Current Status: IMPLEMENTED

As previously noted, effective November 1, 2009, DOB changed its procedures to require QOL Unit inspection supervisors to conduct one Training Inspection and one Quality Assurance Review Inspection every two months for each inspector. Because of this change as well as a reduction in the number of inspectors from nine in 2008 to seven in 2011, Inspection Supervisors completed all required inspection during Fiscal Year 2011. This is a marked improvement from the previous audit where only 11 (5 percent) of the 216 required supervisory inspections were conducted.

Previous 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.”

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

The response to Recommendation 11 includes the following:

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

Current Status: IMPLEMENTED

Based on interviews with officials from the Queens Borough Commissioner’s Office and the fact that QOL Inspection Supervisors completed all of the required Training Inspections and Quality Assurance Review Inspections in Fiscal Year 2011, we concluded that the previous recommendation had been satisfactorily addressed.

Recommendations

To address the issues that still exist, we recommend that DOB QOL Unit should:

1. Forward the LS-4 form via certified mail to property owners in addition to posting the form at the property. If DOB remains resistant to this procedure, at minimum, it should send the notification by certified mail to properties where there is clear evidence of an illegally converted property and/or where prior recent attempts to investigate a complaint and gain access to a particular property have been unsuccessful.

DOB Response: DOB generally disagreed stating: “As mentioned in the previous audit report, the Department sends a letter by regular mail following a second unsuccessful attempt to gain access to premises. Sending a certified mail to property owners does not guarantee receipt. If an owner lives in a separate location, a certified mail may be refused because it requires addressee’s signature. A regular mail is perhaps more successful, because it is left at premises and there is an increase likelihood it may be forwarded to the property owner. If there is ‘clear evidence’ of an illegal conversion, the Department procedure is to apply for an access warrant. Additional notice is unnecessary.”

Auditor Comment: Despite DOB’s ongoing disagreement about using certified mail and speculative comments about the benefits of regular mail, the fact remains that sending the LS-4 letter by regular mail does not provide proof of receipt of the notice, which certified mail has the capability to provide. As DOB is charged with enforcing the City’s rules and regulations governing buildings, zoning, construction, and related matters, it should proactively address the challenges which it faces and look into alternatives that may assist in encouraging property owners’ compliance. Certified mail is just one of any number of different approaches DOB might adopt to contact property owners to access properties and investigate complaints of potential illegal conversions.

2. Seek the assistance of DOB’s legal department, the City’s Law Department, and/or City legislators to attain the legal authority to impose incremental fines on owners who deny DOB inspectors access to their properties and/or who do not respond to the LS-4 forms.

DOB Response: DOB partially agreed stating, “The Department continues to disagree that DOB can impose fines for failing to provide access which is unconstitutional. The Department might consider working with the Department’s General Counsel and the City’s Law department to consider legislative remedies

for imposing incremental fines on property owners or occupants who fail entirely to respond to the LS-4 form.”

Auditor Comment: The City Charter empowers DOB to establish rules and regulations governing buildings, zoning, construction, and related matters, and enforcing those rules and regulations. As part of its enforcement powers, DOB is able to issue violations that carry monetary penalties for noncompliance and violating conditions. Given these facts, we strongly urge DOB to redress its position on the recommendation and seek the assistance needed to attain the authority to impose fines when owners fail to allow inspectors to carryout complaints and/or fail to respond to LS-4 forms.

3. Modify its procedures and implement the practice of purposefully scheduling a second inspection visit at an alternative time of day or on weekends and/or off-hours for all second inspections, especially for properties with strong evidence of an illegal conversion to which they were unable to gain access on a first attempt.

DOB Response: DOB generally agreed, stating: “The Department’s existing program meets the objective. It is the Department’s practice to make second inspection attempts at a different time of day, including nights and weekends, if there is evidence of illegal conversion. The Department makes every effort to inspect illegal conversion complaints at different times of day, and continues to go out on weekends and after regular hours to increase the probability of gaining access.”

Auditor Comment: Although DOB’s procedures do indeed call for scheduling visits at different time of day, in the evenings, and on weekends, we encourage the QOL Unit to, whenever possible, more purposefully and routinely schedule such inspection attempts outside of the normal workday and workweek.

4. Continue to work toward increasing the number of access warrants petitioned from the court for properties with numerous failed inspection attempts, particularly for properties with strong evidence of an illegal conversion to which inspectors continuously are unable to access to inspect and investigate complaints.

