



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Department of
Buildings' Controls Over Illegal Curb
Cuts and Driveways

FM18-138A

June 30, 2021

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

June 30, 2021

To the Residents of the City of New York:

My office has audited the Department of Buildings (DOB) to determine whether: (1) DOB had adequate controls over complaints related to illegal curb cuts and driveways; and (2) financial penalties were properly assessed in connection with illegal curb cuts and driveways, and if not, determine potential monetary effects of the failure to properly assess those penalties.

The audit found that, with respect to curb cuts and driveways, DOB did not adequately oversee its processes for responding to complaints and for issuing permits for their installation. In particular, we found deficiencies in all aspects of DOB's complaint intake, inspection, and disposition processes. The audit also found that DOB inappropriately issued permits that did not meet all the required conditions set forth in the City's Zoning Resolution, and therefore facilitated the installation of illegal curb cuts and driveways. Additionally, the audit found that DOB could not produce reliable reports of curb cut complaints, dispositions, supervisory reviews, and user access rights—hindering its ability to perform proper reviews of the above-mentioned processes. As a result, we estimate that the City potentially failed to collect as much as \$430,014 in penalties due to DOB's failure to respond to curb cut and driveway complaints and as much as an additional \$32,604 due to errors by DOB in its handling of required curb cut and driveway re-inspections as well as errors in filing violations with the Office of Administrative Trials and Hearings (OATH)—the City's violation enforcement agency.

The audit made 27 recommendations, including that DOB should: identify curb cut and driveway complaints that merit a field inspection; conduct these inspections timely; establish specific training for curb cut and driveway inspections to ensure that field inspectors have the requisite knowledge to assess the legality of curb cuts and driveways; ensure that field inspectors follow established criteria during inspections; ensure that field inspectors correctly identify violating conditions and issue violations as appropriate; and ensure that all assessed violations are filed with OATH prior to the pre-set hearing date as required. Additionally, the audit recommended that DOB supervisory field inspectors review the results of all field inspections prior to finalizing their results; that curb cut and driveway permit applications contain all required documentation and that the information contained on this documentation is accurate prior to approving the applications; and that DOB produce accurate and reliable reports of supervisory reviews and user access rights.

The results of the audit have been discussed with DOB officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report. If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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ADDENDUM

THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the Department of Buildings' Controls over Illegal Curb Cuts and Driveways

FM18-138A

EXECUTIVE SUMMARY

The Department of Buildings (DOB) regulates the use of more than 1,000,000 buildings and 40,000 active construction sites to ensure that such use is safe and lawful. In doing so, DOB enforces the New York City (City) Construction Codes, Zoning Resolution, and the New York State Multiple Dwelling Law.

DOB's specific areas of enforcement include the laws and rules related to the installation and maintenance of curb cuts made to enable vehicles to drive smoothly into driveways, garages, parking lots, loading docks, and commercial drive-throughs. DOB enforces compliance with these legal requirements and promotes public safety through its review and approval of building plans, issuance of permits and licenses, and its conduct of inspections and issuance of violations.

To legally create a new curb cut in the City of New York, a homeowner must obtain a DOB Curb Cut Permit and an approved Department of Transportation (DOT) Roadway/Sidewalk Permit to allow a temporary sidewalk closure. Existing curb cuts must also adhere to the Zoning Resolution codified by the Department of City Planning that specifies the allowable dimensions and distances from any obstacles, adjacent curb cuts, and street corners.

The City routinely receives complaints that private homeowners have illegally installed curb cuts and paved driveways on their properties. Most such complaints received by DOB are made by the public through NYC's 311 service and are automatically classified as Priority D, the lowest priority of complaints.¹

DOB's procedures require curb cut complaints forwarded to DOB by the 311 system to be reviewed by DOB Triage Command Officers (triage officers) who then assess their validity. If a triage officer determines a complaint to be invalid, the triage officer closes the complaint. If a

¹ Depending on the type and severity of a complaint, DOB assigns it one of four priority codes: A, B, C, or D. Priority A complaints are hazardous and present an imminent risk to public safety (e.g., shaking building), and must be inspected within 24 hours. Priority B complaints are serious (e.g., illegal conversion, inadequate sidewalk shed or scaffolding), but do not present an imminent risk to public safety in DOB's judgment and must be inspected within 40 days. Priority C complaints allege violations that DOB considers non-hazardous (e.g., defective plumbing), while priority D complaints involve quality-of-life problems (e.g., illegal curb cuts).

complaint is determined to be valid, the triage officer forwards the complaint to DOB's Construction unit, which then assigns it to field inspection personnel for inspection.

When a DOB inspector observes an illegal condition within DOB's jurisdiction, the inspector issues a violation to the property owner. Illegal curb cuts may result in the issuance of multiple violations that must be corrected and for which penalties may be assessed.

For our audit scope period, we obtained from DOB a complaint listing with 7,256 entries, of which 5,783 were individual complaints associated with 3,874 properties of potentially illegal curb cuts, driveways, and carports according to DOB's internal reporting. For the 5,783 individual complaints received during our audit scope, DOB performed 3,238 inspections for 3,020 properties. Of these 3,238 inspections, DOB issued 1,435 Office of Administrative Trials and Hearings' Environmental Control Board (OATH) violations related to 1,203 properties.

Audit Findings and Conclusion

With respect to curb cuts and driveways, DOB did not adequately oversee its processes for responding to complaints and for issuing permits for their installation. In particular, we found deficiencies in all aspects of DOB's complaint intake, inspection, and disposition processes. DOB did not ensure that the conditions referenced in the complaints it received were inspected timely or that complaints received from the City's 311 system were handled appropriately, including with regard to the closure of original, unaddressed complaints, and did not ensure that inspections were properly conducted in every instance where they were warranted. Additionally, DOB did not ensure that properties designated as requiring further research and inspection were actually re-inspected.

Further, DOB lacked training for its field inspectors regarding curb cuts and driveways and did not provide sufficient supervisory oversight of their inspections. DOB did not ensure that field inspectors adhered to established criteria during field inspections, and did not provide its field inspectors with training specific to inspections of curb cuts and driveways.

Additionally, DOB lacked controls over the issuance of violations for illegal curb cuts and driveways. In particular, DOB did not ensure that: a violation was issued in every instance where an inspection revealed an illegal condition; that photographs depicting violating conditions were taken and uploaded into DOB NOW; or that field inspectors' written remarks input into DOB NOW were appropriate and complete. In addition, we found that not all violations were filed with OATH and, therefore, properly adjudicated.

DOB field inspectors also did not appropriately refer all complaints that fall under other agencies' jurisdictions to those agencies. Further, field inspectors did not address violating conditions observed in areas adjacent to inspected properties if those conditions were not expressly the subject of the original complaint.

In addition, in conducting the audit, we also found that DOB reports generated from its databases in response to auditor inquiries of curb cut complaints, dispositions, and supervisory reviews contained inadequate and/or inconsistent information and were therefore unreliable.

Finally, DOB inappropriately issued permits in situations where the curb cut applications did not meet all the required conditions set forth in the City's Zoning Resolution. By issuing these permits, DOB facilitated the installation of illegal curb cuts and driveways.

DOB's failures related to inspecting and permitting curb cuts increased risks to public health and safety and inconvenience for neighborhood residents and visitors. In addition, based on a sample of 1,024 complaints made during the audit scope period, we found that the City potentially failed to assess and collect as much as \$430,014 in penalties due to DOB's failure to adequately respond to 502 (49 percent) of those complaints. In addition, based on a review of the total population of complaints received by DOB in the audit scope period, we found that the City may have foregone as much as an additional \$32,604 due to additional errors by DOB in its handling of re-inspections and filing of violations with OATH.

Audit Recommendations

To address the issues raised by this audit, we make 27 recommendations including:

In connection with deficiencies in processing complaints of illegal curb cuts and driveways, DOB should enhance its procedures to ensure that:

- Triage officers correctly identify curb cut and driveway complaints that merit a field inspection and forward them to the Construction unit;
- Allegedly illegal curb cuts and driveways referenced in complaints are inspected timely, according to DOB's standards; and
- All assessed OATH violations are filed prior to the pre-set hearing date as required.

In connection with DOB's inadequate oversight and training of field inspectors, DOB should:

- Ensure that DOB supervisory field inspectors (supervisors) review the results of all field inspections prior to finalizing their results;
- Ensure that field inspectors complete and submit a checklist as part of their inspections;
- Ensure that field inspectors use appropriate measurement tools during inspections to ensure that homeowners are adhering to the proper dimensions of a curb cut and driveway; and
- Establish specific training for curb cut and driveway inspections to ensure that field inspectors have the requisite knowledge to assess the legality of curb cuts and driveways.

In connection with DOB field inspectors' inadequate inspections of curb cuts and driveways, DOB should:

- Ensure that inspectors' comments related to inspections of curb cuts and driveways are relevant, complete, and appropriate with respect to the complaint;
- Ensure that field inspectors correctly identify violating conditions and issue violations as appropriate; and
- Ensure that potentially violating conditions under DOT's jurisdiction are referred and forwarded to DOT so that it may appropriately follow up.

In addition, DOB should:

- Verify that information submitted on site surveys is accurate and reflects the existing condition of a property prior to approving a curb cut application;
- Verify that the information submitted in support of curb cut and driveway permits contains all required documentation;

- Confirm that applications submitted include all necessary detailed information, including: the purpose of the curb cut (access to a garage or parking lot); measurements of the curb cut; the number of garages and parking pads to be accessed via the curb cut(s); the location of the garage or the parking lot (on which side of the property); and the actual location of the curb cut to be installed (at the back or front of the property);
- Maintain a complete and accurate list of all user access rights for all employees who handle curb cut approvals, inspections, and dispositions; and
- Automate the detection of invalid BINs and addresses and their dispositions as such.

Agency Response

In its response, DOB agreed with 19 of the audit's 27 recommendations, partially agreed with 3 recommendations, and disagreed with the remaining 5 recommendations. For 10 of the 19 recommendations with which it agreed, DOB further stated that those recommendations are either already current practice within DOB or are "already being addressed through updated technology systems put in place since the period your audit reviewed." For the 5 recommendations the agency disagreed with, it stated, among other things, that the implementation of those recommendations is not currently practicable given the agency's available resources; or that the agency is not responsible for compliance with the recommendation. DOB also stated that "[e]ach of the locations identified in the report have also been re-inspected, and enforcement actions taken where appropriate. We agree, however, that our processes can always be improved and we will continue working to strengthen them."

AUDIT REPORT

Background

The DOB regulates the use of more than 1,000,000 buildings and 40,000 active construction sites to ensure that such use is safe and lawful. DOB does this by, among other things, enforcing multiple City laws, rules and regulations, including the City Construction Codes, Zoning Resolution, and Energy Code, as well as the New York State Multiple Dwelling Law. DOB enforces compliance with these legal requirements and promotes public safety through its review and approval of building plans, issuance of permits and licenses, and its conduct of inspections and issuance of violations.

DOB's specific areas of enforcement include curb cuts made to enable vehicles to drive smoothly into driveways, garages, parking lots, loading docks, and commercial drive-throughs. To legally create a new curb cut in the City of New York, a homeowner must obtain a DOB Curb Cut Permit and an approved DOT Roadway/Sidewalk Permit to allow a temporary sidewalk closure. Existing curb cuts must also adhere to the Zoning Resolution codified by the Department of City Planning that specifies the allowable dimensions and distances from any obstacles, adjacent curb cuts, and street corners. DOB is responsible for inspecting curb cuts in response to complaints and issuing violations where they are out of compliance with the law.

The City routinely receives complaints that private homeowners have illegally installed curb cuts and paved driveways on their properties. The installation of such makeshift driveways in front of private homes enables homeowners to avoid the hassles of street parking. However, illegal curb cuts and driveways reduce the amount of street parking available to neighbors and area visitors, potentially create safety hazards by being placed impermissibly close to fire hydrants or otherwise failing to adhere to the City's Zoning Resolution, and create situations where drivers could be improperly issued traffic violations for parking in front of an illegal driveway, all of which present potentially significant quality-of-life, monetary, and safety issues.²

Most complaints received by DOB alleging illegal curb cuts and driveways are made by the public through NYC's 311 service and are automatically classified as Priority D, the lowest priority of complaints. Illegal curb cut and driveway complaints may also be received from Community Boards or other City agencies via phone calls or emails. These latter types of complaints are forwarded directly to DOB for agency action, and are more likely than complaints from the public to be assigned higher than Priority D by DOB. DOB field inspectors can also, with the approval of a supervisor, create complaints based on conditions they observe during their inspection routes and have them immediately added to their route.

On December 7, 2015, DOB launched a new database, DOB NOW, which includes a new online inspection request and routing system. As of August 28, 2017, DOB started migrating the curb cut and driveway application process from its legacy database, the Building Information System

² There are no provisions in the Rules of the City of New York that specifically address illegal driveways with respect to traffic rules and regulations. Accordingly, City traffic enforcement agents do not determine whether a curb cut or driveway was installed illegally prior to issuing a parking violation for what appears to be an illegally parked car.

(BIS), into DOB NOW.³ However, both systems remain in effect and interface with each other.⁴ Under the DOB's current procedures, 311 complaints are forwarded to DOB through an automated interface that loads complaint information directly into DOB NOW.

DOB's procedures require curb cut complaints that have been forwarded to DOB by the 311 system be reviewed by DOB triage officers who then assess their validity. This procedure has remained in effect with the transition from use of BIS to DOB NOW. If a triage officer determines a complaint to be invalid, the triage officer closes the complaint. If a complaint is determined to be valid, the triage officer forwards the complaint to DOB's Construction unit, which then assigns it to field inspection personnel for inspection. According to DOB officials, for Priority D complaints, an initial inspection should be performed (or the complaint otherwise addressed if a field inspection is not warranted) within 90 days from the time the complaint is made, and within 60 days from the time the complaint is made for Priority C complaints.

DOB field inspectors enter inspection results remotely from each field location at the conclusion of an inspection and are required to photograph any violating conditions they encounter and upload the photographs to DOB NOW. Prior to the implementation of DOB NOW, the inspection results were documented on a hard copy form and the information was later entered into BIS. In either case, the field inspector's supervisor must review the results of the field inspection within one to two business days and attest to the validity and completeness of the inspection. However, if upon inspecting a location, a field inspector determines that the conditions encountered fall under a different agency's jurisdiction, such as DOT, the complaint is then supposed to be forwarded to the appropriate agency.

When a DOB inspector observes an illegal condition within DOB's jurisdiction, the inspector issues a violation to the property owner. These violations direct the property owners to: (1) admit the charge, pay the penalty assessed in full, correct the condition, and submit a certificate of correction to DOB; or in the alternative to (2) contest the charge and appear for a hearing at OATH.⁵ The OATH violations issued to homeowners include an associated court hearing date.

The OATH violation form has three identical pages: the top page is sent to DOB's Administrative Enforcement Unit (AEU) for processing; the second page is served on the homeowner; and the third page is maintained by DOB. The notice of violation along with a description of the conditions observed by the inspector are entered into DOB NOW remotely and automatically uploaded to OATH's database (AIMS) via an interface between the two systems after the review and approval by a supervisor. DOB has the burden of proving the factual allegations contained in a violation if there is an OATH hearing. According to *OATH Hearings Division – Rules of Practice*, the

³ During our audit scope period, BIS was DOB's main database and provided real-time data to anyone with internet access. Among other things, it contained general information about properties located in New York City, including recorded complaints, violations, actions, applications, and inspections.

