**Minutes – Executive Policy Committee – September 17, 2019**

## REPORTS

**Item No. 13 Investigation into Allegations of Improper Conduct within Property, Planning and Development**

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Winnipeg Public Service, as amended, and recommended to Council:

1. That this report be received as information.

2. That the Winnipeg Public Service report back to Council by March 2020 with updates on the implementation and changes within departments that have been prompted by the investigation.

3. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

DECISION MAKING HISTORY:

Moved by Councillor Rollins,

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than four business days preceding the committee meeting, be considered by Committee.

Carried

Moved by Councillor Gillingham,

That the recommendation of the Winnipeg Public Service be concurred in, with the following amendment:

- Add the following new Recommendation 2:

  "2. That the Winnipeg Public Service report back to Council by March 2020 with updates on the implementation and changes within departments that have been prompted by the investigation."

and forwarded to Council.

Carried

# ADMINISTRATIVE REPORT

**Title:** Investigation into allegations of improper conduct within Property, Planning & Development

**Critical Path:** Executive Policy Committee - Council

## AUTHORIZATION

| Author | Department Head | CFO | Interim CAO |
|---|---|---|---|
| M. Ruta | M. Ruta | N/A | M. Ruta |

## EXECUTIVE SUMMARY

Over the past five months, the City of Winnipeg's (City) Human Resource Services Department (HRS) investigated allegations of improper conduct levelled against inspectors in the Planning, Property & Development Department (PP&D). The investigation focused on two business units within PP&D's Development & Inspections Division, the Commercial Planning Examination & Inspections Branch (Commercial Branch) and the Housing & Existing Buildings Branch (Housing Branch).

The extensive investigation determined:

- A number of inspectors in the Development & Inspections Division participated in extended and sometime excessive coffee and lunch breaks on a regular basis.
- A number of inspectors misused time by doing personal shopping, running personal errands, and doing family or personal chores on City time.
- A number of inspectors regularly left early; with some found to have been misusing paid City time, claiming mileage inappropriately, and accepted money as a result.
- Management at appropriate levels in the department had suspicion of some issues related to staff activity, however not enough was done to enforce workplace rules and they were not adequately connected to the activities of frontline staff in the Commercial Branch.

A total of 20 staff members received an outcome ranging from non-disciplinary letters up to termination of employment:

- Eight employees were terminated
- Seven employees received suspensions
- Four employees received a written reprimand
- One employee received a letter on file that was non-disciplinary

The respective Bargaining Units, which represent the majority of these employees, have grieved the disciplinary action taken.

As a result of the findings, the Interim CAO will be working with City departments to implement the following items:

- Prioritize a review of field operations across all City departments to ensure consistency in procedures and management.
- Engage an external consultant to work with the CAO's Office to assist the PP&D Director in reviewing all PP&D operations to ensure they are functioning optimally and to identify any potential issues that might exist beyond the Development & Inspections Division.
- HRS will assist PP&D to complete a cross jurisdictional scan of other comparable municipalities to determine how they measure productivity and estimate inspection time frames.
- In coordination with the Interim CAO, the PP&D Director will prioritize plans to move the department forward including a review of the department structure, a review of management, and hiring new staff.
- The Acting Chief Innovation Officer will work with all City departments to explore the use of technology to help with accounting for staff time and tracking productivity, while still supporting staff to maintain the autonomy needed to do their job.
- HRS will work with Unions to review shift start times, end times, and break times for staff in the Commercial Branch to find a way to better meet customer requirements while still respecting employee working conditions.
- HRS will work with departments to create a new orientation process for all new leaders to ensure they understand the tools available to them when they are promoted or hired into a new supervisory role. They will also work to implement stronger training to assist supervisors across all City departments in transitioning from coworker to supervisor.
- Request PP&D explore the use of fleet vehicles for field staff instead of the current practice of using private vehicles.

## RECOMMENDATIONS

1. That this report be received as information.

## REASON FOR THE REPORT

On April 16, 2019 the Executive Policy Committee concurred in the recommendation of the Assiniboia Community Committee and directed the Chief Administrative Officer to make public to Council a full and detailed report of the employee conduct investigation within the Planning, Property and Development Department, including findings, within 30 days of the closing of the investigation.

