

CITY OF PHILADELPHIA PENNSYLVANIA

OFFICE OF THE CONTROLLER

Promoting honest, efficient, and fully accountable government

Construction Activity Review North Central Philadelphia

October 2012



City Controller
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Construction Activity Review North Central Philadelphia

Executive Summary

Why the Controller's Office Conducted the Review

The Office of the City Controller conducted a special review of the construction and development activity in North Central Philadelphia near Temple University. We initiated this special review in response to allegations received by our office that contractors and developers in this area were not complying with applicable building codes and related regulations. We conducted this review pursuant to the requirements of Section 6-400 (c) and (d) of the Home Rule Charter.

What the Controller's Office Found

Oversight responsibilities for construction activity in the City of Philadelphia are shared by at least five (5) separate departments including Licenses & Inspections, Streets, Water, Public Health and Police. As a result, the inspection process is not efficient and code enforcement is inadequate, which leads to the following conditions we observed during our inspections:

- Construction sites without required posted permits
- Stairs encroaching into the sidewalk farther than allowed impeding pedestrian travel
- Street lane closures without proper permits, reducing city revenue
- Lack of properly maintained silt fences or compost filter tubes, increasing costs of the Water Department as well as polluting the streets and waterways
- Lack of proper storm water inlet protection, increasing costs of the Water Department as well as polluting the waterways
- Air vacuum hoses not being used on power saws to collect dust creating air pollution
- Missing dust screens reducing the air quality of the neighborhood
- Illegal short dumping of construction debris
- Construction staging and construction debris left on site from recent development projects
- Sidewalks cracking from heavy trucks and equipment resulting in liability and repair costs for residents that are not involved in the construction activities
- Unpaved driveways and parking lots which lead to dirty streets and sidewalks

We also found inadequate communication among the above five (5) departments with varying levels of responsibility for monitoring construction activity. Specifically, information regarding code violations is not adequately shared among City departments.

What the Controller's Office Recommends

The Controller's Office has developed a number of recommendations to address our findings that can be found at the end of the report.

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INTRODUCTION

BACKGROUND

The Controller's Office initiated a special review of construction and development activity in North Central Philadelphia after receiving numerous complaints from residents. These complaints alleged that private developers were building new student housing near Temple University with complete disregard to the City's building codes. Residents also reported that as a result these construction activities have had a negative impact on the community. This special review was conducted pursuant to requirements of Section 6-400 (c) and (d) of the Home Rule Charter.

The City's oversight of construction activity is shared by five (5) separate departments including Licenses and Inspections, Streets, Water, Public Health, and Police as described below.

Department of Licenses & Inspections

The Construction Services Division, a division of the Department of Licenses and Inspections (L&I), is the primary agency responsible for ensuring that construction activity throughout the City is performed according to the codes and ordinances of the City of Philadelphia and the State of Pennsylvania. L&I is responsible for regulating the conduct of businesses and individuals through the issuance of permits and licenses and the site inspections of construction. L&I reviews applications for the issuance of all other licenses, processes real estate certification statements, rental suitability certifications, and provides copies of violation notices and building permits to the public. L&I is also empowered to take lawful actions necessary to correct dangerous and unlawful conditions, including making necessary emergency repairs to properties, cleaning and sealing abandoned buildings, and demolishing vacant buildings that pose a threat to public safety.

Streets Department

The Streets Department is responsible for permitting street excavations, lane closure, and approving the designs for right of way encroachments. Prior to a street excavation or the closure of one or more lanes of the street, a permit must be obtained from the Streets Department. In the design stage, a plan must be approved by the Streets Department for stairs that encroach on the right of way.

Water Department

The Philadelphia Water Department (PWD) is responsible for monitoring erosion and sediment (E&S) controls to ensure clean waterways and to reduce the maintenance of the City's stormwater inlets and storm sewers. PWD requires that the Pennsylvania Department of Environmental Protection's (PADEP) E&S policy be utilized by developers and contractors.

Public Health Department

The Public Health Department is responsible for noise restrictions and upholding air quality standards.

Police Department

The Police Department is responsible for enforcing illegal dumping laws.

FINDINGS AND RECOMMENDATIONS

SUMMARY OF OBSERVATIONS

As was explained more fully above, the oversight responsibilities for construction activity in the City is shared by at least five (5) separate departments including L&I, Streets, Water, Public Health, and Police. Our review revealed that communication between these City agencies regarding construction projects is inadequate and results in inefficient monitoring of construction activity. Consequently, some developers and contractors have engaged in activities that violated various codes and which negatively impact the quality of life of the residents in the surrounding neighborhood.

