

# New York City Department of Buildings

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## Oversight of Sidewalk Sheds

Report 2019-N-9 | July 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER  
Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objective

To determine if the New York City (NYC or City) Department of Buildings (DOB) adequately monitors that NYC sidewalk sheds are erected and removed when required, are safely maintained, and have valid operating permits. The audit covered the period from January 1, 2017 through October 1, 2020.

## About the Program

DOB is responsible for regulating the safe and lawful use of more than 1 million buildings and construction sites in NYC. This includes enforcing provisions of the NYC Administrative and Building Codes, Rules of the City of New York, and NYC Local Laws that serve to promote the safety of people who visit, live, and work in the City. DOB is also responsible for the permitting and oversight of sidewalk sheds (sheds), which are temporary structures installed and maintained by property/building owners (owners), site managers, contractors, and other responsible parties to protect people and property on city sidewalks during construction and demolition operations.

## Key Findings

DOB needs to be more proactive in ensuring that owners and other responsible parties comply with relevant codes, laws, and rules pertaining to the timely permitting, installation, maintenance, and removal of sheds.

Hazardous conditions that are not corrected can have severe consequences, as in the case of a pedestrian killed on December 17, 2019 after being struck by debris that fell from a Manhattan building. DOB had previously identified immediately hazardous conditions at this site and issued violations, but it did not refer the site to the NYC Department of Housing Preservation and Development (HPD). Ultimately, the responsible parties did not install adequate protection between the time the conditions were identified and when the incident occurred.

During the period December 20, 2019 through March 10, 2020, we visited a sample of 74 sites located throughout the five boroughs of NYC where installation of sheds had been approved. Sheds were in place at 60 of the 74 sites at the time of our visits. At some of the sites, we observed sheds with hazardous conditions and sheds without posted permits, as follows:

- 49 of the 60 sheds (82 percent) did not have publicly displayed permits, as required.
- 27 of the 60 sheds (45 percent) had a total of 47 safety issues. In addition, daily inspection reports were not maintained for 51 of the 60 sheds (85 percent).

Further, in some instances, DOB could have taken additional enforcement action or other actions to promote public safety:

- Between January 1, 2017 and March 31, 2020, of the total 3,798 Class 1 NYC Office of Administrative Trials and Hearings summonses issued, 1,966 were open for more than 30 days. Despite the requirement that these conditions be immediately addressed, DOB did not issue additional violations for failure to timely certify corrections.

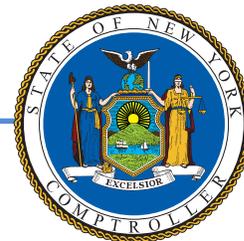
Additionally, DOB did not always refer immediate emergency conditions to HPD. Of 1,065 shed-related DOB Violations issued between January 1, 2017 and September 30, 2020, DOB classified immediate

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emergency conditions at 767 sites, but did not refer these conditions at 214 of these sites to HPD, which would have allowed HPD to take measures to protect the public. Furthermore, the owners of 98 of these sites were notified multiple times of the safety issues, which required immediate attention.

## Key Recommendations

- Improve policies and procedures to monitor that sheds are safely maintained.
- Implement procedures for building owners and contractors to complete and submit uniform daily shed inspection reports to DOB and monitor to ensure inspections address safety conditions per the NYC Building Code.
- Inspect unsafe sites within the required time frames to ensure protective sheds are properly installed or the unsafe condition is corrected.
- Develop and implement control activities, including policies and procedures to ensure property owners publicly post shed permits as required.
- Immediately identify overdue compliance with summonses and implement policies and procedures to monitor these sites and ensure hazardous conditions have been corrected.
- Coordinate with HPD to assist with taking immediate measures to protect the public from unsafe conditions.



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## Office of the New York State Comptroller Division of State Government Accountability

July 6, 2021

Melanie E. La Rocca  
Commissioner  
New York City Department of Buildings  
280 Broadway  
New York, NY 10007

Dear Commissioner La Rocca:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the New York City Department of Buildings entitled *Oversight of Sidewalk Sheds*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Division of State Government Accountability*

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# Glossary of Terms

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<b>Term</b>	<b>Description</b>	<b>Identifier</b>
Administrative Code	New York City Administrative Code	<i>Regulation</i>
BIS	DOB's Buildings Information System	<i>Information System</i>
Building Code	New York City Building Code	<i>Regulation</i>
CSC	DOB's Construction Safety Compliance Unit	<i>Unit</i>
DOB	New York City Department of Buildings	<i>Auditee</i>
DOB Violation	A notice that a property is not in compliance with some provision of applicable law and includes an order from the Commissioner of the Department of Buildings to correct the violating condition	<i>Key Term</i>
HPD	New York City Department of Housing Preservation and Development	<i>Agency</i>
IED	Immediate Emergency Declaration	<i>Key Term</i>
OATH	New York City Office of Administrative Trials and Hearings	<i>Agency</i>
OATH Summons	Summons issued by DOB when a property does not comply with the New York City Construction Code	<i>Key Term</i>
Owners	Property/building owners	<i>Key Term</i>
Shed	Sidewalk shed	<i>Key Term</i>

# Background

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The New York City (NYC or City) Department of Buildings (DOB) is responsible for regulating the safe and lawful use of more than 1 million buildings and construction sites in the City. This includes enforcing provisions of the NYC Administrative and Building Codes, the Rules of the City of New York, and NYC Local Laws in order to promote the safety of all people who visit, live, and work in the City. DOB is also responsible for the oversight of sidewalk sheds (sheds), which are temporary structures installed and maintained to protect people and property on city sidewalks during the construction, demolition, and maintenance of buildings (see Figure 1).



**Figure 1:** Examples of sheds

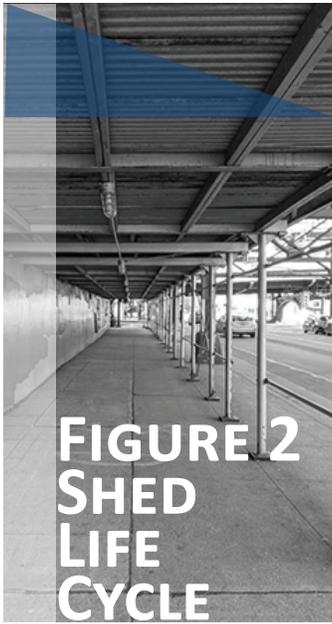
According to Section 3307.6.2 of the NYC Building Code (Building Code), property/building owners (owners), responsible parties, and contractors must erect a shed or have a shed erected when installing certain equipment immediately above sidewalks and walkways, constructing a building or performing façade<sup>1</sup> work that is more than 40 feet above a sidewalk, demolishing a building that is taller than 25 feet, and when any other condition necessitates this type of protection.

DOB is responsible for issuing permits for the installation of sheds, monitoring expiration of permits and the removal of sheds, ensuring inspections are performed as required, overseeing the reporting responsibilities of owners and contractors, issuing emergency declarations on structures that pose a serious safety threat to the public, and ensuring that safety issues are corrected in a timely manner (see Figure 2). DOB can issue summonses, violations, or emergency declarations and can request assistance from the NYC Department of Housing Preservation and Development (HPD)<sup>2</sup> when an owner or contractor does not comply with applicable codes, laws, and rules. As of September 30, 2020, there were 10,741 active shed permits in NYC.

