OFFICE OF THE

CITY AUDITOR

AN AUDIT OF THE MULTIPLE HOUSING ROSTER MAINTAINED BY THE CODE ENFORCEMENT DIVISION OF THE DEPARTMENT OF PLANNING, BUILDING, AND CODE ENFORCEMENT

- BY IMPLEMENTING ADDITIONAL CONTROLS CODE ENFORCEMENT CAN ENSURE THAT ALL MULTIPLE HOUSING BUILDINGS AND UNITS ARE INSPECTED AND ISSUED RESIDENTIAL OCCUPANCY PERMITS AND GENERATE AS MUCH AS $263,000 IN ADDITIONAL REVENUES

- ADDITIONAL CONTROLS ARE NEEDED TO ENSURE THAT THE SAN JOSE FIRE DEPARTMENT INSPECTS ALL MULTIPLE HOUSING FACILITIES AND THAT OWNERS OF THESE FACILITIES ARE PROPERLY BILLED FOR FIRE SAFETY INSPECTIONS

A REPORT TO THE

SAN JOSE

CITY COUNCIL

AUGUST 1998 98-04

CITY OF SAN JOSÉ, CALIFORNIA

800 N. First Street • San Jose, California 95112 • Tel: (408) 277-4601

GERALD A. SILVA
City Auditor

August 10, 1998

Honorable Mayor and Members
of the City Council
801 North First Street, Room 600
San Jose, CA 95110

Transmitted herewith is a report on *An Audit of the Multiple Housing Roster Maintained by the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement*. This report is in accordance with City Charter Section 805.

An Executive Summary is presented on the blue pages in the front of this report. The City Administration's response is shown on the yellow pages while the City Auditor's comments on the City Administration's response are shown on the green pages before the Appendices.

I will present this report to the Finance Committee at its August 26, 1998, meeting. If you need additional information in the interim, please let me know. The City Auditor's staff members who participated in the preparation of this report are Mike Edmonds and Eduardo Luna.

Respectfully submitted,

Gerald A. Silva
City Auditor

finaltr
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cc: James R. Derryberry, Kay Winer, Bob King, Jerry Buzzetta, Regina Williams, Brian Doyle, Amal Sinha, Glenn Schwarzbach, Sherry Langbein, Ed Gawf, Gary Zouzoulas, Jessica Batinich, Joan Gallo, Peggy Rollis, Dave Bopf, Bill Hughes

OFFICE OF THE

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SAN JOSE

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EXECUTIVE SUMMARY

In accordance with the City Auditor's 1997-98 Audit Workplan, we have audited the Multiple Housing Roster maintained by the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement. This is the first of several audit reports on the Code Enforcement Division. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

BY IMPLEMENTING ADDITIONAL CONTROLS CODE ENFORCEMENT CAN ENSURE THAT ALL MULTIPLE HOUSING BUILDINGS AND UNITS ARE INSPECTED AND ISSUED RESIDENTIAL OCCUPANCY PERMITS AND GENERATE AS MUCH AS $263,000 IN ADDITIONAL REVENUES

The Code Enforcement Division of the Planning Department (Code Enforcement) inspects multiple housing projects for compliance with the City of San Jose Housing Code requirements. Code Enforcement relies on a Multiple Housing Roster (Roster) to annually bill owners of multiple housing units $23.60 per unit and to schedule routine inspections. Our audit revealed that Code Enforcement's Roster of 59,160 multiple housing units is not complete. Specifically, when we compared Code Enforcement's Roster to the City's Sewer Service and Use database we identified between 6,670 and 8,940 multiple housing units that should have been on Code Enforcement's Roster but were not. As a result, Code Enforcement has neither billed the owners of these multiple housing units between $157,000 and $211,000 per year nor conducted routine inspections of these units to ensure that they comply with State and local Housing Code requirements. Moreover, we identified 2,200 apartment units that are currently under construction in the City and susceptible to Code Enforcement not receiving information to include them on its Roster. If Code Enforcement billed the owners of these new units and the existing non-permitted units noted above, the City could realize between $209,000 and $263,000 in additional annual revenues. These additional revenues could

pay for at least two new Code Enforcement Inspector positions for the Multiple Housing Program.

We also found that additional controls are needed to ensure that all multiple housing units are identified and permitted. Specifically, the Building Division needs to strengthen its controls for notifying Code Enforcement of newly constructed and occupied multiple housing units. In addition, Code Enforcement could improve its controls by periodically reconciling its Roster with other City databases. Further, the City needs to establish a clear definition of when a multiple housing unit is a condominium as opposed to an apartment so that Code Enforcement will know if it should issue a Residential Occupancy Permit and conduct inspections. Finally, we recommend that the City Council consider modifying the Multiple Housing Program to include other types of rental properties.

ADDITIONAL CONTROLS ARE NEEDED TO ENSURE THAT THE SAN JOSE FIRE DEPARTMENT INSPECTS ALL MULTIPLE HOUSING FACILITIES AND THAT OWNERS OF THESE FACILITIES ARE PROPERLY BILLED FOR FIRE SAFETY INSPECTIONS

The Office of the State Fire Marshal requires the San Jose Fire Department (SJFD) to inspect both permitted and non-permitted multiple housing facilities which are categorized as R-1 occupancies. The SJFD inspects for any condition that may cause a fire or contribute to its spread. Annually, each of the SJFD's 30 fire stations receives a list of SJFD non-permitted multiple housing facilities to schedule September through March inspections. The SJFD's share of the fee for performing SJFD non-permitted fire inspections of multiple unit housing facilities is $4.90 per unit, which is part of a $23.60 Residential Occupancy Permit fee Code Enforcement issues. The SJFD relies upon its fire inspection list to conduct SJFD non-permitted inspections. However, our review revealed that the SJFD's fire inspection list is incomplete. Specifically, when we compared the SJFD's fire inspection list to Code Enforcement's Roster and the City Sewer Service and Use database we found that:

- the SJFD is not inspecting up to 850 multiple unit housing facilities with about 10,800 units that it should be inspecting;
- about 315 multiple unit housing facilities with 3,400 units are paying $4.90 per unit for SJFD inspection services they do not receive; and
- owners of about 2,500 multiple housing units are not paying for SJFD inspection services they receive.

A complete and accurate SJFD inspection list will help ensure that owners of multiple unit housing facilities properly pay for fire inspection services and the SJFD inspects all of the multiple unit housing facilities the State Fire Marshal requires.

RECOMMENDATIONS

We recommend that the Code Enforcement Division,

Recommendation #1:

Follow-up on multiple housing units without Residential Occupancy Permits that were identified from matching the Multiple Housing Roster to the Sewer Service and Use database beginning with the complexes with more than 100 units. (Priority 1)

We recommend that the Code Enforcement Division and the Building Division,

Recommendation #2:

Develop internal procedures to establish and document the process for sharing information on newly constructed multiple housing buildings, including all apartments (three units or more), hotels and motels, guesthouses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities in San Jose. (Priority 2)

We recommend that the Building Division,

Recommendation #3:

Transmit Certificates of Occupancy to Code Enforcement for newly constructed multiple housing buildings. (Priority 2)

We recommend that the Code Enforcement Division,

Recommendation #4:

On a regular and periodic basis, reconcile the Multiple Housing Roster with the City's Sewer Service and Use database. (Priority 2)

Recommendation #5:

Define condominiums and use that definition for program purposes. (Priority 2)

Furthermore, we recommend that the City Council,

Recommendation #6:

Consider modifying the Multiple Housing Program to include other types of rental properties. (Priority 2)

We recommend that the SJFD,

Recommendation #7:

Add to its fire inspection list those multiple unit housing facilities that were identified from matching the fire inspection list against Code Enforcement's Multiple Housing Roster and the City's Sewer Service and Use database. (Priority 1)

We recommend that the SJFD and the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement,

Recommendation #8:

Develop procedures to ensure that owners of multiple unit housing facilities are properly billed for the fire inspection services they receive. (Priority 2)

We recommend that the SJFD and the Building Division of the Department of Planning, Building, and Code Enforcement,

Recommendation #9:

Develop internal procedures to establish and document the process for sharing information on newly constructed multiple unit housing facilities. (Priority 2)

We recommend that the Building Division of the Department of Planning, Building, and Code Enforcement,

Recommendation #10:

Use Certificates of Occupancy to notify the SJFD of newly constructed multiple housing buildings. (Priority 2)

We recommend that the SJFD,

Recommendation #11:

Periodically compare its inspection list against Code Enforcement's Roster and add any exceptions to its inspection list when Recommendation #4 (Finding I) is implemented. Until Recommendation #4 is implemented, SJFD should reconcile its inspection list to Code Enforcement's Roster and the City's Sewer Service and Use database. (Priority 2)

INTRODUCTION

In accordance with the City Auditor's 1997-98 Audit Workplan, we have audited the Multiple Housing Roster maintained by the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement. This is the first of several audit reports on the Code Enforcement Division. We conducted this audit in accordance with generally accepted government auditing standards and limited our work to those areas specified in the Scope and Methodology section of this report.

The City Auditor's Office thanks the staff of the Code Enforcement Division and Building Division of the Department of Planning, Building, and Code Enforcement; the Bureau of Fire Prevention of the Fire Department; and the Billing Services Unit of the Treasury Division, Finance Department who gave their time, information, insight, and cooperation during the audit process.

BACKGROUND

The Code Enforcement Division's (Code Enforcement) program mission is to work in partnership with the people of San Jose, to provide citywide education and enforcement to promote and maintain a safe and desirable community consistent with health and safety regulations. Code Enforcement enforces various ordinances to promote the health, safety, and appearance of the City of San Jose. Specifically, Code Enforcement investigates and abates complaints involving land use (zoning), housing conditions, abandoned vehicles, signs, fences, and general public nuisances. It also monitors landfill and recycling sites to ensure their proper operation and adherence to federal, state, and local codes.

