

A Report of the 2002-2003 Civil Grand Jury
For the City and County of San Francisco

**PREFERENTIAL TREATMENT PERSISTS IN A
DEPARTMENT MARKED BY POLITICAL PRESSURES
AND A LEADERSHIP VOID**

**CIVIL GRAND JURY REPORT ON THE MANAGEMENT OF THE
DEPARTMENT OF BUILDING INSPECTION**

Released June 11, 2003

Reports of the Civil Grand Jury do not identify the individuals interviewed, pursuant to California Penal Code sec. 929. The California Legislature intended this provision to encourage full candor and cooperation by City and County personnel.

Parties identified in the report must respond to the Presiding Judge of the Superior Court within the number of days specified, with a copy sent to the Board of Supervisors. As to each finding of the Grand Jury, the response must either (1) agree with the finding, or (2) disagree with it, wholly or partially, and explain why. Further, as to each recommendation made by the Grand Jury, the responding party must report either (1) that the recommendation has been implemented, with a summary explanation of how it was; (2) the recommendation has not been implemented, but will be implemented in the future, with a timeframe for implementation; (3) the recommendation requires further analysis, with an explanation of the scope of that analysis and a timeframe for the officer or agency head to be prepared to discuss it (less than six months from the release of this Report); or (4) the recommendation will not be implemented because it is not warranted or reasonable, with an explanation of why that is. (Cal. Penal Code, secs. 933, 933.05.)

PREFERENTIAL TREATMENT PERSISTS IN A DEPARTMENT MARKED BY POLITICAL PRESSURES AND A LEADERSHIP VOID

CIVIL GRAND JURY REPORT ON THE MANAGEMENT OF THE DEPARTMENT OF BUILDING INSPECTION

Summary of Recommendations

1. Eliminate the undue influence of and preferential treatment received by certain DBI customers.
2. Institute quality control procedures in both Plan Check and Inspection Services divisions of DBI.
3. Comply with state law by determining the actual costs of providing services of DBI, and adjust fees accordingly.
4. Improve management and leadership skills of those in positions of responsibility.

OVERVIEW

The San Francisco Department of Building Inspection (DBI) serves its “customers” – primarily developers, contractors, and homeowners seeking building or related permits – in a professional and courteous manner. Most permits are issued and inspections conducted promptly with a minimum of bureaucratic inefficiency. A 2001 audit by the Office of the Controller found this, but noted that the department lacked adequate quality control measurement standards and suffered from the perception that undue influence and preferential treatment existed in the way it performed some of its services. The Controller recommended that the department develop a Code of Professional Conduct to guide its employees in the performance of their duties; that the Department develop quality control measures; and that it make changes in the operation of the department to dispel the perception of undue influence.

The 2002-2003 Civil Grand Jury investigated DBI operations in its Plan Checking and Building Inspection programs¹ to determine whether the perception of undue influence and preferential treatment of favored permit applicants had a basis in fact, whether the Controller’s recommendations had been implemented, and whether actions taken by DBI in response to the Controller’s audit recommendations have been adequate. The Grand Jury also considered other steps DBI can and should take to avoid actual or perceived inequalities in the way its customers are served, and generally to serve them better.

¹ The Grand Jury did not investigate the operation of the Housing Inspection Program, which handles code enforcement related to reported code violations in existing buildings with three or more units including transient and residential hotels. The Grand Jury notes, however, that staffing shortages have contributed to a backlog in inspection of residences for illegal units and for unsafe decks and balconies in multiple unit buildings.

