



Report of the Auditor General of the Ville de Montréal to the City Council and to the Urban Agglomeration Council

For the Year Ended December 31, 2014

4.7

COMPLIANCE WITH LAWS AND BY-LAWS



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List of Acronyms

CDN-NDG Côte-des-Neiges–Notre-
Dame-de-Grâce

DAUSE Direction de l'aménagement
urbain et des services aux
entreprises

4.7. Compliance with Laws and By-laws

1. Introduction

Because of the powers conferred on boroughs, particularly by the *Charter of Ville de Montréal*¹ and by City council powers delegated to them, they conduct several activities and make a wide range of services available to the citizens in their respective territories. In providing these activities and services, boroughs must enforce and comply with a large number of laws and by-laws. Laws and by-laws may concern, for example, the issuing of permits for occupancy of the public domain, as well as the conducting of building inspections to ensure the presence of certain equipment.

The boroughs face a plethora of legal and regulatory requirements, each with its share of complexity and distinctive characteristics, which increases the risk of non-compliance. Situations of non-compliance can have serious consequences that can translate into poor management decisions, financial losses for the Ville de Montréal (the City), claims and lawsuits, a dissatisfied citizenry, public criticism of government authorities and a negative image of the City or borough, for example. Apart from these risks that may result from non-compliance with laws and by-laws, the failure to apply certain aspects of the regulations adopted by City council or by a borough council also raises several issues.

The implementation of measures designed to ensure compliance with laws and by-laws is now an integral part of good management practices meant to mitigate these non-compliance risks. All these laws and by-laws can prove quite complex at times, which means that officials in charge of activities must develop and maintain knowledge and implement control mechanisms to ensure compliance.

2. Purpose and Scope of the Audit

The purpose of our audit was to examine the mechanisms put in place by the boroughs to ensure compliance with certain laws and by-laws governing their activities and the services they must provide to citizens.

To ensure the application of and compliance with regulations, we focused more specifically on the control mechanisms put in place to detect situations of non-compliance, the presence of measures providing for corrective action in the event of non-compliance, means of

¹ CQLR, chapter C-11.4.

informing and training employees assigned to targeted activities on the regulations and, lastly, the accountability mechanisms established.

Our examination mainly dealt with the regulatory provisions related to the temporary occupancy of the public domain, including regulatory provisions on the charges associated with such occupancy. Our examination also dealt with provisions surrounding the protection of buildings against sewer backups. Our audit work was conducted in the Ville-Marie and Côte-des-Neiges–Notre-Dame-de-Grâce (CDN-NDG) boroughs and covered the following by-laws:

- For the Ville-Marie borough: the *By-law concerning the occupancy of the public domain*² (R.B.C.M., c. O-0.1 of the former Ville de Montréal), regarding the territory of the Ville-Marie borough; and the *By-law concerning fees–fiscal 2014*³ (by-law No CA-24-206);
- for the CDN-NDG borough: the *By-law concerning the occupancy of the public domain*⁴ (R.B.C.M., c. O-0.1 of the former Ville de Montréal), regarding the territory of the CDN-NDG borough; and the *By-law concerning fees* (by-law No. RCA14 17222)⁵ as well as the *By-law concerning fees* (by-law No. RCA12 17199);⁶
- For the two boroughs, the *By-law concerning the protection of buildings against sewer back-up*⁷ (by-law No. 11-010) and the *By-law concerning the delegation of City council powers to borough councils* (No. 02-002).⁸

For the two selected boroughs, our work was more specifically focused on the Direction de l'aménagement urbain et des services aux entreprises (DAUSE) and the Direction des travaux publics. Our audit also covered the following periods for the two selected boroughs:

- The *By-law concerning the occupancy of the public domain*: the first eight months of 2014 (up until August 31, 2014);
- The *By-law concerning the protection of buildings against sewer back-up*: 2013 and the first eight months of 2014 (up until August 31, 2014).

For some elements, we also took into account information prior to those years. It should also be noted that our audit took into account information that was transmitted and communicated to us up until February 2015.

² Borough council, R.B.C.M., c. O-0.1 of the former Ville de Montréal, October 17, 2001.

³ Borough council, by-law No.CA-24-206, December 10, 2013.

⁴ Borough council, R.B.C.M., c. O-0.1 of the former Ville de Montréal, October 17, 2001.

⁵ Borough council, by-law No.RCA14 17222, February 10, 2014.

⁶ Borough council, by-law No.RCA12 17199, February 6, 2012.

⁷ City council of the Ville de Montréal, by-law No.11-010, June 20, 2011.

⁸ City council of the Ville de Montréal, by-law No.02-002, December 18, 2001.

3. Summary of Findings

Our audit revealed sectors where improvements should be made with regard to compliance with by-laws. For the two by-laws examined, the following points provide an overall summary of our findings for the two boroughs.

- *By-law concerning the temporary occupancy of the public domain* (Section 4.1):
 - Several permit files show a non-compliant fee calculation;
 - The control mechanisms in place do not make it possible to ensure that the temporary occupancy is consistent with the permit issued;
 - The mechanisms in place do not make it possible to identify all situations of temporary occupancy of the public domain without a permit;
 - The control mechanisms in place do not always make it possible to ensure the accuracy of the fees;
 - The control mechanisms in place do not make it possible to comply with the regulations concerning the safety measures for persons involved;
 - The application of the fees for a road obstruction refers to an appendix that is out of date;
 - Training needs are not specifically determined.

- *By-law concerning the protection of buildings against sewer back-up* (Section 4.2):
 - The by-law is not applied in the case of new buildings and buildings in which work to change a plumbing system is conducted;
 - The number of inspections performed is low compared to the number of buildings in which a sewer back-up occurred;
 - Non-compliances have been observed, but there is no evidence that notices have been sent to require that corrective measures be taken;
 - A follow-up subsequent to the inspection or the notice of non-compliance is not always conducted systematically or promptly;
 - Training needs have not specifically been determined.

- *Accountability mechanisms* (Section 4.3):
 - An accountability report related to compliance with the by-laws targeted by this audit is incomplete.

4. Detailed Findings and Recommendations

In carrying out the activities and providing the services related to the occupancy of the public domain and the protection of buildings against sewer back-ups, boroughs must comply with the by-laws governing them. To correctly apply these by-laws, mechanisms must be put in place to enable the concerned staff members to enforce them properly.

Compliance with laws and by-laws requires that each business unit manager take the necessary measures to reduce the risks of non-compliance by implementing effective controls. This also requires making sure that the staff is properly informed and trained on the application of the by-laws that affect them in the performance of their activities. Lastly, accountability mechanisms must be introduced to inform the municipal administration regarding compliance with these by-laws.

4.1. Regulations on the Temporary Occupancy of the Public Domain

4.1.A. Background and Findings

The public domain mainly refers to streets, alleys, sidewalks, off-street bicycle paths and parks. The main purpose of regulations concerning the occupancy of the public domain is to manage this public space, on the one hand by authorizing its use through the issuing of a permit, and on the other by requiring the implementation of security measures related in particular to signage, circulation, and protected access for pedestrians and vehicles. Lastly, effective management of the occupancy of the public domain prevents two applicants from arguing over the use of the public domain.

Application of these regulations falls under the jurisdiction of the boroughs, pursuant to the *Charter of Ville de Montréal*.⁹

Under these regulations, occupancy of the public domain is forbidden without an authorization being given in compliance with the by-law, namely without a permit.¹⁰ Regulations on the occupancy of the public domain include three types of occupancy. Continuous occupancy for more than a year is qualified as permanent. When occupancy spans no longer than seven months and is required every year, it is considered periodic. Lastly, when occupancy is continuous, but for a period of less than one year, it is deemed temporary.

⁹ Article 67.1.

¹⁰ Article 2 of the *By-law concerning the occupancy of the public domain* (for the two boroughs).

This audit deals specifically with temporary occupancy of the public domain, which, according to the by-laws, mainly covers:

- the depositing of material or merchandise;
- the installation of devices, containers, scaffolding, pedestrian barriers, stages, stands or other structures or equipment.

Furthermore, the permit fees for the temporary occupancy of the public domain can be found in the *By-law concerning fees*,¹¹ which also falls under the jurisdiction of the borough councils.¹² The by-laws on the fees for the two selected boroughs are essentially the same when it comes to the fee setting parameters. The main difference is in the fee amounts. Fees are generally reviewed every year.

In order to show the scope of permits issued for temporary occupancy of the public domain by the two selected boroughs, Tables 1 and 2 below present the number of permits and revenue recorded for the period of January 1, 2012 to August 31, 2014:

**Table 1 – Number of Permits and Revenue
Ville-Marie Borough
January 1, 2012 to August 31, 2014**

Period	Number of permits ^[b]	Revenue ^[a]
2012 (12 months)	23,921	\$5,863,505.08
2013 (12 months)	26,513	\$9,188,659.87
2014 (8 months)	19,094	\$5,416,516.33

^[a] Data source: City accounting system (SIMON) for the temporary occupancy of the public domain.

^[b] Data source: Ville-Marie borough.

**Table 2–Number of Permits and Revenue
Côte-des-Neiges–Notre-Dame-de-Grâce Borough
January 1, 2012 to August 31, 2014**

Year	Number of permits ^[b]	Revenue ^[a]
2012 (12 months)	1,469	\$768,438.35
2013 (12 months)	1,576	\$1,327,333.77
2014 (8 months)	898	\$612,246.38

^[a] Data source: City accounting system (SIMON) for the temporary occupancy of the public domain.

^[b] Data source: CDN-NDG borough.

¹¹ For the Ville-Marie borough: borough council, by-law No.CA-24-206, December 10, 2013; for the CDN-NDG borough: borough council, by-law No.RCA14 17222, February 10, 2014 and borough council by-law No.RCA12 17199, February 6, 2012.

¹² *Charter of Ville de Montréal, article 145.*

If the trend continues, we can expect an increase in the number of permits since 2012 in the Ville-Marie borough, compared to a decline in the CDN-NDG borough. To properly interpret these results, we feel it is necessary to first evaluate the extent to which the regulations are applied by each of the boroughs.

To do so, we looked at whether control mechanisms had been put in place to ensure compliance with the regulations concerning the temporary occupancy of the public domain, including regulations on the fees related to this type of permit. We also looked at whether measures had been taken to detect situations of non-compliance with the regulations. Lastly, we looked at whether the employees in the business unit involved had been informed and trained on these regulations.

4.1.1. Implementation of Control Mechanisms Aimed at Ensuring Compliance and Measures to Detect Non-Compliances

4.1.1.A. Background and Findings

In order to ensure compliance with laws and by-laws, it is important that control mechanisms be put in place. These mechanisms enable staff members to verify compliance with regulatory requirements before an action is completed or a final decision is made. Risks associated with non-compliance are thus reduced by using these control mechanisms. Such mechanisms can take many forms; for example, computer applications, control grids to be filled out by employees and reports to be produced.

Generally speaking, for the two selected boroughs, the procedure for issuing a permit is essentially the same. Before occupying the public domain, an applicant must submit a permit request to the borough. This request can be made in various ways, including by fax, by email, or in person. This request includes all the parameters set out in the *By-law concerning fees*, including the location of the occupancy, the number of days and the dimensions of the occupancy that the applicant intends to use. The person in charge of processing permit requests must be sure to have all the information required to issue the permit. To do so, that employee must record all the information in the Détour computer application, which is used as a registry of public domain occupancies. This application automatically calculates the permit amount based on the parameters and fees set out in the by-laws incorporated into it and produces the permit in question. It is based on this data recorded in the Détour computer application that the invoicing for permits for temporary occupancy of the public domain is performed monthly by the Service des finances.

It should be noted that the *By-law concerning the occupancy of the public domain* stipulates that the permit amount must be adjusted when the actual occupancy observed does not correspond to the occupancy stated in the permit request, namely when it does not comply with the permit issued. The by-law also provides for fines in the event of non-compliance with the regulations.

In terms of the temporary occupancy of the public domain, situations of non-compliance with by-laws can occur when:

- parameters or fees used to determine the permit amount are applied incorrectly;
- the actual occupancy differs from that initially authorized by the borough;
- a temporary occupancy of the public domain is not authorized;
- an occupancy of the public domain does not follow the safety rules.

To reduce the risks of such situations occurring, control mechanisms must be put in place. In the sections that follow, we will discuss fee setting for temporary occupancy, control of temporary occupancy of the public domain and management of the safety rules.

4.1.1.1. Applying the Fees for Temporary Occupancy

4.1.1.1.A. Background and Findings

When a permit request for temporary occupancy of the public domain is made, one of the important aspects to consider is the evaluation of the permit's value. This value¹³ depends on several parameters primarily found in the borough's by-law concerning fees. Among other things, the by-law concerning fees includes certain exemptions, namely for certain organizations and certain activities, that result in the permit fee being free or at a minimal cost. When no fee exemption¹⁴ applies, the following parameters, which are stipulated in the by-law, must be taken into account in the calculation of the value of the permit for temporary occupancy of the public domain:

- the basic fee for issuing the permit;
- the surface area occupied (in square metres);
- an amount for the obstruction based on the width occupied (by three-metre sections and according to the street type, whether it is a street listed in Appendix A of the *By-law concerning traffic and parking*¹⁵);

¹³ The cost of the permit may range from a hundred dollars to thousands of dollars.

¹⁴ For example: organizations that benefit from an exemption.

¹⁵ For the Ville-Marie borough: *By-law concerning traffic and parking* of the former Ville de Montréal regarding the territory of the Ville-Marie borough, R.B.C.M., chapter C-4.1. For CDN-NDG: *By-law concerning traffic and parking* of the former Ville de Montréal regarding the territory of the CDN-NDG borough, R.B.C.M., chapter C-4.1.

- an additional amount if the occupancy affects a parking space controlled by a parking metre or terminal;
- an additional amount if the occupancy obstructs parking metres, requiring them to be removed or covered;
- whether the occupancy involves an alleyway;
- the number of days that the occupancy will last.

At this stage of our audit, we examined six permit files for temporary occupancy of the public domain for each of the boroughs to determine whether the permit cost calculation had been performed in accordance with the regulations. This sample consisted of permits issued between January 1 and August 31, 2014.

4.1.1.1.1. Ville-Marie Borough

4.1.1.1.1.A. Background and Findings

Enforcement of the *By-law concerning the occupancy of the public domain*, including the *By-law concerning fees* portion relating to the temporary occupancy of the public domain, is the responsibility of the Division de la circulation et de l'inspection du domaine public, which falls under the borough's Direction des travaux publics. According to the information we obtained from the individuals we met with, these regulations are enforced by various categories of employees involved in one way or another at the various steps in the processing of a permit file. The technical agents receive and handle permit requests and are ultimately in charge of issuing the permits, while inspectors are responsible for following up on the permits. We will discuss the aspect of control following the issuing of permits in Section 4.1.1.2.