Budget And Staffing

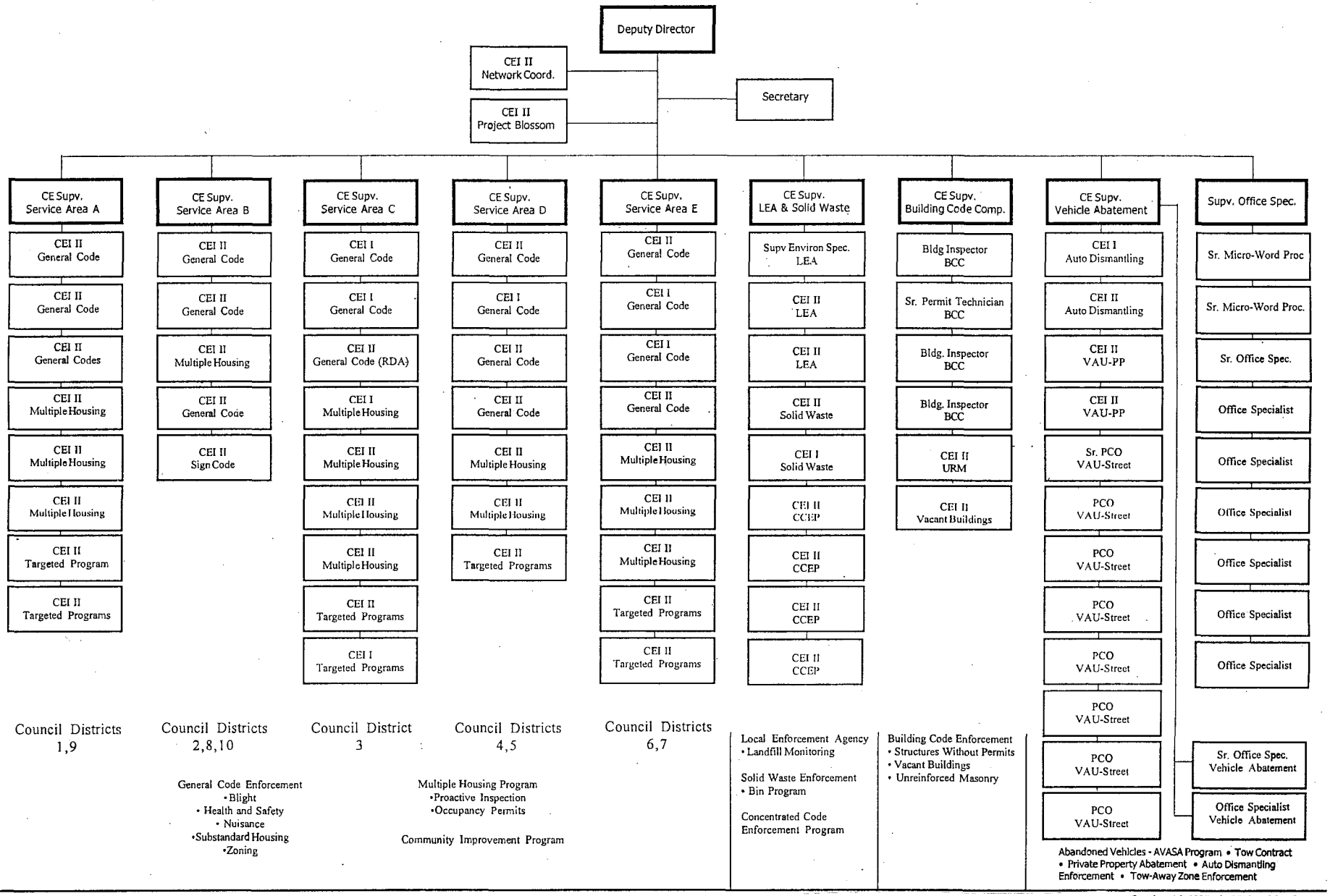
In 1997-98, Code Enforcement's budget was $6.2 million, which included $5.4 million for personal services and about $800,000 for non-personal services (including equipment). Code Enforcement receives its revenues from the General Fund, Federal Community Development Block Grant Funds, and various cost-recovery fees, such as Solid Waste Disposal Fees and Residential Occupancy Permit Fees.

In 1997-98, Code Enforcement was authorized 89 positions, which are organized into five service area groups and three additional groups: building code compliance, vehicle abatement, and solid waste issues. The five service area groups provide general code, multiple housing, and targeted program enforcement services. Code Enforcement's organization chart is shown on page three:

Code Enforcement Division

Internal Organization and Functions

SAN JOSE



October 16, 1997 / ORG9798.P65

CHART I

Through the Multiple Housing Program, Code Enforcement provides Health and Safety Code compliance inspection services on all multiple housing projects within the City. Multiple Housing units include all apartment buildings (three units or more), hotels and motels, guest houses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities in San Jose. The program does not apply to single family rental properties, condominiums, and duplexes. Code Enforcement Inspectors routinely inspect all multiple housing buildings within the City on either a three- or six-year inspection cycle. Code Enforcement Inspectors also investigate complaints about substandard housing conditions in multiple family dwellings.

To pay for the Multiple Housing Program, Code Enforcement issues a Residential Occupancy Permit (permit) annually to all properties it inspects. The permit fee is currently set at $23.60 per unit; $18.70 per unit goes to recover Code Enforcement's cost and $4.90 per unit goes to partially recover the Fire Department's cost of providing fire inspection services to multiple housing units. In 1997-98, Code Enforcement issued permits for 5,814 buildings with 59,160 units. These permit fees generated nearly $1.4 million in revenues.

Major Accomplishments Related To The Program

In Appendix B, the Deputy Director of Code Enforcement informed us of major program accomplishments. Some of Code Enforcement's major accomplishments include the following:

- Changed the General Code Complaint Response Strategy;
- Developed a written Policy and Procedure Manual;
- Reorganized Code Enforcement Supervisor responsibilities creating five geographic service areas;
- Developed and conducted a customer service survey;
- Developed and conducted a "Multiple Housing Training Program" for property owners; and
- Reorganized the Multiple Housing Program.

SCOPE AND METHODOLOGY

The audit reviewed Residential Occupancy Permit fees assessed in 1997-98. The audit objectives were to assess the adequacy of internal controls to ensure that:

- All multiple housing units are identified;
- Residential Occupancy Permit fees are properly assessed; and
- Residential Occupancy Permit fees are collected.

In order to determine if all multiple housing units have been identified and included on the Multiple Housing Roster (Roster), we compared the number of apartments on the Roster to the number of apartment multiple housing units (three units or more) in the Sewer Service and Use database. Specifically, we hired an independent, computer-audit consultant to perform a computer matching of the Roster against the Sewer Service and Use database. The result of the computer matching was an exception report that identified properties in the Sewer Service and Use database that were not on the Roster. For some of these identified properties, we performed a physical observation to verify that the properties were indeed apartments. We also provided the exception report to Code Enforcement staff so that they could verify that these identified properties should be on the Roster.

We also reviewed the accuracy and completeness of the Fire Department's inspection list. Specifically, the consultant compared the number of multiple housing locations on the Fire Department inspection list to the number of multiple housing locations on both the Roster and in the Sewer Service and Use database. We provided the Fire Department staff with any identified properties so they too could verify that these properties should be on their inspection list.

To determine if the Residential Occupancy Permit fees are properly assessed, we reviewed Code Enforcement and the Fire Department's processes for assessing these costs to owners of multiple housing units.

To ensure that all permit fees were collected, we compared the amount of fees billed to the fees actually collected. In addition, we reviewed Code Enforcement's controls for following up on delinquent accounts.

We performed only limited testing of the various computer reports and databases we used during our audit. We did not review the general and specific application controls for the computer systems used in compiling the various computer reports and databases we reviewed.

FINDING I

BY IMPLEMENTING ADDITIONAL CONTROLS CODE ENFORCEMENT CAN ENSURE THAT ALL MULTIPLE HOUSING BUILDINGS AND UNITS ARE INSPECTED AND ISSUED RESIDENTIAL OCCUPANCY PERMITS AND GENERATE AS MUCH AS $263,000 IN ADDITIONAL REVENUES

The Code Enforcement Division of the Planning Department (Code Enforcement) inspects multiple housing projects for compliance with the City of San Jose Housing Code requirements. Code Enforcement relies on a Multiple Housing Roster (Roster) to annually bill owners of multiple housing units $23.60 per unit and to schedule routine inspections. Our audit revealed that Code Enforcement's Roster of 59,160 multiple housing units is not complete. Specifically, when we compared Code Enforcement's Roster to the City's Sewer Service and Use database we identified between 6,670 and 8,940 multiple housing units that should have been on Code Enforcement's Roster but were not. As a result, Code Enforcement has neither billed the owners of these multiple housing units between $157,000 and $211,000 per year nor conducted routine inspections of these units to ensure that they comply with State and local Housing Code requirements. Moreover, we identified 2,200 apartment units that are currently under construction in the City and susceptible to Code Enforcement not receiving information to include them on its Roster. If Code Enforcement billed the owners of these new units and the existing non-permitted units noted above, the City could realize between $209,000 and $263,000 in additional annual revenues. These additional revenues could pay for at least two new Code Enforcement Inspector positions for the Multiple Housing Program.

