

OFFICE OF THE CITY CONTROLLER



**CITY-WIDE POLICY & PROCEDURE AUDIT PHASE III
POLICY DESIGN/EFFECTIVENESS AND OPERATIONAL
EFFECTIVENESS**

**REVIEW OF ADMINISTRATIVE PROCEDURE 7-7 – DEMOLITION
OF PRIVATELY OWNED BUILDINGS**

Chris B. Brown, City Controller

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OFFICE OF THE CITY CONTROLLER
CITY OF HOUSTON
TEXAS

CHRIS B. BROWN

April 19, 2016

The Honorable Sylvester Turner, Mayor
City of Houston, Texas

**SUBJECT: REPORT #2016-08
CITY-WIDE POLICY & PROCEDURE AUDIT PHASE III POLICY DESIGN/EFFECTIVENESS AND
OPERATIONAL EFFECTIVENESS REVIEW OF ADMINISTRATIVE PROCEDURE 7-7 – DEMOLITION OF
PRIVATELY OWNED BUILDINGS**

Mayor Turner:

The Audit Division (AD) of the Office of the City Controller has completed a Compliance Audit of the City of Houston's (City) policy design and operational effectiveness of Administrative Procedure 7-7 (AP 7-7), Demolition of Privately Owned Buildings, including alignment of the strategic objectives to the framework of the policies, management, monitoring activities, effectiveness of the design, operational effectiveness and departmental compliance with the policy.

This audit is part of a recurring audit process as outlined in our audit notification letter to the Mayor's office dated January 15, 2014 and includes the following audit phases:

- Assess Policy Governance Framework;
- Assess Policy Design and Effectiveness;
 - Identify relevant Strategic Objectives and how they are aligned with Policies;
 - Assess Policy Management; and
 - Review Policy Monitoring Activities;
- Test Operational Effectiveness of Specific Policies and Departmental Compliance.

The Audit Team concluded that while the City has established several control procedures around the demolition of privately owned buildings, it is not in full compliance with documentation requirements in certain subsections of AP 7-7 Section 8 as detailed in our report.

Respectfully submitted,

Chris B. Brown
City Controller

xc: TaKasha Francis, Director, Department of Neighborhoods
City Council Members
Alison Brock, Chief of Staff, Mayor's Office
Kelly Dowe, Chief Business Officer, Mayor's Office
Harry Hayes, Chief Operations Officer, Mayor's Office
Reggie Harris, Deputy Assistant Director, Department of Neighborhoods
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EXECUTIVE SUMMARY

INTRODUCTION

The Office of the City Controller's Audit Division (AD) has completed an audit of the operational effectiveness and departmental compliance of Administrative Procedure 7-7, Demolition of Privately Owned Buildings (AP 7-7) to evaluate how the City of Houston (City) complies with the policy's requirements. Specifically, we looked at how the Department of Neighborhoods (DON) complies with AP 7-7 requirements to demolish public nuisance buildings under appropriate circumstances without creating undue legal exposure. The audit is part of a recurring audit process as outlined in our audit notification letter to the Mayor's office dated January 15, 2014, and includes the following audit phases:

- Assess Policy Governance Framework;
- Assess Policy Design and Effectiveness;
 - Identify relevant Strategic Objectives and how they are aligned with Policies;
 - Assess Policy Management;
 - Review Policy Monitoring Activities; and
- Test Operational Effectiveness of Specific Policies and Departmental Compliance.

An initial entrance conference was held with the City of Houston Legal Office and our office on September 11, 2013 and a follow-up meeting was held with the Department of Neighborhoods Chief Inspector's Office on March 3, 2015. At this meeting, we discussed the scope and objectives of the review with Mr. Gregory Mackey, City of Houston Chief Inspector.

BACKGROUND

Section 54.001 of the Texas Local Government Code authorizes municipalities to conduct administrative proceedings related to substandard structures. These administrative proceedings may result in a declaration that a structure is a public nuisance. In some instances, the declaration is followed by an administrative order to demolish the structure. These administrative orders expire after a period of 30, 60 or 90 days. Beginning in 1993, the City began conducting these administrative proceedings before the City's Building and Standards Commission (BSC) or before a hearing officer with the Neighborhood Protection Corps a division of the Houston Police Department, to the substantial benefit of public health and safety.