During our inspections, we noted the following conditions:

Construction sites without required posted permits

Several construction sites visited during our review did not have the proper building permits posted. Section A-302.8 (Posting of permits and licenses) of the Philadelphia Administrative Code states that “Permits and licenses shall be kept on the premises designated therein at all times and shall be readily available for inspection by the code official. A true copy of permits authorizing construction activity shall be posted on the site of the operations, open to public inspection during the entire time of the prosecution of the work for which the permit has been issued.”

Stairs encroaching into the sidewalk farther than allowed (see pictures 1 and 2)

Stairs were observed exceeding the allowable sidewalk encroachment distance. The maximum allowable right of way encroachment distance is 4.5 feet or less depending on the width of the street. Stairs that exceed the allowable encroachment distance creates difficulty for pedestrians and provides no aesthetic appeal. We were informed by L&I that they do not enforce this right of way code because they believe it is a Streets Department function; whereas, the Streets Department believes that it is L&I’s responsibility to enforce this code as part of the construction plan.

Lack of proper storm water inlet protection (see picture 3)

Inlet protection is designed to keep debris from construction sites out of the stormwater drains (inlets), and is required by Philadelphia Water Department regulation 600.4. The installation of inlet protection is the responsibility of the contractor. Without proper inlet protection in place, the city bears increased financial burdens associated with more frequent inlet cleaning or risks safety and pollution issues in the event of heavy precipitation.

Air vacuum hoses not being used on power saws to collect dust (see picture 4)

Certain construction projects involve cutting materials using heavy saws requiring air hoses to prevent dust from blowing off the site. During our site visits we observed a few saws with air hose attachments which were not being utilized. We were informed the Public Health Department does not have enough manpower to enforce air quality codes for small construction projects. We were also informed these codes are not enforced by L&I as part of their inspection. Enforcing this requirement would improve air quality and neighborhood cleanliness.

Street lane closures without proper permits (see picture 5)

We identified streets which were completely blocked without approved permits, and we received several complaints that proper lane closure permits had not been obtained. However, after the initiation of our discussion with L&I regarding this issue, it appears that enforcement has increased because the Streets Department informed us there had been an increase in application for permits resulting in an increase of revenue to the city.

Lack of properly maintained silt fences or compost filter tubes (see picture 6)

A silt fence or compost filter sock is required by the Philadelphia Water Department regulation 600.4 when any earth disturbance takes place on a construction site. The silt fence or compost filter sock keeps sediment on the construction site as opposed to allowing it to run into the street and ultimately into the storm drain. These construction measures promote cleaner streets and neighborhoods while reducing PWD's cost of keeping the debris out of the storm drains. In addition, we identified several instances of remnants from illegal cement mixing in the streets, including dried cement in the storm drains.

Missing dust screens (see picture 7)

Construction sites require the use of dust screens for air quality controls, yet many were missing on our inspections. We were informed the Public Health Department does not have enough manpower to enforce air quality codes for small construction projects. We were also informed these codes are not enforced by L&I as part of their inspection. Enforcing this requirement would improve air quality and neighborhood cleanliness.

Illegal short dumping of construction debris (see pictures 8, 9, and 10)

Short dumping is the illegal dumping of trash and debris on a city street or vacant lot. During our review, we observed several short dumping sites where piles of construction debris had been dumped in vacant lots near new development projects. These illegal dump sites create potential public health risks for residents and negatively impact the appearance of the community. Illegal dumping of construction debris poses physical hazards to both children and adults including the risk of cuts and infections from protruding nails and sharp edges. There may also be chemical hazards from toxic fluids and dust. The presence of illegal dumpsites results in a decrease of neighborhood property values and the quality of life for residents. In addition, the costs faced by the City to continually clean up illegal dump sites are significant.

Chapter 10-700 of The Philadelphia Code, entitled "*Refuse and Littering*" provides for fines and penalties against individuals and commercial operators caught illegally dumping debris. Accordingly, individuals are subject to a \$300 fine and commercial operators are subject to a fine of up to \$10,000. It appears that the City's illegal dumping prevention programs may need to be reviewed to assess their effectiveness in North Central Philadelphia.