We also found that additional controls are needed to ensure that all multiple housing units are identified and permitted. Specifically, the Building Division needs to strengthen its controls for notifying Code Enforcement of newly constructed and occupied multiple housing units. In addition, Code Enforcement could improve its controls by periodically reconciling its Roster with other City databases. Further, the City needs to establish a clear definition of when a multiple housing unit is a

condominium as opposed to an apartment so that Code Enforcement will know if it should issue a Residential Occupancy Permit and conduct inspections. Finally, we recommend that the City Council consider modifying the Multiple Housing Program to include other types of rental properties.

Multiple Housing Program

The Code Enforcement Division of the Department of Planning, Building, and Code Enforcement (Code Enforcement) inspects multiple housing projects for compliance with the City's Housing Code. A goal of the program is to ensure that the City's multi-family rental housing stock is maintained in decent, safe, and sanitary condition in accordance with the requirements of the Housing Code. Code Enforcement issues Residential Occupancy Permits (permits) for all apartment buildings (three units or more), hotels and motels, guest houses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities in San Jose. The program does not apply to single family rental properties, condominiums, and duplexes. In 1997-98, Code Enforcement assigned 13 Code Enforcement Inspectors to this program. Code Enforcement Inspectors routinely inspect all multiple housing buildings within the City on either a three- or six-year inspection cycle. Code Enforcement Inspectors also investigate complaints about substandard housing conditions in multiple family dwellings.

Multiple Housing Roster Identifies Permit Holders

Owners of multiple housing (or their agents) must obtain a permit before a building is occupied. The Municipal Code has established that any building, housing, or unit for which a permit is required, shall not be occupied until a permit has been issued. Code Enforcement maintains a Roster of known multiple housing buildings that have been issued permits. Code Enforcement uses the Roster for billing permit holders on an annual basis and conducting three- or six-year inspections.

In 1997-98, Code Enforcement's Roster included 5,814 multiple housing buildings with 59,160 units, of which, 96 percent or 5,586 were apartment buildings with 51,178 units. The Roster includes the building address, building type, owner name and address, number of units, census tract, and permit number. Table 1 shows the breakdown of Code Enforcement's Roster.

TABLE I

BREAKDOWN OF CODE ENFORCEMENT'S MULTIPLE HOUSING ROSTER BY BUILDING TYPE, AS OF MARCH 23, 1998

Building Type	Number of Buildings	Percent	Number of Units	Percent
Apartment	5,586	96.08	51,178	86.51
Residential Care Facility	9	0.15	82	0.14
Emergency Residential Shelter	6	0.10	72	0.12
Fraternity/Sorority	21	0.36	297	0.50
Guest House	108	1.86	1,130	1.91
Hotel/Motel	79	1.36	6,380	10.78
Residential Service Facility	5	0.09	21	0.04
Total	**5,814**	**100.00%**	**59,160**	**100.00%**

Source: Auditor analysis of Code Enforcement data.

Annual Permit Fees Required

In 1997-98, owners of multiple housing buildings are required to pay a permit fee of $23.60 per unit for inspection services. The permit fee is set annually on a cost-recovery basis. This fee covers the cost of providing routine inspections, as well as all complaint-initiated inspection services by Multiple Housing Program staff. In addition, the fee also includes the Fire Department's costs for performing multiple housing inspections mandated by the State Fire Marshal's Office. The Fire Department's share of the fee is $4.90 per unit.

Sewer Service And Use Database
Has Information On Multiple Housing Units

The Billing Services Unit of the Treasury Division, Finance Department is responsible for billing and collecting Sewer Service and Use and Storm Drain charges. Annually, the Billing Services Unit assesses residential, commercial and government parcels sewer and storm drain charges. The unit maintains a Sewer Service and Use database for placing these charges on the property tax rolls. In 1997-98, the database had information on 214,717 records, which were assessed $63.6 million in sewer service charges and $12.7 million in storm drain charges. According to Department of Information Technology staff, the Sewer Service and Use database is the most accurate and complete database in the City. As of March 30, 1998, the Sewer Service and Use database indicated that there were 4,473 parcels with 60,312 multiple housing apartment units of three units or more.

Code Enforcement's Roster Is Not Accurate

Our review found that Code Enforcement's Roster is not accurate and complete. Specifically, when we compared the multiple housing apartment units in the Sewer Service and Use database to the units on the Roster, we found a significant number of units that were in the Sewer Service and Use database but not on the Roster. Initially, the number of exceptions was approximately 800 building locations with 16,500 units. However, upon further review we reduced the exception list to approximately 600 building locations and 10,500 units. Specifically, from our original exception list, we eliminated units which were on Code Enforcement's Roster but appeared to be exceptions because of address differences with the Sewer Service and Use database.

To verify the remaining 10,500 units that should be on Code Enforcement's Roster, we physically observed 26 sites with 100 units or more and 10 sites with less than 100. As a result of our physical observation, we concluded that the 6,112 units in the 36 sites we visited should be on Code Enforcement's Roster.

After we performed our physical observation, we provided Code Enforcement with our exception list of 10,500 units so they could verify that these units should, in fact, be on the Roster. As of July 10, 1998, Code Enforcement had confirmed that 48 apartment buildings with 6,670 units are valid exceptions and should be on the Roster. They also confirmed that about 1,560 units were either already on the Roster or were not eligible for the Program. As of July 10, 1998, Code Enforcement has approximately 2,270 units left to verify. The 2,270 units are part of buildings with less than 15 units. According to the Deputy Director of Code Enforcement, he believes the majority of the 2,270 units will either ultimately be found on the Roster or will not be eligible for the program.

As a result, as of July 10, 1998, the following summarizes the disposition of our initial exception list of 16,500 units and the status of the remaining exceptions of 8,940 units:

Disposition of Initial 16,500 Exceptions	**Number of Units**
Initial exceptions between the Sewer Service and Use database and Code Enforcement's Roster.	16,500
Units found to be on Code Enforcement's Roster under a different address from the Sewer Service and Use database.	<6,000>
Code Enforcement identified units already on the Roster or not eligible for the program.	<1,560>
Remaining exceptions between the Sewer Service and Use database and Code Enforcement's Roster.	**8,940**
Status of Remaining Exceptions	
Code Enforcement verified exceptions.	6,670
Units awaiting Code Enforcement verification.	2,270
TOTAL	**8,940**

Some examples of apartments we identified that were not on Code Enforcement's Roster included the following:

1,100 Unit Complex On The Woods Drive, Built In 1981

332 Unit Complex On 610 Teatree Court, Built In 1988

144 Unit Complex At 2175 Aborn Road, Built In 1984

#1 We recommend that the Code Enforcement Division follow-up on multiple housing units without Residential Occupancy Permits that were identified from matching the Multiple Housing Roster to the Sewer Service and Use database beginning with complexes with more than 100 units. (Priority 1)

Code Enforcement Has Not Billed
Owners Or Inspected Up To 8,940 Units

Code Enforcement has neither billed the owners of the multiple housing units we identified between $157,000 and $211,000 per year nor conducted routine inspections of these units to ensure that they comply with state and local requirements.

As stated earlier, the Residential Occupancy Permit fee is designed to partially recover the cost of Code Enforcement's and the San Jose Fire Department's (SJFD) programs to inspect multiple housing units. For 1997-98, the total fee is $23.60 per unit; Code Enforcement's share is $18.70 per unit and the Fire Department's share is $4.90 per unit. Assuming that the fee is set at the same level, we estimate that the additional

Residential Occupancy Permit revenue generated from the non-permitted multiple housing units we identified would range from $157,000 to $211,000.

Code Enforcement And The Building Division Need Better Coordination To Ensure That Code Enforcement Adds All Newly Constructed Multiple Housing Buildings To Its Roster

There is no internal procedure or policy between Code Enforcement and the Building Division to ensure that Code Enforcement will add all newly constructed multiple housing units to its Roster. Further, the internal control procedure that Code Enforcement should be able to rely upon to keep its Roster current has not proven effective. Specifically, Code Enforcement primarily relies upon the Building Division transmitting a Certificate of Completion to initiate adding multiple housing units to its Roster. However, our review revealed that Certificates of Completion are not all inclusive for all multiple housing units and not consistently prepared and/or transmitted to Code Enforcement.

According to the Chief Building Construction Inspector, the Building Division uses Certificates of Completion to notify Code Enforcement of new apartment buildings that have received final inspections. The Building Division only issues these Certificates of Completion for final inspections of apartments of three units or more. However, the Building Division does not issue Certificates of Completion for other types of buildings that should be on Code Enforcement's Roster. These buildings include hotels and motels, guest houses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities.

Code Enforcement May Not Have Received All Certificates Of Completion

Our review also found that the Building Division may not have properly transmitted to Code Enforcement all Certificates of Completion. According to Code Enforcement staff, they could not recall the Building Division sending them any

Certificates of Completion for several years. We found that between October 1989 and April 1997, the Building Division issued 39 Certificates of Completion for apartment projects. Of these 39 apartment projects, 16 projects did not appear on Code Enforcement's Roster. These 16 apartment projects were completed between 1994 and 1996 and had about 530 units. Included in these 16 apartments were a 92-unit apartment complex on Campbell Avenue and a 50-unit apartment complex on Evans Lane.

We also found that the Building Division's procedure for completing the Certificate of Completion form was handwritten and taped on the inside cover of a Certificate booklet that is no longer used.

The Building Division Did Not Issue
Certificates Of Completion To All Apartments

The Building Division may not have issued Certificates of Completion for all newly built and occupied apartments. Specifically, between April 30, 1997 and May 10, 1998, the Building Division did not issue any Certificates of Completion. However, we identified a newly built 90-unit apartment complex, located at 360 Meridian Avenue, for which we could not locate a Certificate of Completion. A Building Division official told us that in some situations, a final Certificate of Completion will not be issued until an entire project is completed. This occurs even if the project involves several buildings of which some may, in fact, be completed and occupied.

