



City of Mount Vernon

Building Department Fees and Fines

Report of Examination

Period Covered:

January 1, 2012 — September 26, 2013

2014M-65



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

July 2014

Dear City Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and City Council governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of City of Mount Vernon, entitled Building Department Fees and Fines. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

The City of Mount Vernon (City) is located in Westchester County, encompasses approximately four square miles and serves approximately 68,000 residents. The City Council comprises five Council members and is the legislative body responsible for setting the City's governing policies. The Mayor serves as the City's chief executive officer. The Mayor appoints all department heads including the Building Department's Commissioner and the Law Department's Corporation Counsel.

Scope and Objective

The objective of our audit was to examine the City's procedures for collecting and enforcing building violation fees and fines for the period January 1, 2012 through September 26, 2013. Our audit addressed the following related question:

- Is the Building Department collecting all required fees and fines?

Audit Results

The City did not resolve 955 violations issued during the audit period or about 83 percent of the total violations issued. As a result, the City did not receive a minimum of about \$86,000 in violation fees the Building Department could have collected had all these violations been resolved. The City currently has about 4,900 violation cases unresolved since 2004, with minimum fines due totaling \$440,000. Collecting the fees from resolved violations could significantly increase revenues, well exceeding the \$15,000 in violation fees collected in 2012. Additionally, the Law Department did not pursue collection for all unpaid Court imposed building violation fines. We identified cases with unpaid fines totaling \$12,000. These fines remained unpaid from seven to 20 months because the Law Department did not request Court judgments required to enforce collection. We also found that the Law Department does not review the status of settled cases, enforce Court ordered judgments and pursue fine collection. As a result, The City is not collecting all the fines to which it is entitled.

Comments of City Officials

The results of our audit and recommendations have been discussed with City officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, City officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on issues raised in the City's response letter.

Introduction

Background

The City of Mount Vernon (City) is located in Westchester County, encompasses approximately 4 square miles and serves approximately 68,000 residents. The City Council (Council) comprises five Council members and is the legislative body responsible for setting the City's governing policies. The Mayor serves as the City's chief executive officer. The Mayor appoints all department heads including the Building Department Commissioner and the Corporation Counsel (Counsel).

The City provides various services to its residents, including public works, police and fire protection, street lighting and general governmental support. These services are financed primarily with real property taxes, sales tax and State aid. The City also collects fees and fines by issuing building permits and building code violations. The City's 2013 general fund budget totaled approximately \$93 million. The Building Department is responsible for monitoring building conditions and construction or renovation activity for approximately 10,000 City properties. In 2012, the Building Department issued about 3,150 permits, collected about \$881,000 in fees and issued 651 building code violation notices.

Objective

The objective of our audit was to examine the City's procedures for collecting and enforcing building violation fees and fines. Our audit addressed the following related question:

- Is the Building Department collecting all required fees and fines?

Scope and Methodology

We examined the City's records related to building violation fees and fines for the period January 1, 2012 through September 26, 2013.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix C of this report.

Comments of City Officials and Corrective Action

The results of our audit and recommendations have been discussed with City officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, City officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on issues raised in the City's response letter.

The Council has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Council to make this plan available for public review in the City Clerk's office.

Building Department Fees and Fines

The Building Department oversees the City's building codes by issuing permits and certificates of completion or occupancy, inspecting properties and collecting related fees.¹ The Building Department enforces building codes by issuing building code violation notices to property owners when building conditions do not meet the standards set forth in the codes or when property owners do not comply with the permit process. The Law Department, headed by the Counsel, is responsible for pursuing property owners with unresolved building code violations in City Court (Court) and collecting any fees or fines not received by the Court. The Court is responsible for imposing judgments² and fines on property owners for any unresolved violations.

The Building Department is not collecting all fees for violations and the Law Department is not pursuing all unpaid fines to which the City is entitled. At the end of our audit period, there were about 4,900 unresolved building violation cases dating back to 2004. As a result, the City did not receive a minimum of \$440,000 in violation fees³ that the Building Department could have collected had all these violations been resolved. Additionally, the Law Department did not pursue collection for all unpaid Court-imposed building violation fines. We identified cases with unpaid fines totaling \$12,000. These fines remained unpaid from seven to 20 months because the Law Department did not request Court judgments required to enforce collection. We also found that the Law Department does not review the status of settled cases, enforce Court-ordered judgments and pursue fine collection. As a result, the City is not collecting all the fines to which it is entitled.