For many years the settled law of the state was that the owner of a structure declared to be a public nuisance and ordered demolished as a result of a municipal administrative proceedings was not entitled to compensation from the municipality, provided the administrative proceeding provided adequate procedural safeguards to protect the owner's interests. However, in February 2011, the Texas Supreme Court ruled that the owner of a structure demolished by a municipality in compliance with an administrative order is entitled to seek damages from the municipality, even if the administrative proceeding provided all safeguards required by the Texas Local Government Code.

Notwithstanding the additional legal exposure to the City resulting from the ruling of the Texas Supreme Court, the City's demolition of public nuisance buildings remain essential to public health and safety. As a result, and in order to reduce potential liability arising from legal action instituted by

private owners of demolished structures, the City issued Administrative Procedure 7-7; Demolition of Privately Owned Buildings (AP 7-7) on September 11, 2013. The AP 7-7 established the Demolition Assessment Panel (“DAP” or the “Panel”).

DAP is composed of the neighborhood protection official (or his or her designee); the chief of police (or his or her designee); and three attorneys appointed by the city attorney. Each member of the Panel shall be an employee of the City and shall serve at the pleasure of the Mayor. DAP meets once every quarter to consider the recommendations submitted by the *building standards official* in connection with buildings earmarked for demolition pursuant to the provisions of AP 7-7, the COH Code and applicable law. In accordance with the provisions of Chapter 10, Article IX, Section 10.317 of the City of Houston Code, a *building standards official* means the neighborhood protection official of the building official or the fire code official (as defined in the Fire Code), according their respective enforcement responsibilities as provided in this article (Article IX) or in the Fire Code.

AUDIT SCOPE AND OBJECTIVES

Our audit objective was to test the operational effectiveness and departmental compliance with the provisions of AP 7-7. To accomplish this, we reviewed and performed operational procedures designed to ensure:

- The Director of DON maintains the appropriate documentation for each DAP meeting;
- The DAP is made up of the appropriate members and that every member, or their respective assignees, were in attendance at the DAP meetings where a decision was made regarding the demolition of a privately owned building;
- Any privately owned buildings that were demolished by the City were in accordance with the requirements under Section 6 of AP 7-7;
- DAP has provided an adequate and prompt response to demolition requests from the building standards official and such requests were reviewed by the DAP with reasonable promptness; and
- Photographic evidence was obtained from which the DAP reasonably may conclude the building constitutes a public nuisance on the date of DAP’s consideration for demolition.

The engagement scope consisted of the AD performing tests involving the review of the design effectiveness of the AP 7-7 through a review of documentations of DAP meetings held during the period July 2013 through February 2015.

PROCEDURES PERFORMED

In order to obtain sufficient evidence to achieve audit objectives and support our conclusions, we performed the following:

- Obtained and reviewed the provisions of AP 7-7 to gain an understanding of its requirements.
 - Inquired from key management personnel regarding the operations of the DON regarding compliance with the requirements of AP 7-7;
 - Observed the DAP Meeting held on December 18, 2015 to obtain information regarding the composition of the DAP, and whether all members of the Panel and/or their
-

respective designees were present in person in accordance with the requirements of the AP 7-7.

- Reviewed electronic copies of data and records from the DON FORMS database (the official database used by DON to prepare DAP presentations and to manage its inventory of substandard buildings from which it draws recommendations for demolition);
- Requested and obtained the documents representing the demolition related transactions from DON;
- Reviewed demolition related transactions to ensure compliance with AP 7-7 and conducting follow-up interviews to assess the evidence provided; and
- Performed substantive testing and documented the results from testing the demolition transactions against our test control criteria.
- We interviewed certain officers of departments/offices within the City responsible for monitoring compliance with the City's demolition. AD utilized a combination of testing procedures (i.e., inspection and observation) designed to provide reasonable assurance that departmental policy was adhered to and effective

AUDIT METHODOLOGY

We conducted this compliance audit in accordance with Generally Accepted Government Auditing Standards and the International Standards for the Practice of Internal Auditing as promulgated by the Institute of Internal Auditors. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The scope of our work did not constitute an evaluation of the overall internal control structure of the Department of Neighborhoods. Management is responsible for establishing and maintaining a system of internal controls to ensure that City assets are safeguarded; financial activity is accurately reported and reliable; and management and employees are in compliance with laws, regulations, and policies and procedures. The objectives are to provide management with reasonable, but not absolute assurance that the controls are in place and effective.