## IMPLICATIONS OF THE RECOMMENDATIONS

There are no implications of the recommendation as the report is to be received as information.

## HISTORY/DISCUSSION

Over the past five months, the City of Winnipeg's (City) Human Resource Services Department (HRS) investigated allegations of improper conduct levelled against inspectors in the Planning, Property & Development Department (PP&D) which surfaced through the media in April 2019.

The investigation focused on two business units within PP&D's Development & Inspections Division, the Commercial Planning Examination & Inspections Branch (Commercial Branch) and the Housing & Existing Buildings Branch (Housing Branch). Included in the Appendix are details of the department's organizational structure.

All inspections staff is represented by the Canadian Union of Public Employees, Local 500 (CUPE). The inspectors work a seven hour day, and they are entitled to one hour of unpaid time, as per the collective agreement.

Supervisors are covered under the Winnipeg Association of Public Service Officers (WAPSO) collective agreement. They also work a seven hour day, and are entitled to one hour of unpaid time, as per the collective agreement.

The department, consistent with City-wide practice, allowed up to two 15 minute breaks (one each morning and each afternoon); however, they are not guaranteed under the collective agreements. Employees typically start their shifts at 8 a.m. or 8:30 a.m., and some employees have accommodated start times. Employees are expected to be working until 4 p.m. or 4:30 p.m. daily, to correspond with their start times.

When the allegations first surfaced through the media, there were limited controls in place to monitor or audit the performance or productivity of Commercial Inspectors. Basic control mechanisms including logging daily activities, sites visited, how long they were there, who they saw, when they left, how many kilometers they used, and what they specifically accomplished, in addition to what time they were leaving work for home at end of day were not required. They were not held accountable to input AMANDA (the computerized building permits work flow process and record system used by PP&D) entries immediately following appointments. Commercial Inspectors also were not required to wear City-branded clothing.

The Housing Branch implemented a scheduling and inspection appointment system in 2012 that has more built-in controls to support assigning work and accounting for employee time. Housing Inspectors are scheduled for appointments for 150 minutes in the morning, an hour of unpaid time, and 210 minutes in the afternoon. They have a full day of appointments set before they leave the office in the morning. They are easily identifiable, wearing City-branded clothing, first implemented in 2017. Housing Inspectors have less ability to change their schedules and use time inappropriately.

While the two inspection branches perform similar work, their work flow, work processes and work environments are very different, which was confirmed throughout the investigation team's interviews. The following chart highlights key differences between inspectors in the two branches up to April, 2019:

| Commercial Inspectors | Housing Inspectors |
|---|---|
| Inspectors self-schedule and work directly with general contractors and specific trades | Schedules and lunch times can be set and/or are entered in to the AMANDA* system by support clerks |
| Inspectors are asked to leave a list of inspections that are booked or planned for the day, they are required to fill-in daily activities post-inspections as well | Daily inspections are known before Housing Inspectors leave for their appointments |
| There are no standardized time estimates for commercial inspections – appointment times can vary significantly | Estimated time standards are identified by inspection type, and time is allotted for the appointment as set by AMANDA* |
| Customers contact the inspectors directly to negotiate appointment times, and clients do not have regular contact with department staff to book inspections; Commercial customers don't have a support clerks to call for missed appointments | Customers can see inspector availability by location/area online; appointments are booked by support clerks in the department and customers can contact the office in the event the inspector does not show up at the scheduled time, or if there is a problem |
| Lunches and breaks are taken around appointment times and need to be somewhat flexible, as commercial inspection appointments can take extra time or have delays at the worksite | Time is allotted between scheduled appointments for lunch |
| One hour lunch blocks are not necessarily the best for Commercial Inspectors as it makes it difficult to book or take an extended appointment. | One hour lunch blocks seem to be an acceptable option with Housing Inspectors. |
| Expectations for timely reporting in AMANDA* was not monitored as regularly; there is no evidence that reports were run by supervisors – same or next day report inputs were the expectation. | Submitting reports is required daily and is encouraged after each appointment, but many Housing Inspectors still submit them in the morning; daily reports are run by the Inspections Supervisor but it is unclear how in-depth they are reviewed. |

**AMANDA is the computerized building permits work flow process and record system used by PP&D*

These differences created opportunities for significant discretion for Commercial Inspectors and to a lesser degree for the Housing Inspectors.