Fees

The Building Department is responsible for monitoring building conditions and construction or renovation activity for approximately 10,000 City properties. Building Department functions include enforcing State and local building codes, housing standards and ordinances, and issuing permits for new buildings, repairs and alterations. Building Department staff collect fees for permits and certificates of completion or occupancy when a permit is issued. Violation fees are collected when the property owner corrects the

¹ Building permits are issued and inspections are done to ensure that all work performed is done correctly so that no injury will result to an owner, occupant or visitor to the premises.

² A judgment is a Court decision in favor of either the City or the property owner. If a judgment is decided in the City's favor the Law Department may pursue collecting unpaid fines owed to the City.

³ Closing a violation requires the property owner to correct the condition, have an inspection and pay a fee of \$90 per violation.

violation. The Building Department collected \$15,000 in violation fees in 2012.

City building inspectors issue violation notices⁴ to property owners based on property inspections and complaints received from residents.⁵ Closing a violation case requires corrective action, including obtaining all necessary permits and payment of \$90 fee per violation. The building inspector may dismiss a minor violation with no fee if the property owner promptly completes corrective work in accordance with applicable codes. Otherwise, the Commissioner is responsible for dismissing violation cases⁶ based on the building inspector's report or Court decision made in the property owner's favor.

Policies and procedures outlining the steps the Building Department staff should follow could help ensure that properties with building code violations are tracked and resolved in a timely manner. Such procedures should include establishing a specific timeline for Building Department staff actions after a building violation notice is issued and maintaining a current building violation list for each City property. Ideally, the list should specify the actions taken by property owners and Department staff and be reviewed periodically by the Commissioner or his deputies. Additionally, after violation notices are issued, the building inspector should follow-up with the property owner once the due date for correcting the violation has passed. If the property owner has still taken no action, then other options should be considered such as initiating legal action.

The City did not resolve 955, or 83 percent, of all the violations issued during the audit period. As a result, the City did not receive a minimum of about \$86,000 in violation fees to which it was entitled. Both the Commissioner and the assistant counsel said the City aims for property owner compliance with the City's building codes. However, we reviewed the Building Department's property violation list⁷ and found that 4,904 (or 68 percent) violation cases were open, and remained unresolved since 2004, because the property owner failed to correct the condition, have an inspection and pay the violation fees. If all open violation cases were resolved and associated violation fees

⁴ Violation notices contain property identification, a list of specific building code violations the property owner must address and a statement specifying that dismissal requires correction, payment of a fee and an inspection.

⁵ Building inspectors investigate complaints for building code violations and review property conditions during the construction phase.

⁶ The Commissioner may dismiss a case after a permit is issued, work is completed, the violation fee is paid and the Building inspector has inspected the work.

⁷ The list is maintained using a computer spreadsheet, which Building Department staff use to track the status of violations. In addition, a copy of the violation notice is then supposed to be placed in the individual property's file.

collected, building violation revenues could potentially total more than \$440,000.

Building Department staff stated that there was not enough time to follow up on violations. The Commissioner acknowledged the large number of unresolved violations. He said the Building Department was in the process of updating the property files and that violation notices should be in the property files to assist inspectors with violation follow-up. He also said that he would like the Building Department to use a commercial software program to better track and follow-up on violations.

Strengthening the Building Department's violation enforcement process could result in property owners correcting violations in a timelier manner. Additionally, collecting the fees from resolved violations could significantly increase revenues, well exceeding the \$15,000 in violation fees collected in 2012.

Fines

Each day that a violation remains unresolved is a separate offense punishable by either a fine of \$500 to \$1,000 per day, one year imprisonment or both. The Law Department supervises and directs all aspects of civil litigation and is actively involved in enforcing City ordinances, including building codes, zoning ordinances and other laws affecting City land use and the condition of City buildings. When building violations remain unresolved, the Commissioner may refer violations and recommend fines to the Law Department for prosecution in Court. The Court may then issue a judgment against the property owner and impose fines for any unresolved building violations. The majority of defendants pay fines on the Court date or within one month after the Court issues a judgment. However, if the Court does not collect the fine, then the Law Department is responsible for collecting the fine.