⁴ DOB NOW is DOB's online platform for Professional Engineers (P.E.), Registered Architects (R.A.), Licensees, Special Inspectors, Progress Inspectors, Filing Representatives and Owners to submit jobs to the DOB. DOB NOW has a total of four parts, two of which are used in relation to curb cuts and illegal driveways: *Inspections*, which provides access to online scheduling, tracking, and notifications as well as enforcement and development inspections; and *Build*, the online platform for Professional Engineers (P.E.), Registered Architects (R.A.), Licensees, Special Inspectors, Progress Inspectors, Filing Representatives and Owners to submit jobs to DOB.

⁵ When an inspection of a complaint reveals a code violation within DOB's enforcement authority, DOB may issue an OATH violation and/or a DOB violation. An OATH violation is issued when a property does not comply with a provision of the NYC Construction Codes and/or Zoning Resolution. A DOB violation is a notice that a property is not in compliance with a cited provision of applicable law and includes an order from the Commissioner of DOB to correct the violating condition. Illegal curb cut and driveway violations are OATH violations because they are based on noncompliance with the Zoning Resolution. All of the DOB issued violations referred to in this report are OATH violations.

“evidence at the hearing may include witness testimony, documents and objects. Documents may include but are not limited to, affidavits or affirmations, business records, [and] photographs.”

Illegal curb cuts may result in the issuance of multiple violations that must be corrected and for which penalties may be assessed. The average financial penalty assessed pursuant to a curb cut violation was \$572 during our audit scope period (July 1, 2016 through October 1, 2018). For the population of 5,783 complaints that we reviewed during that scope period, DOB issued 1,435 OATH violations related to 1,203 properties. Open or uncorrected violations prevent an owner from selling, refinancing, or obtaining a new Certificate of Occupancy or Letter of Completion for their property. However, DOB itself has no authority to compel property owners to correct violating conditions or to pay the penalties assessed by OATH.

For our audit scope period, we obtained from DOB a listing of 7,256 entries, of which 5,783 were individual complaints associated with 3,874 properties of potentially illegal curb cuts, driveways, and carports according to DOB’s internal reporting.⁶ Complaints of illegal curb cuts, driveways, and carports are grouped together and designated as complaint category code 35 by the 311 service. However, our audit did not focus on carports because we only found two instances of such complaints in our sample. For the 5,783 individual complaints received during our audit scope, DOB performed 3,238 inspections for 3,020 properties.⁷ 2,597 complaints were not deemed by DOB triage officers or inspectors to merit an inspection and were instead administratively closed.

Objectives

The objectives of this audit were:

1. To determine whether DOB had adequate controls over complaints related to illegal curb cuts and driveways; and
2. To determine whether financial penalties were properly assessed in connection with illegal curb cuts and driveways, and if not, determine potential monetary effects of the failure to properly assess those penalties.

Scope and Methodology Statement

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

⁶ Each property in New York City is assigned a unique Building Identification Number (BIN). Of the 3,874 properties, 5 could not be geocoded based on the complaint information sent by 311. Complaints that cannot be geocoded or located based on incomplete address information from 311 are assigned one of five BINs depending on the borough. 507 complaints were associated with these 5 BINs.

⁷ Of the 3,238 inspections, 3,186 were initial inspections and 52 were re-inspections.

The scope of this audit covers the period from July 1, 2016 through October 1, 2018. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with DOB officials during and at the conclusion of this audit. A preliminary draft report was sent to DOB and was discussed with DOB officials at an exit conference on January 21, 2021. On April 2, 2021, we submitted a draft report to DOB with a request for written comments. We received a written response from DOB on April 23, 2021.

In its response, DOB agreed with 19 of the audit's 27 recommendations, partially agreed with 3 recommendations, and disagreed with the remaining 5 recommendations. For 10 of the 19 recommendations with which it agreed, DOB further stated that the recommendations are already current practice within the agency or are "already being addressed through updated technology systems" (#s 6, 7, 8, 9, 15, 17, 22, 23, 24, 26).

DOB partially agreed with the audit's recommendation to enhance its procedures to ensure that illegal curb cut and driveway inspections are performed timely and according to DOB standards (#4), citing significantly improved complaint response times reported since the audit's scope period. DOB partially agreed with the recommendation to automate the detection of invalid BINs and addresses and their dispositions as such (#27), stating that some complaints can be successfully resolved without complete BIN or address information. DOB also partially agreed with the recommendation that triage officers and field inspectors conduct follow-up research and re-inspections as warranted (#5), asserting that field inspectors—but not triage officers—are assigned such responsibilities.

For 3 of the 5 recommendations with which the agency disagreed—specifically, to establish and perform routine analysis of performance metrics for field inspections (#11); to instruct field inspectors to report potentially illegal curb cut driveways observed in the field for inspection and to flag areas with large concentrations of illegal curb cuts and driveways for a neighborhood inspection sweep (#14); and to require field inspectors to photograph all field inspection sites regardless of whether a violation has been issued (#19)—DOB stated that implementation of those recommendations is not currently practicable given the agency's available resources.

For the remaining 2 recommendations it disagreed with, DOB stated the agency is not responsible for compliance with those recommendations. Specifically, DOB disagreed with the audit's recommendation that Plan Examiners verify information submitted on site surveys (#21), stating that Plan Examiners are "not required to perform comprehensive, independent verification of information that licensed surveyors provide." Finally, DOB disagreed with the recommendation that the agency consider requiring photographs of proposed curb cut sites and their immediate surroundings with permit applications, and of the completed curb cut and/or driveway (#25), asserting that "requiring photographs to accompany a class of applications is unprecedented and not supported by the Building Code."

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

FINDINGS AND RECOMMENDATIONS

With respect to curb cuts and driveways, DOB failed to adequately oversee its processes for responding to complaints and for issuing permits for their installation. In particular, we found deficiencies in all aspects of DOB's complaint intake, inspection, and disposition processes. DOB did not ensure that the conditions referenced in the complaints it received were inspected timely or that complaints received from the City's 311 service were handled appropriately, including with regard to the closure of original, unaddressed complaints, and did not ensure that inspections were properly conducted in every instance where they were warranted. Additionally, DOB did not ensure that properties designated as requiring further research and inspection were actually re-inspected.

Further, DOB lacks adequate training for its field inspectors and did not provide sufficient supervisory oversight of their inspections. DOB did not ensure that field inspectors adhered to established criteria during field inspections, and did not provide its field inspectors with training specific to curb cuts and driveways.

Additionally, DOB lacks controls over the issuance of violations for illegal curb cuts and driveways. In particular, DOB did not ensure that: a violation was issued in every instance where an inspection revealed an illegal condition; that photographs depicting violating conditions were taken and uploaded into DOB NOW; or that field inspectors' written remarks input into DOB NOW were appropriate and complete. In addition, we found that not all violations were filed with OATH and, therefore, properly adjudicated.

DOB field inspectors also did not appropriately refer all complaints that fall under other agencies' jurisdictions to those agencies. This increased the risk that potentially violating conditions would never be addressed. Further, field inspectors did not address violating conditions observed in areas adjacent to inspected properties if those conditions were not expressly the subject of the original complaint.

In addition, in conducting the audit, we also found that DOB reports generated from its databases in response to auditor inquiries of curb cut complaints, dispositions, and supervisory reviews contained inadequate and/or inconsistent information and were therefore unreliable.

Finally, DOB inappropriately issued permits in situations where the curb cut applications did not meet all the required conditions set forth in the City's Zoning Resolution. By issuing these permits, DOB facilitated the installation of illegal curb cuts and driveways.

Based on the average amount of the financial penalties imposed by OATH for illegal curb cuts and driveways, the City potentially failed to assess and collect as much as \$430,014 in penalties during our audit scope due to DOB's failure to adequately respond to 502 (49 percent) of the 1,024 complaints we sampled. For the 502 complaints that DOB did not adequately respond to, we found 803 instances of deficiencies as presented in Table I below. In addition, based on a review of the total population of complaints received by DOB in the audit scope period, we found that the City may have foregone as much as an additional \$32,604 in penalties as a result of 17 instances where complaints requiring further research and re-inspections were not re-inspected, resulting in a potential loss to the City of \$9,724, and 40 instances where violations were issued but not filed with OATH and so never adjudicated, potentially resulting in as much as \$22,880 in losses to the City.

Deficiencies with the curb cut complaint intake, inspection, and disposition processes, where we were able to estimate a monetary effect, are summarized in Table I and detailed in the findings that follow.

Table I

Deficiencies with Controls over
Sampled Curb Cut and Driveway
Complaints with a Monetary Effect

Deficiency	Occurrences	Potential Maximum Effect (\$)
DOB Triage Officers Improperly Close Complaints and as a Result, Properties May Not Have Received Field Inspections	35	20,020
DOB Triage Officers Inaccurately Deemed New Complaints to be Duplicates and Improperly Closed Them	16	9,152
Complaints Requiring Further Research and Re-Inspection Were Not Re-Inspected	17	9,724
DOB Field Inspectors' Comments Were Inadequate	213	121,836
Field Inspectors Dismissed Complaints Where Violations Were Warranted	231	132,132
Conditions Under DOT's Jurisdiction Not Referred to DOT	91	22,750
DOB Inappropriately Issued Curb Cut and Driveway Permits	200	114,400
Total	803	430,014

Deficiencies in Processing Illegal Curb Cut and Driveway Complaints

This audit found deficiencies in multiple DOB processes for managing curb cut and driveway complaints. These processes rely on triage officers to assess the validity of curb cut and driveway complaints received by DOB. During this assessment, triage officers conduct background research on the relevant properties, identify duplicate complaints, close invalid complaints, and assign valid complaints to the Construction unit for inspection or re-inspection. Field inspectors from the Construction unit thereafter inspect the properties to determine whether illegal curb cuts or driveways exist.

The deficiencies in these processes identified by the audit include:

- Triage officers improperly closed complaints and as a result, properties may not have received required field inspections;
- Triage officers inaccurately deemed new complaints to be duplicates and improperly closed them;
- DOB protocols for closing duplicate complaints resulted in improper closures and inaccurate performance measurements;
- Properties that received repeated complaints were re-inspected when they should have been closed as duplicates;
- Complaints were not inspected timely;
- Complaints requiring further research and re-inspections were not re-inspected; and
- Violations were not filed with OATH and remained unenforced.

These deficiencies are discussed in more detail below.

DOB Triage Officers Improperly Closed Complaints and as a Result, Properties May Not Have Received Required Field Inspections

According to DOB guidelines, curb cut and driveway complaints may be deemed “invalid” and not suitable for field inspection for the following reasons:

- Repeated complaints are received about a property that was the subject of a prior complaint and an inspection has taken place within three weeks of a new complaint having been received;
- A new complaint is received that concerns a property that is the subject of a prior open complaint that has not yet been inspected or otherwise addressed, regardless of timing; and
- A complaint contains invalid information, such as a missing house number or an invalid address that cannot be “geocoded” (i.e., the address given cannot be matched with a BIN).

Under all other circumstances, curb cut and driveway complaints should be forwarded to the Construction unit and assigned for inspection by field inspection personnel. Of the 5,783 individual complaints received during our audit scope, we judgmentally selected 1,024 (18 percent) of those complaints for our review. Of the 1,024 sampled complaints, we found 68 complaints (7 percent) to have been improperly closed. As a result, those 68 complaints were never inspected or referred to other authorities as they should have been.

For 52 of the complaints that we found were improperly closed, the triage officers justified the closures by stating that DOB’s records contained either a Curb Cut Permit authorizing the curb cut’s installation, or a Certificate of Occupancy that allowed the curb cut to exist. However, according to DOB officials, neither of these documents is sufficient to automatically establish the legality of a curb cut.

The curb cut itself should still be inspected because a homeowner may have illegally altered or extended a curb cut or added additional curb cuts without DOB approval after a Curb Cut Permit or Certificate of Occupancy was issued.⁸

We also found that the remaining 16 improperly closed complaints were closed for what appeared to be inappropriate reasons, such as “Curb cut existing since 1976” and “Sidewalk parking is a police matter.” According to DOB officials, each of these complaints should have, at minimum, been corroborated by a field inspection or referred to the appropriate authorities.

When valid complaints are improperly closed, they do not receive a field inspection and as a result, there is an increased risk that illegal curb cuts and driveways remain in place, potentially jeopardizing public safety and harming neighborhood quality of life by reducing available street parking. In addition, the failure to properly inspect alleged illegal curb cuts and driveways reduces the City’s ability to levy and collect financial penalties from property owners for illegal activities. Of the 68 curb cut and driveway complaints that we found were improperly closed, 35 of them (51 percent) were for properties that appeared to have illegal curb cuts based on publicly available information such as Google Street View. This included 31 of the 52 complaints (60 percent) that were closed solely because a Curb Cut Permit or Certificate of Occupancy was on file. Based on the average penalty assessed by OATH for illegal curb cuts or driveways, the inappropriate closures of complaints may have resulted in as much as \$20,020 in foregone financial penalties.

DOB Response: “The audit report noted that existing curb cuts must comply with zoning regulations. This is not in fact accurate; existing legal curb cuts are grandfathered and may continue in their use without the need to comply with current zoning requirements... [i]t is inaccurate to suggest that a triage officer administratively closing a complaint based on the existence of a valid curb cut permit or Certificate of Occupancy is by definition improper. Triage officers make an assessment to determine whether, based on substantiated Department records, the statement of allegations can be properly addressed without an inspection. While some situations warrant an inspection following review of Department records, this is not uniformly the case. Whether an inspection is required depends on the nature of the allegations and the records under review.”

Auditor Comment: This assertion contradicts what DOB officials stated and later confirmed in subsequent emails dated February 20, 2019 and May 10, 2019, that neither the existence of a valid curb cut permit nor the existence of a Certificate of Occupancy is sufficient to automatically establish the legality of a curb cut. As a result, the curb cut must still be inspected because a homeowner may have illegally altered or extended a curb cut or added additional curb cuts without DOB approval after a Curb Cut Permit or Certificate of Occupancy was issued.

DOB Triage Officers Inaccurately Deemed New Complaints to Be Duplicates and Improperly Closed Them

DOB often receives repeated curb cut and driveway complaints from community residents about the same properties. As a result, these properties may have multiple complaints open during the same time period. As noted, according to DOB officials, any such complaints are considered “duplicates” if they are received within three weeks of an inspection of the property and/or closure of a prior identical complaint. Such “duplicates” are then closed. If a new complaint is received

⁸ Work without a permit is a DOB violation punishable by civil penalties ranging from \$600 to \$10,000.

three weeks or longer after an initial complaint was inspected or closed, the property should be inspected.

However, we found that instead of assigning a new complaint received three weeks or longer after the initial complaint to the Construction unit for an inspection, triage officers inappropriately closed these new complaints based on the prior inspection and/or closure of prior complaints that occurred more than three weeks prior to the new complaints having been received by DOB. Specifically, in our sample of 1,024 complaints, 204 were deemed duplicates by DOB triage officers and closed. However, we found that DOB triage officers dismissed 16 of these complaints by referring to previous complaints that had been inspected or closed more than three weeks prior. In many cases, the previously-addressed complaint was closed much longer than three weeks prior to the one being closed—an average of 239 days and in one case as long as ten years. These complaints should not have been considered duplicates but instead, under DOB guidelines, they should have received new inspections.

