



**Commissioner's Bulletin
Inspectional Services Department
Boston, Massachusetts**

Number: 2010-05

Date: May 17, 2010

Subject: CITY OF BOSTON REGULATIONS FOR THE IMPLEMENTATION OF THE SECURITY ORDINANCE FOR ELDERLY/HANDICAPPED HOUSING DEVELOPMENTS

Purpose: This bulletin is issued to establish policies and procedures for the Security Ordinance for Elderly/Handicapped Housing Developments. It replaces and rescinds Commissioner's Bulletin 1989-01.

Determination:

1. ADMINISTRATION

- 1.1 **Title:** These regulations (Commissioner's Bulletin #2010-05) shall be known as the City of Boston Regulations for the Implementation of the Security Ordinance for Elderly/Handicapped Housing Developments.
- 1.2 **Scope:** These regulations, in accordance with the City of Boston Code, Ordinance 9, as amended by Chapter 26 of the Ordinances of 1984 and Chapter 39 of the ordinances of 1984, Chapter 4 of the ordinances of 1989 shall control the security requirements for elderly/handicapped multi-family housing developments within the City of Boston.
- 1.3 **Applicability:** The provisions of these regulation shall apply to any building, structure, development or complex of ten (10) or more dwelling units under common ownership, rented or offered for rent for dwelling purposes within the City of Boston, which is specifically designed or designated for rental by elderly or handicapped persons.
- 1.4 **Authority:** Under the authority granted by MGL Chapter 111, section 127A, City of Boston Code, Ordinance 9 and Chapter 4 of the Ordinances of 1989, the Commissioner of Inspectional Services has promulgated these regulations. These regulations shall be construed in a manner consistent with the State Sanitary Code. The Commissioner is empowered in the interest of public safety and general welfare to alter, rescind, amend and

repeal in accordance, these regulations so long as alteration, rescission, amendment or repeal is consistent with the requirements of the State Sanitary Code, Ordinance 9 as amended by Chapter 26 of the Ordinances of 1984, Chapter 39 of the Ordinances of 1984 and Chapter 4 of the Ordinances of 1989, as the same may be, from time to time, amended.

- 1.5 Enforcement: The Commissioner of the Inspectional Services Department shall enforce and administer the provisions of these regulations.
- 1.6 Record of Proceedings: The Commissioner of the Inspectional Services Department or his/her designee shall designate one employee of the department to act as a clerk for all proceedings related to the implementation of the Security Ordinance. The clerk shall keep a detailed record of all correspondence between the Commissioner and landlords and tenants related to the Security Ordinance and regulations, all hearings, decisions and appeals. Such record shall include a docket book showing the name of each development and shall be properly indexed by street and owner; the docket book shall also include a short description of the Commissioner's decision in each case. Such docket book and records shall be open to public inspection during normal business hours. Upon entry, the public shall be furnished with a copy of all documents relative to a landlord's security plan or a party's petition for a modified security plan.
- 1.7 Hearing Officers: the Commissioner may appoint up to three employees of the Department to act as hearing officers for any proceedings before the Commissioner required by the security ordinance and these regulations. These hearing officers shall hear testimony and take evidence in accordance with M.G.L. Chapter 30A, section 11, subsections 1-6. Following the hearing each hearing officer shall submit a summary of the evidence presented and a recommendation to the Commissioner. The Commissioner's decision shall be based upon the evidence presented by the hearing officer, but the Commissioner shall not be bound by the recommendation of the hearing officer and shall make his/her own independent judgment about whether approval of the security plan is warranted, based upon the evidence submitted.
- 1.8 Memorandum of Understanding with Police Department: the Commissioner shall enter into a memorandum of understanding with the Police Commissioner concerning the manner in which the Police Department and the Inspectional Services Department shall coordinate their respective functions in the implementation and enforcement of the provisions of the Security Ordinance.

- 1.9 Administrative Notification to Interested Organizations: Upon the written request of any organization which represents the general interest of elderly/handicapped tenants, or in the general interest of owners of elderly/handicapped housing, the Commissioner shall insure that such organizations get notice, on a monthly basis, of the notices that are being sent out under Section III of these regulations, or of the hearings that are being held and decisions made under Section VI of these regulations regarding security plans or modified security plans.