The investigation confirmed that DBI has many competent employees in managerial and line capacities. Those employees are dedicated to protecting the public, providing equal services to all customers, and to evenhanded code enforcement. Nonetheless, the Grand Jury repeatedly heard from sources inside and outside DBI that the directors (managers in appointive positions) and some of the managers of departments within the Plan Check and Inspection Services divisions are subject to undue influence from certain segments of the construction industry and that certain customers receive preferential service. This information was corroborated in part by records obtained from DBI. The Grand Jury concludes that undue influence by outsiders over DBI decisions and preferential treatment of some customers is actual, not simply perceived. This favoritism is deeply ingrained in DBI operations and is embraced by some directors and managers. Directors have failed to institute a Code of Professional Conduct, to update the department's conflict of interest policy, or to impress on employees the importance of giving equally prompt and professional service to all customers. They have not provided employees with a concise, easily understood summary of ethical obligations imposed by state and local laws and regulations that are applicable regardless of the status of the proposed Code of Professional Conduct. Whistleblowers are not assured of protection. Employees are reluctant to report improper conduct because they fear retaliation and ostracism. DBI management has failed to devise adequate quality control measures to be consistently followed throughout the Department. Management has failed to complete the development of a computerized permit and record tracking system that would significantly aid in reducing inadvertent or intentional delays in the processing of permit applications and make preferential and unequal treatment of customers apparent.

The Grand Jury has concluded that these failings result from directors and managers at DBI who either lack the competence to make institutional changes in the department or are unwilling or uninterested in doing so. Political, rather than professional considerations in appointments to management positions in DBI may account for individuals who, while technically competent, lack management background and skills. These appointees appear to lack incentive to make administrative changes that are necessary to eradicate outside influence and preferential treatment, which would not be welcomed by those DBI customers whose influence permeates DBI.

The Grand Jury recommends that DBI directors prepare and circulate to all employees a simple statement of the ethical rules that should govern their conduct. The director should impress on DBI employees that they are personally committed to these rules and they insist the employees follow these rules without exception. The department should finalize and implement the proposed Code of Professional Conduct. It should immediately implement a new permit tracking system that gives members of the public access to the status of a permit application, including required inspections. Additional in-house training for plan checkers and field inspectors, specific to their duties, should be designed and required. Regular Plan Check and Inspection staff meetings should be instituted to eliminate inconsistent application of codes and regulations. Directors should survey the quality control programs instituted in its Plan Check and Inspection Services divisions and revise them when necessary to ensure that code compliance and public

safety have priority equal to the department's dedication to promptness in all aspects of plan checking and inspection.

BACKGROUND

San Francisco voters created the Department of Building Inspection in 1994 to replace the Building Inspection Division of the Department of Public Works. DBI operates under the direction and management of the Building Inspection Commission (BIC), a seven-member body, four of whom are appointed by the Mayor and three by the President of the Board of Supervisors. The Commission appoints the DBI Director. The Director appoints an assistant director and two deputy directors. The mission of the department is to safeguard life and property by enforcing the San Francisco Building, Housing, Plumbing, Electrical, and Mechanical Codes, and Disability Access Regulations in an equitable and fair manner. DBI is responsible through its Plan Check Division for the issuance of permits for new construction, alterations, and remodeling; and through its Inspection Services Division for the inspection of work done pursuant to those permits, and enforcement of codes and regulations applicable to existing structures.

With a staff of approximately 300 persons, in the 2001-2002 fiscal year, DBI issued 59,176 permits consisting of 24,512 building permits, 14,436 electrical permits, 17,769 plumbing permits and 2,459 miscellaneous permits. Over 90% of those permits were issued within one day. DBI performed 136,878 building inspections of work done during the fiscal year. The department, which is financially self sufficient, has a 2002-2003 fiscal year operating budget of \$34,000,000 that is to be met by permit and inspection fees, fines, and penalties.

INVESTIGATIVE PROCESS

Members of the Grand Jury interviewed employees of DBI at all levels from directors and managers to field inspectors and plan checkers. Former employees were also interviewed. When investigating charges of improper conduct by department staff, more than one employee was interviewed to obtain corroboration of information received. Members of the Grand Jury also interviewed and obtained information from the staff of the Controller, City Attorney, and the budget analyst of the Board of Supervisors. Members reviewed relevant San Francisco Charter provisions, state and local laws, and administrative regulations, as well as minutes of the Building Inspection Commission, internal reports and other documents of DBI, reports of the Office of the Controller, and outside survey results.