When new complaints about a property that was the subject of a prior complaint and inspection are closed without a new inspection, the possibility remains that a new illegal curb cut or driveway was created on the property since the prior inspection and that new illegal action would go undetected. Based on the average penalty assessed for an illegal curb cut and driveway, the lack of inspections of these 15 properties could have cost the City up to \$8,580 in foregone financial penalties.⁹

DOB Protocols for Closing Duplicate Complaints Result in Improper Closures and Inaccurate Performance Measurements

Of the 1,024 sampled complaints, we found 15 complaints associated with 12 properties that had multiple complaints where DOB triage officers closed the initial complaint and left a subsequent complaint open for a disposition. When we brought this to the attention of DOB officials, they stated that closing the older complaint rather than a subsequently made duplicate complaint is “the Department’s procedure.” However, this procedure effectively resets the clock that determines when a complaint must be addressed by referencing the date the latest complaint was received, rather than the date the original complaint was received. As a result, DOB “turns back the clock” and gives the appearance that complaints are addressed in a shorter period of time than is the case. Accordingly, any efforts DOB makes to track its timeliness in inspecting complaints, evaluating performance and productivity, and determining the adequacy of its staffing and other resources is necessarily distorted by eliminating the earlier complaint dates in its systems. Moreover, if new complaints are received before the 90-day time limit and the oldest complaint is always closed, then properties can have pending complaints “open” and remain uninspected indefinitely. As a result, complaints might never be addressed timely or at all.

In addition, we found one case where two complaints made on a single property were closed based on the existence of a prior complaint which in fact referred to a different property. In addition, we found two complaints that appear to have been closed based on themselves, that is, in DOB’s records the basis for their closures were citations to their own complaint numbers. These instances of apparent improper complaint closures should similarly have been automatically detected and prevented. Where complaints can be closed by referencing duplicates that themselves were never properly inspected, the substance of these complaints may never be properly addressed.

⁹ One of these properties had two complaints made against it, for a total of 16 complaints.

Properties That Received Repeated Complaints Were Re-Inspected When They Should Have Been Closed as Duplicates

As noted above, according to DOB officials, properties that receive complaints within three weeks of a prior complaint are considered duplicates and closed. Additionally, complaints that are received for properties where there is already an existing open, uninspected complaint, are closed. However, the audit found that, of the 5,783 curb cut and driveway complaints that were made about 3,020 separate properties during our scope period, 145 received multiple complaints and 65 (45 percent) of these received at least two separate inspections where they should have received only one. In accordance with DOB procedures, the complaints that prompted the multiple inspections should have been closed as duplicates.

Based on data in DOB NOW, we specifically found that:

- 18 properties were inspected, then received another complaint within 3 weeks of the initial complaint and were re-inspected, instead of the subsequent complaint being closed as a duplicate;
- 22 properties with multiple complaints had two separate inspections (on two different days) completed after the second complaint was received and both complaints were open and pending inspection;
- 8 other properties received multiple complaints on the same day and had two separate inspections completed (on the same day or different days); and
- 17 properties with multiple complaints had two separate inspections – the inspection of the second complaint was conducted first, and then a subsequent inspection was conducted to address the first complaint. In a number of cases, the first complaint was left open for a very long period of time after the subsequent complaint was already addressed—an average of 181 days and as long as 442 days--before the initial complaint was inspected.

Furthermore, we found that 18 of those 65 properties with multiple open complaints were both assigned to a single inspector's route and "inspected" on the same date—giving the appearance that the inspector completed two inspections when in reality there was only one. Of those 18 complaints, 11 complaints were made within 3 weeks of each other and inspected by the same inspector. At the exit conference, DOB officials stated that the purpose of the inspections being recorded in this fashion was to note the date each open complaint was inspected and closed and not to indicate that "multiple inspections" were conducted. However, the data provided by DOB did not reflect DOB's explanation in that there was a concurrent inspection for two separate complaints. Therefore, the effect remains that two "inspections" of two "complaints" are recorded in DOB's records.

Complaints Not Inspected Timely

Most curb cut and driveway complaints are designated Priority D complaints and, according to DOB officials, an initial inspection should be performed within 90 days from the time the complaint is made. A Priority C complaint should be inspected (or otherwise addressed if a field inspection is not warranted) within 60 days from the time the complaint is made. However, DOB did not consistently adhere to these standards.

DOB performed 3,186 initial field inspections for the 3,020 properties subjected to 5,783 curb cut complaints during our audit scope. Table II below provides a breakdown of the 3,186 initial curb cut and driveway inspections performed during our review period.

Table II

Time Periods from Complaint to First Inspection

Complaint Category	Total Initial Inspections	Complaints Not Inspected on Time	Percent
C	27	23	85%
D	3,159	2,300	73%
Total	3,186	2,323	73%

DOB took an average of 128 days to inspect Priority C complaints and an average of 259 days to inspect Priority D complaints—exceeding its required time limits by more than twice for both Priority C and D complaints (68 and 169 days, respectively, in excess of DOB standards), and did not inspect such complaints timely for nearly 3 out of every 4 complaints. Furthermore, there were two Priority D complaints that took over two years (801 days) to be inspected.

DOB did not ensure that complaints forwarded to them from the 311 service were addressed within its required time frames. According to DOB officials, this occurred because of an increase in the intake of higher-priority B complaints that had to be addressed by agency inspectors overall.

Management’s failure to address these complaints timely by its internal standards potentially allowed illegal curb cuts to remain on the streets for long periods of time, which increased risks to public safety, decreased available street parking, and delayed imposition of financial penalties.

Complaints Requiring Further Research and Re-Inspections Were Not Re-Inspected

Even with inspections, some curb cuts and driveways may require further research to determine their legality. To conduct this research, field inspectors can use their DOB issued laptops while they are at inspection sites to search BIS and DOB NOW for information about the properties, existing Certificates of Occupancy, and planting requirements (areas in front yards and sidewalks that must have soil and planting rather than paving for environmental and aesthetic purposes). In addition, they can call their supervisors at the borough offices to assist them in conducting these and other forms of research, such as reviewing hardcopy records. In cases where there is insufficient information to make a determination of legality at the time of the inspection, the complaint is flagged for a “follow-up inspection to be scheduled upon further research.”

Thirty-two of the 5,783 individual complaints received during the audit scope were designated for a follow-up inspection by DOB. However, we found that 17 of these 32 complaints (53 percent) never received a follow-up inspection during our scope period. For 4 of the 17 complaints, we

were able to independently verify that they did not receive a follow-up inspection. We brought the remaining 13 of these complaints to the attention of DOB officials, who responded with the following representations:

- 7 were re-inspected on February 27 and February 28, 2019, one month after we brought these to their attention, one day before DOB’s response to our inquiry, and nearly five months after the end of our scope period;
- 3 were re-inspected shortly after our scope period; and
- 3 were reported by DOB to have been re-inspected during our scope period, but officials did not provide any evidence of such inspections and we did not find this evidence in the information we had been provided previously.

DOB also did not provide the results of the 10 follow-up inspections that they claim to have been conducted after our scope period.

DOB did not ensure that complaints that required re-inspection were addressed timely. Based on the average penalty assessed for an illegal curb cut and driveway, these deficiencies may have resulted in as much as \$9,724 in foregone penalties.

Violations Were Not Filed with OATH and Remained Unenforced

After inspections are completed and violations are issued to property owners, the violations must be filed by DOB with OATH so that they can be adjudicated at a hearing. According to *OATH Hearings Division – Rules of Practice*, “the petitioner must file an original or a copy of the summons, together with proof of service, with the Tribunal prior to the first scheduled hearing date. Electronic filing of the summons and proof of service is required unless the Tribunal grants an exception.” Information related to violations adjudicated by OATH is uploaded to OATH’s AIMS database and is publicly accessible on OATH’s *Summons Finder*. OATH also uploads this information to BIS on a weekly basis via an interface between AIMS and BIS. The hearing date is set based on the type of violation being issued.¹⁰

However, we found that 40 of the 1,435 violations issued during our audit scope period (3 percent) were never filed with OATH. Therefore, there was no opportunity for these violations to be adjudicated and enforced by OATH. We attempted to retrieve the original copies of 10 of those violations at their respective DOB borough offices. However, DOB could only provide the original copy for 1 of those 10 violations notwithstanding DOB’s requirement that originals be maintained.

Based on the average penalty assessed for an illegal curb cut and driveway, the 40 instances we identified of violations not being filed with OATH may have resulted in as much as \$22,880 in foregone penalties.

Recommendations

DOB should enhance its procedures to ensure that:

1. Triage officers correctly identify curb cut and driveway complaints that merit a field inspection and forward them to the Construction unit;

¹⁰ There are three classes of OATH violations: Class 1 (immediately hazardous); Class 2 (major); and Class 3 (lesser). The number of days to cure the violation or appear in court are set based on the severity of the violation. Class 1 violations require immediate action and Classes 2 and 3 are allowed 40 days to cure or dispute in court.

DOB Response: “The Department agrees with this recommendation. DOB will review its procedures and update them as necessary to clarify triage requirements.”

2. Triage officers correctly identify, close and consolidate repeated complaints, and ensure that the remainders receive an inspection;

DOB Response: “The Department agrees with this recommendation. DOB will review its procedures and update them as necessary to clarify triage requirements.”

3. Triage officers close the most recent complaint, rather than the oldest, when multiple complaints are received on a single property;

DOB Response: “The Department agrees with this recommendation. DOB will review its procedures and update them as necessary to clarify triage requirements.”

4. Complaints of illegal curb cuts and driveways are inspected timely, according to its standards;

DOB Response: “The Department partially agrees with this recommendation. DOB has significantly improved response times on curb cuts complaints since the 2016-2018 audit scope. While DOB will continue to make every effort to respond to curb cut complaints in timeframes consistent with internal goals and targets, it will not be making changes to its complaint response timeframe procedures at this time.”

Auditor Comment: We are pleased with DOB’s efforts to improve response times for curb cut and driveway complaints. However, although DOB provided evidence of a pre-existing backlog that it has begun to address, it provided no evidence that its response times to curb cut and driveway complaints have improved. We continue to urge DOB to fully implement this recommendation to improve its complaint response times to align with its timeframe procedures.

5. Triage officers and field inspectors conduct follow-up research and re-inspections as warranted; and

DOB Response: “The Department partially agrees with this recommendation. As previously noted, triage officers are not tasked with performing follow-up research or re-inspections. However, DOB field inspectors will conduct follow-up research and inspections when warranted.”

Auditor Comment: We are pleased with DOB’s response regarding tasking DOB field inspectors with conducting follow-up research. We continue to urge DOB to fully implement this recommendation and instruct its personnel to conduct follow-up research and perform re-inspections as warranted.

6. All assessed OATH violations are filed prior to the pre-set hearing date as required.

DOB Response: “The Department agrees with this recommendation as it is current practice. Current procedure requires summonses to be filed prior to the pre-set hearing date. Additionally, curb cut complaint inspections are conducted in DOB NOW: *Inspections*. As of May 2019, summonses associated with those inspections are issued via Mobile Summons, which relays summons information to OATH electronically shortly after service. This significantly enhances the speed and efficiency with which DOB processes summonses to OATH and ensures they are filed prior to the pre-set hearing date.”

Auditor Comment: We are pleased with DOB’s efforts to ensure that OATH violations are filed prior to the pre-set hearing date and its efforts to automate this process with Mobile Summons.

DOB Lacks Adequate Oversight and Training of Field Inspectors

DOB does not have adequate oversight and training of field inspectors to ensure that their field inspections are properly conducted in accordance with the City’s Zoning Resolution, internal DOB procedures governing inspections, and City Comptroller directives. Among other things, we found that:

- Supervisory reviews of field inspectors are not adequately conducted;
- DOB does not ensure that field inspectors use established criteria during curb cut and driveway inspections; and
- DOB does not provide its field inspectors with any training specific to their inspections of curb cuts and driveways.

These deficiencies are discussed in the sections that follow.

Supervisory Reviews of Field Inspections Are Inadequate

According to DOB, supervisors in the Construction unit are responsible for keeping track of the field inspectors’ workload, checking in with them, assigning the inspection route, reviewing the inspection results, and signing off on the inspections performed. Among other things, *DOB NOW: Inspections – Operational and Technical Policies* provides that supervisory reviews of completed inspections must be conducted within one to two business days of the inspection, depending on which time of day the inspection was completed. Specifically, inspections performed before noon must be reviewed by noon of the next business day, while inspections performed after noon must be reviewed by noon two business days later.

However, inspections that were not reviewed within the prescribed time limits were “auto-finalized” in DOB NOW without the supervisory review. Accordingly, supervisory reviews did not need to be performed for any given inspection, since the system would auto-finalize and close the inspection without them. However, in the absence of a supervisory review, any deficiencies in how inspections are conducted would go undetected.¹¹

In order to determine when and how the auto-finalize feature was used in connection with supervisory reviews, we requested DOB’s records of all supervisory reviews performed of inspections of curb cut and driveway complaints during our review period. We further asked that DOB identify all of the inspections that were auto-finalized without a supervisory review having been conducted. However, after analyzing the data DOB provided, we determined that it was not reliable and so there was no way, based on that data, to reliably determine which inspections were actually reviewed and which were auto-finalized.

Among the problems we found with DOB’s data was that 3,436 entries (39 percent) of the complaint numbers DOB provided were nine digits long rather than the standard seven digits.

¹¹ The Comptroller has previously cited DOB for having the auto-finalization feature in DOB NOW since it creates a glaring control weakness (Audit MD18-078A, *Audit Report on the Department of Buildings’ Controls Over Field Inspectors*). DOB’s explanation in response to that audit was that the auto-finalization feature “exists out of consideration for customer service and reduces turnaround time in order to prevent excessive delays in providing results for completed field inspections” and no changes were made. However, after the exit conference held in connection with this audit of curb cut and driveway inspections and permits, DOB officials informed the Comptroller’s Office that the auto-finalization feature was disabled as of September 28, 2020, after our audit scope.

These nine-digit complaint numbers made it impossible to search BIS for information since BIS has a complaint field that is limited to no more than seven characters. Accordingly, in an effort to determine the locations of properties identified with nine-digit complaint numbers, we performed a search of the BINs associated with the complaints that DOB records provided with nine-digit numbers. However, in doing so, we found that some of the BINs could not be found in BIS either, while other BINs did not correspond to physical locations at all. At the exit conference, a DOB official stated that the nine-digit numbers were provided to us in error and were actually job numbers, rather than complaint numbers.

In addition, we found that the listing provided by DOB of inspected complaints does not state the time that the supervisory reviews were performed—only the date. Since DOB procedures give noon deadlines for reviews regardless of when they were performed, based on the information provide by DOB, we could not determine whether supervisory reviews were performed timely.

DOB's procedures effectively rendered its supervisory review requirements meaningless since these reviews do not ultimately need to be performed. Moreover, based on other deficiencies with supervisory reviews noted below in this report, we have no assurance that even if a review was performed, it was performed properly. In the absence of adequate supervisory reviews, there is a significant risk that deficiencies in the inspections will go undetected.

DOB Did Not Ensure That Field Inspectors Used Established Criteria during Field Inspections

DOB did not adequately ensure that its inspectors rely on established criteria when conducting illegal curb cut and driveway inspections. DOB did not appear to have provided specific guidance to its inspectors on the criteria applicable to such inspections or tools to help guide them, such as a checklist of key requirements that should be considered during each inspection. In addition, while DOB has produced a graphical form of *Zoning Resolution 25-63 – Location of Access to the Street*, which codifies legal curb cut and driveway dimensions and distances from any obstacles, adjacent curb cuts, and street corners for easy reference by field inspectors, it did not appear to take adequate measures to ensure that the inspectors refer to it during their inspections.¹²

DOB NOW: Inspections – Operational and Technical Policies specifically provides that “[i]nspection checklists guide the inspection. Before beginning the inspection, the inspector should review the inspection checklist in conjunction with any available information about the site.” Further, “[w]ith each significant observation made by the inspector, the electronic checklist on the mobile device should be correctly marked at the time of that observation,” unless “extreme weather conditions” exist, in which case the inspector is required to “include a brief summary describing why the ideal protocol could not be followed for that particular inspection.” At the conclusion of the inspection, “[t]he inspection checklist must be completed in its entirety and submitted through DOB NOW: *Inspections* **before** moving on to the next inspection.” The field inspector’s supervisor must ensure that “the correct checklist was used to conduct the inspection” before approving and finalizing the results of an inspection.