Similarly, we visited the Los Esteros apartments to verify the issuance of Certificates of Completion for seven buildings with 176 units. Once on site, we discovered that an eighth building had been constructed without the Building Division having issued a Certificate of Completion. It is possible that the Building Division has similarly not issued Certificates of Completion for other apartment projects.

In our opinion, the use of Certificates of Completion is not an effective control to ensure that Code Enforcement adds all newly constructed multiple housing units to its Roster.

The Building Division Issues Certificates Of Occupancy For All Types Of Buildings That Should Be On Code Enforcement's Roster

The Building Division does issue Certificates of Occupancy for all commercial projects, but it does not forward these types of certificates to Code Enforcement. As a result, the Building Division does not notify Code Enforcement when permit eligible buildings are constructed and occupied. Thus, it is possible that these types of structures are built without Code Enforcement's knowledge. Since the Building Division issues Certificates of Occupancy to property owners for buildings that have received final inspections, the Building Division could improve information sharing with Code Enforcement by transmitting Certificates of Occupancy for all multiple housing buildings that have received final inspections.

#2 We recommend that the Code Enforcement Division and the Building Division develop internal procedures to establish and document the process for sharing information on newly constructed multiple housing buildings, including all apartments (three units or more), hotels and motels, guesthouses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities in San Jose. (Priority 2)

#3 We recommend that the Building Division transmit the Certificates of Occupancy to Code Enforcement for newly constructed multiple housing buildings. (Priority 2)

Additional Revenues Can Result In More Staffing

We identified 2,200 apartment units that are currently under construction in the City. Given that Code Enforcement is not receiving sufficient information on new multiple housing construction, there is a risk that Code Enforcement will not be notified when these 2,200 units are completed.

If Code Enforcement billed the owners of the 2,200 units currently under construction and the existing 6,670 to 8,940 non-roster units we identified, the City could realize as much as $209,000 to $263,000 in additional annual revenues. This additional Residential Occupancy Permit fee revenue could provide funding for at least two additional Code Enforcement Inspector positions for the Multiple Housing Program.

A System Under Development May Help Identify Multiple Housing Projects

Department of Planning, Building, and Code Enforcement officials told us that an information system currently under development may help improve Code Enforcement's and the Building Division's coordination and construction activity information sharing. The Integrated Development Tracking System is expected to integrate various land-use tracking subsystems into one comprehensive system that will contain all permit, land use, and geographic data pertaining to a specific parcel. This "integrated" system will provide a way of tracking development projects from start to finish. However, project completion is not expected until December 2000.

Code Enforcement Could Improve Its Controls By Periodically Reconciling Its Multiple Housing Roster With Other City Databases

Our review found that Code Enforcement needs to improve the accuracy and completeness of its Roster. Specifically, Code Enforcement should periodically match its Roster against other City databases, such as the Sewer Service and Use database or the Fire Department R-1 Inspection List. Code Enforcement officials told us that while

they periodically update their Roster to reflect ownership changes, they have never reconciled their Roster with any other City databases. In our opinion, Code Enforcement needs to verify that their Roster is complete by periodically matching their Roster against the Sewer Service and Use database.

#4 We recommend that the Code Enforcement Division, on a regular and periodic basis, reconcile the Multiple Housing Roster with the City's Sewer Service and Use database. (Priority 2)

Code Enforcement Categorizes
Certain Apartments As Condominiums

Code Enforcement has categorized certain apartment projects as condominiums that do not meet the legal definition of a condominium applicable under the Multiple Housing Program. Both State law regulating the operation of condominiums and the Municipal Code Chapter regulating conversion of structures to condominiums define condominiums as real property that consists of undivided interest in a portion of the property, together with a separate ownership interest in another portion of the property. The boundaries of the separate property interests are described on a recorded final subdivision map. Because both definitions require ownership of an undivided property interest in two or more persons, a condominium does not arise until at least one unit has been conveyed. There is no undivided interest, and therefore no condominium, as long as the developer/seller owns all of the units.

Before a developer/seller can sell a unit as a condominium, the developer must follow several steps:

1. obtain approval by the City of a tentative subdivision map for a condominium;
2. obtain approval by the City of a final subdivision map for a condominium;

3. record the approved final subdivision map for a condominium with the County; and
4. obtain a Public Report with the California Department of Real Estate.[1]

Our review found that Code Enforcement has used a different definition of condominiums. Code Enforcement officials told us that they categorized an apartment project as condominiums if the developer filed only a tentative condominium map. This definition is neither consistent with State law, the Municipal Code, nor the development process as it applies to condominiums.

According to a Building Division official, during the development process a developer may apply to build condominiums, but by the time a building permit is issued, the developer may have decided to build apartments instead. In some instances, a developer may apply for a Planned Development Zoning depicting the proposed project as condominiums. The Building Division treats the project as a condominium throughout the development review and construction process. The Building Division issues building permits and performs in-progress construction inspections in accordance with the more stringent Uniform Building Code standards that apply to condominium projects. However, when the project is completed, the builder does not always offer the units for sale, but instead rents the units.

Further, the builder may choose not to complete the land use development process as it applies to condominiums. Specifically, the builder may not file the subdivision map which allows ownership of individual units, or not file the Public Report with the State Board of Real Estate.

[1] Obtaining a Public Report requires demonstrating that a number of other requirements have been satisfied, such as creating bylaws, a declaration of restrictions, and deeds to individual units, formation of a homeowners' association, and providing budgeting information.

For example, in 1996, the Building Division issued a Certificate of Completion for an apartment project that Catalonia Associates owned on Evans Lane. We reviewed independent information that confirmed that Catalonia Associates owned 50 apartment units (built in 1996) on Evans Lane. Santa Clara County Assessor maps showed that the parcel where the apartments were located did not include a condominium tract map. We informed Code Enforcement that the apartment building located on Evans Lane did not appear on their Roster. Code Enforcement researched the situation and informed us that they considered the buildings located on Evans Lane to be condominiums, not apartments, because in 1991 the City's Planning Director approved, A Tentative Condominium Map for 50 Townhouse Units on Evans Lane. Consequently, Code Enforcement considered the units on Evans Lane to be condominiums even though three of the four criteria noted on page 18 were not satisfied.

Additional Clarification Is Needed On Condominium Issue

Code Enforcement needs to establish a clear definition of when a multiple housing unit is a condominium as opposed to an apartment. By so doing, Code Enforcement will know if it should add the building to its Roster.

#5 We recommend that Code Enforcement define condominiums and use that definition for program purposes. (Priority 2)

Other Multiple Housing Issues

In February 1993, the Department of Neighborhood Preservation requested the City Council to consider expanding the use of Residential Occupancy Permits to include condominium projects that are being rented as apartments. The Department had difficulty in differentiating between properties that operated identically from a land-use perspective solely on the basis that they had zoning approval to become condominiums and have been constructed to condominium standards. Specifically, the Department

asked the City Council to direct the City Attorney to draft an ordinance to include condominiums on the list of buildings requiring a Residential Occupancy Permit and to define condominiums as multiple dwellings. The Department also requested that the City Council direct the Administration to implement a program of placing condominium projects containing three or more units in one building, all unit deeds in the ownership of one investor, which are being rented or intended to be rented, into the Residential Occupancy Permit program at the time a Certificate of Completion is issued by the Building Division. However, the City Council did not adopt the Administration's recommendation.

In 1996, a Mayor's Focus Group identified absentee owners (landlords that do not actively manage the rental property) as one of the major causes of poorly maintained rental properties. Yet, the Multiple Housing Program addresses only a portion of rental properties (triplexes and larger). The major categories of rental properties the Multiple Housing Program does not cover include rental condominiums and single family rental properties (including duplexes and townhomes). Code Enforcement responds to code violations on these properties only on a complaint basis and does not inspect these properties on a pro-active basis. Thus, the City is not providing the renters of these properties the same level of service that it provides to renters of those units that the Multiple Housing Program does cover.

The number of rental properties not in the Multiple Housing Program may be significant. In 1993, Code Enforcement officials estimated that absentee landlords may rent up to 9,000 condominium units and that about 1,000 individuals or firms that own at least three rental units rent out a total of 5,000 units.

Code Enforcement does not maintain statistics on the number of complaints received from renters not covered by the Multiple Housing Program. Therefore, we could not support whether a need exists to provide additional inspection services to these dwellings. However, our review identified several potential problem rental

properties that are not under the Multiple Housing Program. For example, shown on page 22 is a 24-unit condominium complex that five individual parties own (one party owns 12 condominiums and four parties each own three condominiums). Code Enforcement had received complaints from renters of this property.

#6 We recommend that the City Council consider modifying the Multiple Housing Program to include other types of rental properties. (Priority 2)

CONCLUSION

Code Enforcement's Roster of 59,160 multiple housing units is not complete. We identified between 6,670 and 8,940 multiple housing units that should have been on Code Enforcement's Roster but were not. Moreover, we identified 2,200 apartment units that are currently under construction in the City and susceptible to Code Enforcement not receiving information to include them on its Roster. If Code Enforcement billed the owners of these new units and the existing 6,670 to 8,940 non-roster units, the City could realize between $209,000 and $263,000 in additional annual revenues. We also found that additional controls are needed to ensure that all multiple housing units are identified and permitted. In addition, we found that Code

Enforcement needs to develop a clear definition of what constitutes a condominium. Finally, we recommend that the City Council consider modifying the Multiple Housing Program to include other types of rental properties.

