



CITY OF ALBANY
Office of Audit and Control
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Follow-Up of the 2011 Audit of Code Enforcement Operations

June, 2017

The Office of Audit and Control (OAC) conducted an audit in 2011 and found many deficiencies in the City's code enforcement operations. That audit report included nine findings and many recommendations. The Department has since experienced significant turnover including being without a Director for 18 months. Most of the findings in the 2011 audit have been partially addressed, with two being addressed and two having no progress.

This report was developed as part of OAC's ongoing risk assessment process and is not an audit conducted under Government Auditing Standards.

Finding 1: The Division was not able to supply a Rental Registry during the scope of this audit

In process of being addressed

The Department is still unable to produce a complete Rental Registry. It has posted an incomplete Registry to the City website and provided the same to OAC. It appears that all of the information in that Registry is accurate, but it is missing many rental units that have current Rental Occupancy Permits.

OAC did not determine how many units are missing, but one staffer was able to manually identify four missing addresses in less than an hour by comparing the City's old AS400 database of inspections to the Department's Registry. The Department agreed that those addresses should be in the Registry.

The Department adopted a new software system in recent months, and OAC's review of its capabilities concluded that it should be able to produce an accurate Rental Registry. However, it will take a full ROP cycle until the Registry is completely up to date.

The Department has updated its Rental Registry forms to receive more complete property information. This should help with gathering accurate owner and local agent information.

Finding 2: Many rental inspections are not being scheduled on a timely basis

In process of being addressed

The Department reported that it had sent out notices to 5,757 properties or 35% of ROP eligible properties in 2016, but that it does not send out notices to properties as ROPs expire. It does plan to start sending those notices when the new software is fully operational. It also plans to initiate changes to the ROP issuances to consolidate the effort for each building, so that all ROPs in a building are effective and expire on the same dates.

The Department points out that it cited 388 properties for renting without an ROP in 2016 and that the onus for compliance lies with the property owner. While this is the case from a legal perspective, it in no way overrides City Code §231-103 which charges the Department with securing compliance.

It is the opinion of OAC that sending notices as ROPs expire is the minimum needed to meet the Department's obligations under §231-103. Additional efforts could include sending notices for all residential properties that do not have STAR exemptions and requesting certification that they are owner occupied.

Finding 3: Many non-residential inspections required by City & State laws are not being done

No Progress

The Department has deployed a third-party inspection program for places of assembly exceeding 50 people. However, other commercial properties are not being inspected every three years as required by State Law.

The Department blames a multitude of labor issues for this shortfall. They are as follows:

- The 2013 hiring of code enforcement officers (CEO) to do inspection work previously done by the firefighters triggered a grievance by IAFF Local 2007. The Department reports that this prevented the CEOs from doing commercial inspections in addition to the residential inspections.
 - OAC questions this logic since the firefighters were not conducting these commercial inspections in the first place. (Documented in the 2011 Audit and the Department's response to OAC's 2013 follow-up questionnaire.)
 - There was some question as to whether the firefighters would begin these inspections to justify their code enforcement stipends, but that should not have prevented the inspections from being done, even if the firefighters were temporarily assigned to do them.
- In 2015, code enforcement staff declared their intent to unionize and the Department was advised that it could not alter the terms of their employment, including doing commercial inspections, without negotiations.
 - OAC questions this reasoning since commercial inspections are clearly included in the Civil Service job descriptions for Code Enforcement Officers.

- Between August 2015 and January 2017, the Department lost two long time deputies, all but three of its eight CEOs, and three of its five clerks. Additionally, in recent years the Department has experienced a full turnover of CEO staffing and currently has only one CEO experienced in commercial inspections. During this time, the Department oversaw the waste collection fee exemption process, adopted new software, and adopted the new State building code.
 - **Labor shortages appear to be a real and valid reason for the lack of progress in addressing this finding.**
 - Albany's CEOs are paid significantly less than their counterparts in neighboring municipalities and the City can expect high turnover as long as that is the case.
 - The City of Albany hires untrained CEOs and puts them through a training program and then pays them \$33,850 while neighboring municipalities pay over \$40,000.
 - **The City should raise the CEOs' pay as they gain experience to avoid being the CEO academy for the Capital Region.**

As part of the labor issues, the Department states that they were advised not to do these inspections. OAC believes the City's public safety departments should ignore advice to not conduct a public safety operation that is required by NY State law. They should diligently find a way to complete the task.

Finding 4: Data entry in the computer system is inconsistent

Addressed

The new computer system appears to have adequate controls to improve data entry. In 2018 the Department should do a review of the recently entered data to determine whether additional controls or training are required. This type of review should be conducted periodically to ensure data consistency.