However, notwithstanding the fact that DOB’s procedures refer to use by the inspectors of a checklist, one did not appear to be in use. During the audit, DOB never provided us with such a checklist notwithstanding our request for documents relevant to the inspection process. Further, when we accompanied a DOB inspector on field inspections of ten properties that received complaints of illegal curb cuts and driveways, we observed that the inspector did not refer to a

¹² Please see Appendix for legal driveway and curb cut dimensions as illustrated by DOB.

checklist of any kind. At the exit conference, DOB officials stated that a checklist was in fact in use, and subsequently provided one that DOB alleged was used in a 2015 inspection. However as previously indicated, DOB did not provide us a checklist throughout the duration of this audit and we did not observe the use of a checklist by the DOB field inspector. In addition, the inspector did not use measuring tools to ensure that measurements are in accordance with the Zoning Resolution. Further, we observed that the inspector did not always check whether the work completed at the ten properties was done in compliance with a valid DOB permit. For one property where the inspector found a DOB permit on file, the inspector never actually inspected the site, but nonetheless assigned a disposition code to the complaint.

Where, as described above, DOB inspectors just “eye” the property, do not follow an inspection checklist, or do any site specific research on their DOB laptops, there is no assurance that the inspections were conducted properly. Further, as noted, we did not observe the inspector in the field consulting the DOB-produced graphical dimensions of a legal curb cut or using of any measuring tools that would assist in their assessment of the curb cut and driveway. When we asked DOB officials about this, they acknowledged that the practice was only just then being implemented. Absent such actions, field inspectors cannot ensure that curb cuts and driveways that are inspected meet the zoning regulations as set forth in *Zoning Resolution 25-63* and there can be no assurance that the field inspectors have made a proper determination of the legality of curb cuts and driveways.

In addition, DOB cannot reasonably rely on the information provided by the inspectors to evaluate their performance of the performance and to take corrective action where necessary. According to Comptroller’s Directive #1, *Principles of Internal Control*, “[m]anagement, throughout the organization, should be comparing actual functional or activity level performance data to planned or expected results, analyzing significant variances and introducing corrective action as appropriate.” Further, “[c]ontrols should also be aimed at validating the propriety and integrity of both organizational and individual performance measures and indicators. This is particularly important in measuring the performance of field personnel such as inspectors.”

In performing our audit analysis, however, we found a very wide range in the results of inspections between individual inspectors. Of the 3,238 inspections performed during our audit scope, 994 (31 percent) resulted in a violation for the homeowner.¹³ For the 66 field inspectors with a minimum of ten curb cut inspections performed during our audit scope, the percentage of inspections that resulted in a violation ranged from zero percent for one inspector to 64 percent for another inspector.¹⁴ Additionally, we found ten properties subjected to multiple complaints within 21 days during our scope, yet the results of the inspections were different from one inspection to the next, notwithstanding that the conditions complained of and the area inspected were all the same.

We found that the apparent inconsistent results of curb cut and driveway inspections resulted in large part from the lack of adequate written procedures, non-adherence to stated criteria, lack of consistency in the manner of performing field inspections, insufficient training (discussed below), and the lack of supervisory oversight. DOB officials did not respond to our inquiry as to why the discrepancies we observed exist, nor did they provide any evidence of inspector performance metrics gathered by the agency in response to our request.

¹³ These 994 inspections resulted in a total of 1,061 violations. Some inspections resulted in multiple violations issued to the homeowner.

¹⁴ The first referenced inspector made 28 curb cut inspections during our scope without issuing any violations. The second made 44 curb cut inspections during our scope and issued 28 violations.

DOB Does Not Provide Training for Inspectors on How to Conduct Curb Cut and Driveway Inspections

DOB has not established any training of field inspectors specific to the inspection of curb cuts and driveways, notwithstanding the fact that DOB inspectors are responsible for inspecting not just curb cuts and driveways, but also for inspecting a broad range of potentially hazardous conditions that affect the structural stability and use of New York City buildings.

According to Comptroller's Directive #1, *Principles of Internal Control*,

It is important that agency management and staff be provided with the required support necessary for them to accomplish their assigned duties, as well as understand the importance of developing and implementing sound internal control. Management must be alert to the various knowledge and skill levels required for the various staff assignments and should provide as needed on-the-job and internal/external training, as well as candid and constructive counseling and performance appraisals. Sound personnel policies and practices are also a critical factor in maintaining a motivated business financial control environment.

Similarly, the Government Accountability Office's (GAO's) Standards for Internal Control in the Federal Government (Green Book) also states that

Management establishes expectations of competence for key roles, and other roles at management's discretion, to help the entity achieve its objectives. Competence is the qualification to carry out assigned responsibilities. It requires relevant knowledge, skills, and abilities, which are gained largely from professional experience, training, and certifications. It is demonstrated by the behavior of individuals as they carry out their responsibilities.

However, DOB does not provide specific training to its inspectors to ensure that they are able to properly inspect complaints of illegal curb cuts and driveways. To become a DOB inspector, the agency requires experience "in the construction trades as a carpenter, mason, ironworker, plasterer, architect, engineer, building construction, superintendent, or inspector of building construction" according to both a DOB Construction Inspector job posting and a civil service Notice of Examination for Construction Inspectors. The job posting also lists as a preferred skill "working knowledge of the NYC Construction Code and Zoning Resolution." While DOB does not require any experience with or knowledge of curb cuts and driveways, it also does not provide specific training to its inspectors. Therefore, absent specific training and guidance on this type of inspections, DOB has no assurance that the field inspectors have the requisite knowledge to make a proper determination of a legal curb cut and driveway during an inspection.

Recommendations

DOB should:

7. Ensure that DOB databases can create accurate reports of supervisory reviews;

DOB Response: "The Department agrees with this recommendation as this is current practice. DOB databases can currently create accurate reports of supervisory reviews."

Auditor Comment: As noted in the audit report, DOB was not able to generate accurate reports of supervisory reviews during our audit scope. DOB provided no evidence beyond

its statement that this deficiency was addressed after we presented this issue on multiple occasions, including at our exit conference. We continue to urge DOB to ensure that its reports of supervisory reviews are complete and accurate.

8. Ensure that DOB supervisory field inspectors (supervisors) review the results of all field inspections prior to finalizing their results;

DOB Response: “The Department agrees with this recommendation in that it is current practice. Supervisors review all inspection results submitted in DOB NOW: *Inspections*.”

Auditor Comment: Although we are pleased with DOB’s stated efforts to ensure that supervisory field inspectors review the results of all field inspections, DOB provided no evidence beyond its statement that this is the agency’s current practice. In addition, we were not able to independently verify that DOB has disabled the auto-finalization feature in DOB NOW: *Inspections*, which DOB officials informed us at the exit conference was disabled in September 2020 (after the audit scope period). We continue to urge DOB to ensure that all field inspections are reviewed before the agency’s stated deadline.

9. Ensure that field inspectors complete and submit a checklist as part of their inspections;

DOB Response: “The Department agrees with this recommendation. DOB inspectors do currently and will continue to submit checklists for curb cut inspections.”

Auditor Comment: DOB provided no evidence beyond its statement that its field inspectors used checklists throughout our audit period or after, other than a screenshot of an inspection conducted in 2015, which we were not able to independently verify. We continue to urge DOB to ensure that its field inspectors use checklists as an integral part of every field inspection.

10. Ensure that field inspectors use appropriate measurement tools during inspections to ensure that homeowners are adhering to the proper dimensions of a curb cut and driveway;

DOB Response: “The Department agrees with this recommendation. DOB inspectors will use measurement tools when necessary to evaluate curb cut and driveway dimensions.”

11. Establish performance metrics for field inspections of curb cuts and driveways, and routinely perform analysis of those metrics, including significant variances between field inspectors’ issuance of violations; and

DOB Response: “The Department disagrees with this recommendation. The Department analyzes metrics related to a variety of inspection types, including curb cut inspections, as part of its continuous efforts to enhance operational effectiveness. DOB will continue to perform these analyses in support of existing mandates and proactive initiatives to promote public safety. However, developing additional metrics to monitor and analyze variations between inspectors’ summons issuance on curb cut inspections is not currently practicable given available resources. The Department will therefore not do so at this time.”

Auditor Comment: This deficiency was brought to DOB’s attention multiple times throughout the audit and, in response, DOB officials never mentioned nor provided any evidence to show that DOB analyzed metrics related to a variety of inspection types, including curb cut and driveway-related inspections. We continue to recommend that DOB establish and analyze metrics of field inspector performance as an integral part of its review of field inspectors.

12. Establish specific training for curb cut and driveway inspections to ensure that field inspectors have the requisite knowledge to assess the legality of curb cuts and driveways.

DOB Response: “The Department agrees with this recommendation. DOB will provide additional guidance to field inspectors to clarify and reiterate curb cut inspection requirements.”

DOB Field Inspections of Curb Cuts and Driveways Were Inadequate

DOB did not ensure that its field inspectors conduct adequate site inspections of curb cut and driveway complaints. Specifically, we found that:

- DOB field inspectors’ comments in inspection reports were inadequate;
- DOB did not ensure that inspectors properly address violating conditions near and at properties adjacent to those subject to complaints;
- Field inspectors dismissed curb cut and driveway complaints where violations were warranted;
- Field inspectors did not photograph violating conditions as required; and
- Conditions under DOT’s jurisdiction were not referred to DOT as required.

These deficiencies are detailed in the below sections.

DOB Field Inspectors’ Comments in Inspection Reports Were Inadequate

DOB inspectors are required to complete the comments section of DOB NOW that pertains to inspections in order to provide details about the conditions they found at the site. The inspectors’ comments are available to the public in BIS and are required to be “appropriate and accurate” according to *DOB NOW: Inspections – Operational and Technical Policies*. DOB supervisors are supposed to verify the appropriateness and accuracy of the comments. Additionally, according to DOB, when supervisors review the inspectors’ comments, “they ensure that applicable laws and regulations were complied with, confirm that there was no ambiguity in the results, and that the violations are substantial. In the case of an inspector having a vague write-up, supervisors may void the write-up and mark for re-inspection at a later date.”

Of the 1,024 complaints we sampled, we found deficiencies in the field inspectors’ comments in 213 cases (21 percent). All of those complaints were dismissed by the inspectors. Among other things, we found:

- Inspectors’ comments regarding the conditions at the inspected locations for 74 complaints were insufficiently descriptive to support the inspectors’ dismissal of the complaints because they were ambiguous, vague, or not relevant to the legality of a curb cut or driveway. These deficiencies effectively made it impossible for a reviewer, including the required supervisory reviewer, to assess whether an inspector’s conclusions were accurate and appropriate. For example, at one location, the field inspector simply stated “No action necessary,” with no description of the conditions found that prompted that conclusion. At another, the field inspector used the irrelevant description “Pre-existing curb cut for pre-existing loading dock space.” However, this statement is irrelevant to a

determination of whether a curb cut is legal and does not even indicate whether a curb cut currently exists. Had an appropriate supervisory review been conducted of these and other similarly vague and irrelevant comments, DOB's stated practice would require the complaint dismissals to be voided and these locations to be re-inspected to properly determine whether an illegal curb cut or driveway exists.

- 85 additional complaints were dismissed by DOB inspectors because, according to the comments, no car was present at the site at the time of the inspection. This statement alone is inadequate to support the dismissal of a complaint as it cannot, in itself, support a determination that a driveway is not illegal. While DOB officials stated that “[i]n instances where no curb cut exists, and a vehicle is not present, the inspector cannot verify a violating condition and therefore issuing a violation is problematic,” in 34 of these 85 instances, the inspectors’ comments did not state that no curb cut existed. Further, there were no photographs of the site. Accordingly, this is impossible to determine based on the record made by the inspectors that the dismissals were proper.
- Inspectors dismissed 39 additional complaints citing in the comments the existence of Certificates of Occupancy that listed a curb cut, driveway, and/or garage for the property that was the subject of the complaints. However, according to DOB officials, the fact that a property’s Certificate of Occupancy includes a curb cut, driveway and/or garage, alone, is not a sufficient basis for deeming a curb cut or driveway to be legal. The physical curb cut or driveway must still be inspected and verified as legal regardless of what is on the Certificate of Occupancy. Not doing so increases the risk that a homeowner had illegally altered the premises since the Certificate of Occupancy was issued or last edited. According to DOB officials, “inspectors are responsible for addressing the statement of allegations contained in a complaint.”
- For 15 inspections, we found that inspectors issued violations that were completely unrelated to the complaints of illegal curb cuts and driveways and for 13 of these 15 inspections, DOB did not provide any information about the existence or non-existence of curb cuts or driveways at all in their remarks. Therefore, there is no indication that those conditions were ever inspected or that the alleged illegal curb cuts or driveways were determined to be legal at those premises.

These deficiencies resulted from the inadequate training and supervision of inspectors discussed above, including specifically the failure of supervisors to ensure that field inspectors’ comments were substantive and appropriate as required. In cases where the inspectors’ comments were insufficient to support the dismissal of the complaints, the locations should have been re-inspected. However, because DOB only requires photographic evidence to be obtained by the inspectors when they find violating conditions at the inspected site, there is no photographic evidence in DOB’s records depicting the conditions where the inspectors comments were inadequate and so no way to determine whether the curb cuts and driveways that were the subjects of those complaint were actually legal.

In addition, officials at DOB’s Administrative Enforcement Unit (AEU), the unit that certifies that violating conditions have been corrected, stated that their review of whether a homeowner corrected violating conditions is based on the inspectors’ allegations and/or comments. If the inspectors’ comments are vague, unreasonable, or otherwise questionable, the AEU’s ability to certify that the violating conditions have been corrected is compromised and increases the risk that illegal curb cuts and driveways continue to exist. It may also result in foregone fines and

penalties owed to the City. Based on the average penalty assessed for an illegal curb cut and driveway, the 213 instance we found in our audit sample where no violations were issued and there were not sufficient comments to explain the basis for the inspectors' determinations that violations were not warranted, could have resulted in as much as \$121,836 in foregone penalties.

DOB Did Not Ensure That Inspectors Properly Addressed Violating Conditions Near and At Properties Adjacent to those Subject to Complaints

According to the *DOB NOW: Inspections – Operational and Technical Policies*,

If an inspector identifies conditions that warrant an unscheduled inspection for which no complaint record exists in *DOB NOW: Inspections*, the inspector must notify the supervisor. The supervisor will create the complaint record in BIS, which will take five (5) minutes to come into *DOB NOW: Inspections*. The supervisor can then create the complaint inspection add it (*sic*) to the inspector's route (Job List). The inspector will wait for the job to appear on the Job List before conducting the inspection.

However, during our on-site observations, we witnessed one DOB inspector issue a violation after an inspection conducted in response a complaint, while ignoring the exact same conditions, which was clearly visible at the adjacent attached property and across the street. When a representative from the property that was served with the violation questioned the apparently different treatment of the properties, the inspector replied that they were only there to inspect the property subjected to a complaint. We did not observe the inspector notifying his supervisor about the adjacent property, and DOB records do not show that a curb cut complaint was ever created by the DOB inspector for this adjacent property or any other on the rest of the block.