2. DEFINITIONS

- 2.1 Meaning – Unless otherwise expressly stated, the following terms shall, for the purposes of Commissioner’s Bulletin# 2010-05, have the meaning indicated in this section.
- 2.2 Building Entrance – An entrance providing access from outside the building or from an entry vestibule to an interior corridor, lobby, or stairway which leads to an individual dwelling unit.
- 2.3 Building Permit – A permit by the Inspectional Services Department for the construction of any building or for any substantial alteration or addition thereto, as defined in Section I of Chapter 143 of the General Laws of the Commonwealth of Massachusetts.
- 2.4 Certified Crime Prevention Personnel – person or persons who are employed by the Boston Police Department and who have been designated by the Police Commissioner, pursuant to the Security Ordinance, to undertake crime prevention surveys and/or assist the Commissioner of the Inspectional Services Department in the assessment of the adequacy of security plans.
- 2.5 Conspicuous Location – A location which is reasonably calculated to draw tenants’ attention. Locations which have been previously used in developments to post notices of general notice to tenants may be conspicuous locations so long as the notices required by these regulations and the security ordinance stand out and are not obscured by other notices.
- 2.6 Cost Prohibitive - Elements mandated by a crime prevention survey shall be regarded as cost prohibitive within the meaning of the security ordinance and these regulations only if the increased costs must be passed on to the tenants’ share of the rent, i.e., the tenants are not shielded by the form of subsidy for their development from the direct impact of such increased costs.
- 2.7 Crime Prevention Survey – A survey conducted by the Boston Police Department, in accordance with the security ordinance, which includes findings as to the security and public safety needs of an elderly/handicapped multi-family housing development and recommendations as to how such needs shall be met through existing or new security measures, such as lighting, locks, safety officers, security stations, security systems or other equipment, personnel or programs.

- 2.8 Days - Calendar days
- 2.9 Dwelling Unit - The part of a building that is used as a home, residence or sleeping place by one or more persons who maintain a household.
- 2.10 Elderly/Handicapped Multi-Family Housing Development - Any building, structure, development or complex of ten (10) or more dwelling units under common ownership, rented or offered for rent for dwelling purposes within the City of Boston, which is specifically designed or designated for rental by elderly or handicapped persons.
- 2.11 Elderly Person - Any person who is at least sixty-two (62) years of age.
- 2.12 Fiscal or Contracting Constraints - Legal requirements that apply to a landlord that either limit the time of year in which the landlord can seek funding for capitol or management improvements or that mandate that certain public bidding and contract award procedures be followed in undertaking such capitol or management improvements. Such requirements shall not excuse a landlord's compliance from the requirements of the security ordinance or these regulations, but may be a basis for the landlord to seek modifications in the method or timetable for meeting the security needs identified in a crime prevention survey.
- 2.13 Handicapped Person - Any person who is physically handicapped as defined in Section 13A of Chapter 22 of the General Laws of the Commonwealth of Massachusetts or mentally handicapped as defined by 29 U.S.C. Section 706 (7) (b).
- 2.14 Landlord - The individual who holds title, either alone or jointly or severally with others, or has care, charge or control of any elderly/handicapped multi-family housing development in any capacity including, but not limited to agent, executor, administrator, trustee or guardian of the estate of the holder of legal title; or lessee under a written letting agreement, mortgagee in possession; or agent, trustee or other person appointed by the courts. Each such person is bound to comply with the provisions of these regulations.
- 2.15 Modified Security Plan - A security plan, as defined in these regulations, which varies from the security measures recommended by a crime prevention survey because:
- 2.15.1 the landlord disputes the need for any of the specific security measures, or the timetable for carrying out the security measures, based upon the fiscal or contracting constraints that apply to the particular development, or
- 2.15.2 the landlord and/or tenants believe that the additional security measures recommended by the crime prevention survey are such as to be cost prohibitive, as defined in these regulations and the security ordinance, and the landlord and/or tenants have been unable to obtain sufficient funding, equipment or services to offset the cost prohibitive aspect of the additional measures.
- 2.16 Safety Officers - Police officers of the City of Boston or special police officers appointed pursuant to applicable law to protect persons or

property in public or subsidized housing, or persons employed as guards or investigators by a duly licensed watch, guard or patrol agency, as defined in Section 22 of Chapter 147 of the General Laws of the Commonwealth of Massachusetts.