The Police Department is charged with monitoring and enforcing regulations pertaining to short dumping activity; however, it is very difficult to catch the violators in the act. The Streets Department is responsible for the clean up of illegal dumping found on city streets and sidewalks. The Mayor's Office of Neighborhood Services is responsible for the cleanup of illegal dumping found on vacant lots.

Construction staging and construction debris left on site (see pictures 11, 12, and 13)

We found several piles of construction debris that were adjacent to recently completed construction projects. According to the Philadelphia Property Maintenance Code PM-302.2 Sanitation: All exterior property and premises, including porches, patios and decks, shall be maintained in a clean, safe and sanitary condition and free from any accumulation of: (1) rubbish or garbage; and, (2) building materials or equipment that are not currently being used for work at the property. The effective enforcement of this property maintenance requirement would promote neighborhood cleanliness and positively impact the quality of life for residents.

Sidewalks cracking from heavy trucks and equipment (see pictures 14 and 15)

We found evidence of cracked and otherwise damaged sidewalks due to construction vehicles driving across and parking on them.

Some of the cracked sidewalks belong to the neighboring properties that have no association with the construction activities. The city and disassociated residents are often left with the burden of repair and potential liability as a result of these damaged sidewalks.

Unpaved driveways and parking lots (see picture 16)

We observed unpaved driveways and parking lots in this neighborhood. The city requires all driveways and parking lots be hard paved; however, this requirement does not appear to be enforced. These unpaved areas contribute to dust and dirt that negatively impacts the air, PWD's stormwater infrastructure, and public waterways.

INEFFICIENT PROJECT MONITORING & INADEQUATE CODE ENFORCEMENT

As illustrated by the above observations, the sharing of oversight authority for construction activity to five (5) separate departments results in inefficient inspection process and inadequate enforcement of the Philadelphia Building Code. We identified the following conditions within each department which contributed to this inefficient inspection process.

Department of Licenses & Inspections

During interviews with L&I management our review team was told that L&I informs the other responsible departments when their inspectors notice violations that are not under L&I's jurisdiction. We were also told that L&I does not have the expertise to spot all of the violations, and they are not sure if the other departments follow through on their information. We were informed that there is an informal information exchange process between L&I and the Streets Department with no written policies or agreements governing this process. As a result, a significant time lapse between L&I's initial notice of the violation and the inspection of the site by another department could occur.

Streets Department

Based upon our review it appears that disagreement exists between Streets and L&I regarding code enforcement related to right of way encroachments. During the design stage of a construction project, the Streets Department reviews the building plans and approves or rejects encroachments into the right of way such as stairs, gardens, or storage areas. At the final site inspection, the L&I inspector is required to verify that encroachments have been constructed according to plan dimensions. According to L&I, if their inspectors find an improperly constructed encroachment, the Streets Department is notified to address the deficiency. However, the Streets Department believes that L&I should enforce the plan and take action without the Streets Department's involvement. We found that the encroachment-related code is not being routinely enforced because of the differing opinions of these two departments regarding monitoring and enforcement.

Philadelphia Water Department

The Pennsylvania Department of Environmental Protection (PADEP) requires that an E&S design plan is implemented, maintained and available on site through the duration of construction projects. We found that PWD does not monitor sites under 15,000 square feet for compliance with the PADEP's E&S policy. This leaves small sites such as many of those being developed in the Temple University area vulnerable to E&S violations with minimal enforcement of code violations.

On a typical construction site the required E&S controls consist of a silt fence or a compost filter sock to keep sediment on site. Silt fences are placed along the outside of the disturbed area to prevent sediment from escaping the site. Inlet protection is also placed on the stormwater inlets downhill of the site to keep escaped sediment out of PWD's infrastructure and out of the waterways.

These basic features should be installed on almost every site. PWD asserts they lack the manpower to inspect every construction site in the city for E&S controls, and L&I claims they do not have the expertise to inspect these items.

In addition to private developers, the condition also exists with utility work (i.e. PWD, PECO, PGW, etc.) Most utility work in the city is done by digging a trench in the street and installing a conduit which may leave large piles of excavated dirt as well as sand for conduit bedding along the side of the road for weeks or months at a time. When it rains, this sand and dirt moves from the piles and is distributed throughout the street. We were informed that often times when private contractors are reminded of the requirement to install silt fences and inlet protection; they complain that neither PWD nor PGW controls their sediment.

Public Health Department

The Public Health Department is charged with monitoring and enforcing noise restrictions and air quality issues such as missing dust fences and the use of saws without appropriate air hoses. Although noise and air quality issues were observed during our site visits, we did not find any evidence indicating L&I has documented or otherwise addressed these issues during their inspections.