FACTS, FINDINGS AND RECOMMENDATIONS

1. THE PERCEPTION OF UNDUE INFLUENCE AND UNEQUAL TREATMENT AT DBI IS WELL FOUNDED.

FACTS

- Some representatives of a construction industry association, expeditors, and builders have access to directors and managers that is not limited to resolution of disputes over actions taken by line personnel.
- In turn, directors and managers request services from DBI staff for the benefit of those builders, representatives and expeditors. Staff members have had to stop regular work for other customers in order to respond to these requests.
- Directors have not clearly identified for DBI staff those provisions of the proposed Code of Professional Conduct that are based on currently applicable state and local law. These provisions are not subject to collective bargaining and must be obeyed regardless of the status or formal implementation of the proposed Code of Professional Conduct. Additionally, the directors have not taken the initiative to meet with representatives of employee bargaining units to discuss and resolve any issues regarding the language of the proposed Code of Professional Conduct, the examples of its application to routine DBI procedures, or to fully implement the Code.
- Some managers themselves fail to adhere to the proposed Code of Professional Conduct, even those provisions implement existing law and regulations and are not subject to collective bargaining. Although one director states that the Code of Professional Conduct was implemented in February 2001, many DBI employees are not aware that it is in effect. Several managers have not read it since the first draft was circulated for comment, and none has undertaken steps to implement it or explain it to the employees he or she supervises.
- Directors have not provided employees with a statement of existing employee ethical obligations in language easily understood by laymen and have not made a clear statement that all employees must adhere to those rules. Past practice has been to circulate a memorandum to which copies of statutes, charter provisions, and rules are attached, leaving it to the employee to read through multiple documents in technical language from which the employee who does read the material must glean provisions applicable to DBI and the employee personally.
- The current DBI Conflict of Interest policy is one adopted in 1969 for the Bureau of Building Inspection bureau of the Department of Public Works, the predecessor of DBI. A subsequent attempt to update the policy did not go into effect. Although some middle managers believe that it should do so, DBI management has not reviewed and has made no effort to update the 1969 policy.

- Many employees appear to be unaware that preferential treatment of certain customers is improper and prohibited.
- Prior to the 2001 Controller’s audit, non-employees routinely entered the employee-only area, took plans to division managers for review bypassing the normal routing procedure, pulled documents from department files, asked that copies be made, and used a department stamp – signifying routing or department approval – on plans submitted for approval. DBI has since posted signage identifying employee only areas and established barriers setting them apart. Despite these measures, employees of the same preferred customers continue to bypass the normal procedures for filing permit applications and submitting plans for review, presenting their plans for review to members of the Plan Check staff who are believed to be less rigorous in their reviews than other plan checkers. Managers and supervisors sometimes facilitate this process through their assignment or reassignment plans to be checked.
- Some DBI employees who are aware of misconduct by others are reluctant to report it, fearing retaliation in job assignments, ostracism, and lack of confidentiality. Others assume that complaints will be ignored and, as a result, have a “don’t rock the boat” attitude.
- DBI directors have not embraced management information systems (MIS) technology, in particular bar-coding of plans and improved permit tracking systems that could identify and eliminate preferential treatment and better serve DBI customers.
- Although some owners and builders repeatedly violate the law by undertaking work without permits or work in excess of that authorized by a permit, the present DBI computer system tracks notices of code violations and abatement orders only by property address.
- DBI policy prohibits singling out any customers for extra scrutiny, including those who are known to have a history of code violations and doing work unauthorized by or in excess of a permit. This policy has led to imposition of discipline on inspectors who give that extra scrutiny and issue notices of violation based on it.
- In one discipline hearing before a neutral referee, the referee ruled that the department’s “fervent resolve to severely discipline [an employee] is to a large extent due to external political pressures [by] the politically influential owners and project sponsors” who complained to the Building Inspection Commission about issuance of a notice of code violations to owners of the properties involved.