CONCLUSIONS AND SIGNIFICANT ISSUES

We believe that we have obtained sufficient and appropriate evidence to adequately support the conclusions provided below as required by professional auditing standards. Our conclusion is aligned with the related Audit Objective for consistency and reference. The results of our audit procedures disclosed instances of noncompliance with the requirements of AP 7-7. For detailed findings, recommendations, management responses, comments and assessment of responses see the "Detailed Findings, Recommendations, Management Responses, and Assessment of Responses" section of this report.

CONCLUSION 1 – AUDIT OBJECTIVE#1

We performed procedures to determine operational effectiveness and departmental compliance with the provisions of AP 7-7. Based on work performed, we conclude that DON is not in compliance with certain requirements of the Policy:

- Management is not in compliance with the provisions of Section 8.5.4 which requires that as part of consideration for the demolition of a building, DAP should consider whether the demolition can be achieved at a final cost to the City both (a) reasonably proportionate to the threat to human health or safety presented by the building and (b) not inconsistent with the City's obligation to expend public funds for the wellbeing of the City as a whole. **(See Finding #1)**
- Management is not in compliance with the provisions of Section 8.7 which requires that a brief summary of the information presented by the building standards official be included as part of recommendations presented to DAP for consideration. **(See Finding #2)**
- Management is not fully in compliance with the provisions of Section 8.5.2 which requires DAP consider whether a partial or full demolition of the building is required to remove a serious threat to human health or safety. **(See Finding #3)**
- Management is not fully in compliance with the provisions of Section 8.5.3 which requires DAP consider whether a partial or full demolition of the building is likely to benefit the surrounding community and, if so, whether the said benefit will be reasonably proportionate to the economic loss, if any, likely to be sustained by the building's owner as a result of the demolition. **(See Finding #4)**

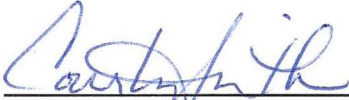
The DAP membership consists of the appropriate members and every member attends the meetings as required, making the necessary decisions regarding the demolishment of privately owned buildings. Privately owned buildings are demolished in accordance with the provisions of AP 7-7, paragraph 6.

ACKNOWLEDGEMENT AND SIGNATURES

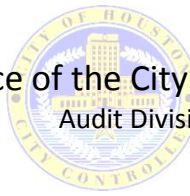
The Audit Team would like to thank DON management for their cooperation, time and efforts throughout the course of the engagement.



Olaniyi Oyedele, CPA
Audit Manager



Courtney Smith, CPA, CIA, CFE
City Auditor



DETAILED FINDINGS, RECOMMENDATIONS, MANAGEMENT RESPONSES, AND ASSESSMENT OF RESPONSES

FINDING #1– NONCOMPLIANCE WITH THE REQUIREMENTS OF SECTION 8.5.4 (IMPACT AND MAGNITUDE) = HIGH

BACKGROUND:

The City of Houston (City) issued Administrative Procedure 7-7; Demolition of Privately Owned Buildings (AP 7-7) to provide guidelines relating to demolition of private buildings. AP 7-7 established the DAP whose mandate was to meet regularly to consider recommendations submitted to it by the *building standards official*. Per Section 8.5.4 of the Policy, the DAP is required to determine whether each building recommended to be considered for demolition by the *building standards official* can be demolished at a final cost to the City both (a) reasonably proportionate to the threat to human health or safety presented by the building and (b) not inconsistent with the City's obligation to expend public funds for the wellbeing of the City as a whole. Administrative Policy 7-7, Demolition of Privately Owned Buildings (AP 7-7)

FINDING:

Our review of the documentary evidence obtained for all DAP meetings held for the period July 19, 2013 through February 20, 2015 did not indicate any determination of the final cost to the City, for each building recommended for demolition to the DAP by the building standards official, as required by the provisions of Section 8.5.4. According to representation obtained from management, the current reporting format was suggested by the Legal Department and was designed to capture information relating to address of the building, zip code, land value, total value, total improvement value, etc. for each of the building presented to DAP for consideration. However, the information did not include any determination as to whether each building can be demolished at a final cost to the City that is both (a) reasonably and proportionate to the threat to human health or safety presented by the building and (b) not inconsistent with the City's obligation to expend public funds for the wellbeing of the City as a whole, as required under the provisions of Section 8.5.4.