For the six files sampled, we found that the main parameters that are subject to a fee are stipulated in the *By-law concerning fees* and involve: 1) the basic fee for issuing the permit; 2) the fee for width of occupancy according to the type of street; and 3) the fee for the surface area occupied. For two of the files examined (Nos. 2 and 6), these involve parking spaces affected by the occupancy, including fees for covering parking meters. For File No. 4, a fee was charged for street closing. Lastly, for four of the files (Nos. 3, 4, 5 and 6), the fees were calculated based on an occupancy lasting several days.

For three of the six files (see Appendix 6.1, Table A, Column a, Nos. 2, 4 and 6), our audit revealed that the fees were applied in accordance with the regulations in effect; however, we question certain aspects related to the fees for width of occupancy based on whether it is a street listed in Appendix A of the *By-law concerning traffic and parking* referred to in the *By-*

law concerning fees. This questioning will be discussed in greater detail in Section 4.1.1.4 of this report.

For the three other files (see Appendix 6.1, Table A, Column a, Nos. 1, 3 and 5), we found no evidence that the setting of fees for temporary occupancy of the public domain was done according to the regulations. Our audit revealed that exemption decisions were not supported by a regulatory reference, the processing of files was not consistent and files were incomplete.

File Nos. 1 and 3 were subject to fee exemptions that raised questions in our minds since in both cases the files did not make any reference to a regulatory provision. As regards permit file No. 1 (see Appendix 6.1, Table A, Columns a and b), only a portion of the fees was subject to an exemption, and temporary occupancy of the public domain was required as part of repair work involving sewers. We observed that, when the permit cost was calculated, an exemption was applied on the surface area occupancy (the surface area occupied in square metres). According to the information obtained from an individual we met with in the Division de la circulation et de l'inspection du domaine public, such an exemption only applies to permits involving work to connect a sewer line or water main. We therefore question this exemption, since we were not able to find any evidence to this effect in the regulations, and all the more so since the fee for surface area occupancy was charged in permit file No. 4, which also involved work related to sewers (connection work). In our opinion, it is important that the regulations be applied in a way that is compliant and consistent for all the permit files. Also, we believe that the staff involved should ensure that all exemptions are indicated in the by-law. Moreover, we feel that the permit file should include a reference to the regulatory provision that authorizes the exemption to ease the review of the files and avoid any confusion in the application of the fees.

For file No. 3, while the cost of this permit totalled over \$3,000, the permit indicated "no charge." The applicant was a business in the telecommunications or cable television sector. According to the information obtained from an individual we met with in the Division de la circulation et de l'inspection du domaine public, this applicant benefits from an agreement with the City regarding the fees for occupancy of the public domain. Our research did reveal an agreement regarding occupancy of the public domain with this applicant, but it ended in December 2003 and a new agreement had not been concluded. In our opinion, it is important that the fees be applied in accordance with the regulations in effect. Our audit revealed that the borough's by-law concerning fees includes a provision stating that the company benefits from an exemption for occupancy of a parking space controlled by a parking meter, but not one for all parameters, and, consequently, all fees. Where an agreement may be concluded with an applicant to apply a different fee structure than that indicated in the regulations regarding occupancy of the public domain, this agreement must be adopted by the

responsible authority and maintained up to date. It should be noted that, according to the documents obtained, more than 600 permits for temporary occupancy were issued to this same company between January 1 and August 31, 2014. In light of the regulations in effect during this period, we consider this to be a situation of non-compliance that represents a substantial loss of revenue.

With regard to permit file No. 5 (see Appendix 6.1, Table A, Columns a and b), we found that the permit request submitted by the applicant was incomplete with regard to the occupied surface area parameter. The request indicated an occupied area greater than 100 square metres but did not specify a figure. Since, according to the by-law, the fee is calculated based on the number of metres occupied for an occupancy of 100 square metres or more, we feel that the request should have included a specific number. What's more, a number was recorded in the calculation of the permit fees but we were unable to find any evidence that this number represented the occupied surface. In our opinion, it is important that a permit request include all of the information on the parameters of the temporary occupancy of the public domain before the permit is issued. The absence of this important fee information in the permit request poses a threat in terms of financial loss.

According to the information obtained from the manager in charge at the Division de la circulation et de l'inspection du domaine public, a spot check is conducted on the various elements of the permit files but is not systematically documented. Also, a brief check of the files is performed before permits are sent to the central City's Service des finances for billing. In our opinion, control mechanisms should be put in place whereby a permit file check is conducted and documented in order to facilitate detection of non-compliances so that the necessary corrective measures can be taken.

4.1.1.1.1.B. Recommendation

We recommend that the Direction des travaux publics of the Ville-Marie borough put in place control mechanisms aimed at ensuring that:

- **all exemptions granted to applicants comply with the regulations in effect or agreements adopted by the competent authority, as the case may be, in order to detect situations of non-compliance in a timely manner;**
- **the regulatory provision authorizing the fee exemption granted to an applicant be included as a reference in the permit file in order to facilitate review of the file;**
- **a permit request contains the information on all the parameters relating to the temporary occupancy before the permit is issued so as to be able to apply the fee that corresponds to the actual occupancy.**

Business unit's response:

[TRANSLATION] The exemption categories, in accordance with the by-law in effect as well as existing agreements, are programmed in the system and are selected each time there is an exemption to be made. There is an "Other" category for new cases, which is systematically accompanied by a comment. (Completed)

An IT request has been made for detailed additions to categories. (Planned completion: December 2015)

Reminder of the directive that all the information must appear on the permit requests before issuance. (Completed)

Auditor General's Comments:

In light of our findings that, in 3 out of 6 cases, the permit files were either lacking references to the by-law, were incomplete or were handled in an inconsistent manner, we feel that a reminder is an insufficient control to ensure that this situation is rectified.

4.1.1.1.C. Recommendation

We recommend that the Direction des travaux publics of the Ville-Marie borough put in place mechanisms to verify the fees applied to permits for temporary occupancy of the public domain, and that these permits be documented to demonstrate compliance with the regulation.

Business unit's response:

[TRANSLATION] A documented verification sampling is now performed on a monthly basis for the permits issued. This information is recorded in an Excel file. (Completed)

Auditor General's Comments:

It should be noted that it is important for actions to be implemented not only after but also before permits are issued. The verification mechanisms to be put in place should therefore also include preventive actions.

4.1.1.1.2. Côte-des-Neiges–Notre-Dame-de-Grâce Borough**4.1.1.1.2.A. Background and Findings**

Enforcement of the *By-law concerning the occupancy of the public domain*, including the portion of the regulations on the fees related to temporary occupancy, falls under the Division du bureau technique of the borough's Direction des travaux publics. According to the

information we obtained from the individuals we met with, these regulations are applied by technical agents and by traffic and parking inspectors. The technical agents receive and handle permit requests and are ultimately in charge of issuing the permits, while inspectors are responsible for following up on the permits. We will discuss the aspect of control following the issuing of the permits in Section 4.1.1.2.

For the six files sampled, we found that the main elements that were subject to a fee are stipulated in the borough's *By-law concerning fees* and involve: 1) the basic fee for issuing the permit; 2) the fee for width of occupancy according to the type of street; and 3) the fee for the surface area occupied. For two of the files, they also involve a fee for parking spaces affected by the temporary occupancy (see Appendix 6.1, Table A, Nos. 8 and 9). Lastly, for four of the files (see Appendix 6.1, Table A, Nos. 8, 10, 11 and 12), the fee was calculated based on an occupancy that extended over several days.

For the six files examined, we found that the only the fee for one file (see Appendix 6.1, Table A, Column a, No. 9) was compliant with the by-law. This was a file in which temporary occupancy of the public domain was required for the filming of a movie. This file was subject to a fee exemption and the permit file indicated "no charge" without making any reference to the applicable regulatory provision. While this exemption was applied in accordance with the by-law, we feel that the permit file should include a reference to the regulatory provision authorizing the exemption granted. Such a practice facilitates subsequent review of the file and avoids any confusion in the application of the fee.

For the five other files that were subject to a fee (see Appendix 6.1, Table A, Column a, Nos. 7, 8, 10, 11, 12), we found that the fee was not consistent with the regulations. Examination of the files revealed that the GST and QST were added to the fees appearing on the permits. Article 1 of the *By-law concerning fees* stipulates, however, that the fees stated in it include these taxes, unless otherwise indicated. Consequently, these taxes should not have been added to the total amount of the permit since it already includes them. It should be noted that the individual we met with at the Division du bureau technique told us that this non-compliance was corrected in the Détour computer application for the temporary permits issued subsequent to our audit. In our opinion, control mechanisms should be put in place so that a permit file check is conducted and documented to facilitate detection of non-compliances and ensure that the necessary corrective measures are taken.

In addition, for two of the six files that were subject to fees (see Appendix 6.1, Table A, Column a, Nos. 11 and 12), we question certain aspects related to the fees for width of occupancy based on whether it is a street listed in Appendix A of the *By-law concerning traffic*

and parking referred to in the *By-law concerning fees*. This questioning will be discussed in greater detail in Section 4.1.1.4 of this report.

4.1.1.1.2.B. Recommendation

We recommend that the Direction des travaux publics of the Côte-des-Neiges–Notre-Dame-de-Grâce borough put in place a control mechanism aimed at ensuring that the regulatory provision authorizing the fee exemption granted to an applicant is included as a reference in the permit file in order to facilitate review of the file.

Business unit's response:

[TRANSLATION] A verification will be performed to ensure that the “no charge” or “chargeable” box is ticked in the Détour computer application. This validation will be included in the control list that will be produced. (Planned completion: August 2015)

4.1.1.1.2.C. Recommendation

We recommend that the Direction des travaux publics of the Côte-des-Neiges–Notre-Dame-de-Grâce borough put in place a mechanism to verify the fees applied to permits for temporary occupancy of the public domain, and that these permits be documented to demonstrate compliance with the regulation.

Business unit's response:

[TRANSLATION] Subsequent to the Division du greffe sending the updated version of the By-law concerning fees to all the borough staff by email, the following procedure will be applied systematically:

- *updating of the fee schedule by the senior technical officer;*
- *validation of the fee schedule by the section manager–Section soutien général of the Division des ressources financières et matérielles;*
- *entry of fee data in the Détour computer application by the senior technical officer accompanied by the section manager–Section soutien général of the Division des ressources financières et matérielles;*
- *validation using a few fictitious permits covering all the fees possible (issuing, width, roadblock, surface area, presence of hydrants, removal and covering of hydrants, alleyway, back sidewalk, no charge) by the senior technical officer;*
- *verification of taxation data by the section manager–Section soutien général of the Division des ressources financières et matérielles;*
- *presentation of a report to the division manager–Division des études techniques showing the fictitious permits used for validation. (Planned completion: December 2015—during the next review of the by-law concerning fees)*

4.1.1.2. Control over Temporary Occupancy of the Public Domain

4.1.1.2.A. Background and Findings

In the management of the public domain, one of the most important steps involves putting in place control mechanisms to ensure not only that the actual occupancy complies with the permit issued, but also that all temporary occupancies are subject to a permit. Control mechanisms must therefore enable the detection of situations of non-compliance. Such detection must allow for the necessary corrective measures to be taken to ensure that regulations are applied.

To control the temporary occupancy of the public domain and be able to detect situations of non-compliance, inspections must be continuously conducted throughout the territory since, once the temporary occupancy is over, it is no longer possible to detect it in the event a permit was obtained for it or it is not compliant with the permit issued by the borough. The failure to detect these situations poses risks that can have significant consequences for the borough and the City. These may include financial losses involving relatively high amounts, considering that occupancies can extend over several days and those based on width or area can be quite expansive.

It is therefore important that the individuals assigned to the inspection of temporary occupancies of the public domain be equipped with the tools and means to allow them to apply the regulations in such a way as to reduce the risks of non-detection. For example, the two boroughs' by-laws concerning occupancy of the public domain require that a work completion notice indicating the end of the occupancy of the public domain be given to the competent authority. Such a notice therefore enables the borough to ensure that the conditions regarding the duration of use of the public domain are met. It is a kind of means of exercising control over the occupancy of the public domain.

Over the course of our audit, we sought to evaluate whether the boroughs had put in place control mechanisms to ensure that the temporary occupancy of the public domain complied with the regulations. We also examined the control tools used to demonstrate this compliance with regulations.

To do so, we used the six permit files selected for each of the two boroughs to examine the control mechanisms put in place following the issuing of the permits. Moreover, to evaluate the detection of "unauthorized" temporary occupancies of the public domain, namely those without a permit, we visited several streets in the two selected boroughs on October 3, 2014. We found temporary occupancies of the public domain for that day related to various work

and construction sites and taking several different forms, including occupancies on the road, on the sidewalk and in an alleyway. The results of our audit of the two boroughs are as follows.

4.1.1.2.1. Ville-Marie Borough

4.1.1.2.1.A. Background and Findings

For the Ville-Marie borough, the control mechanisms put in place are applied by the inspectors of the Division de la circulation et de l'inspection du domaine public. They work on various shifts: days, evenings or weekends. Each inspector is assigned to a given territory to carry out follow-ups on permits. They use a laptop computer to access the Détour computer application, in which the permits for temporary occupancy of the public domain are recorded. According to the information obtained, while on patrol, inspectors verify the compliance of the permits that were issued based on the parameters recorded in the Détour computer application. For example, inspectors check the dimensions of the occupancy in relation to the permit issued. When inspectors observe an actual occupancy that is not compliant with the permit issued, they communicate the information to the technical agents in their division so that a modification can be made in the Détour computer application and the value can be adjusted accordingly. Furthermore, when they witness an occupancy without a permit, they make sure the offender submits a permit request as soon as possible in order to comply with the regulations. Inspectors can also hand out notices of violation.

As part of our audit, we first evaluated the control mechanisms put in place after the permits are issued using the six selected samples. For five of the files (see Appendix 6.1, Table A, Column c, Nos. 1, 2, 3, 4 and 5), while the process was described to us, we found no evidence that an inspection had been conducted after the permit was issued in order to ensure compliance with all the parameters indicated in the permits. In one case, however, (see Appendix 6.1, Table A, Column c, No. 6), we did find evidence of an inspection. Photos had been taken of the occupancy of the public domain to prove that the visits had been conducted and to document the file. We feel that an inspection report listing the visits conducted and demonstrating compliance with the permit issued should be produced. Furthermore, for the six permit files examined (see Appendix 6.1, Table A, Column d), we also did not find a work completion notice, as provided for in the by-law. We believe that the work completion notice is a means of controlling the occupancy of the public domain and allows for the planning of inspections to be carried out.

