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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

July 6, 2023

James Oddo
Commissioner
New York City Department of Buildings
280 Broadway
New York, NY 10007

Re: Oversight of Sidewalk Sheds
Report 2022-F-36

Dear Commissioner Oddo:

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 have followed up on the actions taken by officials of the New York City Department of Buildings to implement the recommendations contained in our initial audit report, *Oversight of Sidewalk Sheds* (Report [2019-N-9](#)).

Background, Scope, and Objective

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.

According to Section 3307.6.2 of the NYC 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 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 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. DOB can issue summonses, violations, or emergency declarations and can request assistance from the NYC Department of Housing Preservation and Development (HPD) when an owner or contractor does not comply with applicable codes, laws, and rules. As of February 7, 2023, there were 9,784 active shed permits in NYC.

The objective of our initial audit, issued July 6, 2021, was to determine if DOB adequately monitored 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. We found that DOB needed 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.

The objective of our follow-up was to assess the extent of implementation, as of May 11, 2023, of the 15 recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

DOB has made limited progress in addressing the issues identified in our initial audit. Of the initial report's 15 audit recommendations, four were implemented, two were partially implemented, and nine were not implemented.

Follow-Up Observations

Recommendation 1

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

Status – Not Implemented

Agency Action – In response to our initial report, DOB officials disagreed with this recommendation and, therefore, took no action. However, at our closing conference, officials advised us that they are now considering implementing this recommendation.

Recommendation 2

Improve policies and procedures to monitor that sheds are safely maintained.

Status – Implemented

Agency Action – DOB has improved its procedures and guidelines to monitor that sheds are safely maintained. This includes a new standard operating procedure (SOP), issued June 2021, which includes guidelines on the role of its Construction Safety Compliance (CSC) unit as well as the requirements and responsibilities of a CSC inspection.

Recommendation 3

Ensure that the unsafe shed conditions identified are corrected.

Status – Partially Implemented

Agency Action – In response to our initial report, DOB officials advised us they inspected all 27 sites that we had previously identified as unsafe. DOB inspectors subsequently issued 30 violations for conditions observed during their follow-up inspections. On February 17, 2023, we reviewed DOB's Environmental Control Board (ECB) violation records and determined that DOB did not ensure that all identified unsafe shed conditions were corrected. Of the 30 violations, ECB violation records show that five had "No compliance recorded" despite DOB having issued these violations in May 2020.

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.

Status – Not Implemented

Agency Action – In response to our initial report, DOB officials disagreed with this recommendation and, therefore, took no action. DOB officials reiterated that daily inspections of sheds are the responsibility of the building owner, and DOB already requires that such reports be made available upon its inspection of a site.

Recommendation 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.

Status – Not Implemented

Agency Action – DOB could not show us that it utilized 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. For example, according to DOB's Notification of Unsafe Conditions data, between July 1, 2021 and December 31, 2022, qualified professionals identified 969 buildings with unsafe façade conditions, based on building identification numbers. Although DOB's records show that it issued violations to 70 of the 969 buildings for failure to maintain their façade, the records also show the violations were issued to 59 of those buildings prior to the most recent façade safety report. Therefore, either the original condition was not addressed, or a new condition was identified by the qualified professional. Moreover, of the 70 buildings with violations, DOB records show that 40 violations remain unresolved (i.e., no compliance recorded).

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.

Status – Not Implemented

Agency Action – Although DOB officials asserted that they confirm the presence of public protection after each and every Notification of Unsafe Conditions or Unsafe Façade Compliance Report for buildings over six stories, officials did not provide us with records to support this assertion.

Recommendation 7

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

Status – Not Implemented

Agency Action – Although DOB implemented a SOP – Construction Safety Compliance Appointments, Inspections & Release Guidelines – in June 2021, the SOP does not show that DOB officials implemented policies and procedures to ensure property owners publicly post shed permits, as required. However, DOB’s website states, “permits must be posted in a visible place at the work site for the duration of the work.”

To determine whether shed permits were posted appropriately, we selected a judgmental sample of 38 buildings with sidewalk shed permits issued between July 2017 and February 2023. We made site visits in February and March 2023 across NYC and found that eight sites still had erected sheds. Of the eight sites, we found that six (75%) did not have publicly posted shed permits.