RECOMMENDATIONS

We recommend that the Code Enforcement Division,

Recommendation #1:

Follow-up on multiple housing units without Residential Occupancy Permits that were identified from matching the Multiple Housing Roster to the Sewer Service and Use database beginning with the complexes with more than 100 units. (Priority 1)

We recommend that the Code Enforcement Division and the Building Division,

Recommendation #2:

Develop internal procedures to establish and document the process for sharing information on newly constructed multiple housing buildings, including all apartments (three units or more), hotels and motels, guesthouses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities in San Jose. (Priority 2)

We recommend that the Building Division,

Recommendation #3:

Transmit Certificates of Occupancy to Code Enforcement for newly constructed multiple housing buildings. (Priority 2)

We recommend that the Code Enforcement Division,

Recommendation #4:

On a regular and periodic basis, reconcile the Multiple Housing Roster with the City's Sewer Service and Use database. (Priority 2)

Recommendation #5:

Define condominiums and use that definition for program purposes. (Priority 2)

Furthermore, we recommend that the City Council,

Recommendation #6:

Consider modifying the Multiple Housing Program to include other types of rental properties. (Priority 2)

FINDING II

ADDITIONAL CONTROLS ARE NEEDED TO ENSURE THAT THE SAN JOSE FIRE DEPARTMENT INSPECTS ALL MULTIPLE HOUSING FACILITIES AND THAT OWNERS OF THESE FACILITIES ARE PROPERLY BILLED FOR FIRE SAFETY INSPECTIONS

The Office of the State Fire Marshal requires the San Jose Fire Department (SJFD) to inspect both permitted and non-permitted multiple housing facilities which are categorized as R-1 occupancies. The SJFD inspects for any condition that may cause a fire or contribute to its spread. Annually, each of the SJFD's 30 fire stations receives a list of SJFD non-permitted multiple housing facilities to schedule September through March inspections. The SJFD's share of the fee for performing SJFD non-permitted fire inspections of multiple unit housing facilities is $4.90 per unit, which is part of a $23.60 Residential Occupancy Permit fee the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement (Code Enforcement) issues. The SJFD relies upon its fire inspection list to conduct SJFD non-permitted inspections. However, our review revealed that the SJFD's fire inspection list is incomplete. Specifically, when we compared the SJFD's fire inspection list to Code Enforcement's Multiple Housing Roster (Roster) and the City Sewer Service and Use database we found that:

- the SJFD is not inspecting up to 850 multiple unit housing facilities with about 10,800 units that it should be inspecting;
- about 315 multiple unit housing facilities with 3,400 units are paying $4.90 per unit for SJFD inspection services they do not receive; and
- owners of about 2,500 multiple housing units are not paying for SJFD inspection services they receive.

A complete and accurate SJFD inspection list will help ensure that owners of multiple unit housing facilities properly pay for fire inspection services and the SJFD inspects all of the multiple unit housing facilities the State Fire Marshal requires.

State Fire Marshal Requirements

The Office of the State Fire Marshal requires local fire departments to inspect, as often as necessary, buildings and premises for any condition that may cause a fire or contribute to its spread. This requirement applies to a variety of building types, including buildings with assembly areas, schools, hospitals, nursing homes, residential care facilities, high-rise buildings, and multiple housing facilities. The latter facilities include all hotels, motels, lodging houses, congregate residences, and apartment houses and dwellings. According to a SJFD Battalion Chief, the Office of the State Fire Marshal has directed the City's SJFD to annually inspect multiple housing buildings which are categorized as R-1 occupancies. The R-1 Inspection Program is divided into SJFD permitted and SJFD non-permitted facilities.

SJFD Inspects Multiple Housing Facilities Under Two Separate Inspection Programs

The Uniform Building Code (UBC) defines R-1 occupancies as hotels, apartments, and congregate residences (each accommodating more than 10 persons).[2] Under the first inspection program, a truck or engine company from each of the City's 30 fire stations conducts inspections of R-1 occupancies (SJFD non-permitted facilities) from September through March. Annually, each fire station receives a list of SJFD non-permitted multiple unit housing facilities that should be inspected. In addition, each fire station receives a pre-printed Record of Inspection form for each facility to be inspected. The inspection team must complete and turn the form in after completing the inspection.

[2] The SJFD's definition of R-1 occupancies should not be confused with the City's R-1 designation for zoning purposes. Under the City's zoning code, R-1 occupancies are defined as one-family dwellings.

A typical inspection of an R-1 non-permitted occupancy would consist of a truck or engine company checking for visible addresses, non-accumulation of weeds, protected gas meters, accessible electrical panels, fire protection equipment, adequate access for fire apparatuses, non-obstructed exiting for building occupants, and smoke detectors.

The UBC has established that in certain situations R-1 occupancies must obtain fire safety permits and have annual inspections. Under the second inspection program Bureau staff annually inspect R-1 occupancies (SJFD permitted facilities) with fire safety permits. The SJFD issues fire safety permits to multiple unit housing buildings that fall within two occupancy groupings:

> Group 2: hotels, motels, and apartment houses with assembly areas for 50 or more occupants; have high fire or physical hazardous materials; or store moderate hazardous combustibles.
>
> Group 6: high rise hotels, motels, and apartment houses. High rise buildings are more than 75 feet tall.

Bureau inspectors inspect R-1 permitted multiple housing facilities. A typical inspection would normally include the items covered under the line inspections of R-1 non-permitted facilities, plus checking hazardous material storage, reviewing Hazardous Material Business Plan, reviewing Evacuation Plan, conducting fire drills and alarm tests, verifying staff training, and verifying the operation of emergency systems (such as, fire pumps, sprinkler systems). According to SJFD officials, line companies participate in emergency pre-planning activities of permitted high-rise multiple housing facilities (R-1 permitted Group 6). Pre-planning activities involve familiarizing fire personnel with a building's layout, alarm systems, and exiting. The

State Fire Marshal's Office does not mandate these activities, but SJFD conducts such activities for operational readiness purposes.

City Charges For Fire Inspections

The SJFD's partial cost for performing R-1 occupancy inspections for non-permitted facilities is included in the Residential Occupancy Permit fee that Code Enforcement administers. The permit fee is set annually by Code Enforcement on a cost-recovery basis.

In 1997-98, owners of multiple housing buildings were required to pay a permit fee of $23.60 per unit for both Code Enforcement and SJFD inspection services. The SJFD's share of the fee is $4.90 per unit.

In 1997-98, owners of R-1 SJFD permitted facilities paid $277 for a fire safety permit, whereas, owners of Group 6 (High rise) buildings paid $492 in permit fees.

SJFD's Multiple Housing Inspection List

The SJFD maintains a list of multiple housing buildings that are inspected as part of their non-permitted R-1 occupancy inspection program. The inspection list is divided by individual fire station, and includes the file number, street address, and business name. The inspection list also includes buildings that are located in unincorporated areas of the County.[3] As of March 30, 1998, the SJFD inspection list had 4,680 multiple unit housing facilities that SJFD's 30 fire stations inspect.

Similarly, the SJFD also maintains a separate list of multiple housing buildings with fire safety permits. As of July 15, 1998, this list had 29 multiple housing facilities with fire safety permits (R-1 permitted facilities).

[3] The SJFD is contracted by Santa Clara County to provide fire service to selected unincorporated areas within the City.

Code Enforcement Inspects The Same Multiple Housing Buildings

Code Enforcement also has an inspection program for multiple unit housing facilities. (See Finding I). The SJFD, through its R-1 Fire Inspection programs, inspects most of the same buildings Code Enforcement inspects. As part of its Multiple Housing Program, Code Enforcement issues Residential Occupancy Permits (permits) to owners of all apartment buildings (three units or more), hotels and motels, guest houses, residential care facilities, residential service facilities, emergency residential shelters, and fraternities and sororities in San Jose. The Code Enforcement Division provides health and safety code compliance inspection services on multiple housing buildings within the City.

The SJFD Is Not Inspecting 10,800 Units

The SJFD's multiple housing inspection list is not accurate and complete. Specifically, our review identified approximately 850 multiple housing locations with approximately 10,800 units that are on Code Enforcement's Roster and/or in the City's Sewer Service and Use Charge database but not on the SJFD's inspection list. We also identified billing problems associated with recovering the costs of fire inspection services. Specifically, some owners are billed for fire inspection services they do not receive and other owners receive fire inspection services for which they are not billed at all.

Our analysis indicates that a significant number of multiple housing sites may not have occupancy permits or be subject to SJFD inspections. The City Sewer Service and Use database is used for billing sewer customers and according to Information Technology Department staff it is the most accurate database in the City. When we compared the number of apartment sites in the Sewer Service and Use database to the SJFD's inspection list we found that the SJFD's inspection list does not include all eligible multiple unit housing facilities. We also compared the SJFD's list of R-1 SJFD non-permitted sites to Code Enforcement's Roster and found approximately 850

multiple housing locations with approximately 10,800 units that are on Code Enforcement's Roster and/or in the City's Sewer Service and Use database but are not on the SJFD's inspection list. Of these 850 locations about 315 locations with 3,400 units are on Code Enforcement's Roster but not on the SJFD's list of R-1 SJFD non-permitted inspection sites. As a result, the SJFD is not performing mandated fire safety inspections on all multiple housing buildings that meet the conditions for the R-1 inspection program.

We provided a list of these multiple housing locations to the SJFD to verify that these sites should, in fact, be on their inspection list.

#7 We recommend that the SJFD add to its fire inspection list those multiple unit housing facilities that were identified from matching the fire inspection list against Code Enforcement's Multiple Housing Roster and the City's Sewer Service and Use database. (Priority 1)

Billing Problems With SJFD Inspection Services

Our review identified billing problems associated with recovering the cost of fire inspection services provided to multiple housing locations. Specifically, we identified the following problems:

- Approximately 3,400 units are on the Code Enforcement Division's Roster but are not on the SJFD's inspection list. The owners of these properties pay $4.90 per unit for fire inspection services they do not receive and

- Approximately 2,500 units are on the R-1 SJFD non-permitted inspection list but are not on Code Enforcement's Roster. The owners of these units receive fire inspection services for which they do not pay.