After the allegations surfaced through the media, an investigation team was assembled consisting of members of HRS, led by the Labour Relations Division, to review the Commercials Inspectors Division.

Investigators formulated the following questions to help guide their investigation into the allegations:

1. Did inspectors participate in extended and often excessive coffee and lunch breaks?
2. Did inspectors do personal shopping, run personal errands, and/or do chores on City time?
3. Did inspectors leave early and misuse paid City time?
4. Did it take months for inspections to be undertaken on electrical permits and related work?
5. To what degree was management aware, and what is their role and responsibility?

The investigation team conducted a thorough investigation into the matter. They conducted nearly 100 staff interviews, reviewed 63 employee files, had access to over 80,000 records, pulled 1,500 work logs, conducted 16 employee electronic searches, and downloaded three months of mileage claims and data from January 1, 2019 to March 31, 2019. In addition, the investigation team reviewed more than 20 hours of video and surveillance material, which was obtained on June 21, 2019 for a cost of $18,000 from an external group.

Considering all of the findings, the information provided, and the responses of those interviewed, the outcome of the investigation determined the following:

- It was proven that a number of inspectors in the Development & Inspections Division participated in extended and sometime excessive coffee and lunch breaks on a regular basis.
- It was proven that a number of inspectors misused time by doing personal shopping, running personal errands, and doing family or personal chores on City time.
- It was proven that a number of inspectors regularly left early with some found to have been misusing paid City time, claiming mileage inappropriately, and accepted money as a result.
- It was not proven that it takes months for final inspections on electrical work.
- It was proven that management at appropriate levels in the department had concerns related to staff activity however, they did not do enough to enforce workplace rules and they were not adequately connected to the activities of frontline staff in the Commercial Branch.

The investigation team contemplated a number of considerations, in addition to consulting with external legal counsel, before disciplinary outcomes were decided.

Among the considerations was the basis that the relationship between employees and their employer is one that is based on trust, and employees should not have to be told or reminded of the requirement to be honest. In addition, a balanced approach to assessment of the facts was required to determine accountability, and therefore both leaders and employees were considered for their role in this situation.

It was also considered that dishonesty may arise in a variety of situations including lying, falsifying documents, or giving false statements. However, there is a principle in labour and employment law that in every employment relationship, employees owe to the employer an implied obligation of honesty and good faith. This was interpreted to mean that employees are obligated to answer the reasonable inquiries of their employer, they are required to answer

honestly, and, where there are concerns about their trustworthiness, they are obligated to provide an explanation for their behaviour.

This investigation looked at employee time theft, where an employee is paid for work that he or she did not do which can happen by coming in late, leaving early, asking another employee to clock in for them, taking extended breaks, or spending time on other things (including personal matters) rather than working. While time theft is often difficult to detect and prove, and the most effective way to prevent theft of employer time is to carefully monitor employees.

It is also grounds for discipline or termination when an employee is leaving work without permission. The underlying legal principle is that employees are required to attend work when scheduled, and not to leave without permission. Lateness is also an independent ground for discipline or discharge, particularly where it is chronic and without reasonable explanation.

And finally, theft, including submitting false expense claims, is also, in most cases, considered to be just cause for discipline or termination.

A total of 20 staff members received an outcome ranging from non-disciplinary letters up to termination of employment:

- Eight employees were terminated
- Seven employees received suspensions
- Four employees received a written reprimand
- One employee received a letter on file that was non-disciplinary

In addition, all remaining employees involved received a letter/email of expectation to reaffirm and reset the workplace, and to ensure workplace rules, policy, practice, administrative standards, and expectations are clear.

The respective Bargaining Units that represents each of these employees has grieved the disciplinary action taken.

As a result of the findings, the Interim CAO will be working with City departments to implement the following items:

- Prioritize a review of field operations across all City departments to ensure consistency in procedures and management.
- Engage an external consultant to work with the CAO's Office to assist the PP&D Director in reviewing all PP&D operations to ensure they are functioning optimally and to identify any potential issues that might exist beyond the Development & Inspections Division.
- HRS will assist PP&D to complete a cross jurisdictional scan of other comparable municipalities to determine how they measure productivity and estimate inspection time frames.
- In coordination with the Interim CAO, the PP&D Director will prioritize plans to move the department forward including a review of the department structure, a review of management, and hiring new staff.
- The Acting Chief Innovation Officer will work with all City departments to explore the use of technology to help with accounting for staff time and tracking productivity, while still supporting staff to maintain the autonomy needed to do their job.

