



INTERNAL AUDIT REPORT

Building Standards Audit: Phase 2

April 2022

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BUILDING STANDARDS AUDIT: PHASE 2

CONCLUSION AND SUMMARY

While the department has made significant progress on several initiatives over the past number of years, opportunities were identified to improve management oversight and ensure risks related to the inspection and compliance processes are efficiently and effectively mitigated. The following opportunities were identified:

- Improve oversight and the controls over outstanding violations and investigations.
- Develop and implement a policy to guide the preparation, documentation, supervision and follow-up of prosecution files.
- Develop inspection documentation standards and leverage technology to ensure that inspection records are complete and reliable.
- Develop and implement an action plan to monitor and resolve inactive building permits.

According to the Ontario Building Code Act, an inspector who finds a contravention of this Act or the Building Code may make an order directing compliance with this Act or the Building Code and may require the order to be carried out immediately or within such time as is specified in the order. The Building Standards Department (BSD) also has a role and responsibility to respond to an internal or a public inquiry or complaint that is related to a building. An investigation must be undertaken within a reasonable time and properly documented. While management recently implemented processes to monitor orders and complaints, certain historical orders and complaints remained open for prolonged periods without proper follow-up as required by BSD's policy. Open investigations and orders date back as far as 2004. These orders, complaints and investigations, are related to potential or known deficiencies and violations. Without proper follow-up of historical orders and complaints, BSD could fail to carry out the responsibilities designated by the Building Code Act and the Building Code.

In accordance with the Building Code Act, if an order is not complied with, legal actions should be considered. Inspection Services is responsible for progressive monitoring and enforcement of orders up to and including prosecution and injunction. In York Region, prosecution is managed by the prosecutors of the Region. The City's Legal Services facilitates the process and passes legal information to BSD when received from the Region. However, such legal information was maintained in hard copy but not documented in AMANDA. Certain files were open for months without follow-up actions or any documents. Developing and implementing a policy will help guide the preparation, documentation, supervision and follow-up of prosecution files.

In pursuance to the Ontario Building Code and case law, BSD shall prepare written records of every inspection of the construction of a building in the course of performing functions. Inspection results should include certain specific details. The BSD's mobile solution has photographs and mark-up features, which allow building inspectors in the field to use their iPhone to record the findings of their inspections by taking photographs of the building work and adding notes and result codes. A general lack of details and consistency was noted in inspection result documentation. In addition, utilization of visual records such as photographs and mark-ups is not standardized. While some inspectors take photographs for investigations and orders,

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photographs are not used in most mandatory inspections. Inspection results form the basis of City's inspection records. Developing inspection documentation standards and leveraging technology will help improve the accuracy and completeness of inspection documentation.

Pursuant to the Building Code Act and the Ontario Building Code, when construction projects in the City reach prescribed stages, contractors schedule inspections with a building inspector. Once inspection requirements have been successfully fulfilled, the permit is closed. However, building permit holders do not always schedule inspections when construction stages are complete and as a result, building permits remain open. Inactive permits are defined as those without inspection attempts in the last six months. Historically the City has a large number of inactive permits. While management introduced processes to address inactive permits in recent years, there were over 5,000 inactive permits in November 2021. While inactive permits only account for 3% of all issued permits, they date back as far as 1979. In addition, BSD has yet to provide regular updates to Council of the situation and advise Council to update or retract an outdated outstanding permit policy. While inactive permits may represent limited legal or financial risks, they could negatively affect the City's reputation.

This audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*.

During the audit, management has already taken steps to improve the processes. Internal Audit will follow up on the status of outstanding management action plans related to this audit and will report the status to a future Audit Committee meeting.

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BACKGROUND

The mission of the Building Standards Department (BSD) is to ensure the safe and lawful use of lands and buildings through administration of the Building Code Act (BCA), enforcement of the Ontario Building Code (OBC) regulations, Zoning By-law (ZBL) requirements, as well as applicable laws. BSD enforces OBC regulations including health and life safety standards, building by-law requirements, and zoning regulations. The Chief Building Official (CBO) represents the City at the Building Code Commission (BCC) and liaises with the Ministry of Municipal Affairs and Housing (MMAH). BSD realizes this mission through four core business units: Zoning Services, Customer Services and Administration, Technical Services and Inspection Services.