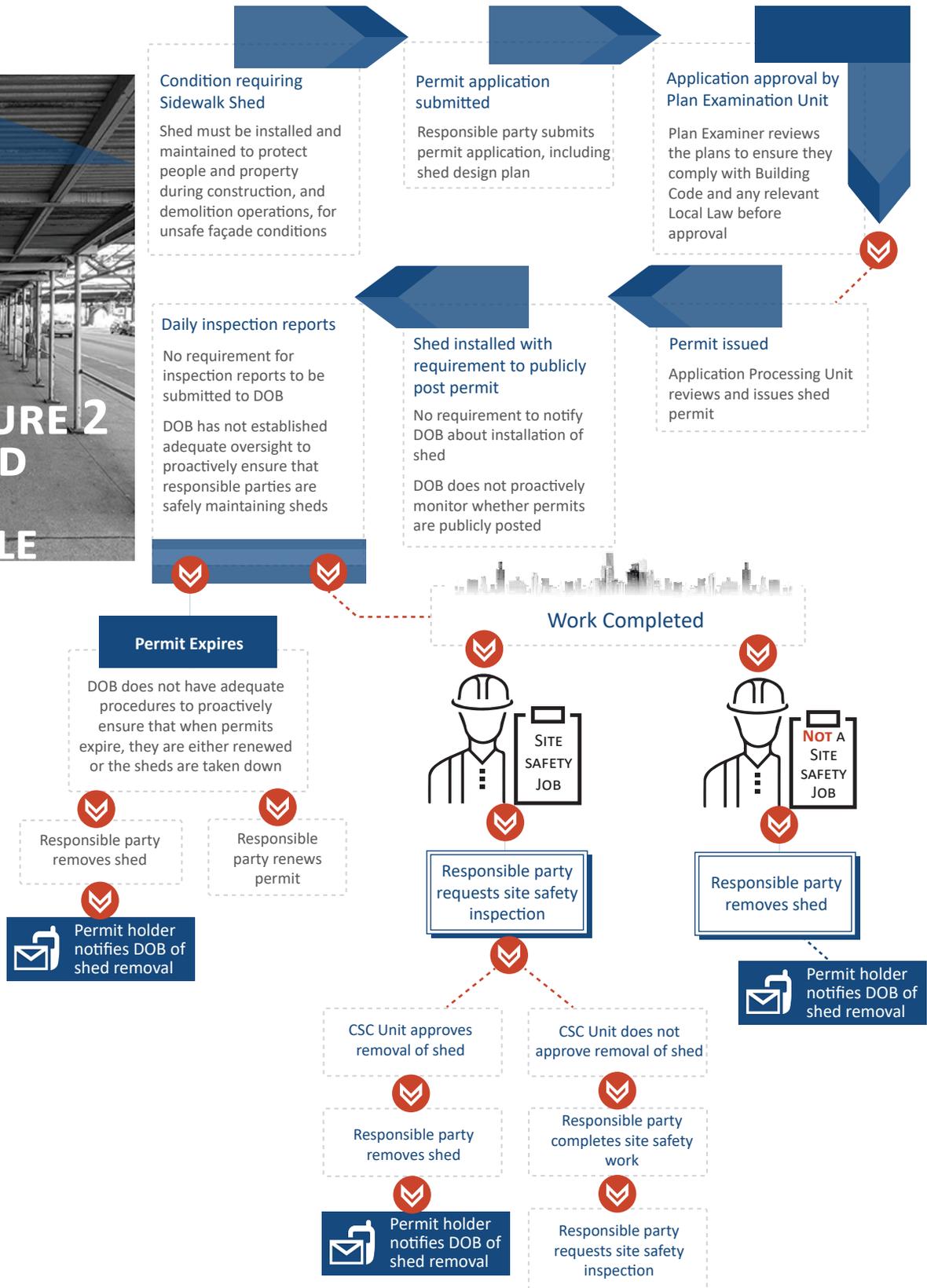
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1 Face of a building.

2 City agency that promotes the quality and affordability of the City's housing and the strength and diversity of its many neighborhoods.



**FIGURE 2  
SHED  
LIFE  
CYCLE**



# Audit Findings and Recommendations

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DOB needs to enhance its efforts to ensure that owners, contractors, and other responsible parties comply with the codes, rules, and laws that govern the permitting, installation, maintenance, and removal of sheds to ensure the safety of individuals who visit, work, and live in the City. We found that DOB does not adequately oversee and monitor the timely installation and removal of sheds or ensure that sheds are properly maintained. We observed unsafe façades with no installed sheds, sheds with hazardous conditions, and sheds without valid operating permits.

DOB's inadequate oversight, policies, and procedures, and insufficient enforcement provide no assurance that sheds are installed or emergency work is performed in a timely manner. Individuals have been injured and property has been damaged as a result of conditions relating to unsafe or missing sheds and unsafe building façades. For example, over an eight-month period, DOB issued several immediately hazardous condition violations at a Manhattan building. However, the owner and contractors never installed adequate protection. Subsequently, a pedestrian was killed on December 17, 2019 after being struck by debris that fell from the building. In response to this incident, DOB announced enhancements to its façade inspection process. Incidents related to unsafe façades also occurred at other buildings in 2020, including two in July 2020. DOB indicated that it had issued multiple violations for hazardous conditions at the sites where these incidents occurred, but that it did not refer the sites to HPD. Ultimately, the responsible parties did not install adequate protection between the time the conditions were identified and when the safety incidents occurred.

## Inadequate Oversight

Our audit determined that DOB provides inadequate oversight of the installation, maintenance, and removal of sheds. Such oversight seeks to address safety issues that could potentially result in personal injury, property damage, and business losses.

### Oversight of Shed Safety

The Building Code requires sheds to be maintained in a safe condition, used in a manner that eliminates hazards to the public, and inspected daily with a written report signed and dated by the person performing the inspection. We found that DOB did not take adequate steps to ensure that owners and contractors safely maintained sheds. Between December 20, 2019 and March 10, 2020, we visited a sample of 74 sites in the five NYC boroughs where sheds had been approved to be erected. Of the 74 sites, 60 had sheds in place at the time of our visit. We found that 27 of the 60 sheds (45 percent) had a total of 47 safety issues (see Table 1 and Figures 3–9).

**Table 1 – Results of Shed Site Visits**

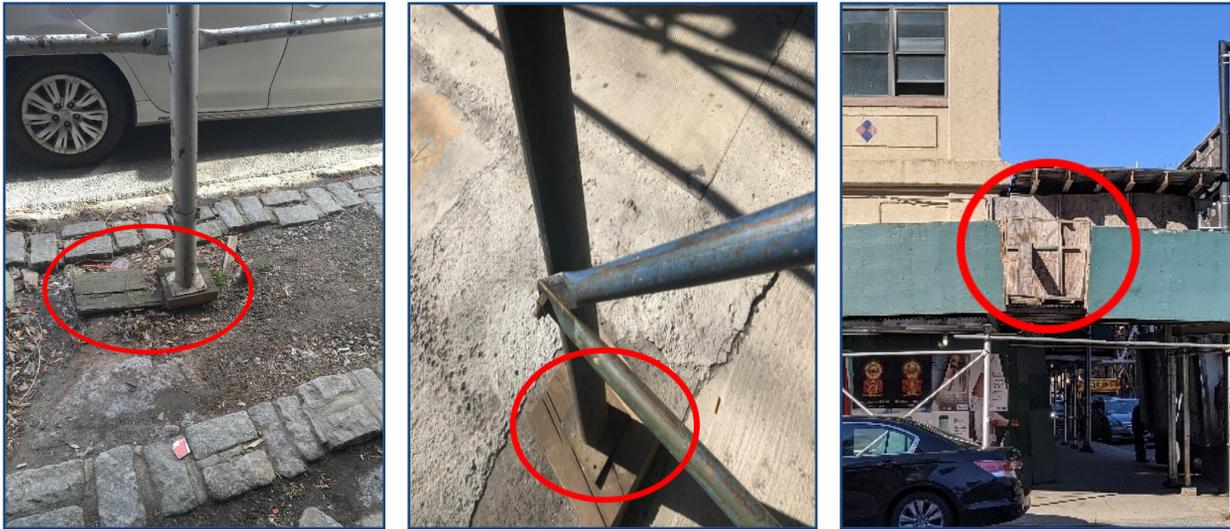
Borough	Unsafe Conditions Observed	Sheds With Unsecured Screws or Uncovered Bolts	Sheds With Non-Functioning Lights	Sheds With Unattached Rails	Sheds Not Sufficiently Attached to Ground	Sheds With Ceiling Safety Issues	Sheds With Missing Parapet* Sections
Bronx	22	8	6	4	3	1	0
Brooklyn	4	1	3	0	0	0	0
Manhattan	5	2	1	0	0	1	1
Queens	7	2	3	0	0	1	1
Staten Island	9	3	3	1	1	1	0
<b>Totals</b>	<b>47</b>	<b>16</b>	<b>16</b>	<b>5</b>	<b>4</b>	<b>4</b>	<b>2</b>

\*A low wall or railing to protect the edge of a platform, roof, or bridge.

Prior to our observations, DOB inspectors issued eight summonses for unsafe shed conditions at just four of the 60 sites. After we informed DOB officials about the unsafe conditions we observed at the 27 sites, DOB inspectors issued 30 summonses and two partial stop-work orders for 22 (81 percent) of these sites. They indicated that no unsafe conditions were observed at the remaining five sites.



**Figure 3** (top left): Shed with an uncovered bolt. **Figure 4** (top right): Shed with an unattached rail. **Figure 5** (bottom left): Shed with a hole in the ceiling. **Figure 6** (bottom right): Shed without ceiling



**Figure 7 (left):** Shed with broken/disconnected base. **Figure 8 (middle):** Shed with missing screws/nails to connect pole to the base. **Figure 9 (right):** Shed with missing parapet section

A permit, required for shed installation, may be issued for a period of up to one year and needs to be renewed thereafter if the shed is still in place. However, emergency work can be performed without a permit. In this instance, building owners and/or contractors must apply for the permit within two business days after work commences. Although building owners are required to receive permits before shed installation, DOB policy does not require that DOB be notified when a shed is installed. Consequently, DOB may be unaware if a needed shed was actually installed – a condition identified during DOB inspections at two of our sampled sites. We found that DOB inadequately monitored shed safety even when it was aware that sheds were installed.

## Oversight of Required Inspections

Owners or contractors are required to conduct daily inspections and maintenance of sheds. Further, the Building Code requires that a written record of such inspections be maintained by the owner or contractor and signed and dated by the person who performed the inspection.

We found that DOB did not always ensure that owners and contractors (including site managers) conducted daily shed inspections. Site managers did not maintain daily inspection reports for 51 of the 60 sheds (85 percent). Of the nine sites with daily inspection reports, we noted inconsistencies. For example, a person conducting the daily inspection at one site simply checked off a single box indicating compliance with the Building Code, but did not identify the conditions reviewed during the inspection. We noted that inspection reports at other sites included a checklist of each condition reviewed. DOB officials stated that, because it is not required by the Building Code, they do not provide owners or contractors with a uniform daily inspection template to record daily inspections and have no requirement for

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inspections to be submitted to DOB. Further, DOB does not proactively inspect sites to check if owners and contractors are performing the daily inspections.

