

Code Compliance Strategies



**A Service Delivery Strategy
with Cost Savings Potential**

Third-Party Building Code Enforcement

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Third-Party Building Code Enforcement:

A Service Delivery Strategy with Cost Savings Potential

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Introduction

Conventionally, local governments implement and enforce building codes through a building or development services department, staffed by government employees. However, as municipal budgets shrink and construction volumes become more unpredictable, jurisdictions have found it difficult to maintain this enforcement structure while ensuring the same level of quality, timeliness, and customer service. One solution is to utilize a third-party code enforcement program. A private sector company would then verify compliance with buildings codes on behalf of the government regulatory agency.

This report includes an overview of a comprehensive third-party program and recommendations for establishing such a model¹. It also features jurisdictions with successful third-party enforcement programs, as well as companies that provide building department services across the U.S.

¹ Additional reports on third-party performance testing and third party plan review can be found on IMT's website:
<http://www.imt.org/codes/code-compliance>

1. Which Jurisdictions Could Benefit?

The traditional compliance verification model relies on government employees, whose responsibility is to the public interest, to provide plan review and inspection services for private sector development. It has long preserved checks and balances to sometimes compromising perspectives.

However, building departments have long been stretched thin. Moreover, in the current economic climate, jurisdictions' budgets have decreased and construction volumes have become more variable. Local governments have therefore found it more difficult to fully staff building departments and maintain timely and high-quality service. In such situations, jurisdictions have found third-party enforcement programs are more cost-effective and reliable than the traditional model.

A comprehensive third-party system should be considered by jurisdictions that do not have a building code enforcement program, are newly incorporated, no longer have the budget to support a building department, have a poorly functioning system, or could benefit from cost savings.

Based on experiences of jurisdictions with existing programs and third-party building service companies, a third-party program would be more cost-effective for small or medium-sized jurisdictions (populations of 100,000 and under) and less so for large cities. It would also be an ideal solution for a jurisdiction that has varying construction volumes and does not have the budget to retain the staff to handle peak loads.

2. Program Structure

In a comprehensive third-party enforcement program, the government regulatory agency administers and oversees the program. A private company is hired to perform plan review and inspection services on behalf of the local government. The responsibilities of each participating player are outlined in this section.

See sidebar "Structure: Contracted vs. Approved Third Parties" for a slight variation on this program structure.

2.1 Key Responsibilities of the Governing Agency

The local government is responsible for administering the third-

STRUCTURE: CONTRACTED VS. APPROVED THIRD PARTIES

This report discusses a third-party enforcement structure where the local government contracts with a third party to handle its building code enforcement responsibilities. A variation on this model is where a local government approves numerous third parties to handle the code enforcement responsibilities, but does not have a contract with them. Under this variation, the local government simply approves third parties that meet the qualifications and the builder or developer is responsible to contract with one of those approved entities.

This type of third party model has the benefit of being able to supplement local building departments, especially during peak activity. Washington, D.C. has been using this model successfully for several years. The District gives developers the option of using an approved third party in lieu of obtaining plan review and inspection services through the City's Department of Consumer and Regulatory Affairs.

party program. A Chief Building Official, trained code official, registered architect, licensed engineer, or someone familiar with codes and the building industry would have the skills necessary to fulfill the duties of a program manager. The local government will first need to set the criteria for approving a third party company, including staff qualifications, continuing education requirements, insurance requirements, frequency of contract renewal, and fees, as well as the third party's responsibilities for plan reviews and inspections.

Once a third party is selected, quality control procedures and performance metrics should be determined. Program managers of existing third-party models have stated that informal methods can be satisfactory—they then emphasize using regular communication and meetings as a form of quality control—but best practices would be to require that the third party submit regular compliance reports, with the program manager conducting random audits of plan reviews and inspections. Program administrators should also consider setting up a way for permit applicants to provide feedback.

One of the program manager's responsibilities is to act as a liaison between the community and third party. If a permit applicant or community member has any complaints about a plan review or inspection, or other feedback, the program manager should be prepared to respond to concerns and check the third party's work.