If the Court decides a case in the City's favor, the Judge may impose a fine, which the property owner must either pay by a specified due date or make other payment arrangements with the Court. If the fine remains unpaid after the Court-specified due date, the Law Department must request that the Court issue a judgment against the property owner to enforce judgment fine collection. Policies and procedures outlining the steps Law Department staff should follow can help ensure that fines are collected in a timely manner. For example, if a fine remains unpaid⁸ after the Court issued a judgment, the Law Department should contact the defendant as soon as the Court-specified date has passed to arrange for payment. The City may engage a collection agency to pursue property owners for unpaid fines.

⁸ Although the Court does not provide the Law Department with a list of fines collected, this information is publically available upon request.

We reviewed the 32 cases with judgments for 22 City properties with Court imposed fines totaling \$38,300 during our audit period. We found that 27 cases were closed because the property owner paid fines to the Court. The five remaining cases had unpaid fines totaling \$22,000. One case with a collection judgment was referred to a collection agency. The four remaining cases were assessed fines totaling \$12,000 that were unpaid as of the Court-specified date. However, Law Department staff did not request Court judgments during the last seven to 20 months for collecting the fines imposed on these four cases.

For example, for one case involving a \$10,000 judgment from February 2013, Counsel told us that there were previously settled judgments and fines against this property owner that were reversed by Court judgment. A new assistant counsel was handling this case and the Counsel indicated he was unaware if any further legal action was initiated against the property owner to collect the fine.

The assistant counsel indicated that he reviews those building violation cases⁹ with larger fines and judgments, but not all such cases are reviewed due to the large case volume. The Counsel said he would check after a month or two on cases with larger fines to see if the fines remained unpaid and if further action was indicated.

Successful prosecution of violations in Court could result in higher levels of compliance with the building codes and increase fine revenue collection. The failure to pursue fine collection and enforce judgments sends the wrong message to property owners and results in lost revenue.

Recommendations

1. City officials should develop and implement Building Department policies and procedures ensuring that City properties with unresolved building code violations are resolved in a timely manner or should pursue available legal remedies.
2. Building Department officials should establish and implement follow-up procedures for all properties with building code violations, ensuring that all violations are corrected and fees are promptly collected.
3. Law Department officials should establish and implement follow-up procedures for settled cases, enforce Court-ordered judgments and pursue fine collection to ensure that all fines are promptly collected.

⁹ The Building Department maintains a list of cases prosecuted for building violations.

APPENDIX A
RESPONSE FROM CITY OFFICIALS

The City officials' response to this audit can be found on the following pages.



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ERNEST D. DAVIS
MAYOR

June 12, 2014

Ms. Tenneh Blamah
State of New York
Office of the State Comptroller
Division of Local Government and School Accountability
Newburgh Regional Office
33 Airport Center Drive, Suite 103
New Windsor, NY 12553

**RE: Report Number 2014M-65
City of Mount Vernon, New York
Building Department - Fees & Fines**

Dear Ms. Blamah,

We are in receipt of the above-referenced Draft Report dated May 19, 2014 and the City of Mount Vernon respectfully submits its response to the auditor's findings. We would like to take this opportunity to thank the auditors for their professionalism and courtesies extended to all City departments at all times.

As a preliminary matter, the Department of Buildings prioritizes achieving compliance with building code violations. In collecting fines, as the front line to our citizens, we must take the totality of the circumstances of each circumstance into account. The Department of Buildings makes every attempt to work with each property owner, and attempts to take extenuating circumstances into consideration including natural disasters and personal perils. In particular, there are a large percentage of foreclosed and abandoned buildings within the City of Mount Vernon's four square miles. This places a high burden on our department of tracking owners and issuing violations to the proper parties. Coupled with both Hurricane Irene and Sandy, the number of violations has dramatically increased in the City. Our growing senior population struggles to upkeep their properties and we continue to work with them. It is the Department's position that the actual resolution of outstanding violations is the most accurate measure of compliance, and that the mere obtainment of fines does not in and of itself demonstrate resolution.

See
Note 1
Page 16

An entrance conference was scheduled to begin the audit and to define the parameters of the audit. At the time of the entrance conference, the Department of Buildings (the "Department") was in the early stages of a re-organization project. The re-organization project included

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replacing an outdated software program with a new powerful one, called [REDACTED] was developed and programmed by [REDACTED] a software company that has over fifty years of experience in improving municipalities become more efficient.