Sheds that are inadequately inspected or not inspected at all may have unsafe conditions that could result in personal injury and/or property damage. For instance, we observed a sidewalk shed in early March that had a hole in the ceiling, a non-functioning light, and an unprotected bolt. This shed had been inspected only four times in February and March, and most of the issues we found were not identified based on the inspection report filed three days before our visit. In addition, business owners may experience significant loss of business because customers avoid unsafe sheds. We interviewed employees at five businesses that operate in buildings with sheds; they all indicated the sheds negatively impact their businesses for reasons such as reduced visibility and foot traffic and their effect on outdoor seating.

## Oversight of Shed Installations at Unsafe Façades

Local Law 11 of 1998 amended the New York City Administrative Code (Administrative Code) to require that all buildings taller than six stories be subject to a critical examination of all exterior walls at least once every five years. According to the Administrative Code, a registered design professional (e.g., registered architect, professional engineer) must submit a technical report to the DOB Commissioner within 60 days of completing the inspection. A registered design professional who learns of an unsafe condition during an inspection must immediately notify the owner and DOB in writing. The responsible party shall immediately commence needed repairs, reinforcements, or other measures (e.g., installation of a shed) to secure the building's façade and thus ensure public safety. Between January 1, 2017 and February 25, 2020, DOB received 1,733 technical reports with an "Unsafe" conclusion. Additionally, registered design professionals filed 1,482 Notifications of Unsafe Conditions with DOB between January 1, 2017 and March 4, 2020, indicating that unsafe conditions needed to be corrected.

We selected a random sample of 50 sites – 25 for which Unsafe Façade Compliance Reports were filed and 25 for which Notifications of Unsafe Conditions were filed by registered design professionals. We found that owners or contractors did not file requests for shed permits within two business days, as required, for 19 of the 50 sites (38 percent). Specifically, permits were never filed for two of the 19 sites and permits for six sites were filed between one and 21 days late. The remaining 11 permits were filed after 30 days, including two that were filed more than 400 days late.

Despite notifications of unsafe façades and no indication that owners intended to install protective measures, DOB did not take actions to promote public safety by enforcing the Building Code. We found that DOB did not issue any summonses or violations related to insufficient public protection at eight of the 19 sites (42 percent). Although summonses were issued at the remaining 11 sites, they were not issued timely; for example, a summons was issued 338 days after the unsafe façade had been reported to DOB.

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DOB inspections conducted at two of the sampled sites found that a shed was never installed, indicating that DOB's issuance of a shed permit does not necessarily mean that a shed was installed. On February 28, 2020, we accompanied a DOB façade inspector to two sites that were not included in our sample, but for which Unsafe Façade Compliance Reports had been filed by registered design professionals. We found that sheds were not installed at the two sites. The DOB inspector issued summonses for failure to take required measures to protect the public. Subsequently, DOB issued a shed permit for each site on March 6, 2020 and March 10, 2020, respectively. However, neither site had a shed when we revisited on March 13, 2020.

Section 28-302.5 of the Administrative Code requires that all unsafe conditions be corrected within 90 days of the critical examination report being filed. Within two weeks of completing the repairs, the registered design professional must file an amended report certifying that the unsafe conditions have been corrected. We found that DOB often did not take steps to ensure that owners and contractors corrected the unsafe conditions and that registered design professionals re-inspected the premises and filed an amended report. DOB officials stated that the registered design professionals for 41 of the 50 sampled sites (82 percent) never submitted the required amended report. However, DOB issued violations for failure to submit an amended report at only six of the sites. Two of those six violations were not issued until 526 days after the filing deadline. DOB did not use available information to follow up on known deficiencies for the remaining 35 sites.

Additionally, DOB did not receive the required façade inspection reports from 2,056 sites for the five-year cycle that ended February 20, 2020. We selected a random sample of 25 of these sites and found that DOB issued violations for failure to file at all 25. However, as of June 25, 2020, DOB had still not received reports from 22 of these sites and issued summonses for each of these sites for failure to submit the required report. Only one of these summonses has been resolved; the registered design professionals have not filed the required reports for the remaining 21 sites. DOB officials dismissed the violations for the remaining three sites because registered design professionals subsequently filed reports.

DOB often either took no actions or took actions that proved to be insufficient to ensure that owners and contractors immediately installed sheds to protect the public from unsafe façades.

## Oversight of Shed Operating Permits

According to the Administrative Code, permits are required for the installation of sheds. In addition, the permits must be publicly posted at the site of the shed. Once a permit expires, it must be renewed if the shed is still required to ensure public safety or the shed must be removed.

DOB does not provide adequate oversight to ensure shed permits are publicly posted, as required. We found that shed permits were not publicly posted at 49 of the 60 sheds (82 percent) we visited. We asked DOB officials what procedures they have in place to ensure permits are posted and were told it is the responsibility

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of either the owner, applicant for exterior wall work, or contractor. Officials added that, if they become aware of the non-compliance, the owner will be notified and a summons can be issued.

In addition, DOB did not take sufficient steps to ensure that, when permits expire, they are either renewed or the sheds dismantled. We visited 50 sites where permits had expired and found sheds were still installed at five of them; one of the permits had been expired for over two months. DOB officials issued a summons to one of the sites before we could notify DOB of our observations; summonses were issued to the remaining four sites after our notification. In addition to the summonses, DOB officials issued new shed permits for three of the five sites and stop-work orders for the remaining two.

DOB officials stated that it is the responsibility of the owner, applicant for exterior wall work, or contractor to install and remove sheds when required. Officials added that if an inspection reveals an expired permit, DOB will notify the responsible party that they are not in compliance and take enforcement action.

## Oversight of Shed Removal

DOB established a procedure for conducting inspections of major buildings (e.g., 10 or more stories tall) required to be constructed under the Site Safety Program. The permit holder or responsible party must submit a request and obtain approval prior to removing a shed at a building site that qualifies under the Site Safety Program. Once the request is submitted, DOB must inspect the site to determine if it is safe to remove the shed before granting approval. Further, the Building Code requires the permit holder to notify DOB within two business days of the shed's removal.

## Removal Requests and Inspections

The request to remove a shed must be submitted to DOB. A DOB inspector then conducts an inspection and sends the results to a supervisor for review and to sign off on an Inspector Results Form.

DOB officials did not take adequate steps to ensure that their personnel inspected Site Safety Program job sites to determine if it was safe to remove sheds. Between January 1, 2017 and August 7, 2020, DOB released a site safety manager/ coordinator from 581 sites, a step that should not occur until site work is finished and sheds are completely removed. However, we found that DOB did not perform inspections for shed removal at 440 of the 581 sites (76 percent) or approve shed removals at 47 of the remaining 141 sites. Of the 94 sites where shed removal was approved, permit holders for only 29 sites (31 percent) actually notified DOB the shed had been removed. As a result of DOB not following its own procedures or adhering to Building Code requirements, sheds that are still needed may be removed without a DOB inspection to confirm they were no longer needed.

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## Supervisory Review

DOB could not show that supervisors were completing their required review of inspection reports for shed removal. We selected a judgmental sample of 25 Construction Safety Compliance (CSC) Inspections for Shed Removal to determine if the inspection results and supervisory reviews were documented. The judgmental basis included the following factors: inspections performed by experienced inspectors, inspections in all five boroughs, and inspections that covered all results. DOB officials provided the results of the 25 inspections, but did not provide documentation substantiating that the results were reviewed by a supervisor. Because the supervisory reviews were not documented, DOB had no assurance that the supervisors actually reviewed the inspection reports. DOB officials acknowledged that supervisors were not recording their reviews of inspections as required, and stated that they had created a new checklist to help ensure these reviews are documented.

DOB supervisors are not adhering to the CSC Shed Removal Request Procedures that apply to buildings subject to the Site Safety Program, and DOB has not updated its standard operating procedures for CSC Inspections for Shed Removal to reflect the new January 2020 checklist. DOB officials may not detect deficiencies or errors in CSC Inspections for Shed Removal, as they have no assurance that the CSC supervisors review the inspection reports.

## Procedures for Verification of Shed Removal

We found that, at several stages in the shed removal process, there were no policies or procedures to ensure that certain steps were actually taken. For example, DOB officials stated that there is no process in place to verify that sheds are actually removed once CSC inspectors grant approval to remove the shed.

DOB officials have not implemented policies or procedures to ensure permit holders adhere to the Building Code requirement to notify DOB within two business days following the complete removal of a shed. Between January 1, 2017 and February 21, 2020, DOB received 5,920 shed removal notifications, of which 3,794 (64 percent) were received more than two business days after the reported removal completion date. On average, permit holders notified DOB 17 business days after the reported removal completion date. In one instance, a permit holder notified DOB one year after the reported date.