- HRS will work with Unions to review shift start times, end times, and break times for staff in the Commercial Branch to find a way to better meet customer requirements while still respecting employee working conditions.
- HRS will work with departments to create a new orientation process for all new leaders to ensure they understand the tools available to them when they are promoted or hired into a new supervisory role. They will also work to implement stronger training to assist supervisors across all City departments in transitioning from coworker to supervisor.
- Request PP&D explore the use of fleet vehicles for field staff instead of the current practice of using private vehicles.

Immediate changes were made by PP&D management in response to the allegations. Some of these changes were communicated to Executive Policy Committee at their meeting on July 9, 2019, and these changes remain in place:

- Commercial Inspectors are now required to provide a detailed daily log of the day's activities outside of the office, including tracking what time they left, time arrived on site, time they leave the site, break times (start and end), and time leaving work for home at end of day, and they are required to leave them for the supervisors before they leave for the day
- Any flex start time arrangements are now documented outside of business hours (8:30 a.m. – 4:30 p.m.) and are kept on file
- Commercial Inspectors will begin wearing City-issued shirts/uniforms
- Management will continue to conduct audits of daily logs and mileage claims
- Commercial Inspectors must submit a list of daily planned inspections, before leaving to perform inspections
- Commercial Inspectors must enter field notes into online tracking forms in real time
- The Director of PP&D directed management to remind staff of existing protocols related to time keeping, record keeping, customer service, mileage tracking, data usage on iPhones and iPads, and work alone protocols with inspectors
- Department hired three additional support clerk positions to support the Commercial Branch with implementing and arranging scheduled appointments for external calls, similar to the process used in the Housing Branch

The department has been actively recruiting for new positions, has adjusting workloads to assist areas that require support, and has enacted a strategy to enable staff to better respond to inspection and occupancy requests in a timely manner.

The department has also been supported by Occupational Health & Safety and Workplace Restoration teams through the Employee Assistance Plan to support staff and the department with recovery efforts over the summer of 2019.

PP&D has operationalized a new Commercial Inspections Intake Centre to review, triage, prioritize, and process building and plumbing/mechanical inspection requests.

In addition, over the summer of 2019, PP&D continued to monitor inspection times and implemented an Interim Commercial Inspections Operation Strategy (Interim Strategy) to mitigate project delays while maintaining service levels during this period of time where they are not fully staffed.

The focus of the commercial inspections team has been on major/complex inspection requests. For the remaining requests, PP&D looked specifically at Section 483(3) of the *City of Winnipeg Charter* which states: “For the purpose of an inspection, the city may rely on a certificate of or representation by an engineer, architect, surveyor or other person with expertise respecting the thing being certified or represented, and where the city relies on such a certificate or representation, it is not liable for any loss or damage arising from the negligence of the person giving the certificate or making the representation.”

The projects which PP&D deemed eligible for this path are those projects which are determined to be less complex and to date, they have worked with the industry to develop specific documentation to help these types of projects proceed. The Strategy has been working as expected, allowing efficient responses to requests for service.

Consultations included the Manitoba Association of Architects (MAA), Engineers Geoscientists of Manitoba (EGM), and the Association of Consulting Engineering Companies (ACEC). As a result of those consultations, feedback was incorporated into the progress and final inspection documentation. However, the MAA feedback indicated that there are professionals who have expressed concerns with the alternative approach in providing certifications in lieu of City inspections.

PP&D is continuing to monitor the Interim Strategy and will continue to make adjustments as required.

**FINANCIAL IMPACT**

## Financial Impact Statemen Date: Date: September 11, 2019

## Project Name:

**Investigation into allegations of improper conduct within Property, Planning & Development**

**COMMENTS:**

As the recommendation is that this report be received as information, there are no financial implications associated with this report.