Second, to assess the extent to which temporary occupancies without a permit had been detected by the inspectors, we visited several streets in the borough on October 3, 2014, and found nine temporary occupancies of the public domain (see Appendix 6.1, Table B,

Column a). We confirmed with an individual from the Division de la circulation et de l'inspection du domaine public in charge of handling requests and issuing permits that each of the situations detected required a permit for temporary occupancy of the public domain.

Our audit revealed that most of the cases we uncovered were not detected by the inspectors and, therefore, were not subject to a valid permit. Thus, out of the nine situations detected (see Appendix 6.1, Table B, Column a), five situations of temporary occupancy had not been subject to the issuing of a permit (see Appendix 6.1, Table B, Column b, Nos. 1, 3, 6, 7, 9). Our audit revealed that none of these situations involved subjects benefitting from a fee exemption. If these situations had been detected, permits with a charge would have been issued. Among these five cases, two situations (see Appendix 6.1, Table B, Nos. 1 and 9) are of particular concern since they involve more substantial work requiring several days to complete. Occupancy situation No. 1 involves very large scaffolding that blocks an entire alleyway. It is being used to perform work on a building. Occupancy situation No. 9 is related to work on a multiple-storey building under construction. We therefore question why such situations had not been detected.

In regard to the four other situations, namely those for which a permit was obtained (see Appendix 6.1, Table B, Column b, Nos. 2, 4, 5, 8), we observed that two of them involved permits with no charge, because they either consisted of work carried out for the City or work performed by an organization benefitting from a fee exemption pursuant to the by-law. We also observed that temporary occupancy No. 2 did not comply with the instructions indicated on the permit issued (see Appendix 6.1, Table B, Column b, No. 2) and that this non-compliance had not been detected by an inspector.

The fact that we found no evidence of inspections being conducted systematically for all the permit files subsequent to their issuing and that most cases we uncovered had not been detected during the inspections carried out by the borough raises a lot of questions for us about the results of such inspections. According to the manager we met with, a compilation of the situations subject to a registered notice of violation is performed. The tables produced involve occupancies of the public domain for which a valid permit had not been obtained and situations that do not comply with the permits issued. According to the documents submitted to us, 40 registered notices of violation had been produced for the first eight months of 2014; however, according to the information obtained, these tables do not include all the situations detected by inspectors since situations of non-compliance do not always entail a notice of violation. In certain cases, the offender has rectified the situation.

The Division de la circulation et de l'inspection du domaine public also compiles other tables that include the cases of temporary occupancy of the public domain for which offenders who

did not request a permit have rectified their situation by obtaining one. For the year 2014, following visits conducted by inspectors, 445 offenders rectified their occupancy by requesting a permit for temporary occupancy of the public domain, for a total amount of \$650,406. This shows the importance of detecting non-compliant occupancies of the public domain.

In order to provide a more accurate portrait of the number of non-compliances detected and the monetary scope that they represent, we believe that all situations of temporary occupancy of the public domain for which a valid permit had not been obtained should also be recorded along with the value of the permit.

In conclusion, the results of our audit did not show that the control mechanisms in place make it possible to ensure that the temporary occupancy of the public domain is compliant with the regulations in effect. While the individuals we met with have told us that they make efforts to detect occupancy situations that are not compliant with the permits issued as well as situations of occupancy without a permit, we feel that additional measures must be taken to detect situations that do not comply with the regulations. As previously mentioned, for the five situations we observed in which a permit had not been obtained, the absence of authorization to occupy the public domain consequently leads to risks that can be quite significant. In this case, it consists of a financial loss for the borough, which was unable to obtain the fee amount set out in the by-law for these five situations. Assuming that cases of non-compliance go undetected day after day, the financial losses could be even greater.

4.1.1.2.1.B. Recommendation

We recommend that the Direction des travaux publics of the Ville-Marie borough review the control mechanisms put in place, specifically by:

- **using an inspection report to demonstrate that the actual occupancy of the public domain is compliant with the permit issued or that a permit has not been obtained for it;**
- **systematically requiring that an applicant submit a work completion notice to be informed of the end of the occupancy of the public domain and to establish better inspection planning practices;**
- **planning daily activities over the entire territory aimed at detecting temporary occupancies that are not compliant with the by-law;**

in order to fulfil its obligation to ensure compliance with the *By-law concerning the occupancy of the public domain*.

Business unit's response:

[TRANSLATION] We will use the existing inspection report to record site inspection operations, particularly to indicate whether it is compliant or not. (Completed)

We will plan inspections based on the expected end dates specified in the permits for each sector. An evaluation of the needs with regard to work completion notices will be performed, taking into account existing information. A follow-up will be conducted subsequent to this evaluation regarding application of article 34 of the By-law concerning occupancy of the public domain. (Planned completion: November 2015)

Activities to detect non-compliant occupancies are already included in the daily tasks related to the inspection of the public domain. (Completed)

Auditor General's Comments:

While the action plan indicates that non-compliant occupancy detection activities are already included in the daily public domain inspection tasks, our audit revealed that this is not sufficient. During our visit on October 3, 2014, we identified 5 sites out of 9 for which no permit had been issued. Given these circumstances, we reiterate our recommendation to improve the detection activities related to the temporary occupancy of the public domain.

4.1.1.2.1.C. Recommendation

We recommend that the Direction des travaux publics of the Ville-Marie borough make sure to compile all situations of occupancy of the public domain for which a permit was not obtained in order to be able to report on the scope of detected non-compliances.

Business unit's response:

[TRANSLATION] Our actions to regulate non-compliant occupancies are already compiled. A reminder of the directive has been made to the entire inspection team so as to consolidate all of our actions. (Completed)

Auditor General's Comments:

In the interest of transparency, we maintain our position with regard to the importance of making sure that all situations of occupancy of the public domain without a permit are compiled. The inspectors do not systematically report all cases identified.

4.1.1.2.2. Côte-des-Neiges–Notre-Dame-de-Grâce Borough

4.1.1.2.2.A. Background and Findings

For the CDN-NDG borough, the control mechanisms put in place are applied by inspectors of the Division du bureau technique within the Direction des travaux publics. The inspector is responsible for looking into situations where a permit was not obtained and the compliance of the permits that have been issued. In this borough, inspectors only work days. According to the information we obtained from the individuals we met with, each inspector is assigned a given territory in which to patrol and follow-up on permits. The inspectors use a list of permits produced each morning to allow them to verify the permits issued for the day. When they come across a situation where a permit was not obtained, they make sure that the offender submits a permit request as soon as possible to comply with the regulations. No notice of violation is given; the borough prefers to have the offender obtain a permit.

As part of our audit, we first evaluated the control mechanisms put in place after permits are issued using the six selected samples. This examination of the six permit files did not reveal any evidence of the inspections conducted after the permit is issued to ensure that all the requirements stated on the permits have been met. We feel that an inspection report listing the visits conducted and demonstrating compliance with the permit issued should be produced. Moreover, for five of the six permit files examined (see Appendix 6.1, Table A, Column d), a work completion notice, as provided for in the by-law, had not been received. We believe that a work completion notice is a means of controlling the occupancy of the public domain and allows for the planning of inspections to be carried out.

Second, to assess the extent to which temporary occupancies without a permit had been detected by the inspectors, we also visited several streets in the borough on October 3, 2014, and found nine temporary occupancies of the public domain that required a permit (see Appendix 6.1, Table B, Column a). To this end, we confirmed with an individual from the Division du bureau technique in charge of handling requests and issuing permits that each of the situations detected required a permit for temporary occupancy of the public domain.

Our audit revealed that most of the cases we uncovered were not detected by the inspectors and, therefore, were not subject to a valid permit. Thus, out of the nine situations detected, seven situations of temporary occupancy had not been subject to the issuing of a permit (see Appendix 6.1, Table B, Column b). Our audit revealed that none of these seven situations involved subjects benefitting from a fee exemption. If these situations had been detected, permits with a charge would have been issued. Generally speaking, these situations involved work requiring occupancy of the public domain, specifically through materials, equipment and machinery. The road and sidewalk are being used for the occupancies. We therefore question

the fact that a high number of situations of temporary occupancy had not been detected and were not subject to a valid permit. Moreover, we question the fact that some of these situations were not detected despite the fact that the occupancy of the public domain was likely to extend over more than one day. For example, one occupancy situation (see Appendix 6.1, Table B, No. 18) involved the complete closure of the sidewalk using a metal pedestrian barrier. While the public domain was occupied by this barrier and by various objects, at the time of our visit we observed no activity at this site.

According to the manager we met with, situations of occupancy without a permit detected by inspectors while on patrol were compiled for the period from June 2013 to July 2014. This was done to obtain an estimate of the amounts that are not billed due to the lack of an occupancy permit. These tables only include occupancies of the public domain for which a valid permit had not been obtained. However, according to the information obtained from the division, such a detection measure was not applied during evenings and weekends. These tables do not indicate non-compliances with permits already issued or aspects related to safety or signage that must be established at the time of occupancy of the public domain.

The fact that we found no evidence of inspections being conducted subsequent to the issuing of permits and that most cases we uncovered had not been detected during the inspections carried out by the borough raises questions for us about the results of such inspections.

In order to provide a more accurate portrait of the number of detected non-compliances and the monetary scope that they represent, we believe that all situations of temporary occupancy of the public domain for which a valid permit had not been obtained should also be recorded.

In conclusion, the results of our audit did not show that the control mechanisms in place make it possible to ensure that the temporary occupancy of the public domain is compliant with the regulations in effect. While the individuals we met with told us that they make efforts to detect occupancy situations that are not compliant with the permits issued as well as situations of occupancy without a permit, we feel that additional measures must be taken to detect situations that do not comply with the regulations. As previously mentioned, for the seven situations that we observed, the failure to comply with the regulations entails significant risks. In this case, there is a financial loss for the borough since it was unable to obtain the fee required pursuant to by-law. Assuming that cases of non-compliance go undetected day after day, the financial losses could be even greater.

4.1.1.2.2.B. Recommendation

We recommend that the Direction des travaux publics of the Côte-des-Neiges–Notre-Dame-de-Grâce borough review the control mechanisms put in place, specifically by:

- using an inspection report to demonstrate that the actual occupancy of the public domain is compliant with the permit issued or that a valid permit has not been obtained for it;
- systematically requiring that an applicant submit a work completion notice to be advised of the end of the occupancy of the public domain and to establish better inspection planning practices;
- planning daily activities over the entire territory aimed at detecting temporary occupancies that are not compliant with the by-law;

in order to fulfil its obligation to ensure compliance with the *By-law concerning the occupancy of the public domain*.

Business unit's response:

[TRANSLATION] Production of a daily inspection report (one report per event) to document the compliance of temporary occupancies of the public domain. Based on the resources currently available, it is not possible to conduct a detailed, systematic inspection of all the infringements. Consequently, our inspections documented by a report will be focused on major infringements. This report must allow for the verification of the following elements or each infringement:

- *address, nature of the work;*
- *period covered;*
- *validation of the signage (standard board of the Ministère des Transports du Québec (MTQ) or special board);*
- *occupancy parameters (width, surface area, roadblock, paid parking);*
- *meeting general conditions of the permit;*
- *meeting special requirements stated under "Conditions" (presence of flaggers when required on the permit, pedestrian access and detours, access for emergency vehicles). (Planned completion: January 2016)*

We are currently assessing the pertinence of keeping or removing the requirement to obtain a work completion notice in the by-law concerning occupancy. Meeting this requirement would require a considerable amount of work relative to the benefit that the borough gains from it. (Planned completion: September 2015)

At the start of every work shift, each borough inspector must:

- *establish the list of new permits issued in their sector;*
- *establish their patrol itinerary in order to cover their territory to the maximum. (Planned completion: February 2016)*

4.1.1.2.2.C. Recommendation

We recommend that the Direction des travaux publics of the Côte-des-Neiges–Notre-Dame-de-Grâce borough make sure to compile all situations of occupancy of the public domain for which a permit was not obtained in order to be able to report on the scope of detected non-compliances.

Business unit's response:

[TRANSLATION] Production of a table that is accessible to all borough inspectors for them to document the number of offenders who did not request a permit and the amounts recovered. In the months of April, June and September, conduct one-day blitzes covering the entire territory in order to identify all the offenders and get a complete picture of the situation. (Planned completion: February 2016)

4.1.1.3. Safety Management as Part of Temporary Occupancy of the Public Domain

4.1.1.3.A. Background and Findings

While collecting fees is an important element of the regulations concerning occupancy of the public domain, the management of safety related to occupancy is just as important. In fact, the by-laws on occupancy of the public domain for both boroughs require that the permit include the measures that must be taken to ensure people's safety.¹⁶ Moreover, the by-laws also stipulate that the permit holder must adhere to the conditions and terms established therein.¹⁷ The absence of related measures, specifically those related to signage or proper protection of the site of occupancy of the public domain, poses risks not only for people's safety, but also for the boroughs and the City. These include risks of legal actions, financial losses, citizen dissatisfaction due to improper management and government criticism.

With regard to occupancy of the public domain, specifically occupancy of a street and the sidewalk, the safety of individuals is governed by various laws and by-laws. The *Highway Safety Code*¹⁸ states that "any person carrying out work requiring occupation of a public highway, duly authorized by the person responsible for the maintenance of the highway, or any person conducting a road check operation must erect traffic signs or signals in compliance with the standards determined by the Minister of Transport for the duration of the work or operation."¹⁹ For its part, the *Safety Code for the construction industry* requires "that any construction site or part of a construction site situated on or near a public highway or a

¹⁶ By-law concerning the occupancy of the public domain (article 33) (for each of the boroughs).

¹⁷ By-law concerning the occupancy of the public domain (article 4) (for each of the boroughs).

¹⁸ Highway Safety Code (CQLR, c. C-24.2).

¹⁹ Highway Safety Code, section 303.

private road open to public vehicular traffic has traffic signs that comply with the standards of Chapters 1, 4 and 6 of Volume V of the manual entitled 'Traffic Control Devices,' determined and set out by the Minister of Transport under the second paragraph of section 289 of the Highway Safety Code.²⁰

The application of the *By-law concerning the occupancy of the public domain* therefore requires that the borough indicate the safety measures on the permits, including those for which a fee exemption has been applied. Moreover, the borough must ensure that the applicant complies with them. The control of safety measures is therefore an important element in the management of occupancy of the public domain.

Using the samples we selected for our audit, we examined whether such measures aimed at ensuring the safety of individuals were indicated on the occupancy permit as required in the by-law. We also looked at whether control mechanisms had been put in place to ensure compliance with the regulations.

4.1.1.3.1. Ville-Marie Borough

4.1.1.3.1.A. Background and Findings

When an applicant submits a permit request, the form used for this purpose includes the general conditions related to the issuing of a permit for temporary occupancy of the public domain, eight of which concern the safety of individuals as well as signage, including a reference to the standards of volume V— road signs. Before issuing a permit, the technical agent must ensure that the applicant has planned safety measures for the temporary occupancy, as applicable, to comply with the general conditions that apply. These specific safety measures should be indicated on the permits since the by-law requires it and they must be verified by inspectors following the issuing of the permit. Furthermore, the general conditions regarding the issuing of the permit should be systematically given to applicants so as to inform them of their obligations.