However, DOB records showed the following:

- A violation for an illegal curb cut was issued for this adjacent property in 2013, five years prior to the date of our on-site observations. DOB mandated that this owner either restore the curb cut or obtain a permit after the fact for this illegally-created curb cut and parking pad, but no compliance was ever noted in DOB records. While DOB does not have the authority to enforce compliance with the violations it issues, it should have noted the continued existence of an illegal curb cut, created a complaint, and issued a new violation.
- Violations for an illegal parking pad in front of the house across the street and an illegal curb cut at the neighboring house were issued in 2009, nine years prior to the date of our on-site observations. The conditions continued to exist as of the date of our observation, along with identical conditions at the next house as well.

Notwithstanding DOB's established procedures, DOB officials defended the inspector's failure to follow them by stating that efforts to address issues at neighboring properties use excessive amounts of time and resources that reduce the inspectors' ability efforts to address the other complaints that have been received. However, if DOB deems the above procedures to be unfeasible, then it should change them.

It is notable that in the situation we witnessed during a field observation, the apparent illegal conditions that were ignored by one inspector appear to have been previously identified as illegal and not corrected. When illegal curb cuts and driveways are allowed to remain after they have been observed by DOB inspectors, whether or not they were the subject of a specific complaint, it weakens the City's efforts to ameliorate those conditions since citizens may think there is no reason to follow the law, which decreases the quality of life of residents overall.

Field Inspectors Dismissed Complaints Where Violations Appear to Have Been Warranted

As previously discussed, the specifications for legal curb cuts and driveways are codified in the New York City Zoning Resolution. Based on those specifications and using the tools described below, we found that in just over half the instances where a curb cut or driveway inspection was conducted and no violation was issued, there were in fact violations.

Specifically, of the 1,024 complaints we sampled for this audit, 630 inspections were conducted by DOB during our scope period. We found that of those 630 inspections, 394 (63 percent) were dismissed without a violation being issued.¹⁵ Using publicly available information, such as Google Street View, a tool also used by DOB's Plan Examiners as a reference, we found that on 236 (59 percent) of those 394 occasions where an inspection was dismissed without a violation, the actual conditions appear to have warranted a violation for an illegal curb cut and driveway because they violated one or more of the Zoning Resolution.¹⁶

Table III provides a summary of the most prevalent conditions found where a violation was not issued for the cited conditions, and the images that follow provide examples of these conditions.

¹⁵ For these 630 inspections, 614 were initial inspections and 16 were re-inspections.

¹⁶ Google Street View allows a 360 degree view of a property so all parts of the property can be reviewed. It also allows the view of multiple years of photographs.

Table III

Violating Conditions Found for
Dismissed Complaints for Properties
Inspected in the Audit Sample

Condition	Total
Driveway without a curb cut	60
Garage without a curb cut	21
Illegal curb cut	113
Illegal driveway	97
Illegal driveway and curb cut (both)	79
Illegal garage	40
Does not meet DOB requirement (less than 7 Ft. from obstacle)	119
Additional violations should have been issued	92
Paved front yard	93
Curb cut/Driveway Created Hazardous Conditions	8
Total	722

As illustrated in the images below, many of these illegal driveways are plainly visible. For example, in one instance, a property that was the subject of a complaint alleging an illegal driveway was inspected but not issued a violation despite its clearly having an unpaved illegal driveway immediately adjacent to a marked crosswalk. This condition is a violation of the Zoning Resolution that require curb cuts and driveways to be at least five feet away from any right-of-way lines such as a crosswalk. As shown in Image 1 below, in order for the car to access the driveway, it needs to be driven across the crosswalk, which is a hazard to pedestrians.

Image 1



Image 2 below contains another example of a property that was subjected to a complaint alleging an illegal driveway that was not issued a violation. However, the driveway's dimensions did not

meet zoning requirements as illustrated by the fact that the car shown in the photograph did not fit completely in the driveway and encroaches on the sidewalk. Accordingly, pursuant to the Vehicle and Traffic Law, Section 1202, it is illegal to park on a City sidewalk and pursuant to New York City Administrative Code, Section 19-138 (b) it is illegal to paint a curb yellow. Accordingly, not only should the inspector have issued the property owner a violation for the illegal curb cut and driveway, the complaint should have been referred to DOT, which is the agency charged with enforcing the City's Vehicle and Traffic Law.¹⁷

However, in this instance, the inspector neither issued a violation nor made a referral to DOT. Rather, in their remarks, the inspector stated, “[c]urb cut installed by prior owner with NOV [Notice of Violation] issued.” In such a case, the prior property owner should have either paid a fine and corrected the condition or a lien should have been placed on the property that would have prevented a sale of the property without the illegal condition having been corrected. Were this to have occurred, it would be proper for the inspector to assume that the present illegal conditions post-date a sale and the new owner should be held liable or, in the alternative, there was no actual change in ownership and a violation should have been issued.

Image 2

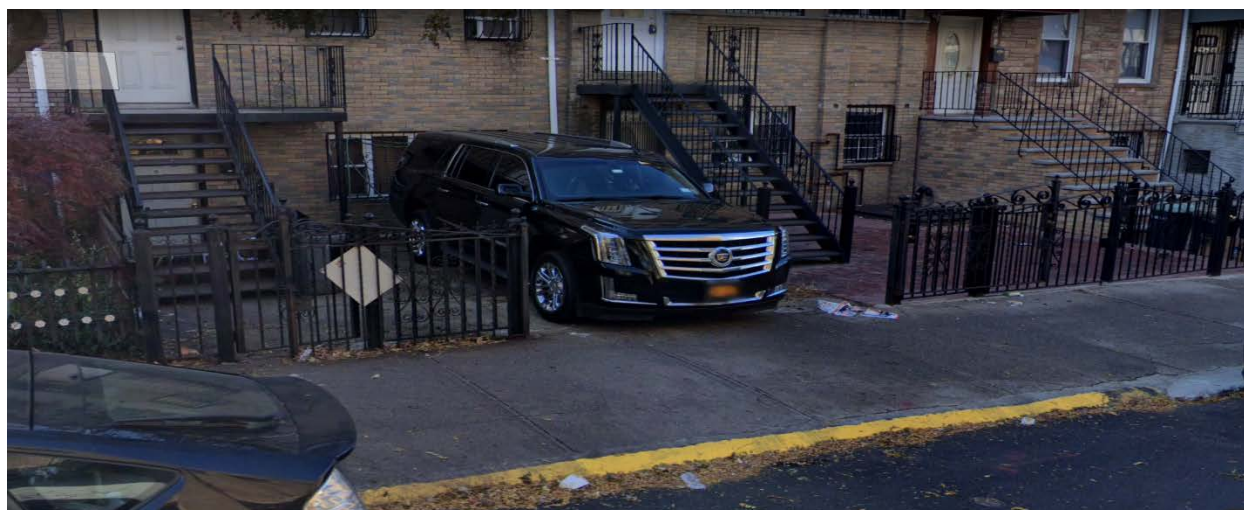


Image 3 below shows a driveway that violates the Zoning Resolution's requirements governing the dimensions of a legal driveway behind what appears to be a movable fence and two trash barrels. The inspector stated in their remarks that “NO ACTION REQUIRED. NO PLASTIC CONE OR OBSTRUCTION OF STREET PARKING FOUND AT TIME OF INSPECTION.” [Emphasis in original.] However, the placement of plastic cones to deter motorists is not relevant to a determination of whether a driveway is illegal. Accordingly, a violation should have been issued to the property owner by the inspector.

¹⁷ Please see the finding *Conditions Under DOT's Jurisdiction Not Referred to DOT* for more detail on DOT violations and DOB's lack of enforcement over this issue.

Image 3



Image 4 below shows another property that was the subject of a complaint and inspection during our audit scope period with a utility pole partially blocking the entrance of what is clearly an illegal curb cut and driveway. Nonetheless, the inspector who inspected this property stated in the remarks that the “[c]urb cut conforms legally.” It is evident that this is not the case.

Image 4



Images 5 and 6 below show that a homeowner removed planting required by the Zoning Resolution, paved over the entire area in front of the house, and added a third curb cut to the left side of the property, all without a permit from DOB. In 2016, the property had been issued a violation for the alterations performed without a permit. However, we found no evidence of this violation in OATH's database and so no evidence that the violating conditions were ever properly addressed. In 2017, a new complaint against the property for the same illegal conditions was dismissed because "[n]o new work observed. Same complaint was closed last year. No action warranted." However, there is no justification for dismissing a complaint based on the fact that there had been a prior complaint a year earlier. To the contrary, a visual inspection would have reflected that illegal conditions still existed on the property that need to be corrected.¹⁸

Image 5 - Before (2007)



¹⁸ Please refer to the *Violations Were Not Filed with OATH and Remained Unenforced* section of this report for more information on this deficiency.

Image 6 - After (2017)



Absent adequate training for field inspectors specific to illegal curb cuts and driveways, clear guidance as to established criteria, measurement tools for field inspector use, and inadequate supervisory reviews, DOB fails to provide adequate support and information to ensure that inspections are properly conducted and violations issued where they are warranted. When a field inspector improperly dismisses a complaint, a potential public safety hazard is allowed to remain, neighborhood quality of life suffers, and the City loses out on financial penalties that should have been assessed. Based on the average penalty assessed for illegal curb cuts and driveways, the deficiencies identified in this section of the report may have resulted in as much as \$132,132 in foregone penalties for the 231 complaints with unenforced violating conditions.

Field Inspectors Did Not Photograph Inspection Sites

According to *DOB NOW: Inspections – Operational and Technical Policies*,

If an inspector issues an ECB violation or sees a condition that needs to be photographed, they must use a department-issued camera or device to take the photos and upload them to DOB NOW: Inspections. All inspection photos must be attached to the inspection results in DOB NOW: Inspections Mobile, and should not be uploaded to the photo database.

DOB NOW further states that “[s]upervisors should monitor all inspections with violations issued to ensure that photos are uploaded. If photos are not uploaded, the supervisor should set the inspection status to ‘Under Review’ and return the inspection to the inspector for correction,” and that “[t]he supervisor’s review must include verification of the following...Photos have been uploaded, when required.”

However, DOB supervisors do not ensure that field inspectors photograph and upload the photos of violating conditions when issuing a violation. We selected a random sample of 50 inspections

where violations were issued from Brooklyn and Queens, the two boroughs with the greatest number of violations, and found that only 10 inspections (20 percent) had photos uploaded into to DOB NOW. Since DOB has no photographic evidence of the actual conditions and illegality of the curb cuts and driveways for 40 inspections in this sample, supervisors cannot, absent actually visiting every location, confirm that the violations issued were valid.

Moreover, the failure to maintain a photographic record of all violating conditions also significantly weakens DOB's ability to ensure that illegal conditions are cured through an OATH proceeding. According to the *OATH Hearings Division – Rules of Practice* procedures governing an OATH trial, DOB “has the burden of proving the factual allegations contained in the summons by a preponderance of the evidence.” If DOB cannot produce sufficient evidence to support a violation, the violation will be dismissed. According to OATH records, 13 violations out of the 50 in our sample (26 percent) were dismissed. All these 13 violations did not have photographs on file.

Conditions Under DOT’s Jurisdiction Were Not Referred to DOT

DOT is responsible for enforcing the Vehicle and Traffic Law which prohibits people from erecting unofficial street signs, such as no-parking signs, painting curbs yellow to deter motorists from parking in front of them, or from otherwise defacing City or private property to reserve their own street parking spots. Under that law, violators can be fined up to \$250. DOB inspectors who find potentially violating conditions under DOT’s jurisdiction should, in accordance with DOB’s instructions, conduct any necessary research and dispose of the complaint by referring it to DOT using the appropriate DOB disposition code.

Based on disposition codes, we identified 91 of the 1,024 sampled complaints as potentially having DOT violations, such as illegal no-parking signs or other defacements of property to deter street parking that had not been referred to DOT. Only 22 of these complaints resulted in the issuance of an OATH violation, which meant that an opportunity was missed for the City to prevent the other properties from continuing to maintain illegally reserved parking areas.

Inspectors who do not appropriately refer violating conditions under DOT’s jurisdiction to that agency allow these conditions to continue to exist unenforced. Based on DOT’s maximum penalty of \$250, DOB’s inaction may have resulted as much as \$22,750 in foregone fines to the City. Additionally, the existence of illegal curb cuts and driveways increases the risk of City residents having their vehicles towed and/or ticketed for parking in areas that are actually legal and public parking areas.

Recommendations

DOB should:

13. Ensure that inspectors’ comments related to inspections of curb cuts and driveways are relevant, complete, and appropriate with respect to the complaint;

DOB Response: “The Department agrees with this recommendation. As previously noted, DOB will provide additional guidance to field inspectors to clarify and reiterate curb cut inspection requirements.”

14. Instruct field inspectors to appropriately report observed instances of potentially illegal curb cuts and driveways for inspection. Areas with large concentrations of illegal curb cuts and driveways observed during inspections should be flagged for a neighborhood inspection sweep;

DOB Response: “The Department disagrees with this recommendation. DOB has procedures in place for addressing conditions encountered during the course of an inspection that are not directly related to the original purpose of the inspection visit. It is important to note, however, that inspectors’ primary objective when conducting complaint inspections is to expeditiously investigate complaints, including those alleging hazardous conditions, that have already been assigned. The Department does not consider it practicable, therefore, to instruct inspectors to make deviations from inspection routes to report and/or address other, unrelated non-hazardous conditions as a matter of course.

Additionally, while the Department conducts inspection sweeps to investigate various conditions, given practical realities with regard to staffing levels and DOB’s multiple competing priorities and mandates, the Department cannot commit to conducting inspection sweeps specific to curb cuts and driveways at this time.”

Auditor Comment: As previously noted, DOB field inspectors have the ability to create complaints in the field based on conditions they observe during their inspection routes which can be scheduled for a field inspection at a later date. Therefore, when field inspectors observe similar conditions at properties adjacent to their inspection routes, they should not need to deviate from their routes to perform this task. We continue to urge DOB to instruct their field inspectors to appropriately report observed instances of potentially illegal curb cuts and driveways for an inspection as stated in DOB NOW: *Inspections – Operational and Technical Policies*.

15. Verify that inspections that should be identified as requiring follow-up research and re-inspection are noted as such;

DOB Response: “DOB agrees with this recommendation. The Department does and will continue to conduct research or re-inspections where it determines that such actions are warranted.”

Auditor Comment: We are pleased that DOB agrees with this recommendation. However, as previously noted, DOB did not ensure that complaints identified as requiring follow-up research and re-inspections received the appropriate response. In addition, DOB provided no evidence beyond this statement that this is its current practice. We continue to urge DOB to ensure that such follow-up research and re-inspections are conducted.

16. Ensure that field inspectors correctly identify violating conditions and issue violations as appropriate;

DOB Response: “The Department agrees with this recommendation.”

17. Require supervisors to periodically accompany field inspectors on their routes to ensure that field inspectors properly inspect properties for illegal curb cuts and driveways;

DOB Response: “The Department agrees with this recommendation in that it is current practice. Supervisors periodically accompany inspectors on inspections of all types, including curb cut inspections, and will continue to do so.”

Auditor Comment: We are pleased that DOB agrees with the recommendation. However, throughout the audit, we were neither made aware of nor provided with evidence beyond this statement that supervisors accompanied field inspectors on their inspection routes.

18. Ensure that field inspectors obtain photographs depicting violating conditions and upload them into DOB NOW prior to finalizing the results of the inspection;

DOB Response: “The Department agrees with this recommendation. When issuing summonses for violating conditions related to curb cuts and driveways, inspectors will obtain photographs depicting the conditions and upload them to DOB NOW: *Inspections*.”