RECOMMENDATION:

We recommend that DON establish procedures to include in its report presented for the DAP meetings, information regarding whether a building can be demolished at a final cost to the City that both (a) reasonably proportionate to the threat to human health or safety presented by the building and (b) not inconsistent with the City's obligation to expend public funds for the wellbeing of the City as a whole.

DEPARTMENT OF NEIGHBORHOODS MANAGEMENT RESPONSE:

The DON will establish procedures to follow the requirements set forth in Section 8.5.4 of the Administrative Procedures 7-7 and include information regarding whether each building can be demolished at a final cost to the City that both (a) reasonably and proportionate to the threat to human health or safety presented by the building and (b) not inconsistent with the City's obligation to expend public funds for the wellbeing of the City as a whole. The department will set a process change team in place to address and comply with any and all findings.

RESPONSIBLE PARTY:

Director, Department of Neighborhoods.

ESTIMATED DATE OF COMPLETION:

APRIL 18, 2017

ASSESSMENT OF RESPONSE:

Management's response addresses the issue as identified in our audit. The Audit Division agrees with DON's commitment to establish procedures to follow the requirements in Section 8.5.4 of AP 7-7.

FINDING #2– NONCOMPLIANCE WITH THE REQUIREMENTS OF SECTION 8.7 (IMPACT AND MAGNITUDE) = HIGH

BACKGROUND:

The City of Houston (City) issued Administrative Procedures 7-7; Demolition of Privately Owned Buildings (AP 7-7) to provide guidelines relating to demolition of private buildings. The Policy established the DAP whose mandate was to meet regularly to consider recommendations submitted to it by the *building standards official*. Per Section 8.7 of the Policy, the Director of the Department of Neighborhoods (DON) shall maintain a written or electronic record of each meeting of the DAP, which record shall include (a) the date and place of the meeting (b) for each building considered, the address or other identifying information and a brief summary of the information presented by the building standards official; and (c) the vote of each Panelist. The Director of the DON shall preserve each such record for at least three years after its creation and as otherwise may be required by law.

FINDING:

During the course of our engagement we noted that the Department maintains information relating to each of the building through its application software; FORMS. Documentary evidence provided for our review in connection with the DAP meetings held during the scope period showed information relating to (a) date and place of the meeting (b) the address and other qualifying information for each building considered; and (c) the vote of each Panelist. However, we noted no inclusion of a brief summary of information presented by the building standards official as part of the records as required by the provisions of Section 8.7.

RECOMMENDATION:

We recommend that DON establish procedures to ensure compliance with the requirements of Section 8.7 of the Policy.

DEPARTMENT OF NEIGHBORHOODS MANAGEMENT RESPONSE:

The DON will follow the reporting requirements set forth in Section 8.7 of Administrative Procedures 7-7. The DON will expand the current reporting format to include a brief summary of the information presented by the building standards official to the DAP in order to be in conformity with the provisions of Section 8.7. The department will set a process change team in place to address and comply with any and all findings.

RESPONSIBLE PARTY:

Director, Department of Neighborhoods.

ESTIMATED DATE OF COMPLETION:

APRIL 18, 2017

ASSESSMENT OF RESPONSE:

Management's response addresses the issue as identified in our audit. The Audit Division agrees with DON's commitment to expand the reporting format to include information required in Section 8.7 of AP 7-7.