First, for the six permit files, we found that four general conditions regarding safety and signage were indicated on the permits. These conditions state that the signage must comply with the standards set out in the *Highway Safety Code*, that the installation of signs is the responsibility of the permit holder, and that a pedestrian walkway and access for emergency vehicles must be present at all times. Our audit revealed that, for most of the six permit files selected, the safety measures required at the time the permit request was made did appear on the permits for temporary occupancy of the public domain. For four of the files (see

²⁰ *Safety Code for the construction industry* (CQLR, c. S-2.1, r. 6), section 10.3.1.

Appendix 6.1, Table A, Column e, Nos. 1, 4, 5, 6) we found that the safety measures aimed at ensuring the safety of individuals, which are required by the borough at the time of issuing the permit, were also indicated on the permit.

In the case of the two other files (see Appendix 6.1, Table A, Column e, Nos. 2 and 3), even if the safety measures to be taken had been determined by the applicants when the permit was requested, we found that they were not indicated on the permits issued. For file No. 2, while the permit request indicated that a sign would be erected to signal the closure of the sidewalk, the permit did not make any reference to this safety measure. Lastly, in file No. 3, when making the permit request, the applicant must have adhered to one of the general conditions requiring that a signage board be produced. A signage board is like a plan illustrating the way in which pedestrian and car traffic will be organized in the case of the obstruction or closure of a street. An examination of the file revealed that a signage board had been submitted by the applicant; however, the permit made no mention of this safety measure to be followed by the applicant. In our opinion, for these two cases, the permit should have mentioned the safety measures required to comply with the regulations. We feel that such situations do not facilitate the verification of adherence to these safety measures during inspections.

Moreover, an examination of the six permit files selected (see Appendix 6.1, Table A, Column g) did not reveal any evidence that the general conditions had been given to the applicant at the time the permit was issued. According to the information obtained from the individual we met with in the Division du bureau technique, the general conditions are not systematically remitted with the permit. In our opinion, it is important to ensure that applicants have obtained or been made aware of all the conditions attached to the permit for temporary occupancy of the public domain, since these are obligations that they must adhere to.

With regard to the control mechanisms put in place by the borough to ensure adherence to the safety measures required at the time the permit is issued, we did not find evidence in any of the six selected files that these safety measures had been verified after the permit was issued (see Appendix 6.1, Table A, Column f). We feel it is important that a verification of the safety measure be conducted subsequent to the permit being issued to ensure compliance with regulations.

With regard to the nine situations of temporary occupancy of the public domain that we witnessed during our visit to the borough on October 3, 2014, our audit revealed that eight of these were partially or fully non-compliant with regard to the safety of individuals, specifically due to missing or faulty signage (see Appendix 6.1, Table B, Column c), despite the fact that three of these situations had been subject to an occupancy permit (see Appendix 6.1, Table

B, Column b, Nos. 2, 4 and 5). These results demonstrate the importance of detecting non-compliant situations so that offenders can obtain the necessary permits and be obligated to follow the safety measures required when a permit is issued.

Lastly, over the course of our audit, we found that the staff in charge of issuing permits or performing inspections did not have a checklist detailing all the situations and the procedure for requiring a signage board. The general conditions of the permit require a signage board for an obstruction of a major street for a width of more than three metres as well as for the blocking of a major street. The general conditions also indicate that such a board can be required for the obstruction of a secondary street when the width of occupancy is six metres or more. Lastly, according to the information obtained from the individual we met with at the Division de la circulation et de l'inspection du domaine public, a signage board could also be required in situations other than those we just mentioned. We feel that such a checklist would facilitate the work of the employees involved by allowing for a more prompt analysis of situations presenting a greater risk and requiring a signage board.

4.1.1.3.1.B. Recommendation

We recommend that the Direction des travaux publics of the Ville-Marie borough put in place control mechanisms aimed at ensuring that:

- **all of the safety measures required at the time the permit request is made appear on the permit issued in order to facilitate the performance of inspections and compliance with regulations;**
- **the general conditions for issuing a permit for temporary occupancy of the public domain are given to applicants to inform them of their obligations;**
- **a verification of safety measures be performed subsequent to the issuing of permits to ensure compliance with the permit.**

Business unit's response:

*[TRANSLATION] It has already been established that safety requirements must be indicated on the permit document. A reminder to this effect was sent to the team. **(Completed)***

*The general conditions of permit issuance always accompany permit requests (2nd page) and must be accepted by ticking the box provided on the form. A reminder was sent to this effect. Also, we made sure that the 2nd page (general conditions) of the permit is sent every time. **(Completed)***

*The permit conditions are verified as part of the inspectors' daily tasks. This is now stated on the inspection report for inspected sites. **(Completed)***

The verification sampling of permit conditions and inspection reports issued will be done on a monthly basis. This information will be recorded in an Excel spreadsheet. (Planned completion: October 2015)

Auditor General's Comments:

Given that our audit revealed that, in 2 out of 6 cases, the safety measures set out in the permit request were not indicated on the permits while, in 6 out of 6 cases, we found no evidence that the general conditions had been sent to the applicants or that they were aware of them and that, in 6 out of 6 cases, we found no evidence that the required safety measures had been verified after these permits were issued, we feel that the proposed actions are insufficient to correct the observed shortcomings.

4.1.1.3.1.C. Recommendation

We recommend that the Direction des travaux publics of the Ville-Marie borough create a checklist to determine, when a request is made for a permit for temporary occupancy of the public domain, whether or not a signage board should be required from the applicant, in order to facilitate the work of the staff involved in analyzing the files.

Business unit's response:

[TRANSLATION] A grid has already been produced in accordance with VOLUME V (Norme de signalisation routière du Québec [TRANSLATION: Québec traffic control standards]), for application of the requirement for signage boards, if applicable. A reminder has been sent to this effect. (Completed)

4.1.1.3.2. Côte-des-Neiges–Notre-Dame-de-Grâce Borough

4.1.1.3.2.A. Background and Findings

When an applicant makes a permit request, the form intended for this purpose includes the general conditions for the issuing of a permit for temporary occupancy of the public domain, three of which are related to the safety of individuals and signage. Before issuing a permit, the technical agent must ensure that the applicant has planned safety measures for the temporary occupancy in order to comply with the applicable general conditions. These specific safety measures must appear on the permits when they are required and should be verified by inspectors following the issuing of the permit. Moreover, the general conditions for issuing the permit must be systematically remitted to applicants to inform them of their obligations.

Our audit revealed that, for half of the six permit files selected, specific safety measures required when the permit was requested did appear on the permits for temporary occupancy of the public domain. It should first be noted that, for the six selected files, the permits included general conditions regarding safety and signage. For three permit files, measures aimed at ensuring the safety of individuals were indicated in the permit along with the general conditions (see Appendix 6.1, Table A, Column e, Nos. 8, 11 and 12).

For the three other files (see Appendix 6.1, Table A, Column e, Nos. 7, 9 and 10), no specific safety measure was mentioned, apart from the general conditions that we mentioned previously. We have questions regarding file No. 10, however. The width of occupancy is nine metres wide and involves a major street. According to the general conditions of the permit, a signage board is required for an obstruction of three or more metres on a major street. We feel that it would be important to indicate the measures related to the safety of individuals on the permit to comply with the regulations. The absence of such an indication does not facilitate verification of compliance with these safety measures during inspections.

Moreover, in five of the six cases (see Appendix 6.1, Table A, Column g, Nos. 7, 8, 9, 10 and 11), our audit did not reveal evidence that the general conditions for issuing a permit for temporary occupancy of the public domain had been given to the permit holders or that they were made aware of them. According to the information obtained, these general conditions are not systematically remitted upon issuing the permit. In our opinion, it is important to ensure that permit holders have obtained or been made aware of the general conditions for issuing a permit since these are obligations that they must adhere to.

With regard to the control mechanisms put in place by the borough to ensure adherence to the safety measures required when the permit is issued, we did not find any evidence among the six selected files that the safety measures had been verified subsequent to the permit being issued to ensure compliance with the regulations (see Appendix 6.1, Table A, Column f).

With regard to the nine situations of temporary occupancy of the public domain that we witnessed during our visit to the borough on October 3, 2014, our audit revealed that eight of them were partially or fully non-compliant with regard to the safety of individuals, specifically due to missing or faulty signage (see Appendix 6.1, Table B, Column c), despite the fact that one of these sites had been subject to an occupancy permit (see Appendix 6.1, Table B, Column c, No. 15). These results demonstrate the importance of detecting non-compliant situations so that offenders obtain the required permits and are obligated to follow the required safety measures.

Lastly, over the course of our audit, we found that the staff in charge of issuing permits or conducting inspections did not have a checklist illustrating all the situations and the procedure for requiring a signage board, even though, in practice, a signage board is required for an obstruction of a major street for a width of more than three metres as well as for the blocking of a major street. We believe that such a checklist would facilitate the work of the employees involved by allowing for a more prompt analysis of situations presenting a greater risk and requiring a signage board.

4.1.1.3.2.B. Recommendation

We recommend that the Direction des travaux publics of the Côte-des-Neiges–Notre-Dame-de-Grâce borough put in place control mechanisms aimed at ensuring that:

- all safety measures required at the time the permit request is made appear on the permit issued in order to facilitate the performance of inspections and compliance with regulations;
- the general conditions for issuing a permit for temporary occupancy of the public domain are given to applicants to inform them of their obligations;
- a verification of safety measures be performed subsequent to the issuing of permits to ensure compliance with the permit.

Business unit's response:

[TRANSLATION] A checklist will be produced to ensure that all parameters allowing for a permit to be issued are reviewed:

- *applicant, nature of the work, location, period;*
- *fee parameters;*
- *sending of general conditions;*
- *additional safety measures in the "Conditions" section. (Planned completion: August 2015)*

The completed checklist will be included in the file along with the general conditions of permit issuance. (Planned completion: August 2015)

Based on the available resources, verification of the compliance of the work and the safety measures on site will be conducted by an inspector who will complete a daily report. A copy of this daily report will be included in the file. (Planned completion: February 2016)

4.1.1.3.2.C. Recommendation

We recommend that the Direction des travaux publics of the Côte-des-Neiges–Notre-Dame-de-Grâce borough create a checklist to determine, when a request is made for a permit for temporary occupancy of the public domain, whether or not a signage board should be required from the applicant, in order to facilitate the work of the staff involved in analyzing the files.

Business unit's response:

[TRANSLATION] A checklist will be produced to ensure that all parameters allowing for a permit to be issued are reviewed, including the requirements for additional safety measures. On the back of the list, the necessary criteria for the requirements of the following additional safety measures will be explained:

- *need to require a signed and sealed signage board;*
- *presence of flaggers;*
- *presence of police officers;*
- *modifications to traffic lights.*

All additional safety measures not stated in the general conditions will appear in the "Conditions" section. (Planned completion: August 2015)

4.1.1.4. Updating the Regulations

4.1.1.4.A. Background and Findings

As we mentioned in Section 4.1.1.1, the by-laws on applicable fees in the two selected boroughs include fees established based on the width of the temporary occupancy on a street. These fees are set by blocks of three occupied metres and for road closures. They are also determined distinctly for two categories of streets:

- The first is defined in paragraph 3 of the by-laws: *[TRANSLATION] "on a street listed on the map in Appendix A of the By-law concerning traffic and parking, a street with a bicycle path on a bus route of the Société de transport de Montréal [...]¹"*,
- The second is defined in paragraph 4 of the by-laws: *[TRANSLATION] "on a street other than those mentioned in paragraph 3 [...]²"*.

The distinction between these streets is based on various characteristics related specifically to regulations concerning the road system, namely major streets and local streets. The streets in the first category are mainly streets where specific services or infrastructures are

²¹ For the Ville-Marie borough: *By-law concerning fees*, No. CA-24-206, article 34.

For the CDN-NDG borough: *By-law concerning fees*, No. RCA-14 17222, article 88.

²² For the Ville-Marie borough: *By-law concerning fees*, No. CA-24-206, article 34.

For the CDN-NDG borough: *By-law concerning fees*, No. RCA-14 17222, article 88.

located, thereby resulting in greater constraints on citizens during occupancy of the public domain. For example, temporary occupancy of a street that has a bicycle path on it or is part of a bus route affects a large number of people. As another example, temporary occupancy of a major street affects a significant number of drivers and individuals compared to a local street. Accordingly, the fees are higher for this category than for “other streets” since the consequences of a temporary occupancy are not the same (e.g., when a major street is closed to traffic as opposed to a local street). It should also be noted that the required safety measures during temporary occupancy of the public domain will be different based on whether the street is a major thoroughfare (main and secondary) or local.

To establish this distinction between streets and be able to apply the appropriate fees, the regulations on fees must refer to maps or schedules on which these streets are indicated. The by-laws on fees refer to a street map that is actually Appendix A of the *By-law concerning traffic and parking*. This map includes several streets, both major and local, for which higher fees apply with regard to width of occupancy. Conversely, lower fees are applied for all the streets that do not appear on this map, namely the “other streets.” Note that the *By-law concerning traffic and parking* is under the jurisdiction of the boroughs pursuant to the *Charter of the Ville de Montréal* and the delegation of powers from City council to the borough councils.²³

Furthermore, throughout the years, certain streets have had additional constraints added to them, specifically bicycle lanes and bus routes. For other streets, authorities have adopted changes in designation, for example, local streets have become major streets. It is therefore important that the maps referred to in the by-laws concerning fees be kept up to date so as to easily be able to determine a street’s category for purposes of fee setting.

Consequently, a street that is not classified under the right category may present several risks for the City and boroughs, including the risk of financial losses, risks involving the safety of individuals, risks of lawsuits and risks of citizen dissatisfaction regarding management.

At this stage in our audit, we first examined the date of creation or adoption of the maps included in Appendix A of the by-laws concerning traffic and parking referred to in the by-laws concerning fees for the two boroughs. Our audit revealed that Appendix A, referred to in the two boroughs’ by-laws on fees, was produced on November 22, 1991, and reviewed in February 1997. Appendix A of these by-laws has therefore not been modified since this last date. According to the information obtained, the streets listed in Appendix A were entered

²³ *Charter of the Ville de Montréal*, article 142 and *Règlement du conseil de la Ville sur la délégation de certains pouvoirs relatifs au réseau de voirie artérielle aux conseils d’arrondissement*, City council of the Ville de Montréal, by-law No.08-055, December 15, 2008.

in the Détour computer application to be able to automatically identify the streets in the first category and calculate the fee accordingly.