19. Require field inspectors to take photographs from the street of all field inspection sites, without regard to whether a violation was issued, in order to ensure that inspections that do not result in a violation are indeed of sites without illegal curb cuts and driveways; and

DOB Response: “The Department disagrees with this recommendation. DOB has determined that requiring photographs to be taken, documented, and uploaded for all field inspections sites regardless of whether a violating condition was identified is not currently practicable given available resources.”

Auditor Comment: According to DOB NOW: *Inspections – Operational and Technical Policies*, field inspectors already use a department-issued camera and can upload pictures into DOB NOW: *Inspections*. Therefore, taking and storing photographs of all field inspection sites should not require an excessive amount of available time and resources to perform. We continue to urge DOB to take photographs of all inspected curb cuts and driveways to accurately depict conditions at the site.

20. Ensure that potentially violating conditions under DOT’s jurisdiction are referred and forwarded to DOT so that it may appropriately follow up.

DOB Response: “The Department agrees with this recommendation.”

Other Matters

DOB Inappropriately Issued Curb Cut and Driveway Permits

In order to legally install a curb cut and driveway, a property owner must apply to DOB for a permit. DOB may only issue a permit if the proposed curb cut complies with the City’s Zoning Resolution. As previously noted, *Zoning Resolution 25-63 – Location of Access to the Street* prescribes, among other things, permissible curb cut and driveway dimensions and distance from any obstacles, adjacent curb cuts, and street corners. In the course of conducting this audit, we found that DOB inappropriately issued curb cut permits even though the applications did not meet all the necessary requirements set forth in the Zoning Resolution.

DOB procedures provide that applications for curb cuts and driveway installations may be made in one of three ways. Under long established DOB procedures, a property owner may apply for a curb cut permit by submitting an application to DOB for review and approval by a DOB Plan Examiner. Pursuant to this process, a Plan Examiner reviews the application together with the documentation submitted with it and either approves the application or raises “objections” with the applicant if deficiencies are found. In addition, a property owner may submit a Professionally Certified application, in which a licensed professional certifies the application’s compliance with the Zoning Resolution. Finally, an applicant can file an application pursuant to DOB Directive 14 (D-14) of 1975, in which the applicant asserts that there was no change in use or occupancy of the building. D-14 applications do not require a Plan Examiner’s review.¹⁹ The Professionally Certified and D-14 applications are only reviewed by Plan Examiners for completeness and may

¹⁹ Projects that do not propose a change to use, egress, or occupancy or any other change that might affect the Certificate of Occupancy are eligible for a limited review under the Directive 14 of 1975 (D14) program. The applicant assumes responsibility for the job and is authorized to perform the final inspection of his/her project and request a letter of completion.

receive a more thorough post-completion audit by DOB Internal Audit and/or the Special Enforcement Program units, which are performed only on a sample basis.

In connection with reviewing DOB records for this audit, we found that a number of the permits in the files appeared to have been improperly issued by DOB. Among other things, we found applications for permits that did not contain all required documentation, did not reflect the actual conditions of the property, and that contained plot plans that did not fully describe the conditions at the property. Of the 726 properties associated with the sampled 1,024 complaints, we identified 200 properties with apparently illegal curb cuts where curb cut permits had been issued.

We judgmentally selected the 14 most egregious instances of potentially illegal curb cuts and reviewed the curb cut application documentation on file, specifically the submitted site survey (the existing condition of the premises) and the plot plan (a drawing of the proposed work to be done, including the new curb cut and driveway). Of those 14 instances, we determined that 5 were professionally certified by a Registered Architect and that 3 were reviewed by DOB Plan Examiners and so appear to have been submitted by the property owners. In addition, we found that the information in the files was insufficient to determine how the remaining 6 permit applications were submitted, including 3 permits where there were no applications on file.

We found deficiencies with all 14 applications that resulted in the installation of illegal curb cuts and driveways, which are summarized in Table IV below.

Table IV
Deficiencies with 14 Sampled Curb Cut Permit Applications

Deficiency	Number of Applications	Percent of Sample
Missing Permit Application	3	21
Missing Site Survey	7	50
Missing Plot Plan	5	36
Site Survey Omitted Disqualifying Obstacles	5	36
DOB Approved Nonconforming Plot Plans	2	14
Application Has Incomplete Information on the Proposed Use of the Curb Cut	10	71
Scanned Supporting Documents Are Illegible	3	21

DOB does not effectively review curb cut applications. There is no process in place to verify the accuracy of a site survey during the application process. An applicant can, as shown in Table IV above, omit obstacles such as hydrants and light poles that would disqualify the site from legal curb cut and driveway installation. While Plan Examiners review the submitted drawing and have access to publicly available information such as Google Street View photographs, we saw no evidence that any verification of the physical site is performed prior to approving the application.

We further found that DOB does not effectively review the completed work after an application for a permit is approved to ensure that the work done conforms to the work approved. For example, in one case, an application was approved in 2001 and appears to have been flagged for a post-

completion audit a month after its approval. It was noted in BIS as having “open issues” at that time, but no subsequent update to these “issues” was found as of the time of our review – eighteen years later.

For applications that are professionally certified and, therefore, only are reviewed for completeness, DOB has established a process whereby its Special Enforcement Program (SEP) unit is supposed to conduct a post completion audit for 20 percent of the permits issued following notice from the property owners that the permitted work is complete. According to DOB officials, SEP’s systems were not yet integrated with DOB NOW and as a result, the SEP unit could not review any applications made through DOB NOW, and has not been able to since August 2017. At the exit conference, DOB officials informed us and confirmed in a subsequent email that the “SEP was dissolved and its functions reorganized into borough construction units on January 13, 2020,” after our audit scope.

The weaknesses in DOB’s approval and review processes increase the likelihood that illegal curb cuts and driveways will be created that do not conform to the Zoning Resolution. As previously mentioned, we identified 200 properties from our sample as having illegal curb cuts and/or driveways and that had either a permit issued, a unique BIN designated for a garage or parking pad, or a Certificate of Occupancy listing a curb cut, driveway, or garage.

For example, Image 7 below, taken in 2018, shows a property on Staten Island where DOB had issued permit for the installation of a driveway. However, as is evident from the photograph, the property is located on a corner lot and the driveway was placed adjacent to a marked crosswalk, so that a driver would enter the crosswalk to get in or out of the driveway. This clearly creates a hazard for crossing pedestrians and turning cars. Pursuant to the Zoning Resolution, the curb cut needed to be a minimum of five feet from the crosswalk to be legal. Based on the information available, we could not determine whether the application was conventionally or professionally certified. This property did not have a permit in DOB NOW, only a Certificate of Occupancy. DOB issues a Certificate of Occupancy when the completed work matches the submitted plans for a new building or major alterations. Accordingly, the presence of a Certificate of Occupancy indicates that the listed items should have been reviewed and approved by DOB.

Image 7



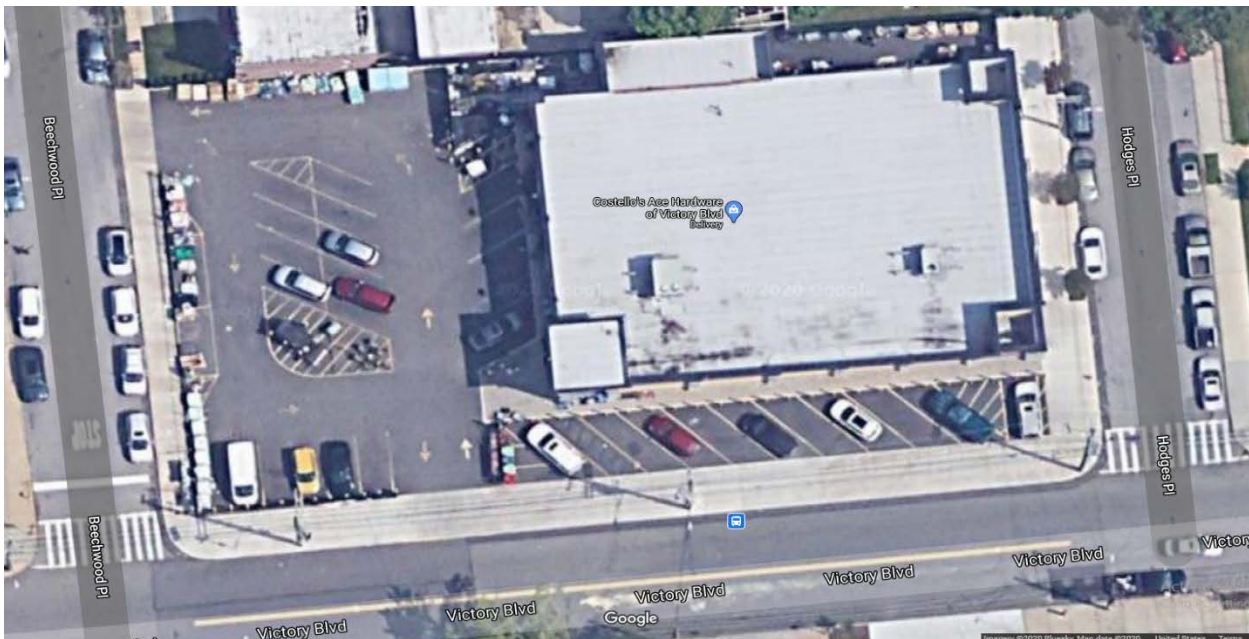
At another location on Staten Island, shown in Image 8 below, taken in 2018, a business had a permit for a curb cut approved by DOB according to a Certificate of Occupancy that notes a parking space and a curb cut.²⁰ However, as is evident from the photograph, the parking spaces created at the side of the building do not have a curb cut that allows access to them. Image 9, a bird's eye view of the property, shows that there is no access to these spaces from the sides of the building or the adjacent parking lot, either. As a result, cars would need to drive over the full curb and dodge obstacles, such as the utility poles or people waiting at the bus stop to access the spaces.

²⁰ This property did not have a curb cut permit in DOB NOW.

Image 8



Image 9



In a third example shown in Images 10 (taken in 2013) and 11 (taken in 2018) below, while there was an application filed for changes to this property that was reviewed and certified by DOB, it did not include the installation of a garage which would justify the installation of a curb cut. Instead, the application drawings claimed that the garage already existed. However, as shown in Images 10 and 11 below, the garage appears to have been newly built without a permit. The illegally-created garage and curb cut removed a previously available street parking space. The new curb cut is also less than seven feet from the depicted utility pole, which is another violation of the

zoning requirements, and the pole was not included on the site survey submitted with the application.

Image 10



Before conversion

Image 11



After conversion

As illustrated by the examples above, DOB's issuance of curb cut permits for illegal work can result in the installation of dangerous conditions and reduce the number of legal public parking spaces. It also increases the risk that DOB will never become aware of the existence of these illegal and potentially dangerous conditions because of the practice discussed above of whereby DOB triage officers and field inspectors improperly rely on existing permits as the basis for dismissing otherwise valid complaints and due to inadequate inspections, oversight and follow-up.

DOB's inappropriate approval of curb cut applications that failed to meet all the necessary requirements for approval allowed illegal curb cuts and driveways to be created. Based on the average penalty assessed for illegal curb cuts and driveways, we estimated that the 200 properties in our sample with permits issued for apparently illegal curb cuts and/or driveways, but where no violations were issued, may have resulted in as much as \$114,400 in foregone penalties for the complaints made on these properties during our scope. In addition, as is evident from the examples above, these created public safety hazards and reduced the number of legal parking spaces.

Inadequate Reporting of DOB User Access Rights

According to the United States Government Accountability Office's (GAO's) *Federal Information Systems Controls Audit Manual (FISCAM)*, access controls limit inappropriate access to data and thereby protect it from unauthorized modification, loss, and disclosure. Logical access controls

limit the files and actions that users can execute. In addition, Comptroller's Directive #1, *Principles of Internal Control*, states that "[t]ransactions and other significant events should be authorized and executed only by persons acting within the scope of their authority." However, and despite repeated requests, DOB could not produce an adequate list of user access controls and edit rights for every unit and employee which handles curb cut approvals, complaints, and dispositions.

Instead, we received a list of a limited set of employees with no indication of their job titles, all of whom the list claims are limited to read-only access in BIS. We also received a separate list of employees with job titles; however, their full access and edit rights in both BIS and DOB NOW were not indicated. Accordingly, we have no assurance that DOB maintains, and is readily aware of, the access rights granted to its employees. Without adequate access controls, users have the ability to modify data that may be outside the scope of their authority, including improperly disposing of and deleting curb cut complaints.

Invalid Building Identification Numbers

We found that 507 (9 percent) of the 5,783 complaints contained in the list provided to us by DOB for our audit scope period had an invalid building identification number (BIN) beginning with "999999" and ending with a figure between 1 and 5 corresponding to the borough of the complaint. This means that the BIN cannot be "geocoded," that is, matched to a street address. We found that 363 of such complaints (72 percent) were correctly closed by a triage officer because, absent geocoding, the locations of the alleged illegal curb cuts and driveways that were the subjects of the complaints could not be identified. However, the remaining 144 (28 percent) of the complaints with invalid BINs were not closed by the triage officer and instead were assigned to field inspectors to be inspected even though the addresses could not be located in DOB NOW. While we found that these complaints were eventually deemed invalid by the field inspectors, that process took an average of 29 days and, in 4 cases, it took over a year.

These improper referrals of complaints resulted in each being individually addressed for a second time and as such is an inefficient use of resources that could unnecessarily delay DOB's efforts to address other legitimate complaints in a timely manner.

DOB Response: "The audit noted that triage officers assigned some complaints with invalid BINs to be inspected even though the BIN was invalid and recommended that properties with invalid addresses be dispositioned as such. It is important to note, however, that in some cases inspectors are routed to complaint locations that have invalid BINs to determine whether the correct location or address can be ascertained while at or near the site or the complaint can nonetheless be investigated or resolved with incomplete information. Given that some complaints may be successfully resolved even without complete BIN or address information (for example if cross streets and a property description are provided without an address), not all complaints with invalid BINs and addresses will automatically be closed or dispositioned as having an invalid address."

Auditor Comment: We agree that some complaints with invalid BINs may be successfully resolved. However, we did not find this to be the case during our review. In addition, DOB did not provide any evidence to support its assertion.

Recommendations

DOB should:

21. Verify that information submitted on site surveys is accurate and reflects the existing condition of a property prior to approving a curb cut application;

DOB Response: “The Department disagrees with this recommendation. Land surveying is a profession regulated by New York State. The Department relies on properly licensed and trained surveyors to provide the necessary information as it does for all licensed professionals who conduct business with the Department.

DOB plan examiners are trained to confirm fundamental information provided in surveys, but are not required to perform comprehensive, independent verification of information that licensed surveyors provide.”

Auditor Comment: While we do not dispute the credentials of New York State land surveyors, an independent verification of the information that they provide would serve as an assurance that the conditions at the site are not misrepresented. We continue to urge DOB to ensure its Plan Examiners verify that the information provided in site surveys is accurate and reflects the existing condition of a property prior to approving a curb cut application.

22. Verify that the information submitted in support of a curb cut and driveway permits contains all required documentation;

DOB Response: “The Department agrees with this recommendation, which is current practice.”

Auditor Comment: We are pleased that DOB agrees with this recommendation. However, as previously noted, we found that DOB did not ensure that all required documentation was included to support a curb cut or driveway permit application. DOB also provided no evidence beyond its statement that this is its current practice. We continue to urge DOB to verify that all permit applications are adequately supported with all required documentation.

