



THOMAS P. DiNAPOLI
COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

GABRIEL F. DEYO
DEPUTY COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY
Tel: (518) 474-4037 Fax: (518) 486-6479

August 2018

Geoffrey M. Szymanski, Mayor
Members of the City Council
City of Lackawanna
714 Ridge Road
Lackawanna, NY 14218

Report Number: S9-17-22

Dear Mr. Szymanski and Members of the City Council:

A top priority of the Office of the State Comptroller is to help City officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support City 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 governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard assets.

In accordance with these goals, we conducted an audit of six municipalities (four cities, one town and one village) throughout New York State (NYS). The objective of our audit was to determine whether the use of local government resources is resulting in effective enforcement of fire safety and property maintenance (FSPM) inspections for multiple dwelling (MD)¹ properties at a minimum of once every three years and confirming known violations are corrected. We included the City of Lackawanna (City) in this audit. Within the scope of this audit, we examined the City's inspection records for MD properties for the period January 1, 2015 through May 12, 2017. We extended the scope of our audit back to January 2013 for review of building permits and October 2008 for inspection testing. 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 NYS General Municipal Law.

¹ A "multiple dwelling" generally is a unit which is either rented, leased, let or hired out, to be occupied, or is occupied as the residence or home of three or more families living independently of each other. An MD is not a hospital, convent, monastery, asylum or public institution, or a fireproof building used wholly for commercial purposes except for not more than one janitor's apartment and not more than one penthouse occupied by not more than two families.

This report of examination letter contains our findings and recommendations specific to the City. We discussed the findings with officials and considered their comments, which are included in Appendix B, in preparing this report. Except as specified in Appendix B, City officials generally agreed with our recommendations and indicated they planned to initiate corrective action. Appendix C includes our comments on the issues raised in the City's response. At the completion of our audit of the six municipalities, we prepared a global report that summarizes the opportunities we identified to improve the inspection of MD properties.

Summary of Findings

We found that the City needs to establish basic internal controls over FSPM inspections on MD properties to ensure the process is functioning. City officials have not developed written procedures to guide employees on documentation requirements for inspections, timeframes for property maintenance inspections, number of reinspections, violation follow-up procedures and program monitoring. Because of the lack of documentation requirements, we could not ascertain whether minimum inspections were performed. Although the City has a local law² requiring an annual report of FSPM inspections, it was not completed or submitted. The Department does not maintain a list of all MD properties. Code Enforcement Department (Department) officials told us they had not identified MD properties in the municipality and only inspected MD properties when responding to a resident complaint. Therefore, the City is not conducting all required (FSPM) inspections.

We reviewed inspection records for 50 FSPM properties and found that 45 properties had one or more of the following inspection deficiencies: no documentation that an inspection ever occurred, older inspection dates, inadequate inspections or insufficient inspection documentation. For the remaining five properties, we found that a certified inspector conducted two FSPM inspections and three exterior PM inspections within one year. Because inspectors do not use checklists and only document violations, we could not verify whether minimum FSPM inspection requirements were met for two inspections. Further, the inspector who performed two inspections as well as one exterior inspection, of the 45 properties inspected outside of 12 months, did not meet the in-service training requirements to maintain an active inspection certification. However, when properties are inspected, we found that they generally follow up on violations within 60 days (average 35 days).

Background and Methodology

The City is located in Erie County, covering approximately six square miles and has approximately 18,000 residents. The City is governed by an elected Mayor and five-member City Council (Council). The City's 2016-17 budgeted general fund appropriations totaled approximately \$25.3 million. The City provides various municipal services to its residents.

Article 18 of Executive Law Section 381³ generally directs that the State's cities, towns and villages shall be responsible for enforcing the Uniform Code⁴ and the New York Codes, Rules and Regulations (NYCRR)⁵ provides that enforcement of the Uniform Code shall be made through

² City of Lackawanna Code Section 75-14(a)

³ New York State Executive Law Article 18, Section 381.2

⁴ 19 NYCRR 1219-1228

⁵ 19 NYCRR 1203.2 (a)

local law, ordinance or other appropriate regulation. Further, the NYCRR⁶ requires FSPM inspections for all residential buildings with three or more dwellings at least once every three years. Expedient and effective inspections can help to preserve the health, safety and welfare of residents; provide reasonable comfort of the tenants; ensure the quality of rental housing units and maintain the character of a neighborhood's population base. Conversely, the lack of inspections could lead to the dilapidation of MD properties and an increased risk of serious injury, death, health and economic issues.