The principal mandate of the Inspection Section is to enforce the Building Code Act, 1992 and the Ontario Building Code which regulates the construction of all buildings in Ontario. The City's enforcement of the Building Code is required under the Building Code Act and allows the City to inspect buildings for compliance with standards in the areas of health and safety, fire protection, structural sufficiency, accessibility, conservation, environmental integrity, zoning compliance and applicable laws.

OBJECTIVES AND SCOPE

Based on the variety and depth of the programs and activities that Building Standards is responsible for, we conducted this audit in phases. We started by reviewing the Business Administration, Permit Issuance and other Zoning Services related processes (Phase 1), followed by the Inspection and Compliance processes (Phase 2). The Phase 1 Audit report was presented to the Audit Committee on November 22, 2021.

The objective of Phase 2 is to evaluate the adequacy and effectiveness of the internal controls, processes and procedures in place to mitigate the business risks associated with the management and administration of the Inspection and Compliance related processes.

The audit approach included a review of the strategic goals, objectives and oversight of the business unit, review of relevant programs, legislation, policies and procedures, use of technology, on-site observations and interviews with staff and management.

The audit scope included department related activities that occurred in January 2020 to September 2021 and historical records prior when necessary.

This audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*.

Auditor and Author: Hemingway Wu, CPA;CA, CIA

Director: Kevin Shapiro CIA, CFE, CRMA

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DETAILED REPORT

1. Improve the Oversight and Controls over Outstanding Violations and Investigations

According to the Ontario Building Code Act 1992 12. (2), an inspector who finds a contravention of this Act or the Building Code may make an order directing compliance with this Act or the Ontario Building Code and may require the order to be carried out immediately or within such time as is specified in the order. BSD also has a role and responsibility to respond to an internal or a public inquiry or complaint that is related to a building.

Pursuant to the by-laws and regulation, BSD has established Standard Operating Procedures (SOPs) to guide the related processes. The current policies require that an investigation must be undertaken within a reasonable time and properly documented. Appropriate course of action should be taken.

Our review of this process identified the following:

- While management recently implemented processes to monitor orders and complaints, certain historical orders and complaints remained open for prolonged periods without proper follow-up. As of September 2021, 373 orders (3.5% of all orders issued) and 344 investigations files (3.9% of all files opened) have remained open longer than one year. Open investigations and orders date back as far as 2004.
- For one Unsafe Order, the risk was properly managed and mitigated, however, the regular inspection and follow-up required by the related policy was not documented.
- Some investigation documentation lacked sufficient details. Visual records such as photographs and markups were not consistently used for all files.

Per discussion with management, the absence of appropriate oversight and supervision is cited as the primary reasons for these issues. The related policies were relatively new, and BSD has yet to fully implement them. The lack of details and consistency in investigation notes and underutilization of photograph is a result of the absence of inspection documentation standards, which will be discussed later in the report.

These orders, complaints and investigations, are related to potential or known deficiencies and violations. Without proper follow-up of historical orders and complaints, BSD could fail to carry out the responsibilities designated by the Building Code Act and the Building Code. It could pose significant legal and reputational risks to the City and potential health and safety risks to the occupants.

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Recommendations

We recommend that management:

- Review the outstanding orders, complaints and investigations and ensure an appropriate course of action is taken using a risk-based approach.
- Improve management oversight on orders, complaints and investigations and ensure the related policies are followed, implemented, and reinforced.

Management Action Plan

The BSD agrees with the recommendations and has reviewed its procedures and oversight of orders, complaints, and investigations. In 2020, two Standard Operating Procedures (SOPs) were developed specifically to manage Orders and Investigations / Complaints. Monthly reports are generated and reviewed by inspection staff and their supervisor to provide greater oversight for all Orders including Unsafe Orders and Stop Work Orders. As well, on a quarterly basis, the inspection manager meets with building inspection supervisors to ensure an appropriate course of action has been taken.

SOP #IS-003-20, "Managing Orders for Compliance", includes specific time frames for reviewing of issued Orders. These timelines have been recently programmed into the AMANDA system so that inspectors and management are reminded of the status of the Order and so that discussion can take place to determine the appropriate next steps to achieve compliance.

SOP #IS-004-20, "Managing Investigations / Compliant Files", also includes time frames for commencing investigations based on the nature of the complaint. For example, allegation of an unsafe or emergency conditions must be investigated the same day the information is received. Timelines for reviewing the status of complaints and investigations have also been programmed in the AMANDA system so that inspectors and management can determine the appropriate next steps.