As previously stated, we visited 50 sites that had expired shed permits to check if the sheds had actually been removed. We observed that five sites still had the sheds installed even though the applicable permits had expired. Although the remaining 45 sites did not have sheds in place, we found that permit holders notified DOB that sheds had been removed for only eight of those sites (18 percent). Additionally, we compared DOB's list of shed removal notifications to CSC inspection reports prepared between January 1, 2017 and October 24, 2019. We found that permit holders did not notify DOB that sheds had been removed for 223 of the 297 sites (75 percent) where inspectors gave permission to remove sheds. Therefore, DOB has no

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assurance that these sheds were ever removed and, thus, unsafe shed conditions may go undetected. These conditions may cause personal injury and property damage. Further, business owners may experience prolonged loss of business because customers avoid sheds that are unsafe.

According to DOB officials, there is no verification process to check that sheds have actually been removed after they have received a shed removal notification. When we asked DOB officials if there were any repercussions for permit holders who took longer than two business days to provide shed removal notification, they stated that DOB did not issue any violations for failing to comply with this section of the Building Code. They also stated that the most important consideration related to sheds is that they are installed when required to protect the public, and that monitoring notifications that sheds have been removed is of lower priority.

## Recommendations

1. Require permit holders to immediately notify DOB when a shed is erected and monitor compliance with this requirement.
2. Improve policies and procedures to monitor that sheds are safely maintained.
3. Ensure that the unsafe shed conditions identified are corrected.
4. Implement procedures for building owners and contractors to complete and submit uniform daily shed inspection reports to DOB and monitor to ensure inspections are accurate and timely.
5. Utilize registered design professional filings, or lack thereof, to identify non-compliance and take appropriate actions to ensure building reports are filed, adequate protection is installed, and unsafe conditions are corrected immediately.
6. Immediately inspect unsafe sites, including sites for which DOB received Notifications of Unsafe Conditions or Unsafe Façade Compliance Reports, to ensure protection is properly installed or the unsafe condition is corrected.
7. Develop and implement control activities, including policies and procedures to ensure property owners publicly post shed permits as required.
8. Identify sheds with expired permits and take appropriate action to ensure property owners obtain the required renewals or remove the shed.
9. Develop, implement, and adhere to procedures to monitor compliance with the Building Code requirement to notify DOB of the removal of a shed within two business days of complete removal and verify that the sheds have been removed.
10. Adhere to DOB shed removal policies and procedures, including supervisor review of CSC inspection results.

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## Insufficient Enforcement

DOB's responsibilities for regulating the safe and lawful use of more than 1 million buildings and construction sites in NYC include enforcement actions relating to compliance with NYC codes, rules, and laws. DOB relies on its enforcement actions to ensure unsafe conditions are corrected timely by owners and other responsible parties; however, their enforcement actions proved to be insufficient in ensuring violating conditions were corrected. When these conditions are not corrected, the potential hazards to the public continue to exist.

## DOB Enforcement Authority

DOB has the authority to issue Office of Administrative Trials and Hearings (OATH) Summonses and DOB Violations when a property or construction site does not comply with the codes, or other applicable regulations and rules. DOB inspectors can issue OATH Summonses for the following types of violations:

- **Class 1. Immediately Hazardous Violation:** A violating condition that poses a threat that severely affects life, health, safety, property, the public interest, or a significant number of persons so as to warrant immediate corrective action.
- **Class 2. Major Violation:** A violating condition that affects the life, health, safety, property, or other public interest but does not require immediate corrective action.
- **Class 3. Lesser Violation:** A violating condition that has a lesser effect than Class 1 or Class 2 violations on life, health, safety, property or other public interest.

An owner who receives a Class 1 OATH Summons must immediately correct the violating conditions and submit a Certificate of Correction to DOB for evaluation. If the owner does not submit the certificate in a timely manner, DOB's policy is to issue a DOB Violation for failure to certify correction. In addition to OATH Summonses, DOB may also issue DOB Violations for violating conditions.

Lastly, DOB can generally issue an Immediate Emergency Declaration (IED) on a structure when it is determined there is imminent danger of serious physical injury, death, or imminent collapse where any delay may further be a danger to public safety. The DOB Commissioner can direct HPD, the Department of Citywide Administrative Services, or another city agency to perform or arrange for the immediate installation of protective measures or perform emergency demolition of such structure or part thereof, or other work as deemed necessary by the Commissioner to make it safe.

## Enforcement Actions Relating to Building Safety

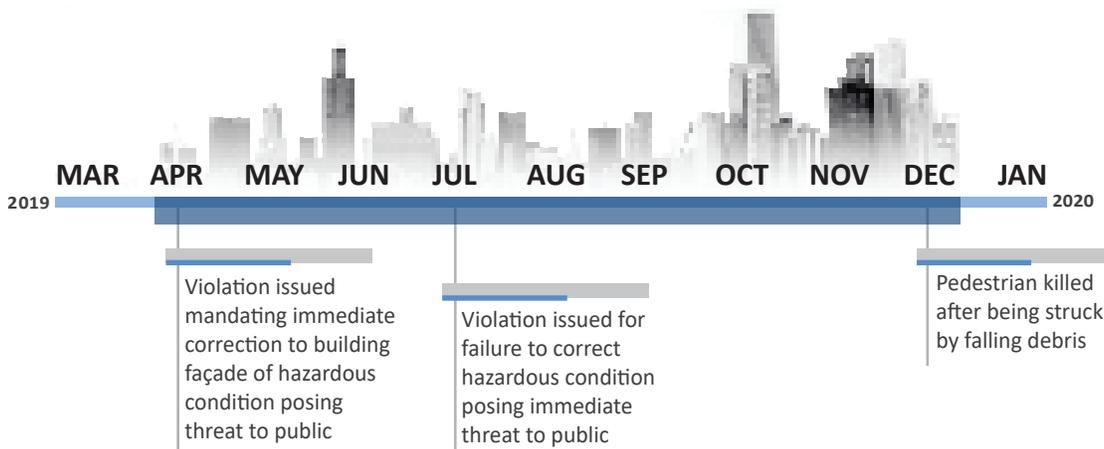
To ensure the safety and structural stability of NYC buildings, owners must comply with Local Law 11 of 1998, which amended the Administrative Code to require inspections of exterior walls of buildings more than six stories tall. Although DOB

conducts inspections, including complaint inspections, at properties six stories or less, these properties are not subject to the same façade inspections and reporting requirements as buildings taller than six stories.

## Incidents Related to Unsafe Façades

DOB did not enforce Building Code requirements to ensure protection was immediately installed at sites with unsafe façades. Although DOB was aware of hazardous conditions at these sites, DOB did not always request assistance from HPD. Without adequate protection, there is a risk of injury and damage to properties. A pedestrian was killed on December 17, 2019 after being struck by debris that fell from a Manhattan building. DOB had previously identified unsafe conditions at this site and issued violations to the responsible party (see Figure 10), but it did not refer the site to HPD. Ultimately, the responsible party did not install adequate protection between the time the conditions were identified and when the accident occurred.

**Figure 10 - Timeline of Unresolved Hazardous Conditions at Building Where Fatality Occurred**

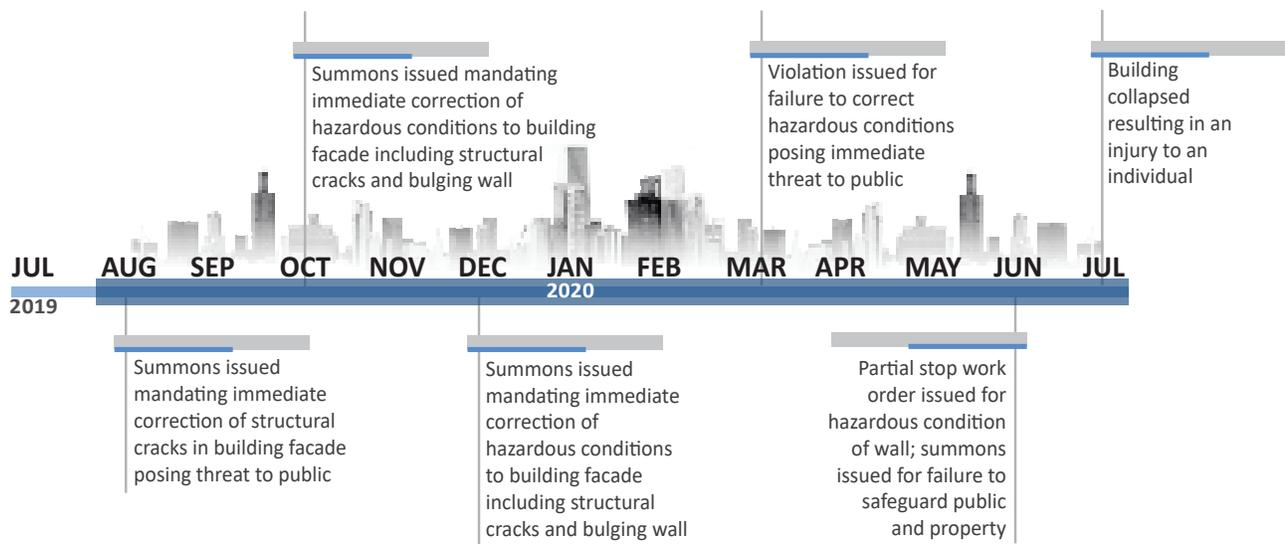


*Eight Months (after DOB's initial violation) of Unresolved Hazardous Conditions Leading Up to Fatality*

In response to this incident, DOB announced enhancements to its façade inspection process for buildings over six stories, including requiring DOB to conduct follow-up inspections within 60 days of every Class 1 façade violation to ensure that required public protection measures have been properly installed. If the owner fails to implement these measures as ordered in the initial façade violation, city contractors will be brought in to perform the work at the owner's expense. In addition, DOB façade inspectors must now conduct follow-up field inspections 90 days after the issuance of the initial Class 1 façade violation to ensure that public protection measures are properly maintained and that repair work has commenced to remediate any unsafe conditions. However, incidents related to unsafe façades also occurred afterward, including the following two incidents.