FINDINGS

1. The perception that undue influence from outsiders affects DBI operations and that favored, politically well-connected customers receive preferential treatment from DBI managers is in fact true. Further, DBI directors are not committed to eradicating

undue influence in the department. Longstanding relationships with outside individuals and organizations influence decisions and actions of DBI personnel at all levels.

2. DBI directors are not committed to the implementation of measures geared to ensure that no customer is given preferential treatment as to the order in which his or her permit application is processed, and that all customers receive evenhanded and consistent code application during inspections.
3. An improved permit tracking system, coupled with a system of bar-coding of plans, would enable the department and customers to track each step in the permit and inspection process, identify repeat violators, and reduce the opportunity for preferential treatment of favored customers.

RECOMMENDATIONS

- 1a. DBI should establish a “Permit Intake Unit” to which all permit applications must be submitted and from which applications are routed to the appropriate division for assignment to the next available plan checker in that division unless the unit supervisor approves and justifies in writing a special assignment. DBI should no longer allow customers to submit plans directly to reviewers in the Commercial Plan Check and Major Projects divisions. Any re-assignment of plans submitted with a commercial permit application from Commercial Plan Check to Major Projects for review should be justified in writing by the manager or supervisor ordering the reassignment.
- 1b. DBI should proceed immediately to develop and implement an enhanced permit tracking and the recommended bar coding technology.
- 1c. DBI directors should immediately implement those provisions of the draft Code of Professional Conduct that restate existing law and regulations.
- 1d. DBI directors should review and update the 1969 Conflict of Interest policy to reflect current conflict of interest concerns and the types of outside employment and activities in which DBI employees should not engage.
- 1e. DBI should designate an individual to whom employees can report in confidence what they perceive to be improper, incompetent, or unauthorized actions by other DBI employees and give that person the authority to investigate and report to the director his or her findings, and to and protect employees from retaliation.

REQUIRED RESPONSES

Director, Department of Building Inspection – 60 days
Building Inspection Commission – 60 days
Ethics Commission – 60 days
Board of Supervisors – 90 days

2. QUALITY CONTROL IS SEVERELY LACKING AT DBI

FACTS

- DBI recognizes that quality control measures are essential to ensuring that review of plans submitted by DBI customers is competent and thorough, that field inspections of ongoing projects ensure that code requirements are being met, and that the work done does not exceed that authorized by a permit. Competent plan review and field inspections are fundamental to DBI's mission of ensuring public safety, and would serve DBI customers by avoiding the extra costs incurred when work that does not meet code requirements must be corrected after construction has been completed.
- In response to the report of the Controller that DBI does not have a means to assess the quality of its plan checking and inspection programs, DBI directors instructed managers in its Plan Check and Inspection Services divisions to implement quality control measurement programs. However, the directors did not offer those managers guidance with regard to the measures that should be taken. Managers have thus devised quality control measures independently. Some divisions have created programs that have well-developed standards of performance against which employee proficiency is measured, but others have not done so.
- In the Plan Check division, most supervisors randomly select plans that have been reviewed by subordinates for a second review. Plans checked by senior employees are not reviewed.
- In the Inspection Services division, supervisors do no random follow-up inspections. Quality control measurement is limited to job inspections done by supervisors when a line inspector is not available and "ride along" visits to the job site in which the supervisor accompanies the assigned inspector to observe the manner in which a line inspector performs. Potential customer inconvenience is a reason offered by managers for failure to institute random secondary inspections.
- Some DBI managers state that quality control measurements are unnecessary because their subordinates are professionals. Another states that review of the work of senior plan checkers is unnecessary.
- Because DBI has not provided sufficient training with regard to state disability-access regulations that became effective more than 20 years ago, and because plan check did not competently review commercial and major project plans, DBI now has a substantial backlog of complaints regarding violations of those regulations. As a result, the supervisor in the division which has responsibility for eliminating that backlog is doing no quality control measurement. Other divisions have reduced quality control for lack of personnel. Supervisors who would otherwise do quality control review now must do the initial plan check.