The BSD will also be adding additional resources to assist with this action plan.

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2. *Develop and Implement a Policy to Guide the Preparation, Documentation, Supervision and Follow-up of Prosecution Files*

In pursuance with the Building Code Act 1992, if an order of an officer under section 15.2 (2) is not complied with, legal actions should be considered.

Inspection Services is responsible for progressive monitoring and enforcement of orders up to and including prosecution and injunction.

Our review of the prosecution files identified the following:

- Legal information was not documented in AMANDA. In York Region, prosecution is managed by the prosecutors of the Region. The City's Legal Services facilitates the process. Legal Services passes legal information, such as comments, reports, summons and outcomes, to BSD when received from the Region. However, such legal information was maintained in hard copy but not documented in AMANDA.
- Certain files were open for months without follow-up actions or any documents.

Per discussion with management, the lack of guidance on prosecution files was cited as the primary cause of these issues. Management confirmed that a policy was being drafted at the time of the audit.

Without policies to guide the preparation, documentation, supervision and follow-up of prosecution files, BSD could fail to fulfil the responsibilities in progressive monitoring and enforcement of orders up to and including prosecution and injunction. Management has no mechanism to ensure the contractors' ultimate compliance with the Building Code Act and the Ontario Building Code.

Since the commencement of the audit, management has taken steps to improve the prosecution file process.

Recommendations

We recommend that management:

- Review the prosecution files to ensure that appropriate course of action is taken, and file documentation and status are up to date.
- Finalize the policy to guide the preparation, documentation, supervision and follow-up of prosecution files. Ensure that the policy is implemented, followed and reinforced.
- Work with the City's Legal Services to improve the effectiveness and efficiency of the prosecution file process.

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Management Action Plan

The BSD agrees with the recommendations and has taken steps to improve the prosecution file process.

The BSD transitioned to the new AMANDA LPRO folders created by our Legal Services team. The new LPRO folders allow for documentation by both the Legal Service team and the BSD. Documentation includes the status which are being reviewed on a monthly basis to determine appropriate follow up action.

The BSD will develop an SOP for the preparation, documentation and supervision of prosecution files by Q2, 2022.

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3. *Develop Inspection Documentation Standards and Leverage Technology to Ensure that Inspection Records are Complete and Reliable*

In pursuance to the Ontario Building Code and case law, BSD shall prepare written records of every inspection of the construction of a building in the course of performing functions. Inspection results should include certain specific details, such as date and reason of the inspection, whether non-compliance with the Building Code was observed in the course of the inspection and the details of the non-compliance. The BSD's mobile solution has photographs and mark-up features, which allow building inspectors in the field to use their iPhone to record the findings of their inspections by taking photographs of the building work and adding notes and result codes.

Our review of inspection documentation identified the following:

- In most of the files the Preliminary Meeting Inspections, a mandatory inspection at the commencement stage of a construction, were not complete or documented.
- There is lack of specific details and consistency in certain inspection results. Some inspectors entered minimal details in AMANDA. Inspection Services maintains Service Level Guidelines for various types of inspections. Inspectors conduct the inspections against the standards listed in these guidelines. If the constructions meet the guidelines, building inspectors will mark "Pass" in AMANDA. Detailed descriptions will only be given if deficiencies are identified.
- Visual records such as photographs and markups were not consistently used for all files. While some inspectors take photographs for investigations and orders, photographs are not used in most mandatory inspections.
- As mentioned earlier, similar findings were also identified in order and complaint investigation documentation.

Per discussion with management, the absence of inspection documentation standards is cited as the primary cause of lack of details and consistency in inspection documentation.

In consultation with the City's Legal Services, the following advice and best practices were recommended to management:

- The Ontario Building Code and case law provide guidance as to the content requirements to be included within an inspection report and the obligations of inspectors while performing an inspection. It is advisable to include certain specific details and information within a City inspection report.
- The Building Code Act permits photographs as part of an inspection. It would be advisable from a legal perspective to implement a policy and procedure and train staff to identify when photographic evidence is to be taken and how it is to be taken, recorded and stored.