On July 1, 2020, a three-story building collapsed in Brooklyn, causing injury to an individual. Building stability complaints were lodged against this property in August 2019 and June 2020. In August, October, and December 2019 and March 2020, DOB inspectors issued four Class 1 OATH Summonses for failure to maintain the building in a code-compliant manner. On June 10, 2020, after another building stability complaint was made, DOB inspectors issued a partial stop-work order and a Class 2 OATH Summons for failure to safeguard all persons when a DOB inspector reported a building with a bulging brick wall over an unprotected sidewalk (see Figure 11). The owner and contractor failed to properly address these matters and DOB did not issue an immediate emergency declaration directing HPD to take necessary actions to protect the public. Further, because the building was three stories, it was not subject to the same façade inspections and reporting requirements as buildings taller than six stories.

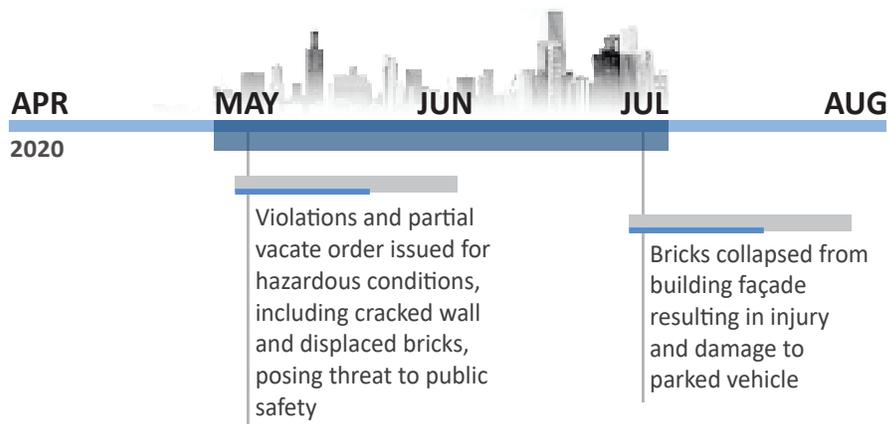
**Figure 11 - Timeline of Unresolved Hazardous Conditions at Brooklyn Building That Collapsed**



*Eleven Months (after DOB's initial summons) of Unresolved Hazardous Conditions Leading Up to Building Collapse*

On July 8, 2020, bricks fell from the façade of a five-story building in Manhattan, resulting in injury and damage to a parked vehicle. DOB inspectors responded to prior complaints about this building and issued violations and a partial vacate order in May 2020 (see Figure 12). These actions were related to cracked and displaced bricks from a wall shared by two buildings. Despite multiple violations for failures to protect the public, DOB did not make a referral to HPD. This building was five stories tall and therefore not subject to the same façade inspections and reporting requirements as major buildings.

**Figure 12 - Timeline of Unresolved Hazardous Conditions at Manhattan Building Where Bricks Collapsed**



*Two Months (after DOB's initial violation) of Unresolved Hazardous Conditions Leading Up to Brick Collapse*

## Enforcement Related to OATH Summonses

DOB's enforcement actions proved to be inadequate for ensuring that the violating conditions were corrected timely. DOB requires the recipient of an OATH Summons to submit a Certificate of Correction attesting to the lawful correction of conditions cited in the OATH Summons, accompanied by a sworn statement attesting to how and when the work was completed and by whom. Proof of correction, such as proof of payment of all applicable DOB civil penalties, permits to do the work (if required by codes), photographs depicting before and after conditions, or invoices for completed work, may also be required. If an owner receives a Class 1 OATH Summons, they must immediately correct the violating conditions and certify correction.

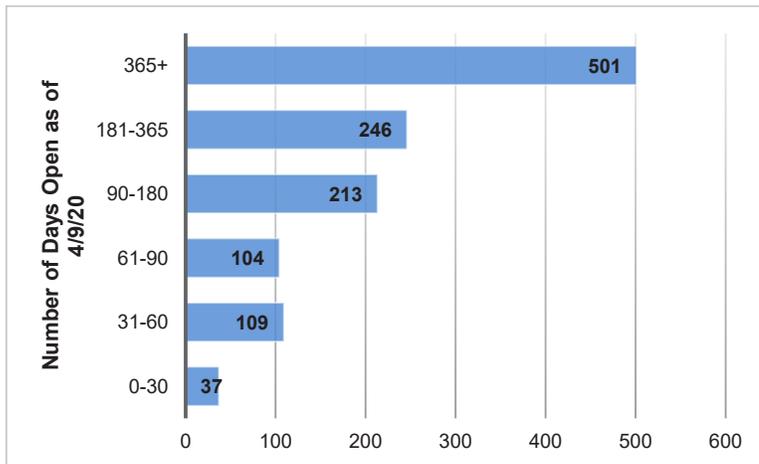
We reviewed the status, as of April 9, 2020, of shed-related OATH Summonses issued between January 1, 2017 and March 31, 2020. According to data provided by DOB officials, DOB inspectors issued 10,811 shed-related OATH Summonses during this time. However, these summonses generally remained open for long periods of time. Because of this, we have no assurance that DOB took sufficient actions to ensure that violating conditions, including immediately hazardous conditions, were corrected timely. Table 2 shows the average number of days OATH Summonses remained open, by violation type and resolution status.

**Table 2 – Average Number of Days Shed-Related OATH Summonses Remained Open January 1, 2017 Through March 31, 2020**

Summons Type and Status	Number of Summonses Issued	Average Number of Days Summonses Open
Open Class 1 Summonses	1,210	390
Closed Class 1 Summonses	2,588	190
Open Class 2 and 3 Summonses	1,852	467
Closed Class 2 and 3 Summonses	5,161	111
<b>Totals</b>	<b>10,811</b>	<b>212</b>

Figure 13 depicts the extent to which Class 1 OATH Summonses, which warrant immediate corrective action due to the severe threat that the unsafe conditions pose to the public, remained open.

**Figure 13 – Open Class 1 OATH Summonses Issued Between 1/1/2017 and 3/31/2020**



We also found that DOB did not properly monitor respondent filings to identify overdue Certificates of Correction. DOB assigns each open OATH Summons a compliance status. Table 3 shows the status, as of April 9, 2020, of open shed-related OATH Summonses issued between January 1, 2017 and March 31, 2020.

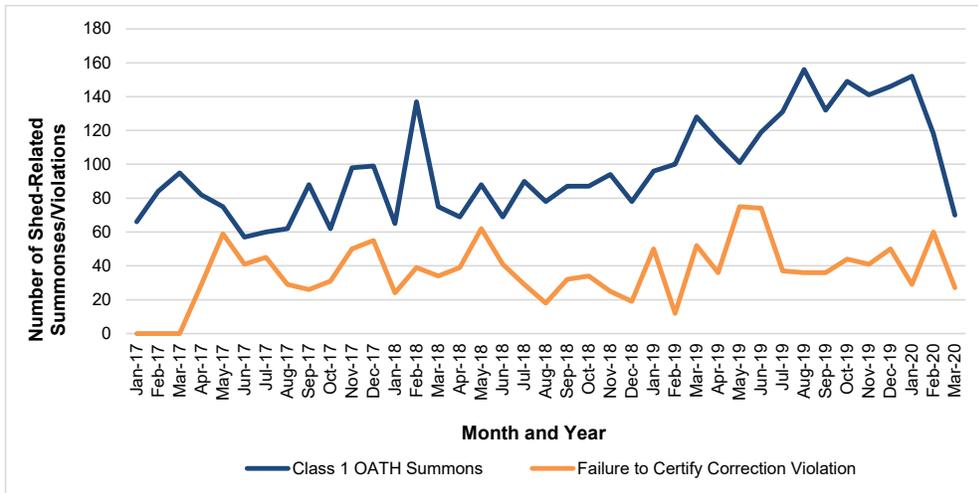
**Table 3 – Status of Open Shed-Related OATH Summonses**

Compliance Status	Definitions of Compliance Status	Number of Summonses
No Compliance Recorded	A Certificate of Correction has not been submitted to DOB, but the statutory correction time period has not passed.	2,503
Overdue Compliance	An acceptable Certificate of Correction was not received by DOB within the statutory correction time period.	559
<b>Total Open OATH Summonses:</b>		<b>3,062</b>

We found that 2,937 of the 3,062 open summonses (96 percent) should have been classified as having “Overdue Compliance” because 2,378 of the 2,503 summonses with “No Compliance Recorded” were open for more than 30 days. Because all OATH Summonses must be corrected within 30 days, we asked DOB officials why the summonses’ statuses were not changed. Officials explained that their system automatically changes the compliance status based on the status of the OATH Summonses. They also stated that “Overdue Compliance” is an OATH Summons status, which is not displayed to the public, and DOB has no control over this status. Officials added that DOB treats both compliance statuses the same. We also found that DOB does not have any policies or procedures to contact property owners/ respondents regarding overdue compliance.