23. Ensure that Plan Examiners raise objections during the application review process if required;

DOB Response: “The Department agrees with this recommendation, which is current practice.”

Auditor Comment: We are pleased that DOB agrees with this recommendation. However, DOB provided no evidence beyond its statement that this is its current practice. As previously noted, DOB did not ensure that its Plan Examiners raised all objections that would have made a proposed curb cut or driveway illegal. We continue to urge DOB to ensure that Plan Examiners flag all deficiencies during the application review process.

24. Confirm that applications submitted include all necessary detailed information, including: the purpose of the curb cut (access to a garage or parking lot); measurements of the curb cut; the number of garages and parking pads to be accessed via the curb cut(s); the location of the garage or the parking lot (on which side of the property); and the actual location of the curb cut to be installed (at the back or front of the property);

DOB Response: “The Department agrees with this recommendation, which is current practice.”

Auditor Comment: We are pleased that DOB agrees with this recommendation. However, DOB provided no evidence beyond its statement that this is its current practice. As previously noted, we did not find evidence that all of the above-detailed information was included with the reviewed curb cut or driveway applications. Without this information, it is difficult for DOB to ascertain whether the conditions at the site conform to the Zoning Resolution. We continue to urge DOB to ensure that all of the above-mentioned information is consistently included with curb cut or driveway applications.

25. Consider requiring photographs of the site of a proposed curb cut including the immediate surroundings, with its application for a curb cut permit, and of the completed work after the curb cut is and/or driveway is created;

DOB Response: “The Department disagrees with this recommendation. DOB requiring photographs to accompany a class of applications is unprecedented and not supported by the Building Code.”

Auditor Comment: Requiring photographs to accompany curb cut or driveway applications is the best way to accurately depict conditions at a proposed site and for DOB to easily verify the stated conditions. Additionally, DOB has the ability to establish procedures beyond those specified in the Building Code, and where necessary, to seek amendments to the Building Code to require photographs. We continue to urge DOB to require photographs of the site before and after the installation of a curb cut or driveway.

26. Maintain a complete and accurate list of all user access rights for all employees who handle curb cut approvals, inspections, and dispositions; and

DOB Response: “The Department agrees with this recommendation in that it is current practice. DOB NOW: *Build* was launched for curb cut applications on August 28, 2017. As of that date, all curb cut applications are filed and processed in DOB NOW: *Build*; BIS curb cut applications are closed. Curb cut inspections are scheduled, conducted, and dispositioned in DOB NOW: *Inspections*. DOB does and will continue to maintain complete and accurate lists of user access rights for employees using DOB NOW: *Build* and DOB NOW: *Inspections* to handle curb cut applications and inspections.”

Auditor Comment: We are pleased that DOB agrees with this recommendation. However, as previously noted, throughout the audit we made multiple attempts to obtain a complete listing of DOB user access rights to DOB NOW and were only provided with incomplete listings that did not show all such rights for all employees. In addition, DOB provided no evidence beyond its statement that this is its current practice. We continue to urge DOB to ensure that it can produce and periodically review and update its users’ access rights to DOB NOW for accurate and contemporaneous reporting.

27. Automate the detection of invalid BINs and addresses and their dispositions as such.

DOB Response: “The Department partially agrees with this recommendation. The Department will create reports to identify invalid BINs. As previously noted, however, there are times where inspectors are routed to complaint locations with invalid BINs or incomplete address information to determine whether the correct location or address can be ascertained while at or near the site or the complaint can be investigated or resolved without complete information. Therefore, given that some complaints may be successfully resolved even without complete BIN or address information, not all complaints with invalid BINs and addresses will ultimately be dispositioned as such.”

Auditor Comment: We are pleased that DOB will create reports to identify invalid BINs. However, DOB did not provide evidence supporting its statement and therefore, we do not

have a reasonable assurance that DOB field inspectors made attempts to locate complaints with invalid BINs. While we agree that some complaints may be successfully resolved with invalid BINs, we continue to urge DOB to automate and properly dispose of complaints with invalid BINs and addresses in order to preserve its available resources.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covers the period from July 1, 2016 through October 1, 2018.

To obtain an understanding of DOB's oversight of curb cuts and driveways, we reviewed and used as criteria the following, obtained from DOB:

- DOB NOW: *Inspections* – Operational and Technical Policies;
- DOB NOW: *Inspections* for Field Inspectors;
- DOB Project Guidelines – Plan Examination Standards: Building Renovations for Curb Cuts;
- DOB PW1 Application User Guide;
- DOB PW2 Instructions;
- DOB Directive 1 Calendar Year 2017 Agency Checklist; and
- DOB Buildings Bulletin 2014-027.

We independently obtained, reviewed, and used as criteria the following:

- DOB Code Notes: Directive 14 of 1975 Alteration;
- DOB Operations – Policy and Procedure Notice # 2/91;
- New Driveway, Curb and Tandem Parking Regulations;
- NYC Building Code; and
- NYC Board of Standards and Appeals – Guidelines for Drawings.
- DOT Instructions For Filing Plans & Guidelines For The Design of Sidewalks, Curbs, Roadways and Other Infrastructure Components (revised July 22, 2010)
- OATH Hearings Division – Rules of Practice
- Zoning Resolution 25-63 – Location of Access to the Street
- BSMART
- Federal Information Systems Controls Audit Manual

We also reviewed and used as criteria:

- Comptroller's Directive #1 – *Principles of Internal Control*;
- GAO – Standards for Internal Control in the Federal Government;
- DOB Construction Inspector job posting; and

- Civil service Notice of Examination for Construction Inspectors.

To obtain an understanding of the process of addressing complaints of illegal curb cuts and driveways, we conducted walkthroughs with the Executive Director of Enforcement and a Construction Enforcement Unit field inspector. Based on those discussions, we obtained and reviewed an LS4 (Notice to Call for Inspection) form and a sample of a field inspector's route in travelling to sites subjected to complaints. We also observed a Construction Enforcement Unit field inspector as he inspected and addressed curb cut complaints.

To obtain an understanding of the process of approving a permit for a curb cut and/or a driveway, we conducted walkthrough meetings with the Plan Examination Unit – one meeting to obtain an understanding of the process prior to changing their computer systems to DOB NOW, and another to obtain an understanding of the process after changing their computer systems to DOB NOW. We also conducted a walkthrough meeting with the DOB Manhattan Borough Office director in order to understand the process of issuing a permit after the Plan Examination review. We created flowcharts for the permit approval processes. Further, we obtained and reviewed the following documents:

- Organizational Charts for Strategic Planning and Policy unit for each of the five Borough Offices;
- L2 (Requests for Overrides, Reductions, or Waivers of Civil Penalties for Work Without a Permit and Stop Work Order Violations) Form;
- PW3 (Cost Affidavit) Form; and
- Cash Receipts Guidelines for Cash Collection Centers.

To obtain an understanding of DOB's process of verifying that PC and/or Directive 14 curb cut and/or driveway applicants have legal curb cuts and/or driveways, we conducted a walkthrough with the Director of the Special Enforcement Unit.

To obtain an understanding of the interface between the 311 service and BIS regarding the transfer of curb cut complaints to DOB, we conducted a walkthrough with the Chief Information Officer.

To obtain an understanding of DOB's process for certifying that properties that received violations performed an adequate remedy to correct the violating conditions, we interviewed the Director of Enforcement Analysis and the Executive Director of the Administrative Enforcement Unit.

We obtained from DOB a list of 7,256 entries of curb cut complaints and their associated dispositions for the period July 1, 2016 to October 1, 2018. To use the list of curb cut complaints and dispositions for audit survey and fieldwork testing, we identified and removed a total of 1,473 entries as follows:

- 763 duplicated entries;
- 634 entries of complaints re-assigned internally without receiving a final disposition at the time of reassignment; and
- 76 entries of complaints where multiple dispositions were made prior to finalizing the complaint.

The remaining 5,783 entries were individual complaints and their final dispositions.

We reviewed a sample of 1,380 entries for 1,024 complaints associated with 726 properties and determined whether DOB had adequate controls over the complaint and disposition process. The complaints were judgmentally selected top to the bottom of the data set by house number/street

name/BIN and ensuring that all of the boroughs were represented. These complaints were not homogeneous as there were many variants in case by case.

	Number of Entries	Number of Complaints	Number of Properties	Number of Inspections
DOB Listing	7,256	5,783	3,874	3,238
Audit Sample	1,380	1,024	726	630

We determined whether:

- Triage officers correctly assessed the validity of curb cut complaints received from 311;
- Triage officers and field inspectors properly researched and used available data to arrive at an appropriate disposition;
- Relevant documentation cited by field inspectors, such as permits and Certificates of Occupancy, actually existed and could be found on BIS;
- Field inspectors addressed all relevant criteria of legal curb cuts and driveways when performing a field inspection;
- Field inspectors' remarks were substantive and appropriate when disposing of a complaint;
- DOB correctly followed up on complaints that were designated as requiring further research;
- Field inspections that did not result in violations conformed to the Zoning Resolution and other established criteria;
- Field inspections that resulted in violations cited the homeowner for all violating conditions of curb cut and driveways found;
- Triage officers and field inspectors appropriately referred to other City agencies complaints that are under those agencies' jurisdictions;
- Complaints that were dismissed because a permit was on file actually reflected the existence of a legal curb cut and driveway; and
- Field inspectors inspected the correct location subjected to a complaint by using publicly available data such as Google Street View. We reviewed months or years that were closest to the time when a complaint was made. We also reviewed photographs prior to when the complaint was made to determine whether any changes had occurred.

For the 3,238 inspections performed during the audit scope, there were 1,435 violations issued of which 1,061 were curb cut- and driveway-specific. To determine whether the data pertaining to the 1,061 violations issued for illegal curb cuts and driveways is reliable, we judgmentally identified four categories and selected a random stratified sample of 50 violations, as follows:

- 40 violations that were not located in BIS – 10 random selections from Queens²¹
- 60 violations that do not have an OATH Hearing Date on our listing – 10 random selections

²¹ This stratum was selected from the entire population of 1,435 violations issued during our audit scope. Of the total of 40 violations not located in BIS, 23 of them (58 percent) were in Queens.

- Remaining violations in Brooklyn (a borough with a high number of violations; 422 of the 1,061 total number of violations issued) – 15 random selections
- Remaining violations in Queens (a borough with a high number of violations; 398 of the 1,061 total number of violations issued) – 15 random selections.

We requested the supporting documentation for those 50 violations to verify that the information on the violations matched the information contained on the listing provided by DOB.

During the analysis of curb cut complaints and dispositions, we conducted an additional walkthrough meeting with the Assistant Chief and a supervisory inspector at the Staten Island Borough Office Construction Unit to obtain additional insight on the following:

- The function of the triage officer;
- The use of available supplementary materials during an inspection, such as permits, Certificates of Occupancy, site surveys, and plot plans on curb cut applications;
- The handling of multiple complaints received in quick succession for the same property;
- Any differences in the handling of curb cuts that lead to garages as opposed to driveways.

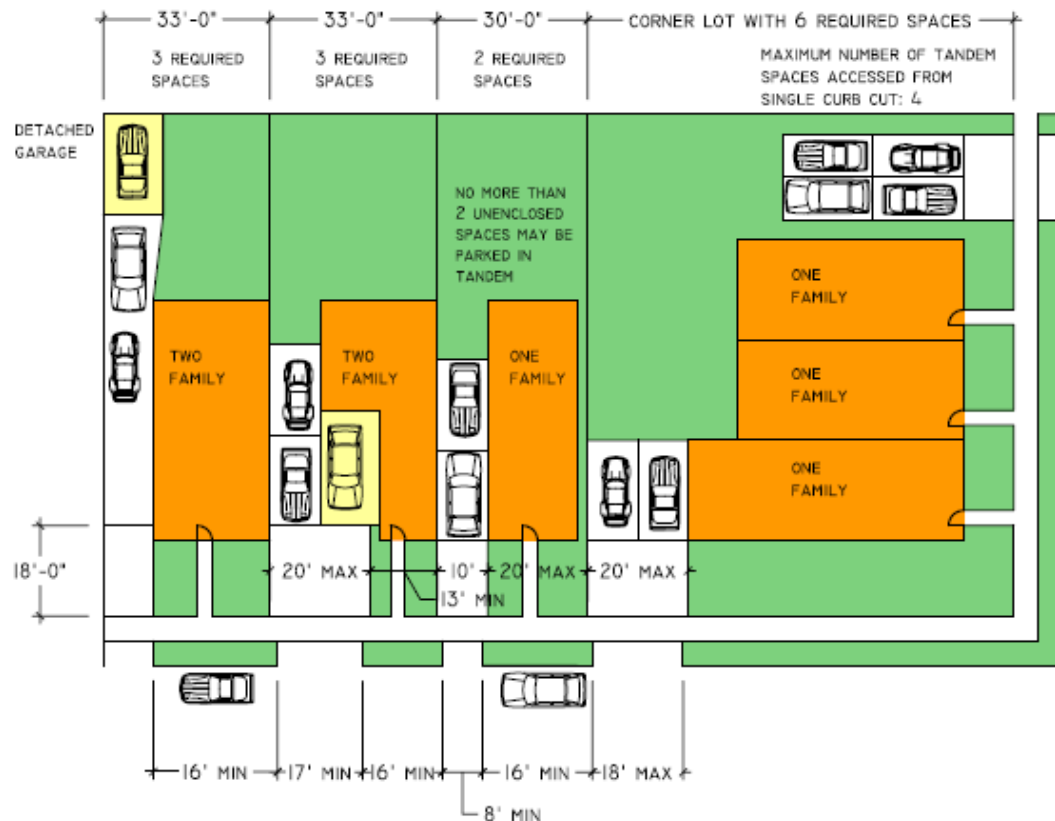
To determine whether complaints on properties with permits associated with curb cuts and/or driveways were dismissed because the inspector stated that a permit on file depicted legal curb cuts and/or driveway, we identified 200 properties where the inspector did not issue a violation because the inspector alleged that the curb cut and/or driveway had a valid permit on file, yet the property appeared to have an illegal curb cut and/or driveway installed based on publicly available information. We selected 14 properties – 10 properties judgmentally selected as the most likely to have an illegal curb cut and/or driveway, and 4 properties where the inspector alleged that a legal permit was on file but could not be found on BIS – and reviewed the curb cut and/or driveway application packages on file, specifically the site surveys and plot plans submitted by the applicants.

To determine whether DOB supervisory field inspectors performed required reviews of the results of DOB field inspections, we requested and received DOB's records of such reviews, including any available information on whether the inspection was reviewed by a supervisor or auto-finalized due to not receiving a review. In addition, we accompanied a DOB field inspector on his routes to observe the inspection process for curb cuts and driveways.

The results of the above tests, while not projectable to their respective populations, provided a reasonable basis for us to evaluate the controls over complaints of illegal curb cuts and driveways.

