

THE CITY OF NEW YORK  
DEPARTMENT OF BUILDINGS

DEPARTMENTAL MEMORANDUM

DATE: March 26, 1982

TO: Borough Superintendents

FROM: Irwin Fruchtman, P.E., Commissioner *IF*

SUBJECT: Procedure for Police Assistance to Inspectors

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A number of questions have surfaced that impact upon this Department's inspectorial activities. The questions span a number of subject areas and issues, but the principal problems concern police assistance to our inspectors. The questions and answers are set forth below and, where appropriate, this memorandum shall supersede prior memoranda on the same subject matters.

1. Question: What is the procedure when issuing a court appearance summons including request for identification from respondent? Who is a responsible party?

Answer: When issuing a court appearance summons inspector shall either immediately serve a summons for violations of the type listed under C26-85.5 of the Administrative Code, or if prior notice was required to the responsible party then the inspectors shall let 10 days expire after the service of the violation order and if the order has not been complied with or work to effect compliance is not actually in progress then the inspector shall serve the party that was named in the order. Section 643a-3.0 says a responsible party is the owner, lessee or occupant of the building, premises or properties affected thereby or any person of suitable age and discretion in charge or apparently in charge of such building premises or property.

A person who is in charge or apparently in charge is an individual who either caused the violation or has authority to correct the violation. Thus the same individual may be in charge for one purpose, but may not be in charge for service of another type of violation, e.g., 1. A janitor may be considered a person in charge for the purpose of removing debris or furniture that is blocking an egress, but would not be in charge for the purpose of complying with Local Law 5 of 1973; 2. An elevator starter may be in charge for starting up a red tagged elevator but would not be in charge for frayed cables.

In the examples listed above, where the elevator starter or the janitor have apparent authority to correct the violation, then they shall be served with the Notice of Violation, and, if upon the reinspection, the violation has not been corrected then those individuals shall be served with the summons. In those situations where the employee does not have such apparent authority, the employee shall be served with one copy of the Notice of Violation and the owner or managing agent shall be served by the Borough Office with a Notice of Violation.

1833

The identity of the owner or managing agent shall be determined by reviewing the tax records of the Finance Department and the published directories of real estate owners. In the event that the violation presents a substantial threat to the health, safety, or welfare of the occupants of the structure then the chief inspector of the borough may request a title search to be ordered by the Operations Unit located at 120 Wall Street.

Where it has been determined that the employee at the location is not in charge, then the owner or managing agent shall be served with a summons if the violation is not corrected and not the employee at the location.

If the inspector has reason to believe that the allegedly, responsible party is falsely identifying himself to the inspector, then the inspector shall serve the summons made out to the name stated by the allegedly responsible person. Subsequent to the service of summons the inspector is to report his suspicions to his supervisor. If the inspector determines that the violation is of a sufficiently serious nature then he shall request that the Operations Unit, located at 120 Wall Street, arrange to have a title search made to determine the name and address of the owner and or to examine the land maps for the borough where the violation exists to determine the identity of the owner. Thus in the instance where an inspector has reason to believe that an allegedly responsible party has falsely identified himself or herself then the owner of the premises shall also be served with an appearance summons.

2. Question: What action should be taken when an inspector of the department feels he is being threatened with bodily harm?

Answer: When an inspector is scheduled to conduct an inspection during the hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, at a location where he is anticipating trouble he shall contact the Borough Chief Inspector of the Department, and if the Chief Inspector determines that assistance is required he will notify the Police Department by calling the local precinct and arranging to have a patrol car waiting at the premises to meet the department inspector. The Chief Inspector shall make these arrangements at least three hours prior to the arrival of our inspector at the location.

In the event that the inspections are to be conducted in the evening then the inspectors assigned to this evening duty shall contact the Borough Command directly to make arrangements for police assistance. If the police personnel are not present when the inspector arrives at the location he will wait at the location but not enter the premises until the police arrive. If the police do not arrive within some reasonable time after the inspector's arrival then the inspector shall either call the Borough Chief Inspector for further orders, or if it is an evening inspection shall call the precinct commander to determine whether assistance will be provided to the inspector, why there was a failure to respond, and make a full

1834

report of the incident to the Deputy Commissioner for Operations and Technical Affairs. Said Deputy Commissioner shall thereafter determine whether the matter should be reported as a complaint to the Chief of Patrol for the Police Department. A reasonable grounds for anticipating trouble during the course of an inspection would include knowledge that assaults have been perpetrated in the premises or that threats of physical harm have been made on prior occasions to other individuals. Merely the location of the site in a high crime area does not constitute a reasonable basis for anticipating trouble.

3. Question: What action should be taken when an inspector of the department has been assaulted?

Answer: All incidents involving assaults, mugging, robbery or other acts against inspectors which may be considered as criminal acts shall be reported immediately to the local police precincts. The person filing the complaint with the Police Department shall record the name of the Police Department desk officer to whom the report was made and the date and time such report was made. Copies of the report shall be forwarded to the Assistant Commissioner for Operations and the Executive Chief Inspector without delay.