Contrary to its policy, DOB did not issue additional violations when owners failed to certify that immediately hazardous conditions had been corrected. Figure 14 shows DOB actions in response to immediately hazardous conditions. For example, as of April 9, 2020, DOB did not issue a DOB Violation for failure to timely certify correction for 1,966 Class 1 OATH Summonses that were open for more than 30 days.

**Figure 14 – Levels of DOB Action in Response to Immediately Hazardous Conditions**



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Without a certification by the responsible party that the condition identified in the Class 1 violation was corrected, DOB has no assurance the condition has been addressed.

Furthermore, DOB can take additional steps to address weaknesses in certifying corrective actions. We judgmentally selected a sample of 35 resolved shed-related OATH Summonses that were assigned a compliance status of “Certificate Accepted” as of March 31, 2020. To determine whether DOB has adequate assurances that the conditions identified by the OATH Summonses were addressed, we reviewed the documents that the respondents submitted to DOB to substantiate correction of the violating conditions. DOB officials provided these documents for 34 of the 35 summonses; however, we determined that the documents provided for 26 summonses (76 percent) did not substantiate that the violating conditions had been corrected. For example, photographs provided did not have addresses, dates, or timestamps. Additionally, there were no “before and after” photographs. Therefore, we determined that DOB used inadequate evidence to verify that the conditions noted in the summonses had actually been corrected. DOB officials stated that, as a result of these findings, DOB’s Administrative Enforcement Unit will meet internally to clarify photograph requirements.

## Enforcement Related to DOB Violations

According to data provided by DOB officials, DOB issued 1,065 shed-related DOB Violations between January 1, 2017 and September 30, 2020. Table 4 shows the status of these DOB Violations as of September 30, 2020.

**Table 4 – Status of Shed-Related DOB Violations**

Violation Status	Number of Violations	Percent of Total
Active	767	72%
Administratively Closed	292	27%
OATH Summonses Pending	6	1%
<b>Totals</b>	<b>1,065</b>	<b>100%</b>

DOB classified 569 of the 767 active violations (74 percent) as an immediate emergency. A violation remains active if the conditions have not been addressed and DOB has received no information from the owner indicating otherwise. Although DOB classified the conditions warranting the violations an immediate emergency, these violations were active for an average of 403 days as of September 30, 2020.

## Immediate Emergency Declarations

An IED may be declared when it is determined by DOB that there is imminent danger of serious physical injury or death to the public or imminent danger of collapse that, with any delay, may cause further danger to public safety. We asked DOB officials if

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all DOB Violations classified as immediate emergencies result in an IED referral to HPD and, if not, what methods of oversight are used to ensure unsafe conditions are immediately corrected. DOB officials stated that not all IEDs are referred, as owners can indicate they will address the unsafe conditions.

However, there are many instances where DOB inspectors have issued an initial Class 1 violation (which means conditions must be addressed immediately) and a subsequent IED, but DOB did not refer the IED to HPD to ensure protective measures are installed. Of the 1,065 shed-related DOB Violations previously mentioned, there were 767 sites with immediate emergency conditions. DOB issued IEDs referring 553 of the 767 sites to HPD. Although these conditions were classified as an immediate emergency, DOB did not refer the IEDs for the remaining 214 sites. DOB officials explained that owners can and should comply with DOB Violations. However, owners do not always respond appropriately. For example, for 98 of the 214 sites, DOB had issued a Class 1 violation, DOB Violation for failure to certify a correction, and an immediate emergency DOB Violation. For these instances, it is unclear why DOB did not refer the IED to HPD, as DOB had notified the property owners multiple times of the safety issues that required immediate attention. DOB officials could not explain why a request to HPD to place protective structures was unwarranted after DOB had no assurance that owners took appropriate steps.

## Recommendations

11. Develop and implement policies and procedures to monitor façade conditions at buildings six stories or less.
12. Immediately identify overdue compliance with OATH Summonses and implement policies and procedures to monitor these sites and ensure hazardous conditions have been corrected.
13. Update the required documents to be submitted with Certificates of Correction (as proof that conditions have been corrected) to ensure that the records provided substantiate correction of the violation.
14. Re-inspect sites that submit a Certificate of Correction to determine if all hazardous conditions have been corrected.
15. Follow procedures to coordinate with HPD to assist with taking immediate measures to protect the public from unsafe conditions.

# Audit Scope, Objective, and Methodology

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The objective of our audit was to determine if DOB adequately monitors that sheds are erected and removed when required, are safely maintained, and have valid operating permits. The audit covered the period from January 1, 2017 through October 1, 2020.

To achieve our audit objective and assess relevant internal controls, we interviewed DOB officials and reviewed relevant laws, codes, and rules as well as DOB's guidance related to sidewalk sheds. DOB utilizes two information systems, DOB NOW and Buildings Information System (BIS), to record and process data related to sheds. Throughout the course of our audit, we utilized the Building Information Search function, DOB's online query system within BIS, and DOB NOW's Public Portal. The BIS query system allows users to search for general information about NYC properties, including recorded complaints, violations, permits, actions, applications, and inspections. The DOB NOW Public Portal allows users to view all of the transactions filed in DOB NOW. While DOB NOW is being developed, only filings made in DOB NOW will be available on the DOB NOW Public Portal while all other filings will be available in BIS. DOB NOW will fully replace the 30-year-old BIS once all filings and requests are deployed in DOB NOW.

To determine if DOB took reasonable steps to ensure that appropriate protection was immediately installed, we selected a random sample of 25 of 1,733 sites for which Unsafe Façade Compliance Reports were filed and 25 of 1,482 sites for which Notifications of Unsafe Conditions were filed. We selected a random sample of 50 of 19,435 expired shed permits and visited the associated sites to see if the sheds were still in place. We also selected a random sample of 25 of 9,273 active shed permits and a judgmental sample of 50 of 9,298 active shed permits, and visited 74 of the associated sites to observe whether the permits were publicly posted and the sheds were erected. We selected the most recent and oldest active permits. One site was not visited due to COVID-19 limitations. We also checked whether permit holders notified DOB when sheds had been removed. We also selected a random sample of 25 of 2,056 sites where registered design professionals did not file the required façade inspection reports with DOB to determine if DOB inspectors issued violations for failure to file the required façade inspection reports. In addition, we selected a judgmental sample of 25 of 1,252 CSC inspections and reviewed the associated inspection reports to verify that CSC inspectors conducted the inspections and supervisors performed the reviews, as required. To assess whether DOB is adequately monitoring and implementing enforcements related to OATH Summonses, we selected a judgmental sample of 35 of 10,811 OATH Summonses that had been resolved as of April 9, 2020. To select our judgmental samples, we considered various factors such as borough and permit date. None of our samples were designed to be projected to the entire population.

# Statutory Requirements

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## Authority

The audit was performed pursuant to the State comptroller's authority as set forth in Article V, Section 1 of the State Constitution, and Article III of the General Municipal Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained during the audit provides a reasonable basis for our findings and conclusions based on our audit objective.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, DOB officials have not provided a representation letter in connection with this audit. As a result, we lack assurance from DOB officials that all relevant information was provided to us during the audit.

## Reporting Requirements

A draft copy of this report was provided to DOB officials for their review and comment. Their comments were considered in preparing this final report and are included in their entirety at the end of it. While DOB officials agreed with most of the report's recommendations and indicated actions they have taken or will take to implement them, they disagreed with some of our conclusions. We address certain remarks in our State Comptroller's Comments, which are embedded within DOB's response.

Within 180 days after final release of this report, we request that the Commissioner of the NYC Department of Buildings report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

# Agency Comments and State Comptroller's Comments

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Commissioner

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April 19, 2021

Joseph Gillooly  
Office of the State Comptroller  
59 Maiden Lane, 21st. Floor  
New York, NY 10038

**Re: 2019-N-9 New York City Department of Buildings' Oversight of Sidewalk Sheds, Draft Report**

Dear Mr. Gillooly:

Thank you for the opportunity to respond to the above-captioned findings.

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. DOB therefore agrees with the auditors' conclusion that owners' and other responsible parties' failure to maintain buildings, maintain sidewalk sheds, or provide protection is unacceptable. We disagree, however, with the audit's assertion that failures on the part of building owners and other responsible parties to fulfill their legal obligations to maintain buildings and sites and provide protection where required equate to DOB failing to enforce code, rules, and applicable laws. DOB in fact rigorously enforces these provisions and has consistently taken strong enforcement actions against those who fail to abide them.