NYS Department of State⁷ requires FSPM inspections be performed by certified code enforcement officials or building safety inspectors whose certification has not become inactive or revoked.⁸

The City adopted a local law that designated the code enforcement officer (CEO)⁹ responsible for FSPM inspections of buildings and structures, including MD properties. The CEO oversees one code enforcement officer, who assists him with inspecting the City's 476 MD properties.

To complete our audit objective, we interviewed City officials, reviewed policies and procedures and reviewed inspection reports to determine whether inspections occurred as required by local and State law. We also reviewed inspection documentation to determine if minimum inspection requirements were completed and documented and if officials ensured violations were corrected.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). More information on the standards and the methodology used in performing this audit are included in Appendix C of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

Audit Results

Policies and Procedures – The Council and officials have a responsibility to oversee and monitor City operations and to ensure that government resources are being used effectively. This responsibility includes establishing policies and procedures, that define roles, designate responsibilities, establish the documentation that must be maintained for inspections and provide reasonable assurance that applicable laws, rules and regulations are followed. Maintaining adequate records enables the Council and officials to fulfill their responsibility to monitor inspections of MD properties. In addition, effective policies and procedures would also establish timeframes for inspections and violation follow-ups, as well as how many potential follow-up inspections should occur before involving the Court system. The entire enforcement process also should be formalized and effectively communicated to ensure that violation follow-up procedures are equally and consistently applied.

⁶ 19 NYCRR 1203.3 (h)(2)

⁷ 19 NYCRR 1208-3.1

⁸ Inspectors must meet the certification requirements set forth by the NYS Department of State in order to be eligible to inspect a property. The requirements include 24 hours of in-service training annually for code enforcement officials and six hours annually for building safety inspectors.

⁹ City of Lackawanna Code Section 75-3(b)

The City is operating a deficient MD property inspection program. The Council adopted a local law¹⁰ requiring the CEO to conduct FSPM inspections of MD properties at least every 12 months and submit an annual report to the Council. However, the CEO told us he was not aware that he was responsible for FSPM inspections. As a result, officials have not developed the following written procedures to ensure the program operates effectively.

- **MD Property List:** Officials should have a list of MD properties that require FSPM inspections. Officials have not developed a MD property list.
- **Inspection Scheduling:** Inspections should be scheduled to ensure that MD property inspections are performed within the Law's 12-month requirement. The City's current procedures require officials to perform inspections based solely on complaints.
- **Checklists:** A complete checklist that documents minimum inspection items should be used to provide a record of the items inspected. Officials have not developed minimum inspection documentation requirements (complete checklist). Inspections are performed based on complaints. In addition, if the complaint relates to a property's exterior, that is all the inspectors inspect. The CEO told us that four to five years ago there was a checklist. However, when they switched to a computer program, they stopped using the checklist. Instead, they rely on their training. Therefore, the current procedure is not sufficient to ascertain whether the minimum FSPM requirements are met.
- **Violation Follow-up:** Officials should establish guidelines for the number of reinspections, timeframes between the inspections and parameters for when uncorrected violations should be turned over to the Court system. Officials have not developed guidelines for violation follow-ups.
- **Certified Inspectors:** All inspectors must be certified by NYS and annually complete a minimum of six hours of in-service training. However, there are no procedures to monitor inspectors' certifications. As a result, an inspector that was conducting FSPM inspections during the audit period did not meet the annual training requirements in 2014 and 2015, and he did not maintain his active certification. Without the required training, the inspectors may be unaware of the minimum inspection standards, further increasing the risk to public safety and the quality of rental housing units.
- **Oversight:** The Board requires an annual report be submitted. The CEO told us he was aware of the local law requiring annual written reports to the Council. However, he indicated that he did not prepare them because the Council did not request the reports. In addition, without a control list of MD properties, Council members cannot effectively begin to monitor the program's effectiveness. As a result, officials are unaware of the magnitude of the programs ineffectiveness.

MD Property Lists – Municipalities must maintain a complete list of MD properties to effectively manage the inspection process. A complete MD property list should be maintained and used to reconcile the number of inspections completed and readily determine if the inspection program is operating effectively.