Subsequently, using the permit files selected for each of the boroughs, we examined whether the streets in question were listed on the map found in Appendix A of the *By-law concerning traffic and parking* referred to in the *By-law concerning fees*, and whether they included constraints such as a bicycle path or bus route. We also looked at which fees had been applied for width of occupancy.

The results of our audit revealed confusion in the application of the regulations for the two boroughs.

For the Ville-Marie borough, the affected streets for three permit files (see Appendix 6.1, Table A, Column h, Nos. 1, 5 and 6) were not listed in Appendix A of the *By-law concerning traffic and parking*. The fees applied were therefore those for “other streets” (see Appendix 6.1, Table A, Column i, Nos. 1, 5 and 6). However, according to the 2014 public transit network maps of the Société de transport de Montréal,²⁴ the streets on which the permits for temporary occupancy of the public domain Nos. 1 and 6 (see Appendix 6.1, Table A, Column j) were authorized include bus routes. In addition, for the affected street in file No. 5, the borough map²⁵ for 2013 indicated the existence of a bicycle lane at the location where the temporary occupancy was subject to a permit.

Moreover, for file No. 2 (see Appendix 6.1, Table A, Column i), the temporary occupancy involved two streets, one of them listed in Appendix A and the other not. These two streets were not considered major and did not include a bicycle path or bus route. When the permit was issued, the fee applied was that of the first street category, namely the higher one. We question why such a fee would be set for streets that are not arterial and do not include a bicycle path or bus route, when the fee applied to streets with a bus route was that for “other streets,” namely the lower one (see Appendix 6.1, Table A, Column i, Nos. 5 and 6). We feel that such a situation creates confusion for the staff responsible for applying the fees.

With regard to file Nos. 3 and 4 (see Appendix 6.1, Table A, Column i), there was no possibility of confusion since the streets appeared on the map included in Appendix A of the *By-law concerning traffic and parking*, and the streets included constraints such as a bicycle path or bus route. In these cases, the fees applied were those for streets in the first category.

²⁴ 2014 STM Downtown system map:
www.stm.info/fr/infos/reseaux/plans-des-reseaux

²⁵ Ville-Marie borough map:
http://ville.montreal.qc.ca/portal/page?_pageid=7317,84222189&_dad=portal&_schema=PORTAL

For the CDN-NDG borough, we found that two files also caused confusion in terms of the interpretation of the regulations. These are the affected streets in permit file Nos. 11 and 12. Since they do not appear on the map in Appendix A of the *By-law concerning traffic and parking*, the fee is that for streets of the second category. However, according to the 2014 public transit network maps of the Société de transport de Montréal²⁶ and according to a borough map for 2013²⁷ available on the borough's website, these two streets include bus routes and bicycle lanes at the location where the temporary occupancy was authorized.

With regard to the four other permit files used in our sample, we did not find any confusion in the application of the fees since they involved streets in the first category. File Nos. 7 and 8 (see Appendix 6.1, Table A, Column h), involved local streets that did not appear on the map in Appendix A of the *By-law concerning traffic and parking* and did not include bus routes or bicycle paths. The two other files (Nos. 9 and 10) involved streets that appeared in Appendix A of the *By-law concerning traffic and parking* for which there was a bus route and, for one of the streets, a bicycle lane as well.

In our opinion, the situation which we just described creates a certain amount of confusion in the application of regulations regarding the occupancy of the public domain and poses certain risks that could have an impact on compliance with laws and by-laws. For streets that present similar characteristics in terms of constraints and risks related to the temporary occupancy of the public domain, similar rules should apply. We feel that efforts should be invested to update the regulations in order to determine the streets that belong to one or the other of the categories that we described above. Consequently, efforts should also be invested in updating the Détour computer application, which establishes the fees for these street categories.

4.1.1.4.B. Recommendation

We recommend that the Direction des travaux publics of the Ville-Marie and Côte-des-Neiges–Notre-Dame-de-Grâce boroughs:

- **update the regulations in order to determine which streets should be included in which fee categories;**
- **modify the classification of streets entered in the Détour computer application after the regulations are updated to establish the applicable fees with regard to width of occupancy of the public domain;**

in order to establish a uniform fee structure.

²⁶ 2014 STM system map:
www.stm.info/fr/infos/reseaux/plans-des-reseaux

²⁷ CDN-NDG borough map:
http://ville.montreal.qc.ca/portal/page?_pageid=7497,84237570&_dad=portal&_schema=PORTAL

Business units' responses:**VILLE-MARIE BOROUGH**

[TRANSLATION] An analysis of needs has been initiated in anticipation of a regulatory review. (Planned completion: October 2015)

Following this review, the IT department will be asked to make updates to the street classification. (Planned completion: December 2015)

CÔTE-DES-NEIGES–NOTRE-DAME-DE-GRÂCE BOROUGH

[TRANSLATION] Validation with the department involved regarding the possibility of making the required changes to the Détour computer application to modify the streets programmed. (Planned completion: June 2015)

4.1.2. Staff Information and Training Mechanism**4.1.2.A. Background and Findings**

Informing and training the staff responsible for applying the regulations are key elements in ensuring compliance with laws and by-laws. It is important that the employees that apply them possess sufficient expertise and knowledge of them, otherwise several risks of non-compliance can arise, in particular risks of financial losses, lawsuits and citizen dissatisfaction with regard to management. It is therefore important that employees possess and receive adequate training, including being informed about new regulatory provisions that are directly related to the activities to be carried out. Moreover, it is essential that the staff have access to training on the application of these regulations.

At this stage, our audit consisted in examining whether mechanisms had been put in place to ensure that the staff responsible for the application of the regulations related to the temporary occupancy of the public domain had access to, among other things, up-to-date versions of the regulations, training, tools and information that enabled them to apply such regulations with confidence.

First, in terms of the versions of the by-laws that are used by the staff, our audit revealed the following:

- For the *By-law concerning fees*, the staff in the two selected boroughs had a current version of this by-law. A fee grid regarding the temporary occupancy of the public domain is used, and it is valid. The version being used was dated January 1, 2014;
- For the *By-law concerning the occupancy of the public domain*:
 - For the Ville-Marie borough, we found that the version of the by-law used was not up to date. We obtained a version of the by-law in the form of an office consolidation,

- dated September 10, 2007. It should be noted that an office consolidation essentially includes the by-law and all modifications. However, after doing some research on the borough website, we found that the by-law had been modified several times since 2007 and that the latest version of the office consolidation was dated March 15, 2014;
- As regards the CDN-NDG borough, we found that the version of by-law that we were shown was not up to date. After doing some research on the borough website, we obtained a version of an office consolidation dated March 22, 2006.

In our opinion, a control mechanism should be introduced to ensure that the employees responsible for applying the regulations dealing with the temporary occupancy of the public domain, including managers, always have an updated version of the by-laws in effect, given the risks involved in applying provisions that are no longer in effect.

Second, with regard to training, we also examined for each of the business units the mechanisms in place surrounding the training of staff assigned to the application of these regulations. For both business units, the staff assigned to processing permit requests and those assigned to inspection received training, specifically on signage. However, according to the information obtained from the individuals we met with, there is no formal framework mechanism for training; some training is done at the employee's initiative and some at the request of the manager. We feel that training needs must be determined and that a follow-up must be performed with regard to staff training.

Third, with regard to tools, we evaluated whether the business units had guides and procedures available to enable the application of regulations on the temporary occupancy of the public domain. For the Ville-Marie borough, two procedures guides related to the application of regulations on the temporary occupancy of the public domain were produced for the staff in 2013. In our opinion, this is a good management practice. As for the CDN-NDG borough, no procedures guide intended for the staff on regulations concerning the temporary occupancy of the public domain was found, except for a guide on the Détour computer application. We feel that such a guide should be produced and made available to all the staff involved to aid in the application of these regulations. We also feel that relying mainly on the knowledge and expertise of the employees to apply these regulations leaves the business unit more susceptible to non-compliance with laws and by-laws. For example, when experienced employees leave, applying these regulations could pose greater risks with regard to non-compliance.

Lastly, according to the information obtained from the individuals we met with in the two business units, other means are used to inform the staff about regulations on the temporary occupancy of the public domain, including:

- access to the current by-laws on the borough website for the staff involved;
- relaying of information during meetings with employees;
- emails to inform employees of regulations;
- internal and external training sessions;
- distribution of the inventory of laws and by-laws to the staff involved, including legislative and regulatory modifications, produced by the Service des affaires juridiques as part of the legislative oversight for the boroughs.

We feel these are relevant means that constitute sound management practices and promote compliance with laws and by-laws.

While efforts have been invested in informing and training the staff responsible for applying the regulations, we feel that managers in the Direction des travaux publics of the Ville-Marie and CDN-NDG boroughs should determine training needs with regard to the application of the regulations regarding temporary occupancy of the public domain. They should also implement follow-up mechanisms for staff training to ensure staff knowledge is kept up to date in this regard.

4.1.2.B. Recommendation

We recommend that the Direction des travaux publics of the Ville-Marie and Côte-des-Neiges–Notre-Dame-de-Grâce boroughs:

- **put in place control mechanisms to ensure that all the staff involved in the application of regulations concerning the occupancy of the public domain have updated versions of the by-laws in effect to reduce the risk of errors in the application of regulations;**
- **determine training needs for the staff involved in the application of regulations related to the temporary occupancy of the public domain, and put in place follow-up mechanisms for the staff training to keep their expertise up to date and promote compliance with laws and by-laws.**

Business units' responses:

VILLE-MARIE BOROUGH

[TRANSLATION] We made sure that the entire team had the correct version of the by-law. A reminder about the importance of this aspect was sent out. A quarterly verification will be conducted to ensure that the entire team is using the proper by-law. (Planned completion: June 2015)

Training needs are already determined with the staff at the beginning of each year. Training on minor violations was just given to all the staff involved in issuing permits.

We will plan for our employees' training needs, as always, according to the changes in the laws and by-laws. **(Completed)**

CÔTE-DES-NEIGES–NOTRE-DAME-DE-GRÂCE BOROUGH

[TRANSLATION] Once the By-law concerning fees is updated by the Division du greffe, the document will be systematically sent to the entire borough staff. **(Planned completion: April 2015)**

Ongoing internal training for staff during statutory meetings held at least monthly:

- explanation of changes to by-laws, if applicable;
- review and explanation of specific features of the current regulations;
- discussions and case studies;
- question periods. **(Planned completion: April 2015)**

4.1.2.C. Recommendation

We recommend that the Direction des travaux publics of the Côte-des-Neiges–Notre-Dame-de-Grâce borough produce a procedures guide on the application of regulations regarding the temporary occupancy of the public domain and make it available to the staff involved to support them in the application of these regulations.

Business unit's response:

[TRANSLATION] Development of a guide explaining all the parameters to consider when issuing permits for the temporary occupancy of the public domain and the elements to take into account during an inspection. Implementation of guidelines regarding the following safety measures:

- need to require a signed and sealed signage board;
- presence of flaggers;
- presence of police officers;
- modifications to traffic lights. **(Planned completion: August 2015)**

4.2. By-law Concerning the Protection of Buildings Against Sewer Back-ups

4.2.A. Background and Findings

The Service de l'eau has been reporting an increase in the frequency of heavy rainfall over the entire territory for several years now. Rainfall is considered heavy when a significant number of millilitres falls within a span of less than two hours. According to the information obtained from the Service de l'eau, this phenomenon is being exacerbated by climate change.

In terms of damages to buildings caused by water, Table 3 below presents the number of claims received by the City over the past few years:

Table 3 – Number of Claims Received by the City^[a]

Year	Number of complaints
2002	150
2003	226
2004	422
2005	5,326
2006	398
2007	209
2008	2,864
2009	1,880
2010	819
2011	1,105
2012	4,314
2013	681
2014 (9 months)	216

^[a] Data source: Bureau des réclamations de la Ville.

Between 2005 and 2009, in response to a significant number of claims from citizens regarding damages caused by water, the City began a process to look for solutions to this problem. The considerable increase in the number of claims for this type of damage posed a high financial risk for the City. The City faces risks of lawsuits, financial losses and high costs related to processing claims. For their part, the residents forced to deal with this problem are left in crisis, since several consequences result from the damage, including financial losses and health risks.

With the aim of finding solutions to this crisis situation and reducing the impacts of heavy rainfall on citizens, the Service de l'eau, in collaboration with the boroughs, began work on an integrated approach involving regulations, communication tools and education as well as guides.

In order to gain a clearer picture of the situation, between 2010 and 2011 the Service de l'eau conducted over 600 inspections in buildings affected by a sewer back-up or flood, for which citizens volunteered. These inspections revealed that most buildings affected by a sewer back-up, namely 80%, were lacking the protection of a backwater valve. In addition, close to half of the buildings (46%) were lacking the protection of a catch basin and drain pump. One of these pieces of equipment was either missing or not functional, reducing the building's protection against sewer back-ups, and thus increasing the risks of a flood or sewer back-up.

Following this finding, one of the solutions proposed in the integrated approach, which was to adopt a by-law on the protection of buildings against sewer back-ups, was implemented. A by-law was adopted in June 2011²⁸ by City council, which delegated its application to the boroughs wanting to take part in it.

This main purpose of this by-law is to reduce the impacts of heavy rainfall on citizens' buildings by making it mandatory to install equipment intended to protect the building against sewer back-ups and floods. The by-law is aimed at three types of buildings:

- new buildings;
- buildings where alterations are made to a plumbing system;
- buildings affected by a back-up or flood.

Furthermore, the main measures provided for in this by-law involve the installation of equipment, specifically a backwater valve on all plumbing equipment requiring protection, a catch basin where drainage water can collect near the foundation and a drain pump in the catch basin equipped with a mechanism allowing for emergency drainage to the outside of the building.

For the City, the purpose of adopting this by-law was to reduce claims related to sewer back-ups and floods, and reduce the impacts on citizens.

It should be noted that this by-law came into force in 2011²⁹ for 16 boroughs and in 2014 for two more. At the time this audit report was produced (March 2015), one borough³⁰ was still not applying this by-law. According to the information obtained from the Service de l'eau, applying the by-law resulted in a reduction in the number of claims made to the City for the boroughs that applied it.

To assess compliance with the provisions of the *By-law concerning the protection of buildings against sewer back-up*, we wanted to be sure that the boroughs selected for this audit properly applied the by-law with regard to the important aspects. We therefore examined the following aspects:

- application of the by-law;
- follow-up of inspections and notices produced for important equipment.

We examined whether control mechanisms had been put in place to ensure compliance with these regulations. We also looked at whether measures had been taken to identify situations

²⁸ *By-law concerning the protection of buildings against sewer back-up* – City council resolution: CM11 0533.

²⁹ For the two boroughs audited, the by-law came into force on July 1, 2011.