*"Original Signed By"*
Mike McGinn, CPA, CA
Manager of Finance

## CONSULTATION

This Report has been prepared in consultation with:
Human Resource Services
Planning, Property & Development

## OURWINNIPEG POLICY ALIGNMENT

n/a

## SUBMITTED BY

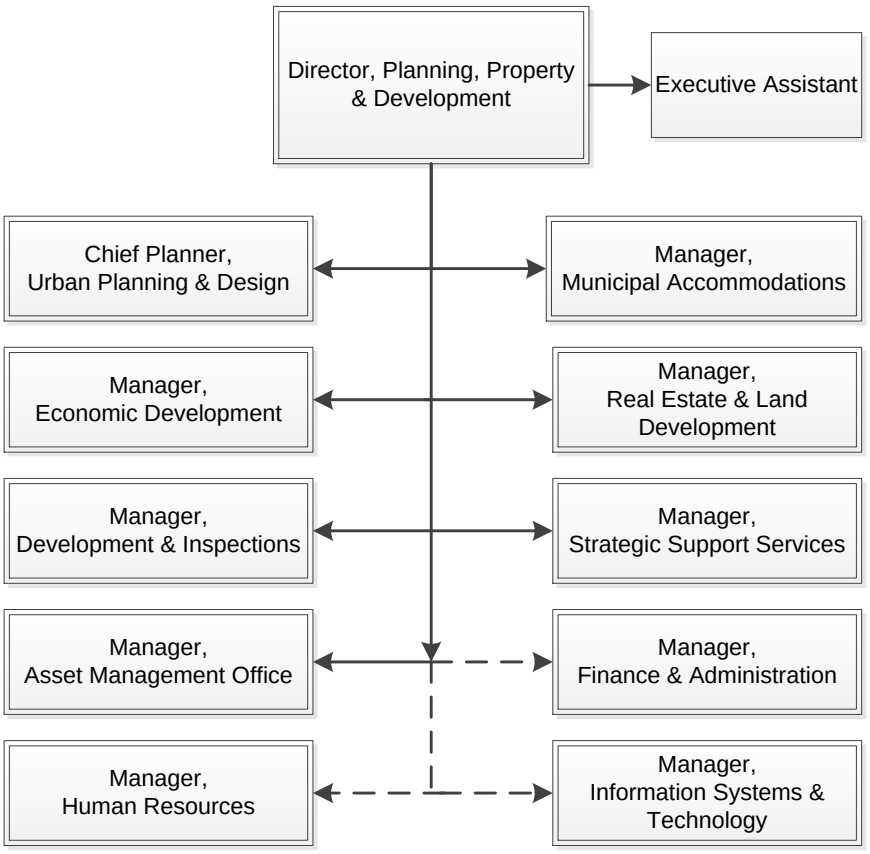
Department: Office of the CAO
Division: Office of the CAO
Prepared by: Michael Ruta, Interim Chief Administrative Officer
Date: September 9, 2019

Attachments:

Appendix: Organizational Structure

**PLANNING, PROPERTY & DEVELOPMENT (PP&D) ORGANIZATIONAL STRUCTURE**

The following chart illustrates the department's organizational structure:




A dotted line denotes a dual reporting relationship to respective Chief / Director.

*As at April 1, 2019*

Note, a dual reporting relationship exists for the Manager of Finance & Administration, Manager of Information Systems & Technology, and Manager of Human Resources. These positions report directly to the Corporate Finance Department, Innovation Department, and Human Resource Services Department, respectively, and indirectly report to the Director of PP&D.

Division Manager is the term given to the manager that oversees one of the department's divisions. They have overall control and accountability for their functional area as it relates to identifying resources, creating organizational structure, hiring and discipline (up to termination), and are responsible for setting workplace practices and rules in accordance with the City's Administrative Standards.