**State Comptroller's Comment** – Our audit identified situations where DOB did not pursue additional enforcement actions when warranted. For example, we identified 98 instances where a building site received a Class 1 violation and failed to correct the underlying condition, which was deemed an immediate emergency, yet there was no referral to HPD for protective measures. An immediate emergency occurs when there is imminent danger of serious physical injury or death to the public, or imminent danger of collapse, which may pose further danger to public safety.



DOB's legal and technical experts have also taken significant steps to continually reinforce those provisions, promulgating rules and laws that have significantly strengthened requirements for façade inspections and increased civil penalties for failing to submit reports and make required repairs. In February 2020, DOB implemented a new Facade Rule for our Façade Inspection Safety Program (FISP), further bolstering what was already the strongest proactive façade program in any city in the country. The rule includes stiffer repeat fines to landlords with unsafe façade conditions: where fines were previously capped at \$12,000 per year, with the new rule the fines now continue to accrue until the situation is remedied.

These types of aggressive enforcement initiatives, coupled with the thousands of proactive and complaint-based inspections conducted by our Construction Safety and Façade Unit inspectors have resulted tens of thousands of violations and orders being issued to bring owners and other responsible parties to task for maintaining the safety of their buildings and sites.

Despite liberal use and continual strengthening of these enforcement tools and initiatives, it is important to note that the Department's powers to ensure that owners and other responsible parties correct conditions and maintain safety of their properties and sites is also fundamentally limited by owners, who after repeated notices of violation, refuse to take action. While DOB can and does order these individuals and entities to fulfill their legal obligations and correct violating conditions, DOB does not have the ability to use emergency contractors to perform the work, or directly compel owners to do so.

**State Comptroller's Comment** – DOB officials have the ability to refer instances of repeat non-compliance to HPD, which can use emergency contractors to address outstanding safety conditions.

DOB's manpower and logistics resources expended in this area are already significant, and each staff hour spent in this area, where there are already clear mandates and tools holding owners accountable to maintain their property, reduces the Department's resources in other areas needing incident response and oversight.

**State Comptroller's Comment** – It is unclear what additional resources would have been required for DOB to follow its own procedures, as DOB already has an established procedure to refer immediate emergency conditions to HPD to enact protective measures. We noted this step is not always taken.

DOB remains wholly committed to the safety of all New Yorkers and continues to hold owners and other responsible parties accountable for violations of their legal responsibilities to maintain site and building safety. We appreciate your policy recommendations and are open to evaluating any initiative that both contributes to our safety mission and is feasible and sustainable to execute. However, we ask that you consider that, given the technical complexities and resource concerns that the Department has and will continue to face, some of these initiatives cannot be undertaken at this time.



Below please find clarifying comments and responses to recommendations.

**Clarifying Comments**

DOB's primary concern is promoting the safety of sites and buildings, including those with sidewalk sheds, and of the public. The Department promotes safety at these sites and buildings through a variety of means including site safety, complaint, and proactive façade safety enforcement inspections. The Department makes every effort to balance its multiple, competing priorities and mandates to conduct these inspections and takes enforcement action where appropriate. Ultimately, however, it is the responsibility of building owners to maintain their buildings in safe condition and ensure that protection is installed to protect the public from unsafe building conditions.

Similarly, when DOB identifies non-compliance with regulations related to maintaining sidewalk sheds, sidewalk shed removal, and posting and renewal of sidewalk shed permits, it takes appropriate enforcement action. However, the responsibility for maintaining sidewalk sheds, for ensuring that permits are appropriately renewed, for posting sidewalk shed permits, and for ensuring that sidewalk sheds are removed when required, lies with the property owner or other responsible party.

The audit determined that DOB's enforcement actions were inadequate, citing as evidence the fact that property owners and other responsible parties did not correct immediately hazardous conditions timely. It is important to clarify, though, that while DOB can and does notify the responsible party of the continued existence of violating conditions and order that those violating conditions be corrected, the resolution of OATH summonses is ultimately the responsibility of the respondent.

The audit noted that it found open summonses that should have been classified as having "Overdue Compliance" because a number of summonses with "No Compliance Recorded" were open for more than 30 days. However, as noted during the audit, "Overdue Compliance" is an OATH status, which is not displayed to the public or in BIS. DOB has no control over this status, which is applied and controlled exclusively by OATH through its AIMS database. Further, the status of "No Compliance Recorded" is accurate in that it does not relate to the timeframe by which a person must submit a certificate of correction. By saying "No Compliance Recorded," DOB is notifying the public that DOB has yet to receive compliance documents. This status better serves the customer and public because it informs them that a certificate of correction is required.

The audit additionally determined that in some cases DOB did not issue a DOB violation for failure to certify correction for Class 1 OATH summonses that were open for more than 30 days. It is important to note, however, that 30 days is neither the legal standard for conducting re-inspections of uncorrected Class 1 conditions, nor the policy standard for issuance of DOB violations for failure to certify correction of Class 1 conditions (AEUHAZ). AEUHAZ violations are issued approximately 80 days after the service of the summons to allow for hearings on the initial summons. This is to avoid customers paying for



summonses that are dismissed by OATH.

**State Comptroller's Comment** – We understand that some summonses could be dismissed. However, without a Certificate of Correction or up-to-date information on the OATH Summons hearing status, DOB does not have any assurance that, for Class 1 summonses that were not dismissed, the safety conditions have been adequately addressed.

The auditors concluded that AEUHAZ violations were not issued for 1,966 OATH summonses. However, for all 1,966 of those summonses AEUHAZ violations either were in fact issued or could not have been issued. 1,440 of the summonses were no longer eligible for AEUHAZ violations: prior to AEUHAZ issuance they were either corrected, were dismissed or downgraded at an OATH hearing, had certificate of correction applications submitted that were subsequently approved, or were dismissed during the certificate of correction application review process. 402 of the summonses were never eligible for AEUHAZ violations as they were failure-to-comply or signs-type summonses, or they were issued to city agencies. For 112 of the summonses, AEUHAZ violations were later issued after a delay resulting from COVID-19. 12 of the summonses were missing address information, which prevents the issuance of an AEUHAZ violation to the property.

**State Comptroller's Comment** – Our report identified instances where Class 1 violations remained open 30 days after issuance. While the final outcome of an OATH Summons violation may result in a number of conclusions that may make an AEUHAZ violation unnecessary, without a Certificate of Correction or up-to-date information on the OATH hearing status, DOB does not have any assurance that these open Class 1 violations have been resolved.

The audit noted that some of the photographs submitted for sampled certificates of correction did not have addresses, dates, or timestamps and that for some of the certificates of correction there were no "before and after" photographs. Before photos are not always possible. It is therefore unreasonable to make this a requirement. Photo labels are required in cases where the only way to substantiate correction is a photograph. Labels must include the summons number and place of occurrence, along with the date the photos were taken.

Additionally, DOB performed a secondary analysis of the 35 certificates of correction selected in the audit sample. One of these 35 summonses was not issued for a sidewalk shed but rather for advertising signs on a fence. DOB determined that 16 of the remaining 34 certificates of correction, or 47%, were not acceptable as opposed to the 76% determined by the audit. DOB is in the process of updating its SOP and training staff to provide further guidance with respect to reviewing submitted evidence. In addition, DOB will update its web page, forms, and systems to instruct customers that photographs require labels.

The audit noted that DOB did not receive 2,056 required façade inspection reports for Cycle 8. As of



April 1, 2021, that number is 1,748.

**State Comptroller's Comment** – According to data provided by DOB on March 11, 2020, required façade inspection reports from 2,056 sites were not provided by the end of the five-year cycle (February 2020). In their response to the draft report, DOB officials stated that, as of April 1, 2021 – 13 months later – 1,748 inspection reports had still not been provided to DOB.

The audit report noted that there were instances where DOB issued an IED but did not refer the IED to HPD. The report appears to be using DOB Violations/Commissioner's orders for emergency work, which are sent to individual owners, and Immediate Emergency Declarations, which are sent to HPD interchangeably. These are separate and distinct items.

**State Comptroller's Comment** – DOB officials stated that IEDs are recorded in BIS as DOB Violations. According to DOB officials, "A DOB Violation is used because this is the only method for the IED to be recorded in BIS. DOB Violations labeled 'Immediate Emergency', therefore, are the DOB Violations used to document IEDs in BIS." We reviewed a listing of shed-related DOB Violations provided by DOB and identified 767 DOB Violations labeled as "Immediate Emergency." We followed DOB's explanation in identifying instances where an IED was made, but no referral was made to HPD.

The audit report asserted that DOB supervisors were not adhering to the CSC Shed Removal Request Procedures, and that DOB officials have no assurance that their supervisors review CSC inspection reports. It further stated that DOB has not updated its standard operating procedures to reflect a checklist that CSC implemented for this purpose.

As noted during the audit, CSC supervisors are in direct contact with the inspector at the end of the appointment inspection. The supervisor and inspector review photos and the report, and then discuss the results together. When finalizing inspection results, the supervisor enters his or her name with affirmation that the report was reviewed, enters comments if necessary, and sends the final results to the CSC completed inspection results inbox. Administrative staff then takes the results, which were reviewed and sent by the reviewing supervisor, and inputs the results into the BIS system. CSC has since revised its checklist review process to include supervisors entering a unique password that auto-populates the supervisor's name upon finalization of the checklist. CSC implemented this process in January 2021 and has updated its SOPs to reflect the revised procedures. These procedures are in place until CSC transitions from a manual review submittal process to a fully electronic system (DOB NOW). DOB NOW requires the inspector to submit results through the system electronically. It also allows the supervisors to see those records in their pending workflow and review and approve them in the system. This process will provide additional verification that inspection reports have received supervisory review.



