

MIKE SPANO
MAYOR



CITY HALL - ROOM 315
YONKERS, NY 10701-3872

PAUL N. SUMMERFIELD, P.E.
CITY ENGINEER

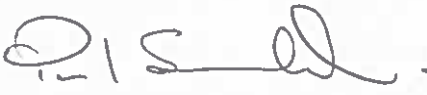
Phone (914) 377-6210
Fax (914) 377-6215

DEPARTMENT OF ENGINEERING
CITY OF YONKERS

MEMORANDUM

DATE: 4/25/16

TO: Brendan McGrath, Inspector General

FROM: Paul Summerfield, P.E. City Engineer 

CC: Mayor Mike Spano
Members of the City Council
Vincent E. Spano, City Clerk

RE: Engineering Department – Permitting Procedures

The Engineering Department has reviewed the Inspector General's report regarding the permitting process and will implement a number of its recommendations, which we will discuss in greater detail below.

The Department appreciates the statement in the report that "Engineering performs their functions in a way that protects the City's infrastructure while ensuring the safety of the traveling public". In fact the Department issued 2,565 permits last year, 1,529 of which involved excavations within the right-of-way and almost all of which required multiple inspections, by 3 inspectors. The system was working smoothly in its current configuration for well over 10-years, and functioned well until problems were highlighted recently by actions taken by one contractor.

To give a point of reference, more than 10-years ago, the previous City Engineer and prior administration were petitioned to alter the system of taking in refundable deposits. At that time the deposit system was modified to allow contractors in good standing who took out multiple permits per year to increase the amount of bond they had on file with the City from \$10,000 to \$50,000 (the City Code allows the City administration to set the amount of deposits and fees). Contractors who posted the additional bond amount were exempt the deposit requirement (typically \$1,000 per permit) which had become problematic due to the revolving door of contractors repeatedly paying a deposit and then waiting for its return, while in the meantime paying more deposits for more permits. The financial system in those days was not as streamlined as it is today, and deposits would take many months to be returned, generating complaints from contractors, many of whom both lived as well as worked in the City. The revised system worked well for over 10 years, until one contractor began to regularly fail to close out permits within the

time allotted, and generated many expired permits¹. As explained in the report, this contractor's permitting rights were suspended temporarily and the situation has since been rectified. However, as the IG report points out, there could be similar problems in the future with other contractors and we agree that the system can be improved.

In summary, in order to reduce the likelihood that contractors in the future take advantage of the permit system, deposits will be required from all contractors for each road opening permit. In addition, a monthly report will be generated by the permit section and issued to the City Engineer for review. Expired permits will be flagged and the issue discussed to determine action to follow.

The following is a discussion of each of the Inspector General's recommendations;

- 1. A task force should be established to review the current permitting procedures throughout the City to ensure that all Departments are fully informed and have access to real time data concerning all aspects of the jobs for which their Departments may issue permits. To the extent that such a committee already exists for such a purpose, it is recommended that all affected City Departments participate.*

A committee reviewing permitting with Engineering, Housing and Buildings and DoIT has been in effect since February of this year. While the focus of that workgroup was not specifically the street opening permit issue, the workgroup's agenda will be expanded to include this topic. Notably, this workgroup has developed and implemented a number of administrative changes which will enable speedier transfer of data between the Departments. One of the goals is to give other Departments (e.g. Consumer Protection, YPD) access to the permitting system. Engineering and DoIT have also been discussing providing tablet devices to the other agencies to enable them to view open permits. Engineering is now notified through DHB permit system when plumbing work in the street has been completed. We plan to modify the system to electronically notify the Engineering Department when a Plumbing Permit has been pulled in DHB, instead of relying solely on the plumbing slip. The Committee will be expanded to include other Departments involved in permitting and issuing violations.

- 2. Amend the definition of "home improvement" in ch31-128 of Yonkers City Code to make it clear that such definition covers work performed by excavators in the replacement or repair of water service lines connecting one, two or three family homes.*

An amendment to the Yonkers City Code will be drafted and presented to the City Council for consideration.

¹ With regard to the expired permits mentioned above, in the majority of cases inspections were performed both by the plumbing inspector for plumbing work and engineering inspectors for excavation, backfill and restoration of the trench. The permit expired because final asphalt top-course restoration involving cut back of the existing asphalt roadway had not been performed, and the Engineering Department inspection reports indicated such. It is important to note that a restoration in this condition is safe for vehicular and pedestrian traffic. The few cases where the contractor had not called for backfill inspection were noted in the file, and if settlement occurred appropriate action could be taken. Subsequently the patches were restored with final top course asphalt.