As of April 1, 2019 there were a total of 668 employees in the department.

| **PP&D EMPLOYEE COUNT**<br>*as at April 1, 2019* | |
|---|---|
| **DIVISION** | **EMPLOYEE COUNT** |
| Director's Office<br>(includes Economic Development, Strategic Support Services, and Asset Management) | 14 |
| Human Resources | 7 |
| Financial Services | 16 |
| Information Systems & Technology | 8 |
| Urban Planning & Design | 47 |
| Real Estate & Land Development | 80 |
| Municipal Accommodations | 320 |
| Development & Inspections | 176 |
| **DEPARTMENT TOTAL** | **668** |

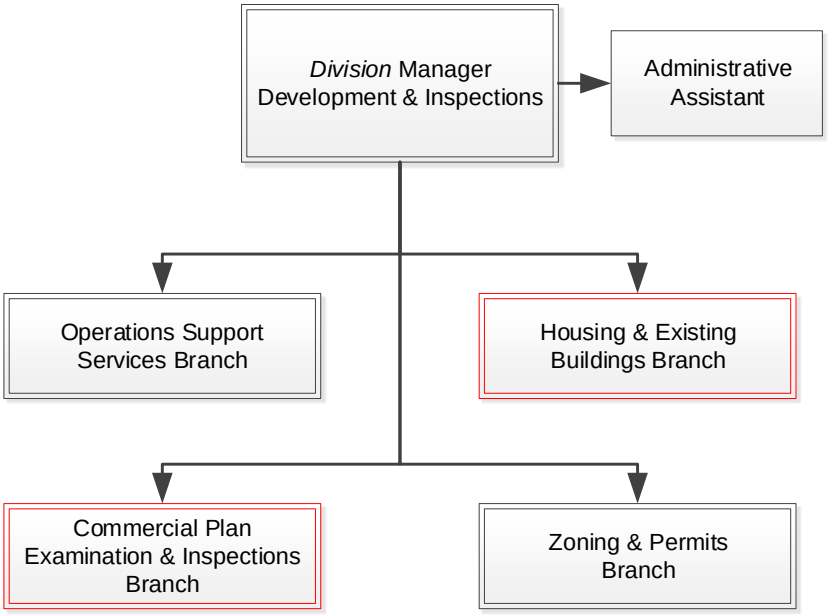
**Note:** Division Managers are included in their respective division counts. Employee counts also include all employees whether they are actively working or on paid or unpaid leave, or seasonal workers.

**DEVELOPMENT & INSPECTIONS DIVISION**

The Development & Inspections Division, which was the subject of the investigation, is segmented into the following four branches:

1. Commercial Plan Examination & Inspections Branch
2. Housing & Existing Buildings Branch
3. Operations Support Services Branch
4. Zoning & Permits Branch

The following chart illustrates the division's organizational structure:




*As at April 1, 2019*

The title Branch Manager refers to the individual heading up a branch of the Development & Inspections Division. The Branch Manager is the closest to the work, managing workplace issues, dealing with escalating supervisor issues, and escalating any larger issues to the Division Manager.

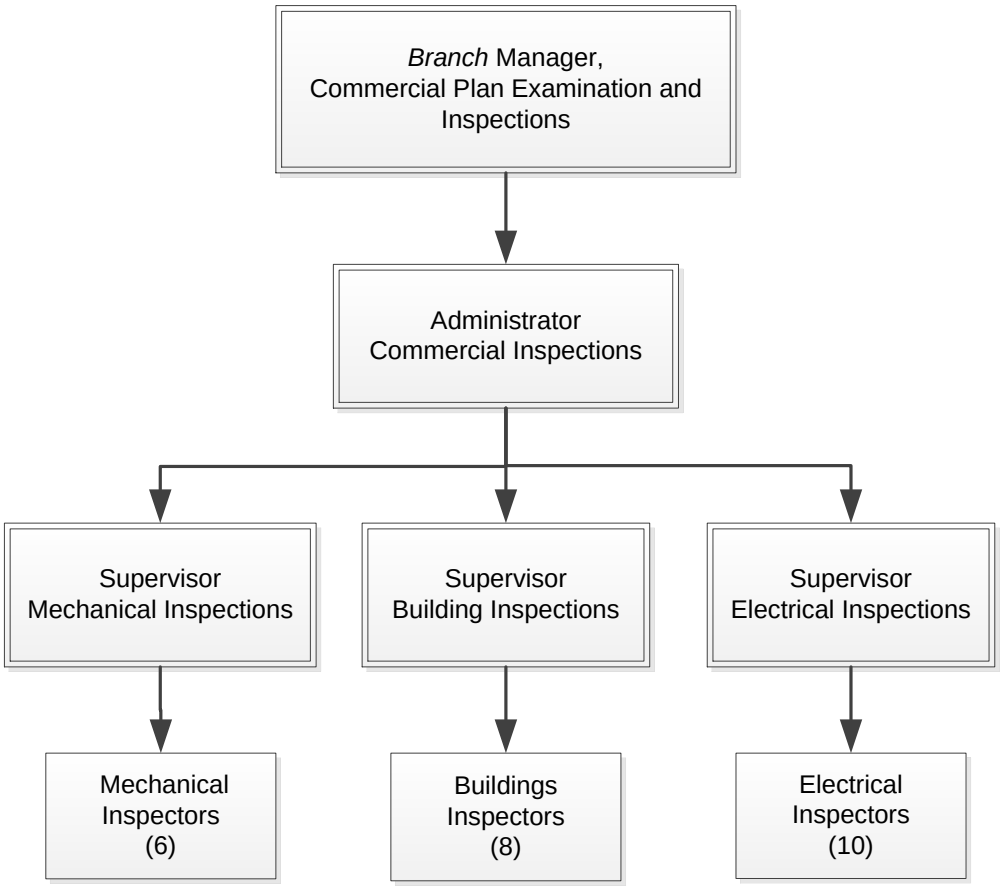
As of April 1, 2019 there were 176 employees in the Development & Inspections Branch.