³⁰ Plateau-Mont-Royal borough.

of non-compliance. Lastly, we examined whether mechanisms had been put in place to inform and train the staff in the business units involved.

4.2.1. Implementation of Control Mechanisms Aimed at Ensuring Compliance as well as Measures to Detect Non-Compliances

4.2.1.A. Background and Findings

In order for managers to ensure compliance with laws and by-laws affecting them, control mechanisms must be put in place. These control mechanisms help ensure that the important aspects of regulations are identified and verified before actions are taken. These mechanisms will therefore help to reduce the risks associated with non-compliance with laws and by-laws. These control mechanisms can take many forms, including internal checks, computer applications and analysis grids.

In the sections that follow, we will describe the key aspects of the by-law, which, when not adhered to, cause the business units to be non-compliant and to expose themselves to risks that can have major consequences. Through interviews and surveys, we assessed the extent to which the selected business units complied with the regulatory requirements related to these key aspects. In addition, we examined whether control mechanisms had been put in place to allow for the detection of situations of non-compliance.

To carry out our audit, we selected inspection and follow-up files from the lists of inspections and follow-ups conducted. For each of the boroughs audited, we selected a total of four files covering the years 2013 and 2014 (up until August 31, 2014).

4.2.1.1. Application of the By-law

4.2.1.1.A. Background and Findings

One of the first key elements regarding the application of the *By-law concerning the protection of buildings against sewer back-up* is its field of application, that is, the buildings and situations that it covers. As previously mentioned, the by-law applies to the following three situations:

- a new building;
- a building where alterations are made to a plumbing system;
- a building affected by a sewer back-up or flood.

The by-law stipulates that boroughs can use various means to verify compliance, including inspections and certificates of compliance and proper functioning of the systems or components installed.

In the case of new construction or alteration work requiring the installation of plumbing fixtures, compliance with the by-law should be established when the permit is issued. In the case of buildings affected by a sewer back-up or a flood, compliance with the by-law should be established when informed about this event.

For a building in one of these situations, non-compliance with the by-law poses several risks for the boroughs and the City. In the case of a new building or a building undergoing alteration work, if the by-law is not applied in order to detect non-compliances, the risks of back-up or flood remain present, and if these occur at a later time, they can result in even greater consequences. The work to be carried out by the owner could be more complicated and costly than if it had been done during the construction of the building. The same applies to alteration work on a building. In the case of buildings affected by a back-up or flood, failure to apply the by-law and detect non-compliances can result in the building remaining at risk for other back-ups or floods resulting in damages, and new claims being made to the City.

It is therefore important that regulations be applied by the borough in order to identify situations of non-compliance in the case of the three situations presented above. It is also important that the staff responsible for applying the by-law have the tools and means to enable them to apply the regulations in such a way as to reduce the risks described above.

Furthermore, the *By-law concerning the delegation of City council powers to borough councils*³¹ provides that the borough council must submit to the director of the Service de l'eau a yearly list of addresses that were inspected and, if applicable, the non-compliances uncovered and the actions taken to correct them.

At this stage in our audit, we sought to examine whether the business units systematically applied the by-law to new buildings, buildings where alterations are being made to a plumbing system and buildings affected by a sewer back-up or a flood, to ensure compliance. We also wanted to evaluate the extent to which control mechanisms had been put in place to detect situations of non-compliance with the regulations.

Application of the by-law in the two selected boroughs is the responsibility of the Division des permis et des inspections within the DAUSE. In the Ville-Marie borough, a single building

³¹ City council of the Ville de Montréal, by-law No.02-002, December 18, 2001.

inspector is in charge of applying this by-law. For the CDN-NDG borough, this by-law is enforced by four building inspectors.

First, for the two boroughs, we observed that the by-law is not applied to new buildings. We also found that the by-law is also not applied for buildings where alterations are being made to a plumbing system. Among the permits issued for alteration work, we were unable to determine which ones involved plumbing work. When alteration permit requests are made, there is no control mechanism in place to detect those involving plumbing work. For these two types of buildings, the managers we met with stated that the staff required had not been deployed since the by-law came into effect.

Yet, according to the information obtained from the individuals we met with attached to the Service de l'eau, data compiled during inspections conducted between 2011 and 2014, and involving new buildings as well as those for which a permit was granted for plumbing work, reveal that, in more than 70% of cases, the catch basin and drain pump do not comply with the by-law. Moreover, in over 30% of cases, the valve does not comply with the by-law. Consequently, we feel that it is important to apply the by-law to these buildings to make them compliant, otherwise several of the risks discussed earlier could occur. Also, we feel that, when a permit request is processed, a regulatory analysis grid should include the *By-law concerning the protection of buildings against sewer back-up* so that the staff can ensure that it is systematically applied to the buildings in question. In addition, for alteration permit requests, a control mechanism to detect those involving a plumbing system in a building should be in place to facilitate application of the by-law.

Second, we observed that, since its coming into force, the by-law is applied essentially to buildings affected by a sewer back-up or a flood. For both boroughs, our audit revealed that the building inspections conducted since 2011 were completed based on a list of buildings affected by a sewer back-up and for which citizens submitted a claim to the City as a result of the damages incurred. This list comes from the Service de l'eau.

In the case of the Ville-Marie borough, building inspections related to compliance with the by-law began in 2011, but they were conducted by the Service de l'eau at the time. The borough took over in 2012. In relation to the number of claims received in the years 2012, 2013 and 2014 for buildings affected by a sewer back-up or a flood, the number of inspections conducted by the borough for the same period represents a percentage of 37%. According to the information provided by the manager we met with at the Division des permis et des inspections, the inspections carried out in 2013 and 2014 primarily involved claims submitted by citizens in 2012. We feel that measures should be taken to ensure that inspections are carried out more promptly.

For the CDN-NDG borough, building inspections related to compliance with the by-law also began in 2011, but they were conducted by the Service de l'eau. The borough took over in 2012. According to the information obtained, no inspections were conducted in 2014. According to the manager we met with at the Division des permis et des inspections, the inspections carried out in 2012 and 2013 mainly involved claims submitted by citizens in 2012. A comparison between the number of inspections conducted by the borough and the number of claims received for the years 2012, 2013 and 2014 (up until August 31) demonstrates that a small proportion of claims were inspected, namely 7.5%. This said, over the course of our audit in this borough, a new procedure that the individuals we met with intend to use systematically from now on was applied for three files of buildings affected by a sewer back-up in 2014. In this procedure, the borough sends the building owner a request for a compliance certificate with regard to the equipment mentioned in the by-law. This certificate must be produced by the owner or a contractor and must indicate that the plumbing equipment stated in the by-law is compliant. The individuals we met with stated that they plan on no longer conducting inspections and using this method systematically to verify compliance with the by-law. In our opinion, while this method is provided for in the by-law, we feel that it is important for the borough staff to ensure they receive an inspection report from the building owner or contractor in support of the required compliance certificate. Given that the borough must report on inspections conducted in the buildings affected by a sewer back-up or flood, we feel that such reports are necessary.

Furthermore, even though inspections are conducted with regard to buildings that have been the subject of claims, it is important to remember that the by-law applies to all buildings affected by a back-up or flood, regardless of whether a claim or request was submitted to the borough by a citizen. It should also be mentioned that not all buildings affected by a sewer back-up or a flood have been the subject of a claim. Our audit revealed that boroughs must respond to numerous calls concerning citizen requests related to sewer back-ups and the functioning of a sump or sewer, resulting in more resources being used and extra costs incurred.

According to the documents we obtained, these requests are primarily handled by the boroughs' Direction des travaux publics, and the DAUSE is not involved in the handling of these requests. A comparison between the lists of requests made by citizens and the lists of claims shows that certain requests were also subject to claims. Such requests that were also subject to claims are likely to involve an inspection by the DAUSE, which is not the case for the other requests, even though there is a risk that the building was affected by a sewer back-up or a flood. In our opinion, control mechanisms aimed at detecting citizen requests related to a building affected by a sewer back-up or a flood for which a claim has not been made should be put in place by the boroughs in order to verify compliance with the by-law. The

failure to identify buildings affected by a back-up leaves them in a situation where they are at risk for a back-up or flood and this, in turn, creates a new risk of claims for the City and the borough.

We feel that additional efforts should be put forth so that all buildings affected by a back-up or flood are subject to an inspection or a compliance certificate.

4.2.1.1.B. Recommendation

We recommend that the Direction de l'aménagement urbain et des services aux entreprises of the Ville-Marie and Côte-des-Neiges–Notre-Dame-de-Grâce boroughs:

- apply the by-law to new buildings and buildings where alterations are done to a plumbing system, and put in place control mechanisms to ensure that the by-law is systematically applied to these buildings to ensure compliance with the by-law;
- ensure that inspections are performed or actions are taken as soon as possible with regard to all buildings affected by a sewer back-up or a flood in order to reduce the risks of back-up or flood for these buildings and, in turn, the risks of claims;
- put in place mechanisms aimed at detecting, among requests submitted by citizens, the buildings affected by a sewer back-up in order to be able to conduct or take actions in accordance with the by-law.

Business units' responses:

VILLE-MARIE BOROUGH

- *[TRANSLATION] Apply the by-law to new construction and extensions.*
- *Train the staff on this by-law.*
- *Provide the applicant with documentation including the requirements of the by-law when the permit request is submitted.*
- *Create two dedicated follow-up lines in Oracle, one for the permit issuing clerks and one for inspectors to use to ensure application of the by-law. (Planned completion: October 2015)*

Take action as soon as a flood or back-up is brought to our attention (claim or complaint) by sending a notice to the owner requiring him/her to comply with the regulations and submit a compliance certificate within 90 days of the notice being sent. (Planned completion: October 2015)

Develop a sewer back-up investigation transmission process with the Direction des travaux publics. (Planned completion: October 2015)

CÔTE-DES-NEIGES–NOTRE-DAME-DE-GRÂCE BOROUGH

[TRANSLATION] Computer coding (named CO REFOUL) with automatic entry already exists as part of permit request follow-up in the Gestion du territoire – permis

computer application when an alteration or construction permit request is entered. When analysis confirms application of the by-law, a sticker is applied on the plans informing the applicant of the obligation to comply with the by-law. **(Planned completion: May 2015)**

The diagrams in Appendix C and D of the by-law as well as the inspection form will be included with the documents remitted with the issued permit for which the work is subject to the by-law following review by the permit issuing clerk. **(Planned completion: May 2015)**

The claims compilation will be consulted once a week by a designated employee in order to respond more quickly. One requisition per address will then be entered in the Gestion du territoire – permis computer application and given to the inspector in charge. A new application directive will establish a response time. **(Planned completion: April 2015)**

The new directive on the procedure for application of the by-law will include a detection mechanism for sewer back-up requisitions. **(Planned completion: June 2015)**

4.2.1.1.C. Recommendation

We recommend that the Direction de l'aménagement urbain et des services aux entreprises of the Côte-des-Neiges–Notre-Dame-de-Grâce borough ensure, for situations in which compliance certificates are requested, that they are accompanied by an inspection report so as to satisfy the requirements of the *By-law concerning the delegation of City council powers to borough councils* with regard to accountability in terms of the list of addresses where an inspection was conducted, which must be submitted annually.

Business unit's response:

[TRANSLATION] The new directive on the procedure for the application of the by-law will confirm the need to attach the inspection form to the non-compliance notice. (Planned completion: June 2015)

4.2.1.2. Follow-up to Inspections and Notices of Non-Compliance

4.2.1.2.A. Background and Findings

To protect buildings against risks of sewer back-up or flood, the by-law provides for the installation of certain equipment that ensures protection of the building, in particular a backwater valve on the plumbing equipment, a catch basin to collect drain water near foundations, and a drain pump in the catch basin with an emergency drain toward the outside

of the building. These are the key aspects of the by-law regarding the equipment to be installed. The presence of this equipment in a building helps to reduce the risks of sewer back-ups and floods.

In order to verify whether a building complies with the regulations related to these key aspects, namely to ensure that this equipment is installed in a building, checks must be conducted by the borough. The by-law provides for various means for the borough to conduct these checks, including through inspections or compliance certificates. When a sewer back-up or flood occurs in a building and when an inspection or work must be conducted, it is important that it be done as soon as possible to reduce the risks of a sewer back-up or flood occurring again. In addition, when an inspection has been carried out and a notice of non-compliance has been produced with a time limit, it is important that a follow-up be conducted at the end of the time period to ensure that the required corrective measures have been taken so as to comply with the by-law.

Since, at the time of our audit, the two selected business units were not applying the by-law to new buildings and those where alterations were done to plumbing system, we focused our audit on buildings affected by a sewer back-up or flood. We chose our sample files from lists of inspections and follow-ups of buildings affected by a sewer back-up or flood for which a claim was made to the City.

At this stage of our audit, we therefore wanted to determine whether the key equipment stated in the by-law was systematically subjected to an inspection or servicing. We also wanted to evaluate the means used to ensure corrective measures are taken when situations of non-compliance are uncovered. Lastly we examined whether a follow-up was performed promptly to ensure compliance with the by-law and reduce the risks related to non-compliance.

4.2.1.2.1. Ville-Marie Borough

4.2.1.2.1.A. Background and Findings

The four files examined are related to inspections conducted in 2013 (Nos. 1 and 2) and 2014 (Nos. 3 and 4). These files involve heavy rainfall and claim events dating from 2011 (No. 1) and 2012 (Nos. 2, 3 and 4). Our audit revealed that the four files involved an inspection of three main pieces of equipment required by the by-law (see Appendix 6.2, Table A, Column a) and that an inspection form was used in electronic form in each of the cases in order to cover all the elements required by the by-law (see Appendix 6.2, Table A, Column b).

We also found, for the four cases, that the inspections revealed non-compliant elements on the equipment checked (valve, catch basin and drain pump) (see Appendix 6.2, Table A, Column c). Notices of non-compliance were produced in which the owner was asked to contact the inspector within three weeks of receiving the notice to establish the date the non-compliances were corrected (see Appendix 6.2, Table A, Column e).

While the inspection and the notices of non-compliance are well documented, we question the long time span between the date on which the sewer back-up occurred and the date of the last contact with the owner. While none of the four files are closed permanently yet, at the time of our audit, the processing time varied between 742 days and 1,192 days (see Appendix 6.2, Table A, Column f).

First, for the purpose of our audit, we were interested in the follow-up done to ensure inspections are carried out within a reasonable time frame. To begin with, we found that the inspections had been conducted more than 12 months after the date of the rainfall event and the claim submitted to the City. Based on the process in place, before conducting an inspection in the building affected by a back-up or flood, the DAUSE must contact the owner by way of an inspection notice letter. The owner is generally given a certain time frame to make an appointment with the borough. For the four files examined, we found that these notices were sent long after the sewer back-up had occurred. For example, for file Nos. 1 and 2, these letters were sent more than a year later. Moreover, we also found that a time limit had not been indicated on the inspection notice for file Nos. 1 and 2 (see Appendix 6.2, Table A, Column d). We believe it is important to indicate a time limit on the inspection notice in order to formalize the inspection requirement and provide evidence if this time limit is not adhered to. It should be mentioned that, for the two other files (Nos. 3 and 4), the owner was given ten days to establish contact with the borough.