- 2.17 Security Measures – measures or steps taken to maintain or improve the security of tenants of an elderly/handicapped housing development against assault, robbery, theft or other violence or crime against their persons or property in or around such development. Such measures may include, but are not limited to interior or exterior lighting, locks, safety officers, security stations, security systems or other equipment, personnel or programs.
- 2.18 Security Ordinance – Chapter 4 of the Ordinances of 1989 of the City of Boston.
- 2.19 Security Plan – A plan for providing security and public safety measures for the tenants of an elderly/handicapped multi-family housing development, based upon a crime prevention survey, which meets the criteria and has been developed in accordance with the process outlined in the security ordinance and these regulations.
- 2.20 Security Stations – Locations in and around an elderly/handicapped multi-family housing development where safety officers or other appropriate personnel may be based on a full time or periodic basis.
- 2.21 Security Systems – Wires, conduits, apparatus, devices, fixtures or other appliances installed or interconnected electrically or electronically to permit access control, proprietary signaling, surveillance and the detection of burglary, intrusion, holdup or other conditions requiring response or the transmission of signals or audible alarms. See, in general, M.G.L. Chapter 147, Sections 57-61.
- 2.22 Tenant – A tenant, subtenant, lessee, sub lessee or other person, entitled, under the terms of a rental housing agreement to the use and occupancy of any dwelling unit in an elderly/handicapped multi-family housing development.
- 2.23 Tense, Gender and Number – Words used in the present tense include the future; words used in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural the singular.
- 2.24 Terms not Defined Herein - Where terms are not defined they shall have their ordinarily accepted meanings or such that the context may imply.
- 2.25 Written Notice – A notification in writing delivered in person to the individual or parties intended, or delivered at or sent by certified or registered mail to the last residential or business address of legal record.

3. IMPLEMENTATION

3.1 Identification of Development within the scope of the Ordinance:

- 3.1.1 Notification: Landlord's Election of Remedies and request for a Crime Prevention Survey
- 3.1.2 Identification of Development within the Scope of the Ordinance:

Consistent with the requirements of the security ordinance, the Commissioner has identified elderly/handicapped multi-family housing developments within the scope of the security ordinance and these regulations. The list of developments, identified by the Commissioner, is available for inspection at the offices of the Inspectional Services Department, 1010 Massachusetts Avenue, Boston, MA. The Commissioner reserves the right to alter or amend this list should information come to his/her attention that additional developments fall within the scope of the security ordinance and these regulations or that developments which have been previously identified as within the scope, do not, in fact, fall within its scope.

3.13 Notification to Landlords:

The Commissioner shall cause all landlords whose developments have been identified as falling within the scope of these regulations to be notified of the operation of the security ordinance and these regulations and of their duty to elect to either provide safety officers on a 24-hour basis or to request a crime prevention survey, thus triggering the development of a security plan. Notice shall be sent to such landlords, both by first class mail and by registered or certified mail, return receipt requested, and shall identify by address and development name, if known, the specific development involved. Such notices shall be sent out on a phased basis, beginning as of November 1, 1989, so that all landlords within the scope of the security ordinance will receive such notice by no later than June 30, 1990. The notice shall be accompanied by a form on which the landlord may indicate which alternative he/she has selected, provisions of safety officers or a crime prevention survey.

3.14 Landlord Election of Alternatives:

Within thirty (30) calendar days of receipt of the notice from the Commissioner the landlord shall elect to either:

- 3.14.1 provide safety officers for such development on a 24-hour per day, seven day per week basis. The safety officer's duties shall include, without limitation, the monitoring of all building entrances in such elderly/ handicapped development
- 3.14.2 provide security measures as identified in a security plan which has been developed and approved in compliance with sections 502 and 503 of the ordinance.
- 3.14.3 If the landlord has elected to provide security measures as identified in a security plan, he shall, at the same time that he notifies the Commissioner of such election, request a crime prevention survey from the Boston Police Department. The Commissioner shall send the landlord a standard form that he may use to request this survey. The landlord shall deliver one copy of his request for a survey to the Boston Police Department. If a landlord has requested a crime prevention survey from the Boston Police Department within thirty (30) days after receipt of a notice or notice of non-compliance for failure to provide security officers or have an approved security plan,

thus triggering the first stage in the provision of a security plan, the landlord shall be relieved of the responsibility of providing safety officers as required above, unless and until a security plan or modified security plan has been approved. A landlord may choose, after initially electing one of the above two alternatives, to switch to the other with the approval of the Inspectional Services Department, he/she continue to provide safety officers or the security measures mandated by the security plan pending such approval.