Some jurisdictions may also employ a permit technician to issue permits and certificates of occupancy after the third party completes its plan review and inspection process.

A third party company can work from its own offices or within government buildings. Both options have been successful in jurisdictions with existing programs.

2.2 Key Responsibilities of the Third Party

A third party is responsible for meeting the qualification criteria and fulfilling its contract for plan review and inspection services. When performing plan reviews and inspections, a third party should determine if a project is in compliance with all building codes and ordinances adopted by the local government. The local government is often responsible for issuing the permit or certificate of occupancy after the third party approves a project's plans or submits a satisfactory final inspection report.

See Sidebar "Innovative Initiatives: Engaging the Community" for how some third parties have exceeded these basic requirements and engaged the communities in which they are working.

2.3 Relationship Between the Community and Third Party

If the transition from an old enforcement mechanism to a third-party program is seamless (and especially if the third party works from government offices), members of the community may not notice a change in the service delivery strategy. The process for permit applicants often stays exactly the same. The priorities for third-party companies are to quickly understand the community culture, local codes and ordinances, and to create a partnership with the community.

2.4 Costs

The cost of hiring a third party for compliance activities is usually based on a percentage of the permit application revenues. Typically, companies charge 60 to 80 percent of permit fees to perform complete plan reviews and inspections. These figures are only estimates, and fee schedules vary for different companies and in different regions—for example, the fees charged to permit applicants are fairly low in the South and Midwest, so a third party often gets a higher percentage.

Other costs of the program include overhead and time of a program manager. In many jurisdictions with existing third-party programs, the responsibilities of a program manager get rolled into an existing position in the building or community development department, or remain under the Chief Building Official. Program managers from across the country report that administering a third-party program requires about 10 to 25 percent of their total time.

INNOVATIVE INITIATIVES: ENGAGING THE COMMUNITY

To engage with stakeholders of the community and compete in the private market, third party enforcement companies often go beyond simple plan review and inspection responsibilities.

- SAFEBuilt, based in Colorado and working with over 100 jurisdictions in Colorado, Georgia, Michigan, North Carolina, South Carolina, and Wyoming, has created training curriculums for community members, as well as resources like customized International Code Council (ICC) building guides and brochures about common issues and frequently asked questions by builders and homeowners. They host homeowner clinics about parts of the code that most people do not comply with at the time of their first inspection, including basement finishes. They also provide customer satisfaction surveys to get feedback, assess what people need assistance with, and improve their services.
- Colorado Code Consulting, LLC, has conducted an energy code compliance assessment for many jurisdictions in Colorado.
- In the City of Centennial, Colo., the third party contractor is responsible for meeting long-term city goals, as well as immediate duties. Centennial has undertaken a Home Improvement Program (HIP), which will be supervised by their third-party building services provider. Through HIP, the Building Division works with homeowners that are planning to do major renovations by providing a consultation prior to the beginning of construction and identifying opportunities to find discounts on services and materials. Homeowners with minimum permit valuations of \$15,000 are eligible for a 20% discount on building permit fees.

3. Benefits

The benefits of a third-party enforcement program are numerous:

- It is often more cost-effective because the governing agency needs fewer staff and does not have to pay for overhead, benefits, insurance, or administrative costs.
- The fixed costs of staff members, overhead, and benefits are replaced by variable costs that are dependent on permit applications.
- Because of flexibility in scaling staff members working in a jurisdiction, a third party is better equipped to handle large projects or increases in construction volume while

maintaining timeliness of reviews and responding to applicants.

- Experts are expensive. A building department often does not have funds to hire and retain specialists for mechanical, plumbing, electrical, and energy codes. Hiring a third party gives a jurisdiction access to experts for less than it would cost to hire full-time experts in each of those fields. See Sidebar “Training and Staff Expertise” for examples of requirements companies set for their staff and how they utilize their specialized knowledge.
- Third parties bring a broader perspective and can help a government streamline the permit process. They have access to a large network, which creates an ideal environment for collaboration and idea-sharing, and increases the potential to replicate best practices.
- Third-party companies can capitalize on their resources and networks to create training curriculums and resources for stakeholders that can then be customized for local jurisdictions.
- Administering a program usually takes less time than overseeing a building department, so a program manager may have more time to pursue beyond-code activities or green building programs.