3. *When the permit application by a contractor is for work in a residential property, 3 families or less, Engineering shall require proof that the contractor possesses a current Home Improvement License issued by the City.*

If item 2 is implemented, Engineering will check the License prior to issuance of a permit. This could be achieved by running an automatic electronic check in the system when the contractor inputs his License number into the Permitting system, expired or non-existent Licenses would be flagged.

If Item #2 is not achieved, then the Engineering Department will confirm that the contractor has a Westchester County Home Improvement License, and shall notify the County if no such license is in place.

4. *There must be objective and consistent enforcement of existing code provisions and Departmental regulations with all permit applicants. All contractors should be uniformly expected to adhere to the required permit process. A meaningful deposit should be mandatory for each permit obtained with strict adherence that the deposit will not be returned until the City Engineer is satisfied that the work was completed correctly and as per code.*

As stated earlier, the increased bond requirement was intended to replace the deposit for repeat contractors in good standing, but we agree that deposits must be standard practice and taken from all contractors as per a rate chart that the Department will publish, and update as necessary, in consultation with the Mayor's office.

A unique deposit for each road opening permit will be required.

5. *The Department of Engineering should have in place a system to facilitate the payments of deposits and fees. Moreover the system should include the ability for the Department to accept payment by credit/debit card to assure there are sufficient funds and the ability of the City to accept electronic fund transfers.*

The Task Force is discussing ways to accept credit/debit cards and EFT. The Department is discussing this with its Permit provider, Symprocity.

The Department currently accepts only checks and money orders and these are deposited with the City cashier on a weekly basis.

6. *There should be no circumstance whereby a contractor is holding an open and expired permit. Rules currently exist requiring the contractor to extend the permit beyond its original expiration date in certain circumstances.*

The permit section will generate a monthly report of open permits, including those which have expired, which will be reviewed with the City Engineer. Contractors will be notified of their deficiency and will be denied further permits until the expired permit(s) is(are) closed out. As the IG points out above, in certain circumstances (weather related delays, conditions beyond the contractor's control) a permit extension may be granted – we propose charging a Permit Extension Fee. In those cases, if there are no other expired permits, the contractor will be allowed to pull new permits.

7. *The code should be amended to permit agents of the Engineering Department to issue Stop Work Orders when they are made aware that contractors are performing work without the required*

permits or in any situation whereby it is determined that the work being performed is not in compliance with applicable Code provisions, rules and/or regulations.

Currently if our inspector observes a contractor not following the specifications, the contractor is told to stop work and perform to specification, or the permit cannot be closed out. Codifying this action would increase its effectiveness, and will be included in the amendments to the Yonkers City Code which will be presented to the City Council for its consideration. When we are made aware that a contractor is working without a permit. Code Enforcement is notified and they will issue a violation and fine to the property owner.

8. *Engineering should develop a protocol whereby any street opening permits that are left to expire without being completed will be completed by the City and charged to the applicable excavation contractor holding the permit. In such instances the offending contractor's ability to apply for permits in the future should be revoked or suspended for a significant amount of time.*

This should only be used in very rare instances, involving public safety or involving excessively long periods of time. The City does not always have the resources available to do extra work (construction contracts in place, funding for contracts, DPW personnel available). The most effective tool is revocation of permitting privileges, especially for contractors performing repeat work. Section 103-29 G & H gives authority to City Engineer to instruct contractor or property owner to replace backfill and re-lay pavement if the work has not been done to the satisfaction of the City Engineer. Codifying the City Engineer's ability to suspend permitting privileges will be included in the amendments to the Yonkers City Code which will be presented to the City Council for its consideration. Mechanisms for performing the work and billing contractors or property owners will also be considered.

9. *Engineering should develop a protocol whereby any street opening which is closed prior to a final inspection must be reopened at the contractor's expense so that an inspector can be present to give final approval. In such cases, the contractor's ability to apply for permits in the future should be suspended for a period of time.*

This can be prepared, with some consideration given to emergency work which sometimes occurs on weekends or overnight and needs to be backfilled for public safety prior to inspection. Section 103-29 G & H gives authority to City Engineer to instruct contractor or property owner to replace backfill and re-lay pavement if the work has not been done to the satisfaction of the City Engineer. Amendment to the Yonkers City Code will be presented to the City Council for its consideration to allow the City Engineer authority to deny permitting privileges to contractors who fail to perform to City requirements.

10. *Penalties for performing work without a permit must be increased. The fact that the current penalty is only marginally more expensive than the cost of actually applying for a permit acts as an incentive to avoid the permit fees.*

Penalty for starting work without a permit is currently \$100. We propose raising this to \$500 and \$50 per calendar day for work continuing beyond the initial stop work order. Section 103-34 allows fees and deposits to be set by the DPW Commissioner and the Mayor. An amendment will be presented to the City Council for consideration changing this to the City Engineer and Mayor.