3.14.4 The landlord's submission seeking approval for a switch in alternatives must be submitted in quadruplicate and mailed by certified mail, return receipt requested, to the Commissioner of Inspectional Services, 1010 Massachusetts Avenue, Roxbury, MA 02118. The landlord's submission seeking approval for a switch in alternatives must be carried out in accordance with sections 502 and 503 of the ordinance.

3.14.5 Failure by a landlord to notify within thirty (30) calendar days the Commissioner of Inspectional Services of his/her election pursuant to section 501 of the ordinance shall subject the landlord to the enforcement provisions of section 505 of the ordinance.

3.15 Crime Prevention Surveys:

Each crime prevention survey shall include both findings as to the security needs of the tenants of the development and recommendations as to how such needs shall be met through existing or new security measures. Each survey shall include a one page summary, on official Police Department stationary, itemizing the elements recommended.

A new crime prevention survey must be performed every three (3) years by the Boston Police Department. If a building permit is required by the Inspectional Services Department for substantial structural changes in the building entrances before the expiration of the three-year period since a survey was last performed, a new crime prevention survey must be performed upon submission of the building permit application.

3.2 Process for Approving a Security Plan or Modified Security Plan:

3.2.1 Security Plan: Within thirty (30) days of receipt of the crime prevention survey prepared by the Boston Police Department the landlord shall prepare a security plan (in quadruplicate) for approval by the Commissioner of the Inspectional Services Department.

Such plan shall be deemed to be in full compliance with this ordinance provided that:

3.2.1.1 the security plan mandates, at the very least, the provisions of

the security measures recommended in the crime prevention survey; and

- 3.2.1.2 the tenants have not articulated security needs which are not adequately addressed by the survey or the plan.

In all cases the tenants must be given the opportunity to present their views to the Commissioner of the Inspectional Services Department at a public hearing before the plan is accepted.

3.2.2 Tenant Participation Requirements in Conjunction with Submission of Security Plans:

- 3.2.2.1 The landlord shall post a notice that he/she intends to submit a Security plan to the Inspectional Services Department in a conspicuous location within the department.
- 3.2.2.2 The notice shall be in the form established by the Commissioner of the Inspectional Services Department.
- 3.2.2.3 The notice shall first be posted at least ten (10) days prior to the submission of the security plan. The notice shall remain posted until such time as the Inspectional Services Department has made its final determination.
- 3.2.2.4 It shall be deemed a violation of the ordinance, enforceable under section 505, for any landlord to fail to post such a notice in a conspicuous location or to intentionally or willfully cause such notice to be defaced, destroyed or removed.
- 3.2.2.5 If such notice is defaced, destroyed or removed by a third party it shall be the landlord's obligation to immediately post a copy of the original notice.

3.3 Access to Security Plan: (Landlord's Provision of Information to Tenants)

- 3.3.1 If any tenant requests a copy of the proposed plan, it shall be provided as soon as reasonable and free of any cost by the landlord to the tenant together with:
- 3.3.1.1 a copy of the findings and recommendations of the crime prevention survey (or the official Boston Police Department summary).
- 3.3.1.2 if applicable, a summary of the landlord's reasons disputing the findings and recommendations of the crime prevention survey, for seeking alterations in the method or timetable for implementation of security measures, or for claiming that the additional security measures mandated by

the crime prevention survey are cost prohibitive, including a summary of the financial alternatives that he/she has explored to cover costs.