CREATING EXPERTS: TRAINING AND STAFF REQUIREMENTS

Third-party building service companies often have higher standards for training and experience levels for their staff than a typical jurisdiction. For example, Colorado Code Consulting (CCC) requires staff to have at least ten years of experience in their specialized field, as well as ICC certifications. Members of their staff also serve on and lead local chapters of the ICC and take part in code adoption processes.

Many companies, like CCC and Interwest Consulting (based in California), also capitalize on their experience in the field and are code education providers. They provide trainings to building code officials and builders across the country.

Such companies are thus well-positioned to serve as advisors during the code adoption process. For example, in Windsor, Colo., the town’s building services contractor conducts research about latest model codes to inform recommendations and the adoption process.

4. Considerations

While implementing a third-party enforcement program, government officials may encounter opposition from stakeholders and the community. However, by setting the right criteria during the selection process and high-performance metrics, sources of opposition can be removed. Considerations for and challenges of implementing a program are outlined below:

- Privatizing the enforcement mechanism may seem unfamiliar. However, similar models have proven to be effective in the provision of many government services, so a third-party enforcement program would not be ground-breaking. The National League of Cities Municipal Action Guide on “Privatizing Municipal Services” states: “the average American city works with private partners to perform 23 out of 65 basic municipal services,” and “...governments often realize cost savings of 20 to 50 percent when the private sector is involved in service provision.” (Rozsa and Geary, 2010)
- To ensure that a third party is not self-serving, a government can specify in the contract or search criteria that the chosen third party will only work with governments—and not with the private sector.
- Government agencies and community members may think that working with a third-party company would result in working with a constantly changing staff and unfamiliar faces. However, jurisdictions with existing programs report that they reliably work with the same third-party staff members—other third party employees may replace members that are on vacation or supplement the existing team when the construction volume increases, but the same people are consistently responsible for a jurisdiction. Amanda Thompson, Planning Director of Decatur, Georgia, states that the employees of Decatur’s third-party agency are “treated like other employees of the city, so they act like employees of the city.” The program manager should take the lead in fostering a collaborative environment and setting expectations.

“...governments often realize cost savings of 20 to 50 percent when the private sector is involved...”

- Building officials may be concerned that setting up a third-party program costs government employees their jobs. In most jurisdictions with existing programs, a jurisdiction never had its own building department, or a third-party program was not chosen until other options for maintaining quality were explored or employees were already laid off due to shrinking budgets. Furthermore, large companies make an effort to hire locally and may hire past building officials.
- Hiring a third-party company to do plan reviews and inspections does reduce staff needs and the burden on a government agency. However, for the program to be effective and efficient it requires oversight by a program manager and his/her time to establish program requirements and ascertain that they are being met. When planning a program, duties and time requirements of a program manager should be clearly specified.
- Regular communication should be built into the contract to ensure effective coordination. Expectations and the community culture and long-term goals should be understood by both parties.
- Quality control procedures should also be built into negotiations. The formality of procedures will depend on the size of jurisdiction and availability of the program manager. For example, the City of Centennial, Colo., (population of approximately 100,000) requires its contractor to maintain and submit monthly reports to demonstrate compliance with agreed upon performance measures.

5. Conclusion

Using a third-party building services provider is a viable and effective option to the traditional building code enforcement model. A program should be carefully crafted, so that performance metrics are determined and met and requirements of both sides are understood.

References

Rozsa, S, and C Geary. *Privatizing Municipal Services*. Washington, DC: National League of Cities, 2010.

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About the Institute for Market Transformation (IMT)

The Institute for Market Transformation (IMT) is a Washington, DC-based nonprofit organization promoting energy efficiency, green building, and environmental protection in the United States and abroad. IMT's work addresses market failures that inhibit investment in energy efficiency and sustainability in the building sector. For more information, visit imt.org.

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