DOB Response: DOB did not directly address this recommendation, rather it stated: “The Department has made significant improvement in gaining access warrants since the previous audit. In FY 2011, over six times the amount of access warrants were obtained. Warrants are not sought when there is no legal basis upon which to make a request to the court. The Department seeks to get access warrants where there is ‘legally sufficient evidence,’ and will produce the evidence to the court. It is the judge’s decision to issue an access warrant.”

Auditor Comment: As noted in the report, we recognize that since the prior audit DOB has improved its efforts to pursue access warrants for properties that QOL inspectors were unable to access and inspect and as a consequence increased the number of warrants it obtained from the court. However, considering that the 80 access warrants it obtained in Fiscal Year 2011 accounted for less than 2 percent (1.43 percent) of the 5,577 properties to which inspectors could not access during that year, we strongly encourage DOB to continue to maximize its efforts to obtain a greater number of access warrants, where applicable.

5. Create and maintain an ongoing record to track the number of access warrant requests prepared by inspectors and submitted to the Enforcement Unit. To assist in identifying needed training and other areas where efficiencies can be made, the record should also track and indicate the requests accepted or returned for more information by the Enforcement Unit and the result of the request (i.e., warrant issued or denied).

DOB Response: “The Department disagrees with this recommendation. The database maintained by Enforcement already includes data concerning applications that are returned for correction or additional information, inspector identification, reasons for rejection, and final application results. The Queens Quality of Life Unit is under the same Unit leadership. The Legal Staff in the Enforcement Unit, as well as the Queens Borough Commissioner, meet regularly with the Chiefs and all the Inspectorial Units that request access warrants (including QOL), and provide training as it pertains to access warrants and their criteria.”

Auditor Comment: We did not observe the type of information in the Enforcement Unit’s spreadsheet that DOB elaborates on in its response. Rather, we found the information recorded therein included (1) access warrant requests submitted to the Law Department, (2) access warrants obtained, and (3) access warrants executed by QOL Unit inspectors. If any other type of record is maintained by the Enforcement Unit, it was not shared with us during the audit, and therefore not considered. Although the Enforcement Unit and QOL are under the same leadership, each unit has its own set of duties and functions to carryout, including tracking related documentation, requests, performance, productivity, et. al. Simply, the Enforcement Unit’s workbook does not provide a means by which to track the actual number of requests made by each inspector. Based on these facts we stand by our recommendation.

6. Be proactive in promptly carrying out re-inspections of properties where vacate orders remain in effect to ensure that subject properties remain vacated until conditions are corrected.

DOB Response: DOB generally agreed, but is unable to fully implement this recommendation. DOB stated: “While the Department would like to re-inspect vacated properties within approximately 30 days of posting the official vacate order; it does not have the labor force to act in accordance as stated in the vacate Order Procedures. As mentioned in our previous audit response, the Department re-inspects all hazardous conditions 90 days after the original violation is issued. The Department will strive to re-inspect vacated properties within 30 days of posting the official vacate order; however, the Department believes 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: We agree that property owners have a legal obligation and duty to comply with vacate orders and to remediate violating conditions. However, effective enforcement on DOB’s part can only serve to ensure that owners comply and ensure that the properties remain vacated and violations are remedied.

7. Ensure that, given its current level of resources, protocols and controls are implemented to ensure that established procedures are promptly put into practice and consistently carried out.

DOB Response: “The Department agrees, and will continue working on strengthening, developing, and implementing its formal procedures.”

8. To ensure that a property is not illegally reoccupied, require that inspectors immediately contact the police department for assistance when a vacate order remains in effect and the inspector is unable to access the same property at the time of a visit to either re-inspect or to investigate a new complaint.

DOB Response: “The Department agrees, and will continue working on strengthening, developing and implementing its formal procedures.”

DETAILED 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 audit scope covered Fiscal Year 2011 (July 1, 2010, through June 30, 2011). To accomplish our objective, we carried out audit procedures as detailed below.