Police Department

The Police Department is charged with enforcing short dumping laws; however, without a witness difficulty arises in proving the source of the violation. In general, the police can either witness the violator in the act, or facilitate fining the property owner of the land with the debris. L&I claims to have worked with the police to set up sting operations to catch known violators, however short dumping is still prevalent in the area.

Due to this inefficient inspection process, it appears that contractors have little incentive to obtain all of the proper permits because they are aware of the number of inspectors it takes to properly monitor their projects. Furthermore, failure to obtain permits or to comply with the requirements often does not result in penalties or any punitive actions. Therefore the current inspection process could encourage the contractor to operate as inexpensively as possible and apply for permits only after being directed to do so.

RECOMMENDATION

In order to improve project monitoring and code enforcement we recommend that a Memorandum of Understanding (MOU) be established between L&I and each of the four other departments – Streets, Water, Public Health and Police– with oversight responsibilities for construction activity. The MOU should provide guidance to and authority for any inspector observing building code violations to immediately address the condition observed. At a minimum the MOU should contain written guidelines for the exchange of information regarding code violations. The MOU should also address cross departmental training for inspectors. For example, in order to enforce erosion and sediment control issues L&I inspectors should be trained on the correct placement of silt fences and inlet protections.

INADEQUATE COMMUNICATION BETWEEN CITY DEPARTMENTS

We found inadequate communication among the five (5) departments responsible for monitoring construction activity. Specifically, information regarding code violations is not adequately shared.

For example, prior to the Controller's Office's initiation of our review, when L&I performed its inspections, they did not routinely ensure that appropriate Street Department permits were obtained.

We were also informed that when L&I's inspectors notice violations that are not under their jurisdiction, they notify the other responsible departments. L&I maintains that they do not have the expertise to identify all non-L&I related violations, and they are unaware whether the other departments follow through on the information L&I provides. There are no written policies or agreements governing the informal communication that exists between these five (5) departments. Consequently, this informal exchange of information regarding code violations is inefficient and could result in the loss of information.

In addition, there can be a significant time lapse between L&I's initial notice of the violation and the inspection of the site by another department. During this time the air and water continue to be polluted. If an appropriate MOU was in place, these violations could be immediately addressed rather than the delay caused by the time it takes the L&I inspector to inform the department, and for the other inspector to schedule a site visit, and attempt to witness and address the noncompliant activity. For example, in the case of a lane closure, the City may lose permit fees because by the time a representative from Streets arrives at the location the lane may have been reopened.

RECOMMENDATIONS

To improve communication between the relevant departments, we recommend the following:

A) The above mentioned MOU should also contain clear channels of communication relevant to each department's inspection responsibilities. At a minimum, the City should link the Streets Department permits database with the new Eclipse program that L&I is developing so that permits can more easily be verified.

B) Create and implement a mobile application (app) that would allow for department employees responsible for on-site inspections to report violations and non-compliance issues to an internal database hub. This would allow all concerning departments (e.g. L&I, Police, Streets, Water, Public Health) to gain access to the database and to use the app as a resourceful enforcement tool. The app could be installed on mobile phones and employees could send pictures, videos and additional violation information, such as GPS location, into a central location where each department could review, document and determine appropriate action.

APPENDIX A

Photographs of Conditions Found

Picture 1. Stairs encroaching seven feet into the sidewalk



Picture 2. Stairs properly directed to the side to reduce encroachment on the sidewalk



Picture 3. Lack of proper stormwater inlet protection



Picture 4. Air vacuum hose not being used on a saw to collect dust



Picture 5. Street lane closure without proper permits



Picture 6. Lack of properly maintained silt fence or compost filter tube



Picture 7. Missing dust screens



Picture 8. Illegal short dumping of construction debris



Picture 9. Illegal short dumping of construction debris



Picture 10. Illegal short dumping of construction debris



Picture 11. Construction staging and construction debris left on site



Picture 12. Construction staging and construction debris left on site
(approximately 2 months after the picture above)



Picture 13. Piles of construction debris left on site next to completed construction



Picture 14. Sidewalk cracked likely due to construction trucks and heavy equipment parking on it.



Picture 15. Cracked sidewalk where construction vehicles parked, undamaged sidewalk closer to the house where vehicles did not park.



Picture 16. Unpaved parking lot