3.4 Required Meetings:

- 3.4.1 In developments that are subject to tenant participation requirements under 780 CMR, Section 6.00, 24 CFR, Section 245 or other applicable law and, where there is a tenant organization, the landlord shall provide a copy of the security plan or petition and the above documents to such tenants' organization at least ten (10) days in advance of the submission of the plan or petition to the Inspectional Services Department.
- 3.4.2 If the tenants participating in the organization vote that there are deficiencies in the security plan or petition, the landlord shall be required to meet with the tenants organization at a mutually agreed time and place to discuss the tenants' concerns and attempt, in good faith, to resolve such concerns.
 - 3.4.2.1 The tenants' organization shall give written notice to the landlord, within the ten (10) day period after receipt of the plan and survey, of its desire to have such a meeting. The landlord shall meet with the tenants' organization within two (2) weeks of receipt of the tenants' organization's notice. To the extent that such meetings or discussions delay the finalization of the security plan, but in no event later than thirty (30) days from the date of the tenant meeting.
 - 3.4.2.2 The landlord shall give written notice to the Commissioner of the Inspectional Services Department of any request received for tenant meetings. The Commissioner shall not schedule any hearing on the security plan until after such tenant meetings have taken place and the thirty (30) day period for the Commissioner to hold a hearing after receipt of a plan shall be extended in such event.
 - 3.4.2.3 Failure of the tenants or the tenants' organization to request a meeting with their landlord to discuss the plan shall not be deemed to constitute a waiver of the tenant's right to approve, oppose or seek modification in a plan or petition at the hearing before the Commissioner.

3.5 Modified Security Plan:

- 3.5.1 Within thirty (30) days of receipt of the crime prevention survey, if:
 - 3.5.1.1 the landlord disputes the need for any of the specific security measures recommended by the crime prevention survey, or

- 3.5.1.2 the landlord disputes the method or timetable for carrying out security measures, based on the fiscal or contracting constraints that apply to the particular development, or
- 3.5.1.3 the landlord and/or the tenants believe that the additional security measures mandated by the crime prevention survey are such as to be cost prohibitive, given the economic circumstances of the tenants of the development and the inability of the landlord and/or tenants to obtain sufficient funding, equipment, or services to cover the costs of such additional measures, despite best efforts, then; the landlord and/or the tenants may petition the Commissioner for permission to submit a modified security plan which does not encompass all of the security measures mandated by the crime prevention survey.
- 3.5.1.4 A landlord may only claim that the elements mandated by the crime prevention survey are cost prohibitive if the increased costs must be passed along to the tenants of the development and absorbed by the tenants in the tenants' share of the rent.
- 3.5.1.5 If a landlord submits a petition for a modified security plan then the landlord shall have the burden to show how any of the specific security measures recommended by the crime prevention survey are unnecessary, or given the fiscal or contracting constraints particular to the development, how changes are needed in the method or timetable for implementation of the security measures.
- 3.5.1.6 In the event that a party claims that that the costs of the additional security measures are cost prohibitive, the landlord shall state what the estimated costs of the security measures are. In such cases the landlord shall also substantiate his/her current and projected operating expenses and revenues and shall show what efforts he/she has made to otherwise cover the costs through his/her best efforts to seek and obtain such funding, grants, donations of funds, equipment or services as may lessen or eliminate such additional costs.

4. HEARING PROCESS:

4.1 Submission of Security Plans or Petitions for a Modified Security Plan

Following the posting of notice to tenants as required by section 503 of the ordinance, the landlord shall submit, in writing, the security plan or the petition for a modified security plan, whichever is applicable, to the Commissioner of the Inspectional Services Department for approval.

4.2 Hearings:

Upon receipt of a security plan or petition for a modified security plan the Commissioner of the Inspectional Services Department shall hold a hearing on each plan or petition

- 4.2.1 Such hearings shall be held at a convenient time and place. The Commissioner or clerk shall give at least ten (10) days advance notice of the time and place of each hearing to all parties and shall give notice to anyone else requesting notice as provided for in section I (9). Notice of the hearing date shall be given to any tenants' organization which exists in the development and shall be posted by the landlord in a conspicuous location at the development.
- 4.2.2 Said hearings shall be held no later than thirty (30) days after the Commissioner's receipt of the security plan or petition for a modified security plan. Any such party may appear in person, or by agent or by attorney at such hearing.
- 4.2.3 Failure to hold a public hearing within thirty (30) days shall not affect the validity of the hearing or any decision rendered. The Commissioner in the hearing conducted under the ordinance shall not be bound by the strict rules of evidence prevailing in courts of law or equity. At the hearing the landlord and the tenants shall be given an opportunity to be heard, to present witnesses and/or to submit documentary evidence as to why the security plan or petition should be approved or modified.

4.3 Consultation with Boston Police Department:

In reviewing the adequacy of a security plan or modified security plan, the Commissioner shall consult with a certified crime prevention officer from the Boston Police Department.