By switching to this new software, our ability to address the needs of the public has been greatly enhanced. The following Departmental functions that have been improved because of [REDACTED] include, but are not limited to:

- The tracking of parcel history, permits, building inspections, safety inspections, complaints, fees;
- The tracking of permit applications from submission, through all required inspections and re-inspections, up to issuance of permit or certificate;
- The tracking of complaints including issuance of violations based on local ordinance and regulations.

Additional elements of the Department's reorganization plans included:

- Consolidation of file/folders storage system through the strategic relocation of 12,000 existing file/folders to within the department office space, rather than two stories away;
- Creation of a color coding system for efficiently locating file/folders via block and lot; and
- Removal and replacement of old dilapidated file/folders;

The Building Department Audit findings:

- The audit covered a period of January 1, 2012 through September 26, 2013.
- The audit found that 955 or 83% of all the violations issued during the audit period were unresolved. These violations were served by two building inspectors, one building/elevator inspector, one code enforcement officer, two housing inspectors, and one Plumbing Inspector.
- Contrary to the audit's findings, we have ascertained that 20% have been permitted and are on route to being resolved. The auditors resulting conclusion offers a false reading of the number of violations that have never been addressed. It is our position that the greater good of the community has been served in at least 20% of the cases noted because compliance was achieved.

See
Note 2
Page 16

Proposed Policy Implementation of the Building Department:

In 2012 the Building Department issued 3,150 permits, collected about \$281,000 and issued 651 building code violation notices.

- Updates to our existing [REDACTED] software will enable the Department to monitor, track, and flag all violations that are issued, which will provide the Department with the necessary tools to promptly and efficiently monitor all violations.

- Monthly reports of all open violations are being issued to inspectors for follow up on the properties.
- Corrected code violations that have not yet paid the \$90 fee for the violation dismissal, will now be sent a final notification. Response to notices must be met within fifteen (15) days.
- All properties not in compliance with the above-referenced notices will be sent to the proper departments (legal department, assessor, and/or comptroller) to have a lien placed on the property and/or added to the tax assessment roll.
- Permits that are filed in response to a Notice of Violation having been issued will pay a dismissal fee at the time of submitting the permit application.

The Department of Building's Corrections to the Audit:

- Fees for building violations were not implemented as a policy until after 2004. Thus, as opposed to the 4,904 unresolved cases there are 4,208 since 696 of the reported cases were before fees were implemented (4,904-696=4,208). See Note 3 Page 16
- Furthermore, approximately 508 violations were in response to fire damage. When unforeseen circumstances such as fire, floods, and other natural disasters occur, the Buildings Department attempts to assist the owner to get their lives back on track. These types of violations are generally not the fault of the owner. Therefore, so as long as the owner complies with the findings of the Article 21 conference, the \$90 fee is waived. As such, we contend that approximately 508 should not be counted, further reducing the 4,208 by 508 to 3,700. See Note 4 Page 16
- After a manual review by Department of building staff, it was determined that approximately 20% of the 3,700 violations have attained a permit to reduce the number of violations that are unresolved to 2,960. See Note 2 Page 16
- Our findings are that a total of 191 permits issued towards the process of violation resolution. This reduces the 955 total of the evaluation period of the audit to 764. See Note 5 Page 16

Fine Collection Response:

The audit period showed that there were four City Court cases where fines were not collected. The Mount Vernon City Court collects the fines imposed on cases that have been settled or where a default judgment has been entered. The Department of Law concurs with the audit's findings that there were four cases in the audit period where the outstanding fines owed had not been collected. With regard to these four cases, the Department of Law is currently in the process of filing notices of entry, and expects them to be entered within one to two weeks of the date of this response. As it currently stands, however, the City of Mount Vernon City Court does not give notice to the Law Department when or if the fines have been fully paid. Unless a representative from the Law Department contacts the Court directly regarding those specific

cases, the Law Department will not know whether a fine has been paid in full. As further explained in the Fine Collection Corrective Action Plan, a system reducing or eliminating this potential miscommunication will be instituted shortly.

During the course of the audit, the Department of Law and the Department of Buildings have collaborated to prosecute over forty-five (45) cases. Upon review of our files, there were only four cases where judgments were not entered and the applicable fines were not paid to the Court. Prior to the audit, the Department of Law was already exploring various methods to increase the efficiency of its prosecution of Violations of City Ordinances (“VCOs”).

Fine Collection Corrective Action Plan:

Recommendation:

“Law Department officials should establish and implement follow-up procedures for settled cases, enforce Court-ordered judgments and pursue fine collection to ensure that all fines are promptly collect.”