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Inspection results form the basis of City's inspection records. The accuracy and completeness of documentation is important in supporting inspection pass and fail decisions, particularly in view of potential legal liability. Increased and standardized use of photographs for recording inspection activity while on a job site will improve inspector efficiency and effectiveness by providing strong evidence and backups to the visual inspections. Without improving the accuracy and completeness of inspection documentation, it could pose legal, financial and reputational risks to the City.

Recommendations

We recommend that management:

- Incorporate the advice as recommended to management by the City's Legal Services department.
- Work with Legal Services to develop and implement inspection result documentation standards and policies for inspection results and use of photographs.
- Provide building inspectors with training on the new standards and policies.

Management Action Plan

The BSD agrees with the recommendations and will meet with Legal Services and the Access and Privacy Officer to develop inspection result documentation standards.

Meetings will be scheduled with representatives from Legal Services and the Access and Privacy Officer in Q2 of 2022. An SOP will be developed in Q3 of 2022. Training and implementation of the SOP will be completed in Q4 of 2022.

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4. Develop and Implement an Action Plan to Monitor and Resolve Inactive Building Permits

In accordance with the Building Code Act 1992, 10.2 and the Ontario Building Code 1.2.5.1 and 1.3.5.2, when construction projects in the City reach prescribed stages, contractors schedule inspections with a building inspector. Once inspection requirements have been successfully fulfilled, the permit is closed. However, building permit holders do not always schedule inspections when construction stages are complete, and as a result, building permits remain open.

Inactive permits are defined as those without inspection attempts in the last six months. Pursuant to the by-laws and regulation, BSD has established an SOP to guide the related process. The SOP requires the Manager, Supervisor and Inspectors to undertake regular review and provide input, with the objective to maintain the building permits active.

Our review of the process identified the following:

- Historically the City has a large number of inactive permits. BSD records show that there were over 11,000 inactive permits in 2008. While management introduced processes to address inactive permits in recent years, as of November 2021, there were over 5,000 inactive permits. While the inactive permits only account for 3% of all issued permits, they date back as far as 1979.
- In 2008, BSD management submitted to Council a report on the inactive permits. Council also approved an Outstanding Permit Policy upon request. This Policy allowed any inactive permits greater than 3 years but less than 8 years old to be inspected for visible safety requirements only. Management indicated the desire to review the 2008 Policy in consultation with Legal Services, and to bring forward any required amendment for Council consideration at a future date. In the interim management has sought to resolve inactive permits without relying on the Policy. However, management has yet to advise Council to update or retract the Policy. In addition, management has not provided Council with regular updates on inactive permits since.

Per discussion with management, AMANDA currently does not have a report to capture inactive permits for management to monitor and manage them. The inactive permit SOP was introduced in February 2021; however, the current pandemic has limited BSD's ability to perform proactive inspection and follow-up of inactive permits.

Management stated that inventories of inactive building permits are not unique to Vaughan and are not necessarily a significant risk to the City. Under the Building Code Act, 1992, the onus is on the contractors to request inspections when construction stages are complete. While inactive permits may represent limited legal or financial risks, they could negatively affect the City's reputation.

Since the commencement of the audit, management has taken steps to improve inactive permit data gathering.

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Recommendations

We recommend that management:

- Continue to improve the functionality of the reporting system, with the purpose of gathering accurate data of inactive permits for management to monitor and manage the situation.
- Implement the policy of inactive permits and proactively follow up with permit holders to maintain the building permits active.
- Provide periodical updates to Council on the status of inactive permits.
- Bring forward a report for Council's consideration that would recommend updating or retracting the outdated outstanding permit policy.

Management Action Plan

The BSD agrees with the recommendations

A dashboard reporting system for inactive permits is in development and should be fully functional by Q3 of 2022. The new reporting system will equip the inspection team with the necessary information to monitor and manage inactive permits.

SOP #IS-006-21, "Managing Building Permits to Maintain and Active Status" was developed to reduce the probability of active permits becoming dormant or inactive permits. This policy was fully implemented in Q2 of 2021.

Management will be meeting with Legal Services to review the 2008 Outstanding Building Permits Policy in Q3 of 2022. This review may result in recommendations to update the policy or replace it with a new SOP. This initiative is expected to be completed in 2022.

The inspection team has a program in place to clear old permits. The status of inactive permits will be reported to Council on an annual basis. In addition, the BSD will be adding resources to assist with this action plan.