To ascertain any changes in organization, internal controls, and procedures since the prior audit and to assess the implementation status of the prior audit recommendations, we interviewed key officials from DOB's Borough Commissioner's Office and Borough Enforcement Inspection Division. We also met with senior officials, supervisors, inspectors, and administrative staff from the QOL Unit. In addition, we reviewed DOB's Agency Audit Implementation Plan submitted to the Comptroller's Office on October 21, 2010, in response to a request for an update on the prior audit recommendations. Further, we reviewed DOB procedural documents, which were used as audit criteria, including:

- "Standard Operating Procedures: Illegal Conversion (Complaint) Inspections" (SOP No.: 201111109, Version No.: 1.2.3, Issue Date: 4/23/2012)
- "Standard Operating Procedures: Vacate Order Procedures" (SOP No.: 20070716, Version No.: 2.0.0, Issue Date: 1/13/2008)
- "Notice to Call for Inspection" (LS-4) form.

DOB provided us with an electronic file containing data extracted from BIS on quality of life complaints received during Fiscal Year 2011. To assess the reliability of the file for audit purposes, as noted below, we ran various sorts and integrated data reliability tests into the substantive tests designed to accomplish our audit objective. Based on our evaluation of the data file, the QOL Unit received 9,561 total quality of life complaints (associated with 6,994 properties) during Fiscal Year 2011. To address these complaints, the QOL Unit made 17,746 inspection visits.

To determine the overall "no-access" rate for the QOL Unit, we sorted the 17,746 inspection visits by disposition codes and identified 12,692 (72 percent) inspection attempts coded as "no access."

To determine whether the QOL Unit attempted to inspect properties with multiple "no access" visits during off-hours and/or weeknights, we sorted the electronic file of 6,994 properties with quality of life complaints for those properties that had four or more inspection attempts that resulted in no access. There were 737 properties that fit this criterion. We obtained route sheets for a random sample of 25 of the 737 properties to determine the day and time of the second inspection attempts. The comparison of data from the electronic file to the hardcopy documentation for the 25 sampled properties provided assurance about the file's accuracy and reliability.

To ascertain whether Training Inspections and Quality Review Inspections were consistently performed by QOL inspection supervisors in Fiscal Year 2011, we obtained a list of all such inspections carried out for the same year. We randomly selected three of the seven inspectors employed during the year and obtained and analyzed supporting documentation to determine the frequency and consistency of supervisory inspections performed by each.

To assess the QOL Unit's efforts regarding access warrants, we obtained and analyzed an electronic file listing all access warrants obtained by the Borough Enforcement Unit in Fiscal Year 2011. Using BIS, we researched a sample of 40 (50 percent) of the 80 access warrants included in the file and obtained hardcopies of access warrants to determine the accuracy of the list. The comparison of data from the electronic file to the hardcopy documentation for the 40 sampled properties provided assurance about the file's accuracy and reliability.

Lastly, to determine whether the QOL Unit adequately tracked, monitored, and inspected vacated properties in accordance with DOB procedures, we obtained an electronic file listing 912 properties for which 36 full and 876 partial vacate orders had been obtained and executed in Fiscal Year 2011. We randomly selected 10 of the 36 properties with full vacate orders and researched the complaint history for each property in BIS to assess whether the QOL Unit had indeed re-inspected those properties and the time it took to perform the inspections following the vacate order being issued and posted. The comparison of sample property information in the electronic file to BIS provided assurance about the file's accuracy.



Robert D. LiMandri
Commissioner

January 23, 2013

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**RE: Final Audit Report Draft (MJ12-102F)
Follow-up Audit on the Queens Quality of Life Unit of the
Department of Buildings**

Dear Ms. Kim:

Thank you for the opportunity to respond to the findings and recommendations of the above-captioned 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 some of your findings and recommendations. For the most part, we have made the necessary improvements, and the recommendations have already been implemented.

As your report indicates, the objective of the audit was to determine whether the Department of Buildings implemented the fourteen (14) recommendations made in the prior audit report. This audit resulted in eight (8) recommendations.

Following are the Department's responses to the eight (8) 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:

While the positive comments seem to be mitigated by what appears to be the Department's unwillingness to impose fines on property owners, or not forwarding the LS-4 via certified mail, the Department has made significant strides to pursue access warrants, issue violations and perform inspections.

Authority to impose fines.

The Department does not have the constitutional rights to impose fine on property owners who deny access to their property.

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RESPONSES TO RECOMMENDATIONS:

DOB 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. If DOB remains resistant to this procedure, at minimum, it should send the notification by certified mail to properties where there is clear evidence of an illegal converted property and/or where prior recent attempts to investigate a complaint and gain access to a particular property have been unsuccessful.

Agency Response:

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.