Recommendation 8

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

Status – Not Implemented

Agency Action – In response to our initial report, DOB partially agreed with this recommendation. However, officials could not show us they actively use available data to identify sheds with expired permits and take appropriate actions to ensure the owners either obtain the required renewals or remove the sheds. On March 14, 2023, we requested DOB’s records of sidewalk shed removal notices; however, DOB officials did not submit the requested information until April 6, 2023, after we provided them with a written summary of our findings. Nevertheless, we reviewed the information that DOB provided on April 6, 2023 and compared it to DOB’s publicly available data (e.g., NYC Open Data, DOB’s website) on approved shed permits. We found that, between July 2021 and December 2022, there were 4,978 buildings with expired sidewalk shed permits where either the permit was not renewed or the owner had failed to notify DOB that the applicable shed was removed. Consequently, we have no assurance that this recommendation was implemented.

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.

Status – Not Implemented

Agency Action – In response to our initial report, DOB officials disagreed with this recommendation and, therefore, took no action. Initially, officials advised that monitoring notifications for sidewalk shed removals is a lower priority as DOB prioritizes the proper installation of sidewalk sheds to protect the public. However, during our closing conference, officials stated that DOB is currently reviewing this recommendation and may create additional rules or procedures in response.

Recommendation 10

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

Status – Implemented

Agency Action – On November 15, 2021, DOB officials implemented a system to monitor supervisory review of CSC inspection results.

Recommendation 11

Develop and implement policies and procedures to monitor façade conditions at buildings six stories or less.

Status – Not Implemented

Agency Action – In response to our initial report, DOB disagreed with this recommendation. Officials maintain that they cannot implement this recommendation due to technical complexities, resource limitations, and legal concerns.

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.

Status – Not Implemented

Agency Action – In response to our initial report, DOB officials disagreed with this recommendation and, therefore, took no action. While officials have access to the NYC Office of Administrative Trials and Hearings (OATH) data and can analyze it to determine overdue compliance, they choose not to do so. Furthermore, officials explained that OATH, not DOB, controls a certain status field that indicates overdue compliance. However, this status field is not required to identify overdue summonses. In fact, DOB already has access to all the relevant data – such as the issue date of the summons, type of summons, and whether the summons has been closed – and can use this data to determine whether compliance is overdue.

In addition, although officials noted that changes in the local law exempt one- to four-story family homes from certain DOB re-inspection procedures, they did not provide records to show how DOB implemented policies and procedures to monitor non-exempt sites.

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.

Status – Implemented

Agency Action – DOB updated the listing of documents it requires to be submitted with Certificates of Correction to substantiate correction of violating conditions. DOB has also developed training materials on this topic, which detail the Certificate of Correction process and DOB's review process.

Recommendation 14

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

Status – Partially Implemented

Agency Action – DOB did not re-inspect all sites that submitted a Certificate of Correction. At a minimum, Local Law 117 requires that DOB conduct inspections on 15% of Certificates of Correction filed with DOB for Class 1 violations. However, DOB officials did not provide inspection records to verify that DOB inspected 15% of sites that submitted Certificates of Correction between the period July 1, 2017 and January 1, 2023. Instead, officials provided copies of 3 years of DOB's Local Law 117 reports, which stated that DOB inspected 17.7% (2019), 15.9% (2020), and 16% (2021) of all Certificates of Correction filed with DOB for Class 1 violations. Officials explained that this includes all types of violations, not only sidewalk shed violations. Upon request, DOB did provide records showing its officials inspected 11.4% of Certificates of Correction submitted for Class 1 sidewalk shed violations, but DOB did not re-inspect all sites that submitted a Certificate.

Recommendation 15

Follow procedures to coordinate with HPD to assist with taking immediate measures to protect the public from unsafe conditions.

Status – Implemented

Agency Action – Immediate emergency declarations (IED) are declared when it is determined by DOB that there is structural damage and/or an imminent danger of collapse, which poses an immediate threat to public safety. DOB's IED procedure includes posting the IED information to a database it shares with HPD and contacting HPD directly with the IED information. According to the shared database, DOB issued 446 IEDs to 410 buildings between January 1, 2022 and December 31, 2022. The shared database indicated DOB had closed 442 of the 446 IEDs as of February 2023. Additionally, DOB provided sample records showing that its staff directly contacted HPD with IED information for unsafe sites.

Major contributors to this report were Adefemi Akingbade and Margarita Ledezma.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of DOB for the courtesies and cooperation extended to our auditors during this follow-up.

Very truly yours,

David Schaeffer
Audit Manager

cc: Kerry Castro, NYC Department of Buildings
Doug Giuliano, NYC Mayor's Office of Risk Management and Compliance
Marjorie Landa, NYC Mayor's Office of Risk Management and Compliance