Second, we were also interested in the follow-up of notices of non-compliance to ensure corrective actions were taken. We first found that, in the notice of non-compliance sent to the owner, the borough gave a three-week time limit to establish the date of correction of non-compliances. We did not, however, find evidence of another document on which the time limit agreed on between the borough and the owner to complete the work is indicated. At the time of our audit, we observed that two of the notices of non-compliance (Nos. 1 and 2) had been produced over a year ago and a follow-up still had not been conducted.

It should be noted that the *By-law concerning the protection of buildings against sewer back-up* states that “The authority having jurisdiction may, by way of a notice, order that the owner of a building that does not comply with this by-law render it compliant within a timeframe it

*determines, not to exceed 90 days.*³² We feel that the notice of non-compliance should be accompanied by a time frame within which the owner is ordered to carry out the work required to comply with the by-law. This would make owners more inclined to carry out the work required, especially since the by-law provides for fines ranging from \$300 to \$4,000, for violations, depending on whether it is a natural person or a corporate entity.

Moreover, while we found that the four files had been registered in the Gestion du territoire – permis computer application, we also found that the data entry did not allow for an effective follow-up to be conducted. For example, the time frames indicated in the inspection notice letter, the date of the notices of non-compliance and the time frames given to take corrective action were not entered in the application so as to enable a follow-up to be done at the appropriate time. In addition, upon reading the files, we found no evidence that a follow-up had been performed subsequent to the latest inspections. For example, for file Nos. 3 and 4, our examination of the files revealed that inspections were carried out in June and July 2014 and that corrective work was to be completed by the owners in the following weeks. At the time of our audit, however, we did not find any evidence that a follow-up had been performed, and this was more than six months after the notice of non-compliance was sent. In our opinion, it would be important that a follow-up to ensure corrective measures have been taken be done as soon as possible after the time frame agreed on by the borough and the owner (see Appendix 6.2, Table A, Column g).

In conclusion, we feel that the current practice does not promote diligence in the implementation of corrective measures by the owner and does not allow the City to reduce the risk of a new event affecting the building and of another claim resulting from it. We feel that an analysis of the processing times should be conducted to determine the steps of the process that could be done differently or more promptly following the back-up or flood event. Subsequently, we feel it would be important that control mechanisms be put in place to ensure that files are followed up on promptly for all the steps that involve an inspection and a notice of non-compliance. We also feel that any notice should be accompanied by a time frame in order for corrective measures to be taken as soon as possible to reduce the risks of a sewer back-up or flood.

³² Article 13.

4.2.1.2.1.B. Recommendation

We recommend that the Direction de l'aménagement urbain et des services aux entreprises of the Ville-Marie borough take the necessary measures to:

- ensure that the inspection notice letter is systematically accompanied by a time limit to formalize the inspection requirement in order to facilitate the follow-up of files and provide official proof in anticipation of the issuing of a notice of violation, if applicable;
- ensure that the notice of non-compliance is systematically accompanied by a time limit within which the owner is ordered to complete the required work in order to facilitate the follow-up of files and provide official proof in anticipation of the issuing of a notice of violation, if applicable;
- reiterate to the staff involved the importance of entering the notices and time limits given to the owner as well as the follow-up visits conducted in the Gestion du territoire – permis computer application to facilitate the planning of actions to take and allow for a subsequent verification.

Business unit's response:

[TRANSLATION] Systematically send a notice stating the obligation to comply with the by-law and to send us a compliance certificate within 90 days of notification as soon as we are informed of a sewer back-up or flood. (Planned completion: October 2015)

Create a dedicated requisition in Oracle as soon as we are informed that a building has been affected by a sewer back-up or flood (claim or complaint). All data related to follow-up will appear on it (notice, time limit, return of certificate). (Planned completion: October 2015)

4.2.1.2.1.C. Recommendation

We recommend that the Direction de l'aménagement urbain et des services aux entreprises of the Ville-Marie borough perform an analysis of the processing times for inspection files involving buildings affected by a sewer back-up or a flood to determine the steps of the process that could be done differently in order to accelerate the process and reduce the risks of claims for the City.

Business unit's response:

[TRANSLATION] Systematically send a notice stating the obligation to comply with the by-law and to send us a compliance certificate within 90 days of notification as soon as we are informed of a sewer back-up or flood. (Planned completion: October 2015)

4.2.1.2.2. Côte-des-Neiges–Notre-Dame-de-Grâce Borough

4.2.1.2.2.A. Background and Findings

Out of the four files examined, three were subject to inspections carried out in 2013. The fourth file was subject to a compliance certificate request from the borough. These files involved heavy rainfall events and claims dating from 2012 to 2014 (see Appendix 6.2, Table A).

Our audit revealed the fact that three files were subject to an inspection of the three main pieces of equipment required in the by-law (see Appendix 6.2, Table A, Column a, Nos. 5, 6 and 7). We found no evidence for file No. 5 that an inspection form had been used, but handwritten notes had been produced. In addition, for file No. 7, we found that the inspection form had been partially completed (see Appendix 6.2, Table A, Column b). For file No. 8, we were unable to evaluate the use of the inspection form since it was sent with the compliance certificate request and the file was still open at the time of our audit. Nevertheless, we feel that an inspection form should be used systematically for all files at the time of an inspection or action to ensure that all the elements provided for in the by-law are covered and ensure compliance with it.

We also observed for the three cases that inspections revealed non-compliant elements on the equipment checked (valve, catch basin and drain pump) (see Appendix 6.2, Table A, Column c). We did not, however, find any evidence that notices of non-compliance had been produced to require the owner to take the necessary corrective measures (see Appendix 6.2, Table A, Column e).

As with the Ville-Marie borough, we question the relatively long processing time between the date on which the sewer back-up occurred and the date of the last contact with the owner. While none of the four files are permanently closed, at the time of our audit, the processing time ranged from 141 days to 385 days (see Appendix 6.2, Table A, Column f). It should be noted that, in the case of the CDN-NDG borough, the date of the last contact is that of the inspection or the sending of the compliance certificate request, and there is no evidence of any notice of non-compliance or follow-up visit being conducted to ensure that the situations were corrected.

First, as part of our audit, we were interested in the follow-up done to ensure inspections are carried out within a reasonable time frame. To begin with, we found that the inspections had been conducted more than 12 months after the date of the rainfall event and the claim submitted to the City. However, we cannot attribute this significant delay to the late sending of an inspection notice letter because we found no evidence of such letters (see Appendix

6.2, Table A, Column d). We feel that efforts should be made to ensure inspections are conducted as soon as possible after the sewer back-up or flood event in order to reduce the risk of a sewer back-up or flood affecting the building once again and resulting in another claim for the City.

Second, with regard to the follow-up of non-compliances to ensure that the necessary corrective measures are taken, we were unable to assess it because we found no evidence of this in the file (see Appendix 6.2, Table A, Column e). In our opinion, it is important that, when non-compliances are uncovered, notices of non-compliance accompanied by a time limit be given to the offender to ensure that corrective measures are ordered to comply with the by-law. Moreover, it is important that, when the notice time limit is up, a check be performed as soon as possible to determine whether corrective measures were applied in accordance with the by-law. It is also important that a follow-up report be produced, both to facilitate the planning of actions to be taken by the staff and to facilitate the checking of actions by the manager.

File No. 8 involves a new procedure being used by the managers in charge at the time of our audit. We were unable to assess the effectiveness of this method since the file was not closed. According to the information obtained, however, it primarily concerns buildings affected by a back-up or flood. It does not apply to new buildings or those undergoing alterations to a plumbing system. It consists in sending a notice to the owners of buildings affected by a sewer back-up or a flood asking them to provide a certificate of compliance with the by-law signed either by them or by a contractor. The letter is accompanied by an inspection form including the aspects provided for in the by-law and an action sheet that the owner or contractor must fill out. According to the borough's procedure, a 90-day time limit is given to the owner. If this time limit is not met, a second notice will be sent with a 30-day time limit.

We question the fact that a second notice is sent given that the first notice provides a 90-day time limit to produce the compliance certificate. We feel that such a procedure complicates the application of the by-law given that two notices are sent with the same purpose. In addition, we feel that this procedure may lead to at-risk situations by increasing response times. In our opinion, the procedure put in place should apply to all types of buildings to which the by-law refers, and should promote a simplified application aimed at taking corrective measures as soon as possible in order to protect the building against sewer back-ups and floods and, ultimately, reduce the risk of claims for the City. Therefore, while efforts are made to manage the application of the regulations by way of a procedure, we feel that it should be modified to include the various elements that we discussed above.

Moreover, we found that only one file had been entered in the Gestion du territoire – permis computer application. Consequently, the application is not used for file follow-up purposes or to produce reports. This situation does not make it possible for a manager to introduce verification mechanisms.

In conclusion, we feel that the current practice does not promote proper management of the inspections of buildings affected by sewer back-ups for which claims were made. This situation can be explained by the fact that the borough does not use an inspection form, does not produce a notice of non-compliance and does not provide proof of the follow-up conducted to ensure that the corrective measures required of the owner have been taken. This situation does not enable the City to reduce the risk of a new event affecting the building and resulting in another claim. We feel that it would be important that control mechanisms be put in place to ensure that a follow-up of the files is performed as soon as possible for all the steps that involve an inspection and a notice of non-compliance. We also feel that all notices should be accompanied by a time limit so that corrective measures are brought as soon as possible in order to reduce the risks of a sewer back-up or flood.

4.2.1.2.2.B. Recommendation

We recommend that the Direction de l'aménagement urbain et des services aux entreprises of the Côte-des-Neiges–Notre-Dame-de-Grâce borough:

- take the necessary steps to ensure that the inspection form is used and completed for every file so that all the key aspects of by-law are dealt with;
- ensure that notices of non-compliance accompanied by a time limit are produced when non-compliances with the by-law are found so that corrective measures can be applied as soon as possible and to promote the follow-up of files in a timely manner;
- re-evaluate the relevance of providing owners with an additional 30 days to produce the compliance certificates since an initial time limit has already been set, in accordance with the by-law and so as to not complicate the procedure in place;
- take the necessary steps to ensure that follow-up reports generated by the Gestion du territoire – permis computer application are systematically produced for each file in order to facilitate the follow-up of actions and favour verification by the manager in charge;
- take the necessary steps to ensure that the staff involved enters in the Gestion du territoire – permis computer application the inspection forms, the compliance certificates, the notices of non-compliance and the time limits given to the owner as well as the follow-up visits conducted in order to facilitate the planning of actions to be taken and allow for subsequent verification;
- improve the procedure being used to facilitate application of the by-law for all the affected buildings and thus facilitate the resulting management of inspections and accountability reporting.

Business unit's response:

[TRANSLATION] The new directive on the procedure for the application of the by-law will be applicable to each file. (Planned completion: June 2015)

The claims compilation will be consulted once a week by a designated employee in order to respond more quickly. (Planned completion: April 2015)

A re-evaluation of the pertinence of the additional time frame will be performed during production of the new directive. (Planned completion: June 2015)

The file's field and class entered in Oracle allows for the production of this type of report. A standard entry will be included in the directive. (Planned completion: June 2015)

The Gestion du territoire – permis computer application allows for this type of data entry. The directive will standardize the procedure so that all the relevant items are included. (Planned completion: June 2015)

The procedure will be complete, from analysis of permit requests or entering of the requisition to the closing of the file by the inspector. (Planned completion: June 2015)

4.2.2. Staff Information and Training Mechanism

4.2.2.A. Background and Findings

Compliance with laws and by-laws requires that the staff applying them have a certain level of knowledge and expertise, otherwise risks related to non-compliance are likely to arise. These risks can involve claims and lawsuits against the City and the boroughs, major costs, and citizen dissatisfaction with regard to management. It is therefore important that the staff involved in applying the regulations be adequately informed, specifically by being kept up to date on legislative and regulatory modifications and by having the latest versions of the regulations to be applied. It is also important that the staff have proper expertise by having access to training on the regulations that they are responsible for applying.

At this stage, our audit consisted in examining whether mechanisms had been put in place to ensure that the staff in charge of applying the regulations had access in particular to up-to-date information, tools to aid in comprehension and application, and training. The staff responsible for applying these regulations should have appropriate training and be kept up to date on the various aspects of these regulations. Our audit work revealed that the business units had an up-to-date version of the regulations.

In addition, our audit revealed that, as part of the integrated approach adopted by the executive committee, the Service de l'eau provided the boroughs with several tools aimed at assisting them in the application of the by-law. It produced and made available to the boroughs a detailed procedures guide including explanations on the application of the by-law, an inspection form in paper and electronic formats (Excel file) covering all the elements of the regulations as well as examples of letters to use. Moreover, the Service de l'eau provided the boroughs with an electronic directory including the same tools as the guide. We were able to determine that the two selected boroughs had these guides and were aware of the electronic directory of the Service de l'eau as they used it to retrieve the lists of addresses prepared for the boroughs of the buildings affected by a sewer back-up or a flood.

Furthermore, according to the information that we obtained from the individuals we met with and connected to the Service de l'eau and the Division des permis et des inspections of the

two selected boroughs, the inspectors responsible for applying the by-law constantly receive information from the Service de l'eau regarding the by-law. Also, the Service de l'eau offers telephone assistance when needed.

With regard to training, according to the information obtained from these same individuals, inspectors from the two boroughs received training offered by the Service de l'eau on the application of the by-law. However, for the Ville-Marie borough, the manager we met with in the Division des permis et des inspections told us that only one inspector had received the training offered by the Service de l'eau. With regard to the CDN-NDG borough, according to the information provided by the managers we met with, only inspectors received the training offered by the Service de l'eau. In both cases, the managers stated that they do not closely supervise training with regard to this by-law.

For both boroughs, we feel that other categories of employees should also be able to benefit from the training offered by the Service de l'eau, including the permit clerks since they will be asked to apply the by-law with regard to new buildings as well as buildings undergoing alterations to the plumbing system.

While the Service de l'eau participates in staff training for both boroughs, we feel that the managers in charge in the Division des permis et des inspections of these boroughs should be aware of the training needs of their staff regarding application of this by-law and follow-up on this training since other employees besides inspectors may have a need for training.

4.2.2.B. Recommendation

We recommend that the Direction de l'aménagement urbain et des services aux entreprises of the Ville-Marie and Côte-des-Neiges–Notre-Dame-de-Grâce boroughs:

- establish training needs for the staff involved in applying the *By-law concerning the protection of buildings against sewer back-up*;
- put in place follow-up mechanisms regarding staff training to ensure their expertise is kept up to date and provide assurance of compliance with the regulations.