¹⁰ City of Lackawanna Code Section 75-11(a)

The Department does not maintain a list of MD properties and does not track required FSPM inspection. To compile a MD property list, we obtained the City Assessor's 2016 tax roll, sorted it by property classification code¹¹ and then provided the list to the Assessor to determine whether they were MD properties. In addition, we reviewed the City's new MD building permits. We found the City has 476 MD properties. The CEO told us that his department had not identified MD properties in the City. Without a MD property list, officials cannot monitor or assess the MD inspection program's effectiveness which significantly increases the risk to public safety. In addition, there is a likelihood that some properties requiring inspection may not be inspected.

Inspections and Violations – Local law requires that FSPM inspections be performed at least once every 12 months. Inspections should be completed by certified inspectors. Inspectors should follow up on violations, as well as, determine when voluntary compliance is ineffective and formal enforcement action should be initiated.

The CEO told us he was unaware that he was responsible for FSPM inspections of MD properties. Department officials told us they perform FSPM inspections only in response to a resident complaint and when the complaint pertains to the exterior of a building, they will only inspect the property's exterior. Officials also told us that they generally inspect common areas and the property's exterior unless they are invited into an individual unit. Inspectors document inspection dates and types (exterior or interior/exterior) along with violations by signing and completing a notice of violation form. If no violations are found, the inspector does not document the inspection. The CEO also told us that if a property owner does not address the violations within the inspector's timeframe based on the violation type, such as 30 days for painting or 24 hours for serious violations, the issue is turned over to the Court system for resolution.

We reviewed records for 50 MD properties to determine if certified inspectors performed minimum inspections within one year and followed up on violations. We found that 45 properties were not inspected within one year. A certified inspector conducted two FSPM and three exterior PM inspections within one year. Because inspectors do not use checklists and only document violations, we could not verify whether minimum FSPM inspection requirements were met for the two FSPM inspections or if other inspections were conducted. In addition, the exterior PM inspections do not meet minimum FSPM inspection requirements.

The City has not established timeframes for property owners to correct cited violations or for the follow-up inspections. However, we found that officials generally follow up on violations within 60 days (average 35 days). Inspectors cited the five inspected properties with 10 violations that required a follow-up inspection.

- One FSPM inspection resulted in four violations. The inspector issued an immediate order to vacate because of violations such as a gas leak, no heat and no fire extinguishers.
- One FSPM inspection resulted in two violations. The inspector reinspected in eight days because he was unable to access the basement on the initial inspection and the sump pump needed to be repaired. Officials told us that, based on the reinspection results, the property

¹¹ Property classification codes are used to describe the primary use of each parcel of real property on an assessment roll.

owner was then issued an appearance ticket. However, they could not provide us with documentation to confirm their assertion. These violations are currently outstanding 318 days.

- Three exterior inspections resulted in four violations that were followed up on an average of 26 days and all passed their second inspections.

For the 45 remaining properties, we found that 29 properties had no documentation that an inspection ever occurred and 16 properties had older inspection dates and inspection and documentation issues. Documentation showed two properties had exterior inspections with previous inspection dates of December 2008 and March 2014. Four FSPM inspections and eight exterior PM inspections were conducted within the last three years. Finally, two properties had inspections dates within the last three years. However, there was no inspection documentation for these properties.

Finally, we reviewed the certifications for all three inspectors who conducted a FSPM or external inspection during our audit period. One inspector was fully certified, one was undergoing training for certification and one had not met his in-service training requirements for 2014 and 2015 and his certification was inactive.¹² The inspector with the inactive certification conducted one exterior inspection and two FSPM inspections that had insufficient detail to determine the nature and extent of the inspection. All three inspections were not performed within the last 12 months.

Because inspectors do not inspect all properties as required, there is a likelihood that violations will go undiscovered, which significantly increases the safety risks to residents. For example, the City was forced to condemn two connected buildings in June 2015 due to disrepair, which were cited with 18 violations, resulting in 12 people being forced out of their homes. According to a City official, this property had never been inspected. This situation was discovered because of a resident complaint. However, if the City performed inspections as required, the issues may have been corrected early enough to mitigate the significant public safety risk. By not performing FSPM inspections, the City potentially risks contributing to a decline in the quality of the rental housing units and significantly increasing safety risks to residents.

Recommendations

The CEO should:

1. Maintain a MD property list and ensure it is complete by periodically verifying the list to the tax roll and building permits.
2. Ensure that all MD properties receive full FSPM inspections by certified inspectors at a minimum of every 12 months and that the annual report is submitted to the Council as required by local law.

Officials must:

¹² This inspector is no longer employed at the City.