| **DEVELOPMENT & INSPECTIONS DIVISION EMPLOYEE COUNT**<br>*as at April 1, 2019* | |
|---|---|
| **BRANCH** | **EMPLOYEE COUNT** |
| Commercial Plan Examination & Inspections | 61 |
| Housing & Existing Buildings | 49 |
| Zoning & Permits | 45 |
| Operations Support Services | 21 |
| **DIVISION TOTAL** | **176** |

**COMMERCIAL BRANCH**

The Commercial Branch primarily focuses on commercial buildings, ensuring the applicable building, electrical, and plumbing codes are followed.

The following chart illustrates the organizational structure of the Commercial Branch's inspections side of the business unit:




*As at April 1, 2019*

The Building Inspectors perform skilled inspections work enforcing compliance with the Winnipeg Building By-law 4555/87 and Manitoba Building Code, and are responsible for inspecting designated buildings with regards to occupancy permits. This position is also responsible for identifying deficiencies and reviewing proposals for correction of defects, including alternative design proposals, initiating enforcement of violations, and responding to complaints.

The Electrical Inspectors perform skilled inspections work enforcing compliance with the Winnipeg Building By-law 4555/87, Manitoba Building Code, Winnipeg Electrical By-law 86/2018, and Canadian Electrical Code, and are responsible for inspecting designated buildings with regards to occupancy permits. This position is also responsible for identifying deficiencies and reviewing proposals for

correction of defects, including alternative design proposals, initiating enforcement of violations, and responding to complaints.

The Electrical Inspectors also respond to after-hours electrical inspections requests, sometimes in fire damaged buildings or other extreme circumstances, and makes assessments of the suitability of re-energizing the installation. They also attend special events and inspect for potential public safety hazards of an electrical nature.