When actual injury is sustained by an employee (whether resulting in time lost or not), a "Supervisor's Report of an Injury" and "Employers Report of Injury" shall be filed and copies of the report sent to the Safety Coordinator at 120 Wall Street. The Executive Chief Inspector and the Assistant Commissioner for Operations shall make contact with the precinct commander upon receipt of these reports to arrange for the arrest and taking into custody of the assailant. Thereafter the Assistant Commissioner for Operations and the General Counsel shall monitor all efforts to prosecute the assailant from the time of arrest through date of conviction. Upon disposition of the charges against the assailant the General Counsel shall prepare a report of the entire matter and submit same to the Commissioner and the Inspector General of the department.

4. Question: What is the procedure for enforcement of the City Charter in relation to police assistance?
5. Question: What is the procedure when and if police assistance is refused for any reason?

Answers 4 & 5: Attached is Police Operations Order Number 75, which you and all inspectorial staff should read and be familiar with its contents. Please note that this order will probably be amended to reflect classifications on Peace Officers status, and additional supportive efforts from the Police Department. Nonetheless the current order should be known and understood by our personnel, and failure to abide by this order on the part of police personnel should be reported to the Buildings Department as provided in this procedure.

6. Question: What is the procedure when making a court appearance as a department representative?

Answer: In response to this question, attached is department memorandum of March 5, 1979 from Commissioner Cornelius F. Dennis, P.E. to all Borough Superintendents. In addition to the matters set forth in the attached all inspectors who are required to appear in court are to consider themselves as being under the supervision and direction of the Department Representative assigned to the Criminal Court. Such inspectors will refrain from discussing the matters on which they will testify with any civilian personnel unless they are authorized to engage in this discussion by the court representative. The inspector shall cooperate fully with the Corporation Counsel assigned to the case.

7. Question: What is the procedure when access is refused; what is the procedure as to right of entry under the City Charter?

Answer: Denial of access to a department inspector constitutes a violation of both the City Charter and Administrative Code but our inspectors do not have a right to force entry even with police assistance if the denial is made. In the event that access is denied the inspector shall notify the Borough Chief Inspector. The Borough Chief Inspector shall determine whether the possible violation would justify making a request for a search warrant. If he determines that justification exists then he shall make a request of the General Counsel to make application for a search warrant. The search warrant will be executed only with police assistance. Currently summonses shall not be served for denial of access.

8. Question: What is the legal status of mailed out violations or summonses?

Answer: Under the Criminal Procedure Law appearance summonses must be personally served. Mail summonses do not constitute service sufficient to bring an individual under the jurisdiction of the Criminal Court. Mailed violations can be used provided that the Department can establish receipt of the notice by the responsible party.



# OPERATIONS ORDER

NUMBER	75
DATE	10-5-81

TO ALL COMMANDS

Subject: COOPERATION WITH DEPARTMENT OF BUILDINGS PERSONNEL RE: VACATE ORDERS, STOP-WORK ORDERS, AND BUILDING INSPECTIONS

1. Pursuant to Administrative Code provisions, N.Y.C. Department of Buildings personnel issue Stop Work and Vacate Orders after inspection of hazardous buildings and premises. In order to preserve the peace and provide protection for building inspectors in the performance of their duties, uniformed members of the service are required to comply with Patrol Guide procedures 116-38 (Vacate Orders) and 116-16 (Stop Work Orders).

2. Vacate Orders direct that a structure or premises be immediately evacuated because actual or imminent danger exists that such structure or premises will fall and endanger life, or because necessary repairs/alterations were not accomplished within a specified time period. The current method of notification regarding Vacate Orders is as follows:

- a. When necessary, to prevent interference with the service or implementation of Vacate Orders, the Department of Buildings may request police assistance by telephoning the Operations Division sufficiently in advance to permit the assignment of uniformed members of the service to respond and assist building inspectors.
- b. The Operations Division will notify the precinct concerned, through channels, of the time and location of service of the Vacate Order. The precinct commander will make the necessary assignments.
- c. Uniformed members assigned shall comply with Patrol Guide procedure 116-38.

3. Stop Work Orders forbid the continuance of unauthorized construction or renovation, or the use of unsafe construction machinery. These orders may affect a complete construction site or portion thereof or a specific construction machine. Notification is made by a Department of Building representative to the Station House Officer concerned who will direct a uniformed member of the service to respond and assist in enforcing the Stop Work Order.

- a. Uniformed members so assigned will comply with Patrol Guide procedure 116-16.

NOTE Department of Buildings inspectors are "special patrolmen" with peace officer status. Therefore, they will serve summonses and make necessary arrests associated with the service of Vacate and Stop Work Orders.

4. Department of Buildings inspectors also respond to emergency complaints which result in visits to and inspections of premises and buildings throughout the city. Uniformed members of the service shall be alert to these operations and render assistance at any location should interference be encountered by such inspectors. However, uniformed members WILL NOT accompany inspectors on routine inspections.

BY DIRECTION OF THE POLICE COMMISSIONER

DISTRIBUTION  
All Commands

OPERATIONS ORDER NO. 75

- 2 -

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