### **Response to Recommendations**

**Recommendation 1:** Require permit holders to immediately notify DOB when a shed is erected and monitor compliance with this requirement.

**DOB's Response:** The Department disagrees with this recommendation. As previously noted, the property owner is responsible for erecting sidewalk sheds when required. While the Department appreciates your policy recommendation, given practical realities with regard to staffing levels and DOB's multiple, competing priorities and mandates, including but not limited to following up on Class 1 OATH summonses, the Department has determined that adding a notification requirement and tracking those notifications is not a practicable, efficient use of Department resources.

**State Comptroller's Comment** – We disagree. Notification to DOB that a shed was installed would provide, at a minimum, indication that a necessary shed was installed. Our report identified two instances in our sample of 74 permitted shed sites where DOB was unaware a shed was actually installed.

**Recommendation 2:** Improve policies and procedures to monitor that sheds are safely maintained.

**DOB's Response:** DOB partially agrees with this recommendation. DOB has multiple units that promote safety at sites and buildings through a variety of means including site safety and complaint inspections. When non-compliance is identified, DOB notifies the responsible party and takes appropriate enforcement action. Ultimately, however, responsibility for ensuring that sidewalk sheds are appropriately maintained lies with the property owner or other responsible party.

**Recommendation 3:** Ensure that the unsafe shed conditions identified are corrected.

**DOB's Response:** DOB partially agrees with this recommendation. DOB investigated the shed conditions that the audit noted, and, where warranted, issued summonses ordering that conditions be corrected. Ensuring that those violating conditions are corrected, however, is the responsibility of the property owner or other responsible party.

**State Comptroller's Comment** – In its response to our draft report, DOB indicates it "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." Therefore, it is disconcerting for DOB to state that, other than issuing summonses ordering that conditions be corrected, it is left to property owners or other responsible parties to ultimately correct an unsafe condition.

**Recommendation 4:** Implement procedures for building owners and contractors to complete and submit uniform daily shed inspection reports to DOB and monitor to ensure inspections are accurate and timely.



**DOB's Response:** DOB disagrees with this recommendation. The code requires that inspection reports be maintained; it does not require those reports to be submitted to DOB. It is the responsibility of the property owner or other responsible party to ensure that these inspections are performed correctly and at the appropriate intervals. If and when DOB identifies non-compliance with these code provisions, it will take enforcement action as appropriate, including issuing summonses.

**State Comptroller's Comment** – It defeats the purpose for inspection reports to be maintained but not submitted to DOB. Our report states that 51 of 60 sampled sites with sheds did not maintain daily inspection reports. If such reports were required to be submitted, DOB officials would have been aware of the non-compliance and could have taken appropriate actions to monitor and assess potential safety risks.

**Recommendation 5:** Utilize registered design professional filings, or lack thereof, to identify noncompliance and take appropriate actions to ensure building reports are filed, adequate protection is installed, and unsafe conditions are corrected immediately.

**DOB's Response:** DOB partially agrees with this recommendation. The Department currently uses filing information to identify non-compliance and take enforcement actions where appropriate for buildings over six stories. Ensuring that unsafe conditions are corrected, however, is the responsibility of the property owner or other responsible party.

**Recommendation 6:** Immediately inspect unsafe sites, including sites for which DOB received Notifications of Unsafe Conditions or Unsafe Façade Compliance Reports, to ensure protection is properly installed or the unsafe condition is corrected.

**DOB's Response:** DOB partially agrees with this recommendation as the Façade Unit already confirms the presence of public protection after each and every unsafe notification or unsafe compliance report for buildings over six stories. The Façade Unit confirms whether public protection is installed, if necessary, per the unsafe report or unsafe notification and takes enforcement action where appropriate. Ensuring that protection is installed and that unsafe conditions are corrected, however, is the responsibility of the property owner or other responsible party.

**State Comptroller's Comment** – We disagree. In addition to property owners or other responsible parties, DOB has a responsibility to ensure that protection is installed and unsafe conditions are corrected.

**Recommendation 7:** Develop and implement control activities, including policies and procedures to ensure property owners publicly post shed permits as required.



**DOB's Response:** DOB partially agrees with this recommendation. As noted previously, DOB will continue to conduct inspections, including site safety and complaint inspections, at sites with sidewalk sheds and take enforcement action where appropriate. However, the owner or responsible party is responsible for ensuring that shed permits are publicly posted when required.

**Recommendation 8:** Identify sheds with expired permits and take appropriate action to ensure property owners obtain the required renewals or remove the shed.

**DOB's Response:** DOB partially agrees with this recommendation. When DOB identifies sidewalk sheds that have expired permits but remain in place, it will continue to notify the property owner or responsible party that he or she is not in compliance and take appropriate enforcement action. The Department maintains, however, that the owner or responsible party is responsible for obtaining the required renewals or removing sheds when required. DOB will continue to conduct inspections, including site safety and complaint inspections, at sites with sidewalk sheds and take enforcement action when appropriate.

**Recommendation 9:** Develop, implement, and adhere to procedures to monitor compliance with the Building Code requirement to notify DOB of the removal of a shed within two business days of complete removal and verify that the sheds have been removed.

**DOB's Response:** DOB disagrees with this recommendation. The building owner or other responsible party is responsible for ensuring that sidewalk sheds are removed when they are no longer required. The most important consideration related to sidewalk sheds is that they are installed when required to protect the public; monitoring notifications that the shed has been removed is of lower priority. Given practical realities with regard to staffing levels and DOB's multiple, competing priorities and mandates that take precedence, this initiative would not be an efficient use of limited agency resources.

**State Comptroller's Comment** – As noted, sheds should be installed when required and removed when no longer needed. Our report noted 47 unsafe conditions across 60 sites, indicating that sheds themselves can pose their own risk if not properly maintained. Allowing sheds to remain after they are no longer needed creates unnecessary safety risks and has negative impacts on nearby businesses.

**Recommendation 10:** Adhere to DOB shed removal policies and procedures, including supervisor review of CSC inspection results.

**DOB's Response:** DOB agrees with this recommendation. Supervisors already review all appointment approvals through CSC. Additionally, CSC has implemented a revised checklist review procedure and has updated its SOPs to reflect the revised process.

**Recommendation 11:** Develop and implement policies and procedures to monitor façade conditions



at buildings six stories or less.

**DOB's Response:** The Department disagrees with this recommendation. The Department appreciates your policy recommendation. However, given the technical complexities and resource concerns that this raises, the Department cannot accept or implement it at this time.

**State Comptroller's Comment** – DOB should consider implementation at a future date, as the risk of not having such policies and procedures could impact the safety of individuals who build, work, and live in New York City.

It is also important to note that while LL 11/98 applies to buildings over six stories, there are maintenance requirements for all buildings. Please see §28-301.1, which explicitly puts the responsibility for the maintenance of buildings on owners. Furthermore, we note that DOB conducts inspections, including complaint inspections, at properties under six stories and issues violations for non-compliance with those maintenance requirements.

**Recommendation 12:** Immediately identify overdue compliance with OATH Summonses and implement policies and procedures to monitor these sites and ensure hazardous conditions have been corrected.

**DOB's Response:** DOB disagrees with this recommendation. "Overdue Compliance" is an OATH system status over which DOB has no control. DOB has no involvement in applying or monitoring this system status.

**State Comptroller's Comment** – A Certificate of Correction notifies DOB that a condition has been corrected. Without such notification or other up-to-date information on the OATH hearing status, DOB has no assurance the safety conditions its inspectors identified were adequately addressed.

**Recommendation 13:** Update the required documents to be submitted with Certificates of Correction (as proof that conditions have been corrected) to ensure that the records provided substantiate correction of the violation.

**DOB's Response:** DOB partially agrees with this recommendation. As previously noted, "before" photographs are not practical or feasible to require in all situations. However, the Department is in the process of updating our SOP and training staff to provide further guidance with respect to reviewing submitted evidence. In addition, DOB will update its web page, forms, and systems to instruct customers that photographs require labels.

**Recommendation 14:** Re-inspect sites that submit a Certificate of Correction to determine if all hazardous conditions have been corrected.



**DOB's Response:** DOB partially agrees with this recommendation. DOB has an audit process in which it inspects 15% of the certificates of correction submitted for Class 1 OATH summonses. Given practical realities with regard to staffing levels and DOB's multiple, competing priorities and mandates, reinspecting all sites that submit a certificate of correction is not currently feasible. Additionally, to do so would be an inefficient allocation of limited resources given that only a very small number of certificate of correction audit inspections result in a finding of a false filing.

**Recommendation 15:** Follow procedures to coordinate with HPD to assist with taking immediate measures to protect the public from unsafe conditions

**DOB's Response:** DOB agrees with this recommendation in that it is current practice.

Sincerely,

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

Melanie E. La Rocca  
Commissioner

cc: Kenrick Sifontes  
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