**FINDING #3– NONCOMPLIANCE WITH THE REQUIREMENTS OF SECTION 8.5.2 (IMPACT AND MAGNITUDE)
= MEDIUM**

BACKGROUND:

The City of Houston (City) issued Administrative Procedure 7-7; Demolition of Privately Owned Buildings (AP 7-7) to provide guidelines relating to demolition of private buildings. The Policy established the DAP whose mandate was to meet regularly to consider recommendations submitted to it by the *building standards official*. Per Section 8.5.2 of the Policy, the DAP consideration of recommendations submitted to it by the *building standards official* pursuant to Section 8.2 shall be guided amongst others by whether a partial or full demolition of the building is required to remove a serious threat to human health or safety.

FINDING:

Our review of documentary evidence presented to us during the course of the engagement did not disclose any instance of documentation to indicate that discussions were held during DAP meetings regarding whether a partial or full demolition of the building is required to remove a serious threat to human health as required by the provisions of Section 8.5.2. During our observation of DAP meeting held on December 18, 2015, we noted participants' discussion on matters relating to the partial or full demolition of the building as required by the provisions of Section 8.5.2. Management further represented to us that this matter is discussed at each meeting of the DAP. However, we noted that these discussions are not included as part of documentation of the proceedings of the meetings.

RECOMMENDATION:

We recommend that DON establish procedures for the proper documentation of discussions and other proceedings conducted during DAP meetings in accordance with the requirements of Section 8.5.2.

DEPARTMENT OF NEIGHBORHOODS MANAGEMENT RESPONSE:

The DON will work to remedy the issue and ensure complete compliance with the requirements set forth in Section 8.5.2. The DON will establish procedures for the documentation of discussions held during DAP meetings in connection with whether partial or full demolition of the building is required to remove a serious threat to human health or safety. The department will set a process change team in place to address and comply with any and all findings.

RESPONSIBLE PARTY:

Responsible parties for this item include DON.

ESTIMATED DATE OF COMPLETION:

APRIL 18, 2017

ASSESSMENT OF RESPONSE:

Management's response adequately addresses the issue as presented in our audit. The Audit Division agrees with DON's commitment to establish procedures to follow the requirements in Section 8.5.2 of AP 7-7.

**FINDING #4– NONCOMPLIANCE WITH THE REQUIREMENTS OF SECTION 8.5.3 (IMPACT AND MAGNITUDE)
= MEDIUM**

BACKGROUND:

The City of Houston (City) issued Administrative Procedure 7-7; Demolition of Privately Owned Buildings (AP 7-7) to provide guidelines relating to demolition of private buildings. AP 7-7 established the DAP whose mandate was to meet regularly to consider recommendations submitted to it by the *building standards official*. Per Section 8.5.3 of AP 7-7, the DAP consideration of recommendations submitted to it by the *building standards official* pursuant to Section 8.2 shall be guided by whether a partial or full demolition of the building is likely to benefit the surrounding community and, if so, whether the said benefit will be reasonably proportionate to the economic loss, if any, likely to be sustained by the building’s owner as a result of the demolition.

FINDING:

Our review of documentary evidence presented to us during the course of the engagement did not disclose any instance of documentation to indicate that any consideration was made during DAP meetings regarding whether a partial or full demolition of the building is likely to benefit the surrounding community and, if so, whether the said benefit will be reasonably proportionate to the economic loss, if any, likely to be sustained by the building’s owner as a result of the demolition in accordance with the provisions of Section 8.5.3. During our observation of DAP meeting held on December 18, 2015, we noted participants’ discussion on matters relating to this matter. Management further represented to us that this matter is discussed at each meeting of the DAP. However, we noted that these discussions are not included as part of documentation of the proceedings of the meetings.

RECOMMENDATION:

We recommend that DON establish procedures for the proper documentation of discussions and other proceedings conducted during DAP meetings in accordance with the requirements of Section 8.5.3.

DEPARTMENT OF NEIGHBORHOODS MANAGEMENT RESPONSE:

The DON will follow the requirements set forth in Section 8.5.3. The DON will establish procedures for the documentation of discussions held during DAP meetings in connection with whether partial or full demolition of the building is likely to benefit the surrounding community. The department will set a process change team in place to address and comply with any and all findings.

RESPONSIBLE PARTY:

Katherine Tipton, Director, Department of Neighborhood.

ESTIMATED DATE OF COMPLETION:

APRIL 18, 2017

ASSESSMENT OF RESPONSE:

Management’s response adequately addresses the issue as presented in our audit.