- DBI has no formal procedure by which field inspectors are to report errors or items overlooked by Plan Check and discovered during their inspections. No inter-division meetings are held for discussion of recurring problems of code interpretation and application.
- Some, but not all managers hold regular meetings with their subordinates to discuss code interpretation and application.
- DBI does not provide field inspectors with equipment with which to enter data from the field directly into the central computer system. Failure to utilize such equipment requires duplicate handling of information by field inspectors who record it in the field after which it must be entered into the system on their return to the office.
- To show solidarity with other City departments, DBI management is complying with the Mayor's directive that costs be reduced and hiring frozen.

FINDINGS

1. Quality control measures instituted by the various divisions of DBI are inconsistent. Many are inadequate.
2. Ride along field inspections by a supervisor may be adequate to assess the competence of a field inspector; they are not adequate to ensure that the same quality of work is performed in the absence of an inspector's supervisor.
3. The assumption that the work of senior plan checkers need not be reviewed lacks evidentiary support.
4. The failure to implement an adequate quality control program and to schedule regular intra- and inter-division meetings to discuss code interpretation and application contributes to questionable "discretionary" rulings and inconsistent treatment of customers in both plan check and field inspection. This allows directors and managers to overrule line personnel on behalf of favored customers.
5. The City would enjoy enhanced service if DBI were to acquire the technology and equipment necessary to permit remote entry of inspection data directly into the main computer system, train field inspectors in its use, and require them to utilize it.

RECOMMENDATIONS

- 2a. DBI should establish quality control measurements that are uniform throughout all divisions of Plan Check (residential, commercial, and major projects) and all divisions of Inspections Services (building, plumbing, electrical, and mechanical). Each division should establish standards of performance for its employees and hold them accountable to them.

- 2b. Supervisors in the Inspection Division should conduct random secondary field inspections.
- 2c. Additional in-house training specific to an employee's responsibilities should be provided and meetings between employees in Plan Check and Field Inspection should be instituted in order to develop uniform interpretations and application of code provisions, and to minimize inconsistent discretionary rulings.
- 2d. Directors should create a formal process by which field inspectors report errors to the Plan Check division which were made by plan checkers and discovered during inspections.
- 2e. DBI should abandon its voluntary hiring freeze. It should fill vacant plan check and inspection positions and employ sufficient staff to implement a more adequate quality control program and reduce the backlog of complaints regarding alleged violations of disability access regulations.

REQUIRED RESPONSES

Director, Department of Building Inspection – 60 days

Building Inspection Commission – 60 days

Mayor of the City and County of San Francisco – 60 days

3. DBI'S FISCAL MANAGEMENT MUST IMPROVE

FACTS

- **DBI Surplus Fund**
 - DBI funds its operations principally from the collection of permit and inspection fees, code violation assessments and apartment license fees. Funds collected in excess of the cost of operating the department are transferred to the DBI Surplus Fund. If expenses exceed revenues, funds are transferred from the Surplus Fund to the operating fund.
 - Over the past five fiscal years, the balance of the Surplus Fund has varied from \$1.5 million to \$9.2 million. The balance on June 30, 2002 was \$6.5 million.
 - DBI's stated goal is to use surplus funds to increase and improve service to its customers and to provide a reserve for any significant decline in revenues. The department does not have a formal plan for implementation of these goals and does not have a strategic plan to guide its operations into the future.
 - DBI's MIS division has developed a plan to improve permit tracking and bar-coding, for which software can be readily developed. Funds were allocated for this, but not all of those funds have been used.

- Cost Determination
 - State law mandates that DBI permit and inspection fees not exceed the reasonable cost of providing these services. To comply with this law, DBI must establish the cost of providing permit and inspection services, including personnel, benefits, and overhead in such detail that its cost calculations can withstand review by an outside agency.
 - DBI has no cost records to support fees charged, and instead relies on its perception that its permit fees are justified because they are among the lowest in the state.
 - The basic costs such as salary and benefits are readily available, but proper determination of overhead costs and allocation of those costs to each DBI function has not been undertaken.