3. Develop written procedures for MD property inspections that ensure the minimum FSPM items are inspected and documented, violations are followed-up on consistently and documentation is maintained indicating violation disposition.
4. Monitor the FSPM program to ensure it is meeting minimum requirements.

The Board 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 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 Board to make this plan available for public review in the Clerk's office.

We thank the City's officials and staff for the courtesies and cooperation extended to our auditors during this audit.

Sincerely,

Gabriel F. Deyo
Deputy Comptroller

APPENDIX A

International Property Maintenance Code Multiple Dwelling - Fire Safety and Property Maintenance Inspections

The International Property Maintenance Code, as a part of the Uniform Fire Prevention and Building Code, provides standards for MD properties, with exceptions provided for buildings that were built prior to the existence of certain requirements.

Multiple Dwelling- Fire Safety and Property Maintenance Inspection Requirements

General Requirements	General Requirements (continued)	Lighting, Ventilation and Occupancy Limitations	Plumbing Facilities and Fixture Requirements	Mechanical and Electrical Requirements	Fire Safety
<p>General Scope Responsibility Vacant Structures and Land</p> <p>Exterior Property Areas Sanitation Grading/Drainage Sidewalks and driveways Weeds Rodent Harborage Exhaust Vents Accessory Structures Motor Vehicles Defacement of Property</p> <p>Swimming Pools, Spas and Hot Tubs Swimming Pools Enclosures</p> <p>Exterior Structure General Unsafe Conditions Protective Treatment Premises Identification Structural Members Foundation Walls Exterior Walls Roofs and Drainage Decorative Features Overhang Extensions Stairways, Decks, Porches and Balconies Chimneys and Towers Handrails and Guards Window, Skylight and Door Frames -Glazing -Openable Windows Insect Screens Doors Basement Hatchways Guards for Basement Windows Building Security -Doors -Windows -Basement Hatchways Gates</p>	<p>Interior Structure General Unsafe Conditions Structural Members Interior Surfaces Stairs and Walking Surfaces Handrails and Guards Interior Doors</p> <p>Component Serviceability General Unsafe Conditions</p> <p>Handrails and Guardrails General</p> <p>Rubbish and Garbage Accumulation of Rubbish and Garbage Disposal of Rubbish -Rubbish Storage Facilities -Refrigerators Disposal of Garbage -Garbage Facilities -Containers</p> <p>Pest Elimination Infestation Owner Single Occupant Multiple Occupancy Occupant</p>	<p>General Scope Responsibility Alternative Devices</p> <p>Lighting Habitable Spaces Common Halls and Stairways Other Spaces</p> <p>Ventilation Habitable Spaces Bathrooms and Toilet Rooms Cooking Facilities Process Ventilation Clothes Dryer Exhaust</p> <p>Occupancy Limitations Privacy Minimum Room Widths Minimum Ceiling Heights Bedroom and Living Room Requirements -Room Area -Access from Bedrooms -Water Closet Accessibility -Prohibited Occupancy -Other Requirements Overcrowding -Sleeping Area -Combined Spaces Efficiency Unit Food Preparation</p>	<p>General Scope Responsibility</p> <p>Required Facilities Dwelling Units Rooming Houses Hotels Employees' Facilities -Drinking Facilities Public Toilet Facilities</p> <p>Toilet Rooms Privacy Location Location of Employee Toilet Facilities Floor Surface</p> <p>Plumbing Systems and Fixtures General Fixture Clearances Plumbing System Hazards</p> <p>Water System General Contamination Supply Water Heating Facilities</p> <p>Sanitary Drainage System General Maintenance Grease Interceptors</p> <p>Storm Drainage General</p>	<p>General Scope Responsibility</p> <p>Heating Facilities Facilities Required Residential Occupancies Heat Supply Occupiable Work Spaces Room Temperature Measurement</p> <p>Mechanical Equipment Mechanical Appliances Removal of Combustion Products Clearances Safety Controls Combustion Air Energy Conservation Devices</p> <p>Electrical Facilities Facilities Required Service Electrical System Hazards -Abatement of Electrical Hazards Associated with Water Exposure --Electrical Equipment -Abatement of Electrical Hazards Associated with Fire Exposure --Electrical Equipment</p> <p>Electrical Equipment Installation Receptacles Luminaries Wiring</p> <p>Elevators, Escalators, Dumbwaiters General Elevators</p> <p>Duct Systems General</p>	<p>General Scope Responsibility</p> <p>Means of Egress General Aisles Locked Doors Emergency Escape Openings</p> <p>Fire Resistance Ratings Fire-resistance-rated assemblies Opening Protectives</p> <p>Fire Protection Systems General -Automatic Sprinkler Systems -Fire Department Connection Single- and multiple-station smoke alarms -Where Required --Group R-1 --Groups R-2, R-3, R-4 and I-1 --Installation Near Cooking Appliances --Installation Near Bathrooms -Interconnection -Power Source -Smoke Detection System</p>