#8 We recommend that the SJFD and the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement develop procedures to ensure that owners of multiple unit housing facilities are properly billed for the fire inspection services they receive. (Priority 2)

SJFD Does Not Receive Confirmation Of
Newly Constructed Multiple Unit Housing Facilities

Our review found that the SJFD maintains its own database of units they should be inspecting. In addition, the SJFD is involved in the planning and inspecting of new multiple housing building construction projects. According to a SJFD Battalion Chief, the SJFD reviews building plans for new R-1 occupancy buildings and conducts inspections of these buildings upon completion. Specifically, the Municipal Code requires that the Bureau review all building plans, excluding single family and duplex residences, submitted for building permits. The Bureau reviews these plans for conformance with State and local laws relating to the prevention of fire, the storage of hazardous materials, protection of life and property against fire, explosion, exposure to hazardous materials, and panic.

However, our review found that additional controls are needed to ensure that the SJFD receives timely, accurate, and reliable information on newly constructed multiple housing buildings. Similar to Code Enforcement (see Finding I), there is no internal policy or procedure between the SJFD and the Building Division for sharing information on newly completed multiple housing buildings. Consequently, the SJFD does not receive any formal notification of newly completed multiple housing buildings.

#9 We recommend that the SJFD and the Building Division of the Department of Planning, Building, and Code Enforcement develop internal procedures to establish and document the process for sharing information on newly constructed multiple unit housing facilities. (Priority 2)

#10 We recommend that the Building Division of the Department of Planning, Building, and Code Enforcement use Certificates of Occupancy to notify the SJFD of newly constructed multiple housing buildings. (Priority 2)

SJFD Has Not Reconciled Its Inspection List Against Code Enforcement's Roster And/Or The City's Sewer Service And Use Database

Our review also found that the SJFD needs to improve the accuracy and completeness of its inspection list by periodically matching its list against other City databases, such as Code Enforcement's Roster and the City's Sewer Service and Use database. SJFD officials told us that they have never reconciled their inspection list with any other City databases, such as the Sewer Service and Use database and Code Enforcement's Roster. It should be noted that in accordance with Recommendation #4 (Finding I), Code Enforcement will reconcile its Roster to the Sewer Service and Use database. In our opinion, once this occurs, SJFD should reconcile its inspection list to Code Enforcement's Roster. Until Recommendation #4 is implemented, SJFD should reconcile its inspection list to both databases.

#11 We recommend that when Recommendation #4 (Finding I) is implemented, SJFD periodically compare its inspection list against Code Enforcement's Roster and add any exceptions to its inspection list. Until Recommendation #4 is implemented, SJFD should reconcile its inspection list to Code Enforcement's Roster and the City's Sewer Service and Use database. (Priority 2)

CONCLUSION

Our review revealed that the SJFD's inspection list is incomplete. We found that the SJFD is not inspecting about 850 multiple unit housing facilities with about 10,800 units that it should be inspecting. We also found that about 315 multiple unit housing facilities with 3,400 units are paying $4.90 per unit for SJFD inspection services they do not receive and that owners of about 2,500 multiple housing units are not paying for the SJFD inspection services they receive. A complete and accurate SJFD inspection list would help ensure that owners of multiple unit housing facilities properly pay for fire inspection services and the SJFD inspects all of the multiple unit housing facilities the State Fire Marshal requires.

RECOMMENDATIONS

We recommend that the SJFD,

Recommendation #7:

Add to its fire inspection list those multiple unit housing facilities that were identified from matching the fire inspection list against Code Enforcement's Multiple Housing Roster and the City's Sewer Service and Use database. (Priority 1)

We recommend that the SJFD and the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement,

Recommendation #8:

Develop procedures to ensure that owners of multiple unit housing facilities are properly billed for the fire inspection services they receive. (Priority 2)

We recommend that the SJFD and the Building Division of the Department of Planning, Building, and Code Enforcement,

Recommendation #9:

Develop internal procedures to establish and document the process for sharing information on newly constructed multiple unit housing facilities. (Priority 2)

We recommend that the Building Division of the Department of Planning, Building, and Code Enforcement,

Recommendation #10:

Use Certificates of Occupancy to notify the SJFD of newly constructed multiple housing buildings. (Priority 2)

We recommend that the SJFD,

Recommendation #11:

Periodically compare its inspection list against Code Enforcement's Roster and add any exceptions to its inspection list when Recommendation #4 (Finding I) is implemented. Until Recommendation #4 is implemented, SJFD should reconcile its inspection list to Code Enforcement's Roster and the City's Sewer Service and Use database. (Priority 2)

CITY OF SAN JOSE - MEMORANDUM

TO: Gerald A. Silva
City Auditor

FROM: James R. Derryberry, Director
Planning, Building & Code Enforcement

Robert Dorman
Fire Chief

RECEIVED
AUG 0 6 1998
CITY AUDITOR

RE: SEE BELOW

DATE: August 4, 1998

APPROVED: Kay Winer

DATE: 8/6/98

SUBJECT: The Administration's Response *to An Audit of the Multiple Housing Roster Maintained by the Code Enforcement Division of the Department of Planning, Building and Code Enforcement.*

BACKGROUND

The Department of Planning, Building and Code Enforcement, the Fire Department, and the City Manager's Office have reviewed the audit report and are generally in agreement with the findings of the audit. Specific responses to the recommendations are listed below.

We provide additional clarification in three areas: the difficulties encountered in reconciling the Multiple Housing Roster to the City Sewer Service and Use database, existing controls other than the Certificate of Completion in ensuring that new buildings are included in the Multiple Housing Roster and the definition of condominium. Comments on these three areas are included under recommendations 1, 2, 4 and 5. We also provide discussion under Recommendation #6 which recommends consideration of modifying the Multiple Housing Program to include other types of rental properties.

It is important to note that the Administration's response included under Recommendations 1 and 2 explains why $165,000, instead of $263,000, as the Report presents, is a more representative number for additional revenue.

Recommendation #1: *Code Enforcement Division follow-up on multiple housing units without Residential Occupancy Permits that were identified from matching the Multiple Housing Roster to the Sewer Service and Use database beginning with complexes with more than 100 units.*

The Department concurs with this recommendation and has placed on the roster all those complexes over 80 units that belong on the roster. Code Enforcement has completed additional research on the Auditor's list of 10,462 units on the Sewer database which do not appear on the housing roster. We

concur that 6,670 units should be included on the roster. These units are predominately projects that were developed with tentative condominium maps and consequently were not put on the roster due to the question of their status as apartments or condominiums.

Careful research of the list, beginning with the addresses comprising the largest number of units, showed that many addresses on the Auditor's list were already on the Multiple Housing Roster under a different street address. The reason for the different addresses is discussed in the response to Recommendation #4, paragraph two. The Auditor's list also includes a number of mobile home parks, vacant parcels and parcels with duplexes or cottages that do not require a Residential Occupancy Permit. Of the units verified, it was found that 70 % of the addresses with units of 51 or more should be on the roster. For addresses of 15 to 50 units, 39% should be on the roster. An additional 28 addresses, ranging from 14 to 8 units, were checked and none of these were found to be valid additions to the Multiple Housing Roster. These buildings are already on the roster under different addresses or are types of units which are not subject to Residential Occupancy Permits. The Department has presently researched all but 1,212 units and has found 7,006 units should be added to the Roster. This represents approximately $165,000 of additional revenue. Based on staff's research, we can conclude that very few of the remaining units will need to be added to the Roster. Code Enforcement will complete its research of the remaining units by October 1, 1998 and will add any valid units to the roster.

Recommendation #2: *Develop internal procedures to establish and document the process for sharing information on newly constructed multiple housing buildings, including all apartments, hotels and motels, guesthouses, residential care facilities, residential service facilities, emergency residential shelters and fraternities and sororities in San Jose.*

The Department concurs with this recommendation; however, the information contained in the audit stated that 2,200 apartment units are currently under construction and are at risk of not being included in the Multiple Housing Roster. Code Enforcement has already taken action to eliminate this risk. Last year, the Department recognized a need for a staff Project Conformance position to review all completed building projects for conformance with site development permit requirements for Planning and Code Enforcement issues. This position was proposed and approved for funding in the 1998-99 budget process. Part of the scope of duties of this Project Conformance position is to review all completed projects subject to Residential Occupancy Permits and to verify that the permit has been issued. All of the apartment units currently under construction will be reviewed for project conformance immediately following final building permit approval. Consequently there is little risk that these newly constructed apartment units would not be included on the roster.

The Administration believes that the 2,200 units discussed above should not be included in the revenue estimate. By deleting the 2,200 units and having a smaller number of units missing from the Roster after Code Enforcement's

additional research, the Administration believes that a revenue estimate of $165,000 instead of $263,000 is more representative.

Internal procedures have been written detailing the process for transmittal of information on newly constructed or remodeled residential units subject to inclusion on the Multiple Housing Roster. The procedures detail the use of Certificates of Occupancy, which will be transmitted by the Building Division to both Code Enforcement and Fire Prevention upon final building inspection approval of a project. Documented procedures are already established in the Fire Department and the Planning, Building and Code Enforcement Department for reporting illegally constructed or converted apartment units to Code Enforcement for enforcement action.