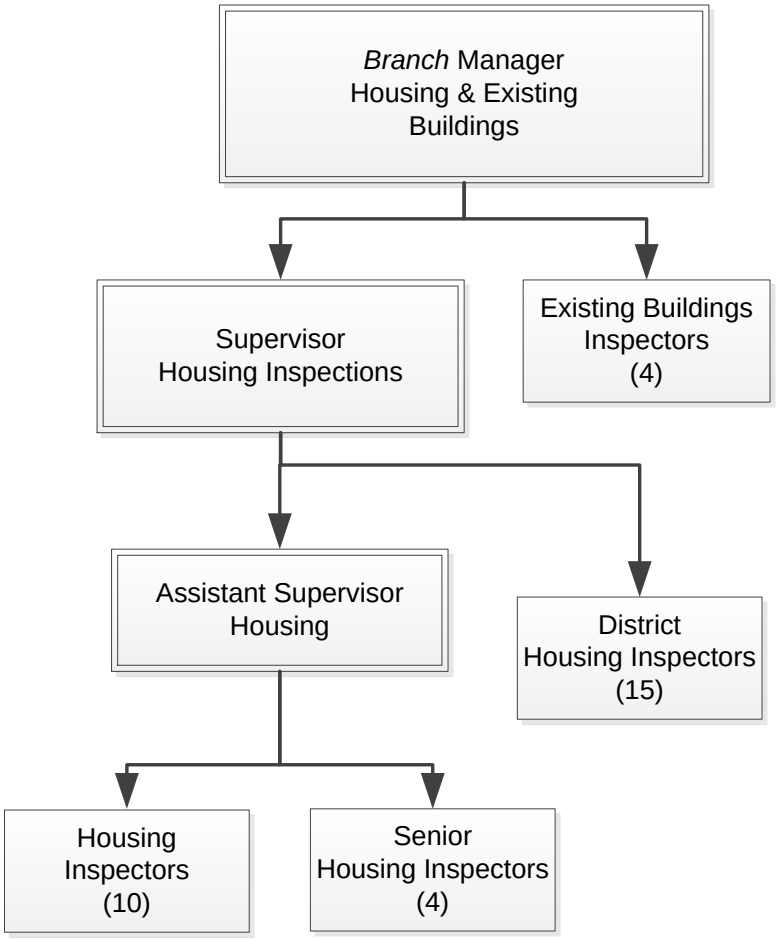
The Mechanical Inspectors perform skilled inspections work enforcing compliance with the Winnipeg Building By-law 4555/87, Manitoba Building Code, and Manitoba Plumbing Code, and are responsible for inspecting designated buildings with regards to occupancy permits. This position is also responsible for identifying deficiencies and reviewing proposals for correction of defects, including alternative design proposals, initiating enforcement of violations, and responding to complaints.

The Inspections Supervisor is responsible for the day-to-day operations of the unit, including the effective and consistent enforcement and interpretation of various codes, standards, regulations, and building and electrical bylaws. Responsibilities include assigning daily work, staff leadership, problem solving, understanding employee workload, reporting unusual events to managers, and the continual review, evaluation, and improvement of the Branch programs and systems.

External occupational training for code inspections is not readily available therefore, job shadowing and mentoring is relied upon for training on technical aspects and application of various code inspections.

**HOUSING BRANCH**

The Housing Branch primarily focuses on ensuring building, electrical, mechanical, and plumbing work for housing construction follow applicable codes and bylaws. The following chart illustrates the organizational structure of the Housing Branch's inspections side of the business unit:




*As at April 1, 2019*

The Housing Inspectors perform skilled inspections enforcing compliance of all electrical, plumbing, and building requirements of the Winnipeg Building By-law 4555/87, Winnipeg Electrical By-law 86/2018, Canadian Electrical Code, Manitoba Plumbing Code, and referenced standards related to the construction or alteration of one and two-family dwellings, including row housing and related residential structures.

The Existing Buildings Inspectors perform skilled inspections and office work in the enforcement of various bylaws, standards, and regulations pertaining to existing buildings, structures, and properties. They inspect properties and structures following established processes and enforcement methodology, determine compliance or violations under the appropriate legislation, document the results and prepare

corresponding Orders for Service upon the responsible party. Follow-up is conducted and further enforcement actions are taken where non-compliance.

The Supervisor Housing Inspections is responsible for the day-to-day operations of the Branch, including the effective and consistent enforcement and interpretation of various codes, standards, regulations, and bylaws. Responsibilities include assigning daily work, staff leadership, problem solving, understanding employee workload, reporting unusual events to managers, and the continual review, evaluation, and improvement of the branch programs and systems.

The Housing Branch moved to combined inspections in early 2000's, meaning a single inspector will review all trade work (e.g. electrical, plumbing, and building) instead of multiple trade-specific inspectors attending the building site. A new employee will have a specific trade's ticket in building, plumbing, or electrical, or a Certified Engineering Technologist (C.E.T.) designation in the electrical or building trades. Once onboard, the employee will review the Winnipeg Building By-law 4555/87, and take in-house courses on plumbing, electrical, HVAC, and building led by trade and specialized Senior Housing Inspectors. For example, the plumbing course is five full days, including on-site inspection training. Inspectors are signed-off by a Senior Housing Inspector before completing inspections independently. Both groups continue training and protocol reviews through regular staff meetings. They also receive email updates and direction from supervisors, Human Resources, and managers as required.