Business units' responses:

VILLE-MARIE BOROUGH

[TRANSLATION] Send a request to the Service de l'eau asking that our staff be trained on this by-law. (Planned completion: October 2015)

Sign an ongoing training agreement with the Service de l'eau. (Planned completion: October 2015)

CÔTE-DES-NEIGES–NOTRE-DAME-DE-GRÂCE BOROUGH

[TRANSLATION] Training will be given to the staff responsible for application of the by-law. This training will be adapted for either permit analysis or building inspection. (Planned completion: June 2015)

An ongoing training mechanism will be put in place to ensure that expertise is kept up to date by means of work team meetings. (Planned completion: June 2015)

4.3. Accountability Mechanisms

4.3.A. Background and Findings

Accountability reporting is a sound management practice that provides managers with information on the state of activities under their responsibility to assist them in decision making. It also makes these managers accountable for the decisions that are made. In the field of public works and urban planning at the municipal level, these decisions are very often related to the application of municipal laws and by-laws.

At this stage, our audit consisted in assessing the extent to which accountability reports on compliance with laws and by-laws are produced by each borough's administrative units to provide information on the current situation with regard to compliance in the application of a regulation. Such accountability reporting may involve, for example, situations of non-compliance, aspects of the regulations that are not being applied, follow-up on the application of a by-law or evaluation of compliance with a by-law with regard to an activity that was carried out.

Our audit revealed that, with regard to the regulations related to the temporary occupancy of the public domain, activity reports are generally produced annually by the Direction des travaux publics of the two boroughs. However, these reports primarily provide information on the number of permits, the category of permits, and the revenue by month or year. Based on the documents consulted and the information obtained, we found no evidence that reports aimed at assuring borough management of compliance with this by-law were produced in order to assist managers in decision making, among other things.

Lastly, with regard to the *By-law concerning the protection of buildings against sewer back-up*, the *By-law concerning the delegation of City council powers to borough councils* provides for an accountability mechanism that requires boroughs to submit a yearly report to the director of the Service de l'eau including a list of addresses where an inspection was conducted in order to verify compliance with the by-law. Also, for each address, this by-law

requires that any non-compliances found as well as the correction of such non-compliance be indicated, if applicable.

For the Ville-Marie borough, an accountability report was submitted during the borough council meetings on July 8, 2014, for the year 2013 and on October 2, 2013, for the year 2012. It should be noted that the accountability report for 2014 was not available at the time this audit report was produced. With regard to the CDN-NDG borough, an accountability report was also tabled during the council meetings on January 12, 2015, for January to December 2014 and on March 3, 2014, for January 2012 to December 2013. According to the information obtained from the individuals connected to the Service de l'eau, the accountability reports submitted by the two boroughs do not meet all the requirements of the by-law. In certain cases, they do not include the lists of addresses of inspections, the non-compliances uncovered and the correction of these non-compliances. In our opinion, it is important that these accountability reports meet all the requirements set out in the *By-law concerning the delegation of City council powers to borough councils* in order to ensure compliance with it. These accountability reports are also important for providing the Service de l'eau with a clear picture of the situation surrounding the application of the *By-law concerning the protection of buildings against sewer back-up*.

While this accountability report exists, we found no evidence of an accountability report related to compliance with laws and by-laws for the affected managers in the borough to help them in their decision making, among other things. Yet, in both boroughs, the by-law is not applied to new buildings or those undergoing alterations to a plumbing system, which, in our opinion constitutes a significant lack of compliance with the regulations. Our review of the decision-making record submitted to the borough council did not reveal any information concerning this matter. We therefore feel that it is important for accountability mechanisms related to compliance with laws and by-laws to be put in place in order to provide a clear picture of the situation surrounding the application of the regulations to facilitate decision making.

4.3.B. Recommendation

We recommend that the Direction des travaux publics of the Ville-Marie and Côte-des-Neiges–Notre-Dame-de-Grâce boroughs:

- **put in place accountability mechanisms related to compliance with the by-laws concerning temporary occupancy of the public domain to provide a clear picture of the situation surrounding the application of the regulations to facilitate decision making.**

Business units' responses:**VILLE-MARIE BOROUGH**

[TRANSLATION] A quarterly report of compliance with the by-law will be produced within management based on monthly samples. (Planned completion: October 2015)

CÔTE-DES-NEIGES–NOTRE-DAME-DE-GRÂCE BOROUGH

[TRANSLATION] Production of a summary report presenting the categories of permits issued, the number and the revenue for each month. Also, an assessment of the situation will be produced presenting a summary of the situations of non-compliances, the aspects of the regulations that are not applied and the modifications that were made during the year. This report will be presented to borough management. (Planned completion: March 2016)

4.3.C. Recommendation

We recommend that the Direction de l'aménagement urbain et des services aux entreprises of the Ville-Marie and Côte-des-Neiges–Notre-Dame-de-Grâce boroughs:

- take the necessary steps to ensure that the documents submitted to the borough council to meet the accountability reporting requirements set out in the *By-law concerning the delegation of City council powers to borough councils* comply with the regulations;
- put in place accountability mechanisms related to compliance with the by-law concerning the protection of buildings against sewer back-ups to provide a clear picture of the situation surrounding the application of regulations to facilitate decision making.

Business units' responses:**VILLE-MARIE BOROUGH**

[TRANSLATION] Define with the Direction du greffe how to send the confidential list of addresses targeted for action. (Planned completion: October 2015)

Produce reports (Oracle extractions) to conduct regular follow-up of activities. (Planned completion: October 2015)

CÔTE-DES-NEIGES–NOTRE-DAME-DE-GRÂCE BOROUGH

[TRANSLATION] The documents provided will meet accountability reporting requirements related to the protection of buildings against sewer back-ups of the By-law concerning the delegation of City council powers to borough councils (02-002). (Planned completion: December 2015)

The Gestion du territoire – permis computer application will be used to extract the data required for accountability reporting. (Planned completion: December 2015)

General comment of the auditor general on the action plan produced by the Ville-Marie borough, Direction des travaux publics

The borough's Direction des travaux publics did not respond in a satisfactory manner to several of the recommendations issued by the Bureau du vérificateur général to ensure that the situations revealed in the audit report be corrected, despite numerous discussions between the Bureau du vérificateur général and the person in charge in the department in question.

5. General Conclusion

Compliance with laws and by-laws is important since they often dictate how activities are to be carried out. Moreover, it is a sound management practice since, in a municipal setting, a large number of the activities to be performed and the services to provide to citizens are governed by laws and by-laws.

We began by examining the *By-law concerning the occupancy of the public domain* and more specifically the temporary occupancy of the public domain, including the regulations in regard to fees. These regulations govern the temporary occupancy of the public domain, namely by requiring permits and measures.

For various aspects surrounding the temporary occupancy of the public domain, we observed several situations of non-compliance with the regulations as well as situations that could lead to a lack of consistency in the application of these regulations:

- Various aspects related to fees that do not comply with the regulations, e.g., fee exemptions applied without any actual regulatory bases, resulting in either a loss of revenue for the boroughs or an overcharging of citizens;
- Major sites of temporary occupancy of the public domain without a permit, which results in loss of revenue for the boroughs as well as risks of claims and lawsuits due to incomplete or missing safety measures for individuals on these sites;
- Lack of evidence that the temporary occupancy sites with a permit are actually inspected to ensure compliance with the conditions of the permit, resulting in a risk of loss of revenue for the borough as well as a risk for the safety of individuals;
- An update, the first in several years, of the fees for temporary occupancy based on the streets that involve special characteristics and various constraints, resulting in a loss of revenue for the boroughs, among other things.

Our audit revealed that these non-compliances and situations were caused primarily by a weakness in the application of the regulations.

We then examined the *By-law concerning the protection of buildings against sewer back-up*. The purpose of this by-law is to set out the equipment that must be present in a building for it to be protected against sewer back-ups and floods. For various aspects surrounding this by-law, we also observed non-compliances and situations that could lead to non-compliances:

- The by-law has not been applied to new buildings and those undergoing alterations to a plumbing system since its coming into force in 2011, leaving these buildings susceptible to a risk of back-up or flood, which in turn puts the City and boroughs at risk for claims and high costs;
- A low number of inspections carried out on buildings in which a sewer back-up has already occurred, leaving these buildings susceptible to risks for the City and boroughs in the event of claims;
- Lack of post-inspection follow-ups and long waits for follow-ups after notices of non-compliance, leaving vulnerable buildings at risk for sewer back-up or flood for long periods of time;
- An incomplete accountability report despite the fact that it is required by a by-law, resulting in elected officials and the Service de l'eau, the intended recipients of this formal accountability report, not being properly informed.

The facts that we observed with regard to this by-law are a concern to us because only one building category, those affected by a sewer back-up or flood, was looked at to verify compliance with the by-law. We question the fact that a by-law duly adopted by City council would only be applied to one category of buildings.

Considering the non-compliances and problematic situations uncovered during examination of the by-laws that our audit dealt with and the risks that result from these, we feel that efforts must be made on the part of the boroughs to put in place control mechanisms providing assurance that the regulations governing their scope of responsibilities are applied accordingly. With regard to the temporary occupancy of the public domain, the risk of financial losses can reach thousands of dollars for a single file. In addition, the number of sites without a permit that we uncovered based on a sample casts a doubt as to the possible existence of the deliberate misappropriation of funds.

6. Appendices

6.1. Application of the Regulations Regarding Temporary Occupancy of the Public Domain

Table A – Sample of Selected Permit Files for Temporary Occupancy of the Public Domain–2014

Investigation file No. Permit amount Duration	(a) Compliance of the permit fee		(b) The permit request includes all the important information	(c) Verification of the compliance of the occupancy with permit issued – Evidence in the file	(d) Work completion notice sent to the borough	Safety measures other than general conditions		(g) General conditions of the permit (included with the permit) – Evidence in the file	The fee for width of occupancy is established based on: • A street listed in Appendix A (street map) • Other street not listed in Appendix A • The street includes a bus route or bicycle lane or includes neither			
	Yes	No	Evidence in the file		Evidence in the file	(e) Indicated on the permit	(f) Verification of compliance		(h) Street listed in the appendix	(i) Fee based on street listed in the appendix or other street	(j) Bus route and/or bicycle lane	(k) Confusion in the regulations
VILLE-MARIE BOROUGH												
1 \$121.99 1 day		X	No	No	No	Yes	No	No	No	Other street	Yes	Yes
2 \$431.98 1 day	X		Yes	No	No	No	No	No	One street yes; one street no	Street in the appendix	No	Yes
3 No charge 4 days		X	Yes	No	No	No	No	No	Yes	Street in the appendix	Yes	No
4 \$1,149.98 2 days	X		Yes	No	No	Yes	No	No	Yes	Street in the appendix	Yes	No
5 \$1,099.74 3 days		X	No	No	No	Yes	No	No	No	Other street	Yes	Yes
6 \$16,362.75 31 days	X		Yes	Yes	No	Yes	No	No	No	Other street	Yes	Yes
CÔTE-DES-NEIGES–NOTRE-DAME–DE-GRACE BOROUGH												
7 \$239.15 1 day		X	No	No	No	No	No	No	No	Other street	No	No
8 \$433.46 3 days		X	Yes	No	No	Yes	No	No	No	Other street	No	No
9 No charge 1 day	X		Yes	No	No	No	No	No	Yes	No charge	Yes	No
10 \$2,147.74 3 days		X	Yes	No	No	No	No	No	Yes	Street in the appendix	Yes	No
11 \$1,156.65 11 days		X	No	No	Yes	Yes	No	No	No	Other street	Yes	Yes
12 \$1,779.81 18 days		X	Yes	No	No	Yes	No	Yes	No	Other street	Yes	Yes

Table B – Detection of Sites of Temporary Occupancy Without a Permit–Visit on October 3, 2014

Detected site No.	(a) A permit is required for this type of occupancy	(b) A permit was issued for this site of temporary occupancy of the public domain		Year of issuance of the permit	(c) Compliance of safety and signage
		Yes Amount of the permit and length	No		
VILLE-MARIE BOROUGH					
1	Yes		X	-----	No
2	Yes	X \$5,017; 43 days		2014	No
3	Yes		X	-----	No
4	Yes	X No charge; 86 days		2014	No
5	Yes	X Permit 1: \$127; 1 day Permit 2: \$1,374; 27 days		2014	No
6	Yes		X	-----	No
7	Yes		X	-----	No
8	Yes	X No charge; 725 days		2013	Yes
9	Yes		X	-----	No
CÔTE-DES-NEIGES–NOTRE-DAME-DE-GRÂCE BOROUGH					
10	Yes		X	-----	No
11	Yes		X	-----	No
12	Yes		X	-----	No
13	Yes	X \$3,714.84; 31 days		2014	Yes
14	Yes		X	-----	No
15	Yes	X No charge; 12 days		2014	No
16	Yes		X	-----	No
17	Yes		X	-----	No
18	Yes		X	-----	No

6.2. Application of the Regulations Regarding the Protection of Buildings Against Sewer Back-ups

Table A – Sample of Selected Inspection Files–Buildings Affected by a Back-up (2013 and 2014)

Investigation file No.	Date of the event	Date of the last contact	(a) An inspection was conducted The main elements were inspected (valve, catch basin and drain pump)	Non-compliances were found, a notice was sent	Letters and notices with time limits Evidence in the file		(f) File processing time – From the time of the event to the last contact	(b) Use of the inspection form	(g) Corrective measures taken
			Evidence in the file	(c) Non-compliances found In the building	(d) Inspection notice letters with a time limit	(e) Notice of non-compliance with a time limit	In number of days	Evidence in the file	
VILLE-MARIE BOROUGH									
1	July 18, 2011	October 22, 2014	Yes	Yes	No	Yes	1,192 days	Yes	No
2	May 29, 2012	November 5, 2014	Yes	Yes	No	Yes	890 days	Yes	No
3	May 30, 2012	June 10, 2014	Yes	Yes	Yes	Yes	742 days	Yes	No
4	May 29, 2012	July 28, 2014	Yes	Yes	Yes	Yes	790 days	Yes	No
CÔTE-DES-NEIGES–NOTRE-DAME-DE-GRÂCE BOROUGH									
5	May 29, 2012	June 18, 2013	Yes	Yes	No evidence	No evidence	385 days	No	No
6	May 29, 2012	June 13, 2013	Yes	Yes	No evidence	No evidence	380 days	Yes	No
7	May 29, 2012	June 13, 2013	Yes	Yes	No evidence	No evidence	380 days	Yes, partially	No
8	June 3, 2014	October 22, 2014	No	No inspection	No evidence	Certificate request with a time limit	141 days	Yes, sent with the request	No