Recommendation #3: *The Building Division transmit Certificates of Occupancy to Code Enforcement for newly constructed multiple housing buildings.*

The Department concurs with this recommendation and in fact had recommended to the Auditor at the exit conference the use of the Certificate of Occupancy as the most reliable mechanism for adding new units to the multiple housing roster. Procedures have already been established by the Building Division for the issuance and transmittal to Code Enforcement and the Fire Department of Certificates of Occupancy for all multi-family building types that are subject to the Multiple Housing Inspection Program.

Recommendation #4: *Code Enforcement on a regular and periodic basis, reconcile the Multiple Housing Roster with the City's Sewer Service and Use database.*

The Department concurs with this recommendation. Upon conferring with the Finance Department it was agreed that reconciliation will be done in the Fall. Finance will be able to assist with reconciliation at that time and the Multiple Housing Roster can be updated and corrected, if necessary, in time for the annual Residential Occupancy Permit billing cycle which begins in mid-November.

Use of the Sewer Service database for reconciliation of the Multiple Housing is problematic because the design and use of the database are not directly comparable with the Multiple Housing Roster. Sewer Service database has one record for each parcel , includes some older Mobile Home parks and combines some residential and commercial uses on the same record. Residential Occupancy Permits are required for every residential building with three or more dwelling units and often have multiple addresses or addresses which differ from Sewer Service. Occupancy Permits are not required for mobile home parks, detached buildings with two or fewer dwelling units on the same parcel or residential and commercial combinations with fewer than three residential units per building. Although reconciliation of the two databases can be done on an Assessor's Parcel Number basis, there will still be a large number of

exceptions due to the above factors. Staff believes that after the first year's reconciliation, future year's exceptions should be minimal.

Recommendation #5: *Develop a clear definition of what elements constitute a condominium. At a minimum Code Enforcement's definition of a condominium should include a developer 1) filing a tentative condominium map with the Planning Department; 2) filing a final condominium map with the City; and 3) recording a final condominium map with the County.*

The Department concurs with this recommendation and has incorporated a definition of when a multiple housing unit is a condominium for purposes of the Multiple Housing Program so that Code Enforcement will know if it should issue a Residential Occupancy Permit and conduct inspections. However, the Department believes it is necessary to clarify the Report's discussion of the definition of a condominium.

It is not uncommon for a particular word to have different meanings in different contexts. The Report discusses the State definition of condominium applicable to laws regulating the conversion of structures to condominiums. However, the Report does not make clear that the Multiple Housing Program has historically operated under another definition of condominium.

The Multiple Housing Program definition of condominium has historically focused on whether a residential project is zoned as a condominium. Application of this definition means that residential projects zoned as condominiums are excluded from the Multiple Housing Program even though some may, in reality, operate like apartments. In 1993, the staff recommended to the City Council that the Multiple Housing Program be expanded to include residential projects that are zoned as condominiums but which were being operated as apartments. A number of organizations, including the Building Industry Association, the Tri-County Apartment Association, the San Jose Real Estate Board, Community Management Services, Inc. and the Executive Council of Homeowners, opposed the recommendation. The City Council ultimately rejected staff's recommendation.

As reflected in the Report, Code Enforcement has been excluding from the Multiple Housing Program residential projects that have filed a tentative map for condominium. However, as the Report indicates, the filing of such a tentative subdivision map does not necessarily mean that the project ultimately obtains the zoning to be a condominium. Accordingly, in order to be consistent with the definition of condominium applicable under the Multiple Housing Program, units of three or more should be placed on the Multiple Housing Roster except for developments that have obtained approval through the City of San Jose of a final subdivision map for a condominium and have recorded a final subdivision map for a condominium with the County of Santa Clara. These guidelines ensure that only multiple family buildings actually zoned as condominiums are excluded from the Program.

Recommendation #6: *The City Council consider modifying the Multiple Housing Program to include other types of rental properties.*

The Department proposed to Council in 1993 a program to expand the Multiple Housing Program to include condominiums that were used as rental apartments. Council direction was clear that it did not want to include these units in the program. Code Enforcement has followed that policy direction. Consequently, the present approach is that Code Enforcement responds only to complaints from condominium units. The number of complaints from condominium units is few. A sample of 6,000 units from the Auditor's list was checked for record of complaints. Only a total of 43 complaints were logged on these units since July 1, 1982.

However, as we have reviewed the Multiple Housing Program over the last year, there is evidence of a need to extend an inspection program to duplex units. There are many examples of poorly maintained and potentially hazardous rental duplexes in San Jose, including some substandard housing conditions in rental duplex units on Hellyer Place that were featured on Channel 11 and in the Mercury News earlier this year. Code Enforcement inspects duplex units only upon receipt of a complaint. If tenants do not complain, substandard conditions are not seen and property owners are not required to make necessary repairs

Recommendation #7: *SJFD add to its fire inspection list those multiple unit housing facilities that were identified from matching the fire inspection list against Code Enforcement's Multiple Housing Roster and the City's Sewer Service and Use database.*

SJFD concurs with the recommendation to have the Multiple Housing Roster and the City's Sewer Service and Use database matched against the fire inspection list. As Code Enforcement indicates in recommendation #1, they are reconciling their data base with the City's Sewer Service and Use database. After Code Enforcement has completed its reconciliation, the Fire Department will reconcile its database against Code Enforcement's Multiple Housing Roster database prior to beginning its annual R-1 units inspection cycle in the fall of 1998. An R-1 unit for Fire Department purposes is any hotel or motel with six or more guest rooms, apartment houses with three or more units and congregate residences each accommodating more than 10 persons. By conducting the reconciliation after Code has completed its reconciliation with the Sewer Service and Use database, duplication of effort is avoided.

Since the Fire Department received the Auditor's Office initial list of multiple housing locations which were on either Code Enforcement's Multiple Housing Roster or the Sewer Service and Use database but not on the Fire inspection list, it has been researching the locations. The Fire Department researched the database and physically inspected various sites which resulted in the modification of the Auditor's Office initial numbers. We provide a table on the next page which presents those changes:

Initial List Provided by Auditors	After Fire Department Research
• 7,900 multiple housing units are paying $4.90 per unit for SJFD inspection services they do not receive	• 3,400 units remained. 4,500 were on the inspection list. These were large apartment complexes which used the rental office address to represent the entire complex and did not match with the address in other databases. However units were being inspected annually. The 3,400 remaining were physically checked and for the most part not on list. These were converted Victorians or units above store fronts.
• 3,900 multiple housing units are paying twice for SJFD inspection services	• 0 units remained. These units are high rises and receive two different inspections: a basic inspection from the line companies that includes checking fire extinguishers, exit pathways and ensuring adequate protection for gas meters and electrical panels; and a more comprehensive technical inspection which includes inspecting emergency generators, pumps and reviewing and implementing evacuation plans, checking alarm systems and sound powered phones. The State Fire Marshall requires a special report for the high rise inspections.
• 3,000 multiple housing units are not paying for SJFD inspection services they receive.	• 2,500 units remained. These are units that the line companies' inspections identified that are not on the Multiple Housing Roster, e.g., 1131 units in The Woods, built to be condominiums, but are actually rentals. (Code Enforcement bills from its Multiple Housing Roster $23.60/unit for a Residential Occupancy Permit, of which $4.90 is Fire's share of the fee.)

SJFD is in the process of entering the 3,400 housing locations from the Multiple Housing Roster that are not being inspected into Fire's database. After Code Enforcement completes its work with the City's Sewer Service and Use database, the Fire Department will reconcile its database with Code Enforcement's.

Recommendation #8: *SJFD and the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement develop procedures*

to ensure that owners of multiple housing facilities are properly billed for the fire inspection services they receive.

SJFD and the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement concurs with this recommendation. As discussed in Recommendation #7 above, the SJFD is adding the 3,400 units to its database. In the Fall, after Code Enforcement reconciles the Multiple Housing Roster with the Sewer Service and Use database, the Fire Department will reconcile its database to the Multiple Housing Roster. Additionally, after completing the annual R-1 inspection cycle, the Fire Department will refer any exceptions to Code Enforcement to add to the Multiple Housing Roster.

Recommendation #9: *SJFD and the Building Division of the Department of Planning, Building, and Code Enforcement develop internal procedures to establish and document the process for sharing information on newly constructed multiple unit housing facilities.*

SJFD and the Building Division of the Department of Planning, Building, and Code Enforcement concur with this recommendation. Code Enforcement has already established a procedure to include the Fire Prevention Bureau of the SJFD in the distribution of the Certificates of Occupancy issued for completed units that qualify for the Multiple Housing Program.

Recommendation #10: *Building Division of the Department of Planning, Building, and Code Enforcement use Certificates of Occupancy to notify the SJFD of newly constructed multiple housing buildings.*

The Building Division of the Department of Planning, Building, and Code Enforcement concurs and has already implemented this recommendation.

Recommendation #11: *When Recommendation #4 is implemented, SJFD periodically compare its fire inspection list against Code Enforcement's Roster and add any exceptions to its inspection list. Until Recommendation #4 is implemented, SJFD should reconcile its inspection list to Code Enforcement's Roster and Sewer Service and Use database.*

SJFD concurs with this recommendation and will annually reconcile its fire inspection list against Code Enforcement's Multiple Housing Roster prior to beginning the R-1 inspection cycle in the fall.

The Administration appreciates the work performed by the Auditor's Office.

James R. Derryberry, Director
Planning, Building & Code
Enforcement

for Wm Stoll
Robert Dorman
Fire Chief

OFFICE OF THE CITY AUDITOR
COMMENTS ON THE RESPONSE OF THE CITY ADMINISTRATION TO AN AUDIT OF THE MULTIPLE HOUSING ROSTER MAINTAINED BY THE CODE ENFORCEMENT DIVISION OF THE DEPARTMENT OF PLANNING, BUILDING, AND CODE ENFORCEMENT

The following comments are presented to expand upon, clarify, and correct statements in response of the City Administration to *An Audit of the Multiple Housing Roster Maintained by the Code Enforcement Division of the Department of Planning, Building, and Code Enforcement.*

Administration's Response – Page 1, Paragraph 3

It is important to note that the Administration's response included under Recommendations 1 and 2 explains why $165,000, instead of $263,000, as the Report presents, is a more representative number for additional revenue.