APPENDIX B

RESPONSE FROM CITY OFFICIALS

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



OFFICE OF THE MAYOR CITY OF LACKAWANNA



Hon. Geoffrey M. Szymanski ~ Mayor

February 23, 2018

Comptroller Thomas P. DiNapoli
110 State Street
Albany, NY 12236

RE: CITY OF LACKAWANNA FSPM AUDIT

Comptroller DiNapoli;

We have reviewed your initial draft of your audit that was based on our multiple unit dwelling inspections. Your team has identified numerous deficiencies within our government that needs to be addressed. Your team was courteous, detailed, and professional.

Since I received your draft, we have already addressed some of the issues that have been identified and will begin to fall into compliance within the mandated timeframes that the state mandates. All of this will be detailed in our corrective action plan (COP) to follow.

Some issues that have been discovered are that, while canvassing other cities comparable to our size, we appear to be one code enforcement officer short to follow through with the mandatory inspections of all 476 multiple unit dwellings. Also, the city of Lackawanna has an unusually high number of multiple unit dwellings compared to other communities. This is no excuse for not conducting timely inspection, but it does reflect that our staff has other responsibilities that will now have to be redirected. We are creatively working as a unit to figure out how to increase our staff while staying within the tax cap.

I believe that your staff has misidentified some glaring items in the audit. Pursuant to our municipal code, the term: CEO; in this case, is not to be considered to be Chief Executive Officer, which is indeed my self as mayor, which was reported in numerous areas of the audit when in fact the acronym CEO is to be considered Code Enforcement Officer. This mislabeling has negated some, but not most, areas of correction. My role, rules, duties, and responsibilities as Mayor as Chief Executive Officer is clearly defined by our city charter and the draft has added duties which are not accurate. While code enforcement officers work for the mayor, all employees with the exception of the city council and the city clerk and clerk employees work directly for me. Code enforcement officers work under the direction and supervision of the Director of Development.

A few questions have arisen that we cannot answer but was hoping your team can enlighten upon: what happens if we schedule an inspection and the owner/property manager does not allow entry? Are these inspections to be in general shared common

See
Note 1
Page 13

See
Note 2
Page 13

See
Note 3
Page 13

Hon. Geoffrey M. Szymanski ~ Mayor
City of Lackawanna, New York

714 Ridge Road ~ Room 301 ~ Lackawanna, New York 14218 ~ (716) 827-6464 ~ FAX (716) 827-6678
<http://www.lackawannany.gov> ~ mayor@lackny.com

areas or room by room inspections per unit? These are questions that need to be answered prior to our city finalizing the necessary COP.

The city would appreciate any further input from your office so that we may meet all state requirements and mandates.

Sincerely,

Geoffrey M. Szymanski
Mayor ~ City of Lackawanna



APPENDIX C

OSC'S COMMENTS ON CITY OFFICIAL'S RESPONSE

Note 1

We modified our report to indicate that CEO referred to the code enforcement officer.

Note 2

Officials should establish written inspection procedures for employees. These procedures should address what action should be initiated in such a situation.

Note 3

Officials should address their technical questions to the Department of State, Division of Buildings Standards and Codes.

APPENDIX D

AUDIT METHODOLOGY AND STANDARDS

To achieve our audit objective and valid evidence, our audit procedures included the following:

- We interviewed City officials and staff to gain an understanding of the City's policies and procedures for the inspection of MD properties.
- We developed a MD property list for the City by filtering the 2016 tax roll for property classification codes related to MD properties and used MD new construction permits from 2013 to 2016 to determine the completeness of the list.
- Using a random number generator, we selected a non-biased judgmental audit testing sample of 50 properties. We reviewed inspection files to determine whether:
 - Inspections of MD properties occurred within the timeframe prescribed by State and local law.
 - The documentation indicated that FSPM items had been inspected and whether minimum FSPM inspections were performed.
 - The inspectors were certified by NYS.
 - Inspectors followed-up on violations, including Court system referrals, if warranted.
- We reviewed the MD property inspection annual reports.

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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.