DRIVEWAY, CURB, AND TANDEM PARKING REGULATIONS

NEW DRIVEWAY, CURB AND TANDEM PARKING REGULATIONS



FOR ZONING LOTS LESS THAN 33 FEET WIDE:

- * MAXIMUM DRIVEWAY WIDTH IN FRONT YARD: 10 FEET
- * ONLY ONE CURB CUT PERMITTED; MAX WIDTH: 10 FT
- * NO MORE THAN 2 UNENCLOSED SPACES MAY BE IN TANDEM (ONE BEHIND THE OTHER)

FOR ZONING LOTS AT LEAST 33 FEET WIDE:

- * MAXIMUM DRIVEWAY WIDTH IN FRONT YARD ON SAME OR ADJOINING ZONING LOTS: 20 FEET
- * MULTIPLE CURB CUTS ARE PERMITTED IF SPACED AT LEAST 16 FEET APART
- * MAX WIDTH OF CURB CUT SERVING DRIVEWAY LESS THAN 12 FT WIDE: 10 FT
- * WIDTH OF CURB CUTS SERVING 2 SIDE-BY-SIDE SPACES: MINIMUM: 17 FT; MAXIMUM: 18 FT

FOR ALL ZONING LOTS:

- * CENTERLINE OF CURB CUTS MUST BE CENTERLINE OF DRIVEWAYS
- * ALL DRIVEWAYS MUST BE AT LEAST 13 FT APART ON SAME OR ADJOINING ZONING LOTS
- * DRIVEWAYS MAY BE PAIRED ON ADJACENT ZONING LOTS IF NOT WIDER THAN 20 FT
- * ALL CURB CUTS CONSTRUCTED AFTER 1989 MUST BE AT LEAST 16 FT APART
- * TANDEM PARKING MAY BE PROVIDED SIDE-BY-SIDE FOR MAX OF 4 SPACES ACCESSED FROM SAME CURB CUT



Melanie E. La Rocca
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April 23, 2021

Marjorie Landa
Deputy Comptroller for Audit
NYC Office of the Comptroller
One Centre Street, Room 1100N
New York, NY 10007

Re: Department of Buildings' Controls Over Illegal Curb Cuts and Driveways (FM18-138A)

Dear Ms. Landa:

Thank you for the opportunity to respond to the recommendations in the above-captioned report.

The Department of Buildings promotes the safety of all people that build, work, and live in New York City by regulating the lawful use of over one million buildings and construction sites across the five boroughs. As part of that mission, DOB works diligently to promote the lawful installation and use of curb cuts and driveways, and will continue to conduct curb cut and driveway inspections and plan reviews with the same dedication and professionalism that it brings to each of its undertakings.

As noted in your report, the scope period of this audit covered July 1, 2016 to October 1, 2018. It is important to note that many of the actions recommended in the report are either current practice or are already being addressed through updated technology systems put in place since the period your audit reviewed. For example, DOB has markedly shortened its response times for curb cut complaint inspections since the 2016-2018 audit scope period; the average curb cut complaint response time decreased 80% between 2018 and 2021. Additionally, technology improvements put in place since the period reviewed, including the electronic processing of summons information to OATH via Mobile Summons and the filing of 100% of curb cut job applications electronically through DOB NOW: *Build*, have further strengthened DOB's ability to increase efficiency, improve record-keeping, increase the level of review, and hold responsible parties accountable for violations of the code and the zoning resolution. Each of the locations identified in the report have also been re-



inspected, and enforcement actions taken where appropriate. We agree, however, that our processes can always be improved, and we will continue working to strengthen them.

It is important to note that while DOB is committed to promoting the lawful installation and use of curb cuts and driveways, this work forms but one small part of DOB's extensive portfolio of responsibilities and legal mandates designed to promote the safety of workers and the public, including incident response, construction site safety oversight and inspections, illegal conversion and school inspections, and re-inspection of hazardous violating conditions. DOB remains wholly committed to the safety of all New Yorkers and makes every effort to balance its multiple, competing priorities to build on its successes and make improvements where required. However, we ask that you consider that, given the Department's finite resources and the need to direct those resources to address issues of the highest priority and with the greatest safety impact, some of the recommended initiatives cannot be undertaken at this time.

Below please find clarifying comments and responses to recommendations.

Clarifying Comments

The audit report noted that existing curb cuts must comply with zoning regulations. This is not in fact accurate; existing legal curb cuts are grandfathered and may continue in their use without the need to comply with current zoning requirements.

The audit asserted that DOB triage personnel improperly closed 7% of sampled complaints. This finding was based in part on the principle that a property having a valid curb cut permit or a Certificate of Occupancy that includes a curb cut, driveway, and/or garage is not itself a sufficient basis for deeming a curb cut or driveway to be legal, and that the physical curb cut or driveway must still be inspected.

However, it is inaccurate to suggest that a triage officer administratively closing a complaint based on the existence of a valid curb cut permit or Certificate of Occupancy is by definition improper. Triage officers make an assessment to determine whether, based on substantiated Department records, the statement of allegations can be properly addressed without an inspection. While some situations warrant an inspection following review of Department records, this is not uniformly the case. Whether an inspection is required depends on the nature of the allegations and the records under review.

The audit noted that triage officers assigned some complaints with invalid BINs to be inspected even though the BIN was invalid and recommended that properties with invalid addresses be dispositioned as such. It is important to note, however, that in some cases inspectors are routed to complaint locations that have invalid BINs to determine whether the correct location or address can be ascertained while at or near the site or the complaint can nonetheless be investigated or resolved with incomplete information. Given that some complaints may be successfully resolved even without complete BIN or address information (for example if cross streets and a property description are provided without an address), not all complaints with invalid BINs and addresses will automatically be closed or dispositioned as having an invalid address.



The audit recommended that procedures should be enhanced to ensure that triage officers and field inspectors conduct follow-up research and re-inspections as warranted. While field inspectors are sometimes tasked with conducting follow-up research in connection with a site inspection, triage officers are not tasked with performing follow-up research. The role of triage is limited to complaint intake to identify conditions including but not limited to duplicate complaints, mis-categorization, and improper jurisdictional assignment. Triage officers may also perform initial research in connection with quickly assessing a complaint that has not been inspected for the purposes of determining whether administrative closure or assignment to a specific Enforcement unit is warranted. As triage officers do not perform follow-up research or inspections, however, they should not be the subject of this recommendation.

Response to Recommendations

Recommendation 1: DOB should enhance their procedures to ensure that triage officers correctly identify curb cut and driveway complaints that merit a field inspection and forward them to the Construction unit.

DOB's Response: The Department agrees with this recommendation. DOB will review its procedures and update them as necessary to clarify triage requirements.

Recommendation 2: DOB should enhance their procedures to ensure that triage officers correctly identify, close and consolidate repeated complaints, and ensure that the remainders receive an inspection.

DOB's Response: The Department agrees with this recommendation. DOB will review its procedures and update them as necessary to clarify triage requirements.

Recommendation 3: DOB should enhance their procedures to ensure that triage officers close the most recent complaint, rather than the oldest, when multiple complaints are received on a single property.

DOB's Response: The Department agrees with this recommendation. DOB will review its procedures and update them as necessary to clarify triage requirements.

Recommendation 4: DOB should enhance their procedures to ensure that complaints of illegal curb cuts and driveways are inspected timely, according to its standards.

DOB's Response: The Department partially agrees with this recommendation. DOB has significantly improved response times on curb cuts complaints since the 2016-2018 audit scope. While DOB will continue to make every effort to respond to curb cut complaints in timeframes consistent with internal goals and targets, it will not be making changes to its complaint response timeframe procedures at this time.



Recommendation 5: DOB should enhance their procedures to ensure that triage officers and field inspectors conduct follow-up research and re-inspections as warranted.

DOB's Response: The Department partially agrees with this recommendation. As previously noted, triage officers are not tasked with performing follow-up research or re-inspections. However, DOB field inspectors will conduct follow-up research and inspections when warranted.

Recommendation 6: DOB should enhance their procedures to ensure that all assessed OATH violations are filed prior to the pre-set hearing date as required.

DOB's Response: The Department agrees with this recommendation as it is current practice. Current procedure requires summonses to be filed prior to the pre-set hearing date. Additionally, curb cut complaint inspections are conducted in DOB NOW: *Inspections*. As of May 2019, summonses associated with those inspections are issued via Mobile Summons, which relays summons information to OATH electronically shortly after service. This significantly enhances the speed and efficiency with which DOB processes summonses to OATH and ensures they are filed prior to the pre-set hearing date.

Recommendation 7: DOB should ensure that DOB databases can create accurate reports of supervisory reviews.

DOB's Response: The Department agrees with this recommendation as this is current practice. DOB databases can currently create accurate reports of supervisory reviews.

Recommendation 8: DOB should ensure that DOB supervisory field inspectors review the results of all field inspections prior to finalizing their results.

DOB's Response: The Department agrees with this recommendation in that it is current practice. Supervisors review all inspection results submitted in DOB NOW: *Inspections*.

Recommendation 9: DOB should ensure that field inspectors complete and submit a checklist as part of their inspections.

DOB's Response: The Department agrees with this recommendation. DOB inspectors do currently and will continue to submit checklists for curb cut inspections.

Recommendation 10: DOB should ensure that field inspectors use appropriate measurement tools during inspections to ensure that homeowners are adhering to the proper dimensions of a curb cut and driveway.



DOB's Response: The Department agrees with this recommendation. DOB inspectors will use measurement tools when necessary to evaluate curb cut and driveway dimensions.

Recommendation 11: DOB should establish performance metrics for field inspections of curb cuts and driveways, and routinely perform analysis of those metrics, including significant variances between field inspectors' issuance of violations.

DOB's Response: The Department disagrees with this recommendation. The Department analyzes metrics related to a variety of inspection types, including curb cut inspections, as part of its continuous efforts to enhance operational effectiveness. DOB will continue to perform these analyses in support of existing mandates and proactive initiatives to promote public safety. However, developing additional metrics to monitor and analyze variations between inspectors' summons issuance on curb cut inspections is not currently practicable given available resources. The Department will therefore not do so at this time.

Recommendation 12: DOB should establish specific training for curb cut and driveway inspections to ensure that field inspectors have the requisite knowledge to assess the legality of curb cuts and driveways.

DOB's Response: The Department agrees with this recommendation. DOB will provide additional guidance to field inspectors to clarify and reiterate curb cut inspection requirements.

Recommendation 13: DOB should ensure that inspectors' comments related to inspections of curb cuts and driveways are relevant, complete, and appropriate with respect to the complaint.

DOB's Response: The Department agrees with this recommendation. As previously noted, DOB will provide additional guidance to field inspectors to clarify and reiterate curb cut inspection requirements.

Recommendation 14: DOB should instruct field inspectors to appropriately report observed instances of potentially illegal curb cuts and driveways for inspection. Areas with large concentrations of illegal curb cuts and driveways observed during inspections should be flagged for a neighborhood inspection sweep.

DOB's Response: The Department disagrees with this recommendation. DOB has procedures in place for addressing conditions encountered during the course of an inspection that are not directly related to the original purpose of the inspection visit. It is important to note, however, that inspectors' primary objective when conducting complaint inspections is to expeditiously investigate complaints, including those alleging hazardous conditions, that have already been assigned. The Department does not consider it practicable, therefore, to instruct inspectors to make deviations from inspection routes to report and/or address other, unrelated non-hazardous conditions as a matter of course.



Additionally, while the Department conducts inspection sweeps to investigate various conditions, given practical realities with regard to staffing levels and DOB's multiple competing priorities and mandates, the Department cannot commit to conducting inspection sweeps specific to curb cuts and driveways at this time.

Recommendation 15: DOB should verify that inspections that should be identified as requiring follow-up research and re- inspection are noted as such.

DOB's Response: DOB agrees with this recommendation. The Department does and will continue to conduct research or re-inspections where it determines that such actions are warranted.

Recommendation 16: DOB should ensure that field inspectors correctly identify violating conditions and issue violations as appropriate.

DOB's Response: The Department agrees with this recommendation.

Recommendation 17: DOB should require supervisors to periodically accompany field inspectors on their routes to ensure that field inspectors properly inspect properties for illegal curb cuts and driveways.

DOB's Response: The Department agrees with this recommendation in that it is current practice. Supervisors periodically accompany inspectors on inspections of all types, including curb cut inspections, and will continue to do so.

Recommendation 18: DOB should ensure that field inspectors obtain photographs depicting violating conditions and upload them into DOB NOW prior to finalizing the results of the inspection.

DOB's Response: The Department agrees with this recommendation. When issuing summonses for violating conditions related to curb cuts and driveways, inspectors will obtain photographs depicting the conditions and upload them to DOB NOW: *Inspections*.

Recommendation 19: DOB should require field inspectors to take photographs from the street of all field inspection sites, without regard to whether a violation was issued, in order to ensure that inspections that do not result in a violation are indeed of sites without illegal curb cuts and driveways.

DOB's Response: The Department disagrees with this recommendation. DOB has determined that requiring photographs to be taken, documented, and uploaded for all field inspections sites regardless of whether a violating condition was identified is not currently practicable given available resources.



Recommendation 20: DOB should ensure that potentially violating conditions under DOT's jurisdiction are referred and forwarded to DOT so that it may appropriately follow up.

DOB's Response: The Department agrees with this recommendation.

Recommendation 21: DOB should verify that information submitted on site surveys is accurate and reflects the existing condition of a property prior to approving a curb cut application.

DOB's Response: The Department disagrees with this recommendation. Land surveying is a profession regulated by New York State. The Department relies on properly licensed and trained surveyors to provide the necessary information as it does for all licensed professionals who conduct business with the Department.

DOB plan examiners are trained to confirm fundamental information provided in surveys, but are not required to perform comprehensive, independent verification of information that licensed surveyors provide.

Recommendation 22: DOB should verify that the information submitted in support of a curb cut and driveway permits contains all required documentation.

DOB's Response: The Department agrees with this recommendation, which is current practice.

Recommendation 23: DOB should ensure that Plan Examiners raise objections during the application review process if required.

DOB's Response: The Department agrees with this recommendation, which is current practice.

Recommendation 24: DOB should confirm that applications submitted include all necessary detailed information, including: the purpose of the curb cut (access to a garage or parking lot); measurements of the curb cut; the number of garages and parking pads to be accessed via the curb cut(s); the location of the garage or the parking lot (on which side of the property); and the actual location of the curb cut to be installed (at the back or front of the property).

DOB's Response: The Department agrees with this recommendation, which is current practice.

Recommendation 25: DOB should consider requiring photographs of the site of a proposed curb cut including the immediate surroundings, with its application for a curb cut permit, and of the completed work after the curb cut is and/or driveway is created.



DOB's Response: The Department disagrees with this recommendation. DOB requiring photographs to accompany a class of applications is unprecedented and not supported by the Building Code.

Recommendation 26: DOB should maintain a complete and accurate list of all user access rights for all employees who handle curb cut approvals, inspections, and dispositions.

DOB's Response: The Department agrees with this recommendation in that it is current practice. DOB NOW: *Build* was launched for curb cut applications on August 28, 2017. As of that date, all curb cut applications are filed and processed in DOB NOW: *Build*; BIS curb cut applications are closed. Curb cut inspections are scheduled, conducted, and dispositioned in DOB NOW: *Inspections*. DOB does and will continue to maintain complete and accurate lists of user access rights for employees using DOB NOW: *Build* and DOB NOW: *Inspections* to handle curb cut applications and inspections.

Recommendation 27: DOB should automate the detection of invalid BINs and addresses and their dispositions as such.

DOB's Response: The Department partially agrees with this recommendation. The Department will create reports to identify invalid BINs. As previously noted, however, there are times where inspectors are routed to complaint locations with invalid BINs or incomplete address information to determine whether the correct location or address can be ascertained while at or near the site or the complaint can be investigated or resolved without complete information. Therefore, given that some complaints may be successfully resolved even without complete BIN or address information, not all complaints with invalid BINs and addresses will ultimately be dispositioned as such.

Sincerely,

A handwritten signature in black ink, appearing to read "Melanie E. La Rocca".

Melanie E. La Rocca
Commissioner

cc: Florim Ardolli
Brady Hamed
Constadino Sirakis
Germain Difo
Kerry Castro