Finding 5: A lack of quality assurance has led to incomplete & inconsistent inspections

In process of being addressed

The Department has initiated a number of efforts to improve inspection quality and consistency. The Department reports that inspection forms have been simplified and more focused, that a property owner appeals process has been initiated, and that training has become more standardized. However, there is no formalized program of supervisor shadowing or supervisor follow-up when a code complaint is received shortly after an ROP inspection.

- OAC continues to recommend a program where supervisors periodically shadow CEOs to ensure that they know how to conduct a proper inspection. We also recommend that when a code complaint is registered shortly after an ROP inspection, a supervisor conduct that inspection and do a quality review of the ROP inspection.

Finding 6: Some firefighter-owned properties are being inspected by firefighters

Addressed

Firefighters no longer conduct residential inspections. Additionally, the Department has initiated a Conflict of Interest policy requiring employees to disclose ownership interest in properties they inspect.

Finding 7: The current operations do not provide for consistent compliance with the Rental Registry and other requirements

No Progress

The City Code charges the Department with securing compliance with its programs. Ad Hoc efforts have occurred but they do not include any proactive, ongoing and methodical efforts to bring properties into compliance with the City's programs.

With the new computer system, the Department plans to start mailing notices as ROPs expire, but that does not bring never-compliant properties into compliance. The 2011 audit references the following examples of proactive compliance activities:

- Rochester and Syracuse send rental registry notices to residential properties that do not have the STAR property tax exemption, which is only available to owner-occupied homes.
- Syracuse has initiated a "Compliant Landlord" program to encourage landlords to come into compliance.
- Cohoes School District requires families to show proof of home ownership or a rental permit before enrolling children in public school. (Cohoes requires a new permit for each new tenant. This effort could not be used with Albany's system.)

In addition to initiating a notice system for renewing expiring registrations, the Department should initiate a program to identify non-registered properties that should be registered.

Finding 8: The Division did not produce written procedures for the code enforcement process

Addressed

The Department has a written set of procedures for its activities.

Finding 9: No outcome based performance measures are being tracked or used for strategic planning

In process of being addressed

The new computer system will allow the Department to better track conditions and compliance. The Department should assess those capabilities to assemble a list of outcome-based indicators.



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ROBERT G. MAGEE
DIRECTOR

June 5, 2017

Leif Engstrom
Chief City Auditor
City of Albany Office of Audit and Control
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Re: *Follow-Up to the 2011 Audit of Code Enforcement Operations*

Dear Chief Auditor Engstrom,

Thank you for the work you, Sam, and Aindrea put into the follow-up report on your office's 2011 audit. I'm proud of the progress we have made as a Department since 2011 even though progress on some of our more difficult problems has been stalled for too long. We will continue to work through those and with the implementation of the EnerGov case management software we are optimistic that these things will be solved soon.

We only have two responses to your follow-up report. The first is related to our "legal requirement" or "legal duty" to secure Albany City Code §231-136 et. seq. compliance. In addition to the 5,750 notice letters we issued in 2016, which you discussed in Finding 2, we cited 388 properties for renting without an ROP in 2016.

The terms "legal duty" or "requirement" imply that we are breaking the law in not sending out ROP reminder notices but this isn't the case. As you acknowledged in the report, it is correct from a "legal perspective" that Albany City Code §231-136 et. seq. does not impose an enforceable duty on the part of the Department to proactively register rental properties. Our methods for securing compliance are not what they should be but they do not violate the law.

The second response relates to the report's statement at the end of Finding 3 that "OAC questions the reasoning [that BRC could not perform regular commercial inspections because of Local 2007's contract dispute and our own ongoing union negotiations] since commercial inspection are clearly included in the Civil Service job descriptions for Code Enforcement Officers." We understand this conclusion and the reality of the situation has frustrated and continues to frustrate us as well. However, it is worth noting that Article 28 of Local 2007's contract with AFD explicitly stated during the relevant time period that "if the City opts to perform commercial code inspections it is understood and agreed by the parties that the members of the [Albany Fire] Department shall perform such commercial code inspections . . .". It is also

the case, as we stated in our response to your January 16, 2017 questionnaire, that our Code Enforcement Officers do inspect commercial properties as complaints arise and in the course of permit-related building inspections. We are only not currently performing the regular commercial inspections that were the subject of Article 28 of Local 2007's contract. Once our own negotiations have concluded, we look forward to resolving this issue.

Your report and this audit have been a valuable opportunities for us to engage in introspection and planning for continued improvement going forward. We thank you and your office for your hard work.

Truly yours,

A handwritten signature in black ink, appearing to read "Robert G. Magee".

Robert G. Magee
Director
City of Albany Department of Buildings &
Regulatory Compliance