As mentioned in the previous audit response, the Department sends a letter by regular mail following a second unsuccessful attempt to gain access to premises. Sending a certified mail to property owners does not guarantee receipt. If an owner lives in a separate location, a certified mail may be refused because it requires addressee's signature. A regular mail is perhaps more successful, because it is left at premises and there is an increase likelihood it may be forwarded to the property owner. If there is "clear evidence" of an illegal conversion, the Department's procedure is to apply for an access warrant. Additional notice is unnecessary.

Recommendation 2:

Seek the assistance of DOB's legal department, the City's Law department, and/or City legislators to attain the legal authority to impose incremental fines on owners who deny DOB inspectors access to their properties and/or who do not respond to the LS-4 forms.

Agency Response:

The Department continues to disagree that DOB can impose fines for failing to provide access which is unconstitutional. The Department might consider working with the Department's General Counsel and the City's Law department to consider legislative remedies for imposing incremental fines on property owners or occupants who fail entirely to respond to the LS-4 form.

The Quality of Life Unit has been, and continues to work with the Department's 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.

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Recommendation 3: *Modify its procedures and implement the practice of purposefully scheduling a second inspection visit at an alternative time of day or on weekends and/or off-hours for all second inspections, especially for properties with strong evidence of an illegal conversion to which they were unable to gain access on a first attempt.*

Agency Response: The Department's existing program meets the objective. It is the Department's practice to make second inspection attempts at a different time of day, including nights and weekends, if there is evidence of illegal conversion.

The Department makes every effort to inspect illegal conversion complaints at different times of the day, and continues to go out on weekends and after regular hours to increase the probability of gaining access.

Recommendation 4: *Continue to work toward increasing the number of access warrants petitioned from the court for properties with numerous failed inspection attempts, particularly for properties with strong evidence of an illegal conversion to which inspectors continuously are unable to access to inspect and investigate complaints.*

Agency Response: The Department has made significant improvement in gaining access warrants since the previous audit. In FY 2011, over six times the amount of access warrants were obtained.

Warrants are not sought when there is no legal basis upon which to make a request to the court. The Department seeks to get access warrants where there is "legally sufficient evidence," and will produce the evidence to the court. It is the judge's decision to issue an access warrant.

Recommendation 5: *Create and maintain an ongoing record to track the number of access warrant requests prepared by inspectors and submitted to the Enforcement Unit. To assist in identifying needed training and other areas where efficiencies can be made, the record should also track and indicate the requests accepted or returned for more information by the Enforcement Unit and the result of the request (i.e., warrant issued or denied).*

Agency Response: The Department disagrees with this recommendation. The database maintained by Enforcement already includes data concerning applications that were returned for corrections or additional information, inspector identification, reasons for rejection, and final application results. The Queens Quality of Life Unit is under the same Unit leadership

The Legal staff in the Enforcement Unit, as well as the Queens Borough Commissioner, meet regularly with the Chiefs and all the Inspectorial Units that request access warrants (including QOL), and provide training as it pertains to access warrants and their criteria.

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Recommendation 6: *Be proactive in promoting carrying out re-inspections of properties where vacate orders remain in effect to ensure that subject properties remain vacated until conditions are corrected.*

Agency Response: While the Department would like to re-inspect vacated properties within approximately 30 days of posting the official vacate order; it does not have the labor force to act in accordance as stated in the Vacate Order Procedures.

As mentioned in our previous audit response, the Department re-inspects all hazardous conditions 90 days after the original violation is issued.

The Department will strive to re-inspect vacated properties within 30 days of posting the official vacate order; however, the Department believes 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 7: *Ensure that given its current level of resources, protocols and controls are implemented to ensure that established procedures are promptly put into practice and consistently carried out.*

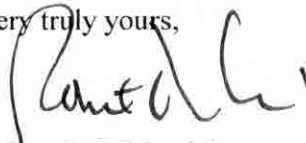
Agency Response: The Department agrees, and will continue working on strengthening, developing, and implementing its formal procedures.

Recommendation 8: *To ensure that a property is not illegally reoccupied, require that inspectors immediately contact the police department for assistance when a vacate order remains in effect and the inspector is unable to access the same property at the time of a visit to either re-inspect or to investigate a new complaint.*

Agency Response: The Department agrees, and will continue working on strengthening, developing, and implementing its formal procedures.

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
Vincent Grippo
Joshua Florsheim
Kerry Castro