The Department of Law submits that the following actions have either already been implemented, or will be shortly:

1. **Already Implemented:**

- a. As recommended on page 8 of the audit of the City of Mount Vernon that the Department of Law “may engage a collection agency to pursue property owners for unpaid fines,” the Department of Law respectfully submits that the Department has been utilizing the services of The Law Office of Anthony J. Maiocchi, PLLC to collect fees for the city, and will continue to expand the use of said agency following the prosecution of its VCO cases;
- b. Effective immediately, after a judgment is granted in favor of the city, the Department of Law immediately enters the information into an [REDACTED] and will ascertain whether the fines have been paid by ascertaining what fines are outstanding on a monthly basis;
- c. Effective immediately, the Assistant Corporation Counsel responsible for prosecuting VCOs in City Court draft notices of entry for *all* default judgments

granted in favor of the City that total over \$1,000.00 no later than two (2) business days after the granting of default judgment.

- d. Effective immediately, after the judgment order is signed and entered by the Westchester County Clerk, the Department of Law will refer the judgment to its collection agency for all judgments over the aforementioned threshold of \$1,000.00
- e. Effective immediately, the Department of Law has arranged for weekly meetings with the Department of Buildings to increase the rate at which Building Department violations are prosecuted.

2. **To be implemented imminently:**

- a. The Department of Law has already begun exploring the potential of amending its City Code to include mandatory fee surcharges. The Department has found by examining neighboring municipalities' city codes, that many of them include surcharges, and therefore the City of Mount Vernon is exploring options for implementing them into the City Code.
- b. Additionally, preliminary meetings with the Judges of the City Court to discuss the streamlining of communication between the Department of Law and the City Court which will assist in facilitating most, if not all, of the changes suggested by the audit.

Please do not hesitate contact me or any of my department heads with any concerns or questions that may arise concerning this response.

Very truly yours,

ERNEST D. DAVIS
Mayor

APPENDIX B

OSC COMMENTS ON THE CITY'S RESPONSE

Note 1

Based on documentation obtained from City officials, 4,900 building violation cases remained unresolved from 2004. Many of these cases involved safety issues such as conversions to multi-family unit homes, lack of carbon monoxide and smoke detectors and rodent infestation. Our report does not imply that obtaining fines is the only measure of this program.

Note 2

Our conclusions were based on documents obtained from the City at the time of our audit fieldwork and accurately reflect the Building Department's activities.

Note 3

Our conclusions were based on the minimum amount of fees due to the City. Because of the many unknowns involved, we did not try to estimate other missed revenues, such as permit costs or the cost to conduct inspections. We used a conservative approach in conducting our audit. Therefore, potential foregone revenues could have been significantly more than just the \$90 violation dismissal fee.

Note 4

Based on the documentation obtained from City officials, there was no indication that the owners complied with the Article 21 conference findings. In addition, there are no written policies or procedures detailing what information the Building Department should collect to assist those with unforeseen circumstances to waive the \$90 violation dismissal fee.

Note 5

Our methodology included reviewing the property file and making inquiries of Building Department staff to determine if the violations were open or closed or if corrective work was performed. Violations were in various stages of completion (including issuance of permits). However, the work necessary to close a violation case was not considered complete unless a final inspection was performed and payment or waiver of the violation fee was received.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

We examined the City's Building and Law Departments' procedures for collecting and enforcing building code violations. To accomplish our audit objective and obtain relevant audit evidence, our procedures included the following:

- We interviewed City officials and documented and evaluated internal controls over issuing permits and building code violation notices, prosecuting unresolved building violation Court cases, collecting violation fees and fines and enforcing building codes and judgments.
- We reviewed Building Department and Law Department building code policies and procedures.
- We judgmentally selected 30 building permits issued during two months of our audit period with no expectation that more or fewer errors would occur in those months than any other months.
- We recalculated the amount of violation fees collected for our audit period and traced the fees collected from the collection records to the permits issued and the bank deposits.
- We obtained a list of all building violation notices issued and reviewed the status for a random sample of 50 building violations. From our sample we then reviewed 13 violations that could affect a resident's or tenant's health and safety.
- We reviewed the list of all building violations prosecuted by the Law Department during our audit period and traced the list to Court documents.

We conducted this performance audit in accordance with GAGAS. 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX D

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