FINDINGS

1. DBI has funds available for the purchase of equipment that will allow remote entry of data gathered during field inspections directly into the central computer system, eliminate duplicate handling of that information, and improve the accuracy and timeliness of the data.
2. DBI has funds available with which to recruit and employ qualified personnel, substantially increase the training of existing personnel, offer better service to customers, fully implement an adequate quality control program, and fulfill its responsibility to enforce disabled access regulations.
3. DBI is vulnerable to a legal challenge to the manner in which it determines permit and inspection fees because it cannot justify these fees on the basis of actual costs.

RECOMMENDATIONS

- 3a. DBI should engage the services of the Board of Supervisors' Budget Analyst, or of an independent consultant selected by him and who specializes in cost analysis, to work with the Controller and City Attorney to determine the actual costs of services provided by the Plan Check and Inspection Services divisions. Permit fees should then be revised to reflect those costs, if necessary.
- 3b. DBI should acquire the technology and equipment necessary to permit remote data entry of inspections reports directly into the main computer system, should train field inspectors in its use, and should require that they utilize it.²

² Because the number of major projects has declined in 2003, revenue from permit fees may decline proportionately. As a result, DBI may experience a shortfall in income, forcing it to use some of its reserve to pay for operating expenses. Nonetheless, the surplus appears to be sufficient to pay for these recommended improvements. Once DBI is able to determine the cost of its permit and inspection related

REQUIRED RESPONSES

Director, Department of Building Inspection – 60 days

Building Inspection Commission – 60 days

Controller – 60 days

4. INTERNAL MANAGEMENT AT DBI LACKS DIRECTION

FACTS

- Since the creation of DBI, directors have failed to eliminate favoritism and outside influence in the department's daily operations.
- Directors have allowed political considerations to influence its policies even in pursuit of disciplinary actions against employees.
- Directors have allowed a culture to exist in DBI in which many employees are reluctant to report misconduct and substandard performance by other employees because they fear retaliation.
- Directors have not pursued implementation of available technology that would improve permit tracking and provide bar-coding of plans under review, both of which could, help to eliminate preferential treatment by making it apparent.
- Directors have not put in place a code of conduct for DBI employees in an easily understood format.
- Directors have not updated its conflict of interest policy since 1969.
- Directors have not established a uniform system of quality control measurement and some divisions currently have no quality control program.
- Directors have no effective program for in-house staff training, meetings, and inter-division communication to resolve conflicting rulings on code interpretation and application.
- Directors have maintained an unnecessarily large surplus account while failing to fill open positions, reduce its disabled access backlog, or make supervisory personnel available to implement adequate quality control measures.
- Directors have not established the cost of its permit and inspections related services.
- DBI operates without a strategic plan.

services, it will be able to establish permit and inspection fees that recover their costs.

FINDING

Persons who might have technical expertise nevertheless create a leadership void if they lack management training and skills. This affects the ability of DBI effectively to carry out its mission of public service and protection.

RECOMMENDATIONS

- 4a. The Building Inspection Commission should ensure that managerial background and competence are criteria for appointment to Director positions in DBI. Professionalism, rather than political connections, should be the standard.
- 4b. The Building Inspection Commission should ensure that DBI managers are offered and required to participate in management skill training specific to an employee's responsibilities.
- 4c. DBI directors should develop a strategic plan defining the department's goals, means of achieving them, and the dates by which they are to be completed. The plan should be prepared and transmitted to the Building Inspection Commission no later than December 31, 2003.

REQUIRED RESPONSES

Director, Department of Building Inspection – 60 days
Building Inspection Commission – 60 days
Mayor of the City and County of San Francisco – 60 days
Board of Supervisors – 90 days

**The Members of the 2002-2003 Civil Grand Jury
For the City and County of San Francisco**

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