4.4 Criteria for Approval of a Security Plan:

- 4.4.1 Following the hearing and based on the evidence presented to the hearing officer the Commissioner shall approve or modify the security plan, consistent with recommendations of the crime prevention survey and the security needs articulated by tenants. Such plan shall be deemed to be in full compliance with these regulations and the security ordinance provided that:
 - 4.4.2 the security plan mandates, at the very least, the provision of the security measures recommended in the crime prevention survey; and
 - 4.4.3 the tenants have not articulated security needs which are not adequately addressed by the survey or the plan.
 - 4.4.4 If the crime prevention survey indicates that no security measures are needed additional to those already in effect at the development, the security plan shall be deemed to be sufficient so long as the landlord, in such plan, agrees to keep in effect all existing security measures.

4.5 Criteria for Approval of a Petition for a Modified Security Plan:

- 4.5.1 Following the hearing and based upon the evidence presented to the hearing officer, the Commissioner shall approve, deny or modify the petition for a

modified security plan and the modified security plan submitted, consistent with the recommendations of the crime prevention survey, the security needs articulated by the tenants and the standards set forth in these regulations and the Security Ordinance. If the Commissioner finds in response to specific disputes raised by a party in the petition for a modified security plan:

4.5.1.1 any of the specific security measures recommended in the crime prevention survey are necessary to meet security needs at the particular development, or

4.5.1.2 within the fiscal or contracting constraints that apply to the particular development, the landlord's proposed plan will provide a reasonable method or timetable for meeting security needs, or

4.5.1.3 the costs required to undertake the improvements mandated by the crime prevention survey are such as to make the security plan cost prohibitive.

4.5.2 The Commissioner shall either approve the petition for a modified security plan or make such modifications to the plan as are necessary. In ruling on a petition where it is claimed that a security plan is cost prohibitive the Commissioner shall be guided by the principle, consistent with the security objectives articulated in the crime prevention survey, that the impact on tenant's rights should be minimized so that the cost of additional security measures will not have the likely effect of displacing elderly/handicapped tenants due to excessive rent increases. In such cases the Commissioner shall consider reasonable alternatives to the security measures called for by the crime prevention survey.

4.6 Decision:

4.6.1 The Commissioner's approval or modification shall be in a form of a written decision which decision includes findings of fact, conclusions and reasons for the decision. The decision shall be furnished to all affected parties within ten (10) days of the hearing date. Failure to issue a decision within ten (10) days of the hearing date shall not affect the validity of the hearing or any other subsequent decision.

4.7 Stay of Proceedings:

4.7.1 Entry of a request for a hearing shall stay all Inspectional Services proceedings until the Commissioner enters a decision.

5. ENFORCEMENT

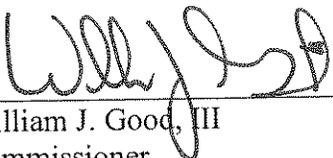
5.1 General:

The Commissioner of the Inspectional Services Department shall notify the landlord of the elderly/handicapped multi-family housing development in the event the development is found to be in non-compliance with the provisions of section 500 through 504 and shall order compliance. Said landlord shall have thirty (30) days from the date of notification in which to achieve compliance with the Commissioner's order. Upon expiration of the thirty (30) day period the landlord of a housing development still in violation of the order shall be subject to a fine of \$150.00. Each day's failure to comply with the order thereafter shall constitute a separate violation of the Commissioner's order. Orders shall be enforced in a manner similar to that provided for enforcement of orders under Article II of the State Sanitary Code.

5.2 Investigations:

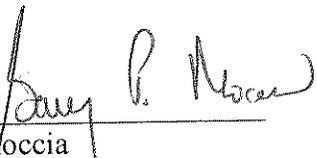
Tenants and/or tenants' organizations of elderly/handicapped multi-family housing developments shall have the right to request investigation by the Commissioner of the Inspectional Services Department if they believe that their landlords have failed to comply with the provisions of sections 500 through 504 and shall have the right to request a hearing from the Commissioner in a manner similar to that provided in M.G.L. Chapter 111, Section 127 B if the Commissioner fails to respond to a request for investigation, if the Commissioner fails to make findings of non-compliance following an investigation, or if the Commissioner fails to issue orders upon a finding of non-compliance.

Signed:



William J. Good, III
Commissioner

6. 7. 2010
Date



Gary P. Moccia
Inspector of Buildings

6 / 7 / 10
Date