Administration's Response – Page 2, Paragraph 4

The Administration believes that the 2,200 units discussed above should not be included in the revenue estimate. By deleting the 2,200 units and having a smaller number of units missing from the Roster after Code Enforcement's additional research, the Administration believes that a revenue estimate of $165,000 instead of $263,000 is more representative.

Auditor's Comment

On page 17 of the Audit Report we state:

"**Additional Revenues Can Result In More Staffing**

We identified 2,200 apartment units that are currently under construction in the City. Given that Code Enforcement is not receiving sufficient information on new multiple housing construction, there is a risk that Code Enforcement will not be notified when these 2,200 units are completed. (Emphasis added)

If Code Enforcement billed the owners of the 2,200 units currently under construction and the existing 6,670 to 8,940 non-roster units we identified, the City could realize as much as $209,000 to $263,000 in additional annual revenues."

It should be noted that we included the 2,200 units under construction in our estimated additional revenues because of the strong possibility that Code Enforcement would not be notified when these units were completed. Further, our estimated additional revenues ranged from $209,000 to $263,000. Finally, the fact that the Administration is now confident that the 2,200 new units will be added to Code Enforcement's Roster is directly attributable to the benefit the City derived from the audit process.

Administration's Response – Page 4, Paragraph 1

Recommendation #5: Develop a clear definition of what elements constitute a condominium. At a minimum Code Enforcement's definition of a condominium should include a developer 1) filing a tentative condominium map with the Planning Department; 2) filing a final condominium map with the City; and 3) recording a final condominium map with the County.

Auditor's Comment

It should be noted that Administration has responded to a recommendation in a draft report. The recommendation in our final report reads as follows:

Recommendation #5

We recommend that Code Enforcement define condominiums and use that definition for program purposes. (Priority 2)

Administration's Response – Page 4, Paragraph 3

However, the Report does not make clear that the Multiple Housing Program has historically operated under another definition of condominium.

Auditor's Comment

We disagree that the report does not make clear that the Multiple Housing Program has historically operated under another definition of condominium.

On page 19, the report reads:

"Our review found that Code Enforcement has used a different definition of condominiums. Code Enforcement officials told us that they categorized an apartment project as condominiums if the developer filed only a tentative condominium map. This definition is neither consistent with State law, the Municipal Code, nor the development process as it applies to condominiums."

Administration's Response – Page 6

Initial List Provided by Auditors	After Fire Department Research
• 7,900 multiple housing units are paying $4.90 per unit for SJFD inspection services they do not receive	• 3,400 units remained. 4,500 were on the inspection list. These were large apartment complexes which used the rental office address to represent the entire complex and did not match with the address in other databases. However units were being inspected annually. The 3,400 remaining were physically checked and for the most part not on list. These were converted Victorians or units above store fronts.
• 3,900 multiple housing units are paying twice for SJFD inspection services	• 0 units remained. These units are high rises and receive two different inspections: a basic inspection from the line companies that includes checking fire extinguishers, exit pathways and ensuring adequate protection for gas meters and electrical panels; and a more comprehensive technical inspection which includes inspecting emergency generators, pumps and reviewing and implementing evacuation plans, checking alarm systems and sound powered phones. The State Fire Marshall requires a special report for the high rise inspections.
• 3,000 multiple housing units are not paying for SJFD inspection services they receive.	• 2,500 units remained. These are units that the line companies' inspections identified that are not on the Multiple Housing Roster, e.g., 1131 units in The Woods, built to be condominiums, but are actually rentals. (Code Enforcement bills from its Multiple Housing Roster $23.60/unit for a Residential Occupancy Permit, of which $4.90 is Fire's share of the fee.)

Auditor's Comment

As part of the normal audit process the City Auditor provided the information shown as "Initial List Provided by Auditors" to the SJFD for review and comment purposes. Based upon subsequent discussions and interactions with the SJFD the City Auditor amended the final report to reflect the information shown as "After Fire Department Research."

It should be noted that it is unprecedented and rather puzzling for the Administration to include in its written response, information generated during the audit that the City Auditor clarified, amended or deleted from the final audit report. The City Auditor has a rigorous quality assurance process that is designed to ensure audit report accuracy, completeness and fairness to the auditee. More than anything else, the information presented on page 6 of the Administrations' written response demonstrates that the City Auditor's quality assurance process works exactly as intended.

APPENDIX A

DEFINITIONS OF PRIORITY 1, 2, AND 3 AUDIT RECOMMENDATIONS

The City of San Jose's City Administration Manual (CAM) defines the classification scheme applicable to audit recommendations and the appropriate corrective actions as follows:

Priority Class[1]	Description	Implementation Category	Implementation Action[3]
1	Fraud or serious violations are being committed, significant fiscal or equivalent non-fiscal losses are occurring.[2]	Priority	Immediate
2	A potential for incurring significant fiscal or equivalent fiscal or equivalent non-fiscal losses exists.[2]	Priority	Within 60 days
3	Operation or administrative process will be improved.	General	60 days to one year

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1 The City Auditor is responsible for assigning audit recommendation priority class numbers. A recommendation which clearly fits the description for more than one priority class shall be assigned the higher number. **(CAM 196.4)**

2 For an audit recommendation to be considered related to a significant fiscal loss, it will usually be necessary for an actual loss of $25,000 or more to be involved or for a potential loss (including unrealized revenue increases) of $50,000 to be involved. Equivalent non-fiscal losses would include, but not be limited to, omission or commission of acts by or on behalf of the City which would be likely to expose the City to adverse criticism in the eyes of its citizens. **(CAM 196.4)**

3 The implementation time frame indicated for each priority class is intended as a guideline for establishing implementation target dates. While prioritizing recommendations is the responsibility of the City Auditor, determining implementation dates is the responsibility of the City Administration. **(CAM 196.4)**

APPENDIX B

CITY OF SAN JOSE-MEMORANDUM

TO:	Eduardo Luna City Auditor Office	FROM:	Ed Gawf, Deputy Director Code Enforcement Division
SUBJECT:	Code Enforcement Program Accomplishments	DATE:	October 23, 1997

APPROVED: DATE:

On April 5, 1995, the Code Enforcement function was transferred to the Department of Planning and Building. Below is an outline of some of the changes and accomplishments we have made since that time.

1. Changed the General Code Complaint Response Strategy.
2. Consolidated all Code Enforcement Offices.
3. Installed local area network, connecting all personnel in Code Enforcement.
4. Established a formal filing system for the Division utilizing Municipal Uniform Filing System.
5. Hired Bilingual Inspectors.
6. Established organized training program (Administrative Remedies, Vector Control, Concrete Jungle, etc.).
7. Development of written Policy and Procedure Manual.
8. Expanded Outreach and Education Efforts.
   - Developed and distributed multi-language Code Enforcement outreach pamphlets.
   - Created and implemented a Code Enforcement Web page and on-line service response.
   - A newsletter "Code Enforcement News" was created and distributed to all known neighborhood associations, home owners associations and community leaders.
   - Attended approximately 100 neighborhood meetings.
9. Reorganized Code Enforcement Supervisor responsibilities creating five geographic service areas.
10. Developed and conducted a customer service survey. It will be conducted upon case closure and annually. It will also provide a vehicle to obtain customer opinion on policies and topical subjects.
11. Integrated three Building Inspectors and a Permit Technician into Code Enforcement creating a Building Code Compliance Team.
12. Updated phone system and increased customer responsiveness through direct lines to inspectors.
13. Expanded use of the Administrative Citation process for quicker complaint resolution.
    - Lawn Parking
    - Yard Waste
    - Blight
    - Overflowing Trash Bins

14. Developed a "Ride-Along" program for residents, staff, media and City Council.
15. Expanded the neighborhood bin program to include the Mayor's Spring Cleanup, conducting 25 - 30 cleanups per year.
16. Developed and conducted a "Multiple Housing Training Program" for property owners.
17. Code Enforcement Pilot Program Budget.
18. Consolidated the Solid Waste enforcement into Code Enforcement.
19. Transition the animal code enforcement to the Humane Society inclusive of a new procedure on the vicious dog hearing process.
20. Streamlined Private Property Vehicle Abatement.
21. Conducted a citywide series of focus groups which resulted in the Mayor's Focus Group Report.
22. Drafted a new Automobile Dismantling Ordinance which was adopted by the City Council.
23. Recognized by the state as a leader in implementing the Abandoned Vehicle Abatement Service Authority
24. Implemented new, more performance oriented, tow contracts with the six zone tow contractors.

<u>Projects Underway:</u>

1. Multiple Housing Program reorganization.
   - Creation of a two tier inspection cycle
   - Regular blight inspections of priority apartment units.
   - Evaluation of all apartment complexes in San Jose
2. Creating Performance Measures for each inspector and program.
3. Developing a new data base system for tracking and automating code enforcement functions.
4. Expansion of the Code Enforcement Imaging System (LEA).
5. Mayor's Focus Group Implementation.
6. Revision of the Blight Ordinance.
7. Development of new Ordinances:
   - Relocation rights for tenants of illegal dwelling units.
   - Vacant neglected commercial buildings regulation.
8. Implementation of the Automobile Dismantling Permit process.
9 Complete a Municipal Comparison Study.
10. Develop recommendations on City's approach to completing the URM program.

division:proaccom