



CITY OF HOUSTON

Administrative Procedure

Subject: **Demolition of Privately Owned Buildings**

A.P. No:

7-7

Effective Date:

September 11, 2013

1. AUTHORITY

- 1.1 Article VI, Section 7a, of the City Charter of the City of Houston; Chapter 54 of the Texas Local Government Code; Subchapter A of Chapter 214 of the Texas Local Government Code.

2. BACKGROUND

- 2.1 The Texas Local Government Code authorizes municipalities to conduct administrative proceedings related to substandard structures, which proceedings in certain instances may result in a declaration that a structure is a public nuisance. In some instances, the declaration is followed by an order to demolish the building. Beginning in 1993, the City conducted such administrative proceedings before the City's Building and Standards Commission or before a hearing officer, to the substantial benefit of public health and safety.
- 2.2 For many years the settled law of this state was that the owner of a structure declared to be a public nuisance and ordered demolished as a result of a municipal administrative proceeding was not entitled to compensation from the municipality, as long as the administrative proceeding provided adequate procedural safeguards to protect the owner's interests.
- 2.3 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.
- 2.4 Notwithstanding the additional legal exposure to the City resulting from the Texas Supreme Court's ruling, the City's demolition of public nuisance buildings remains essential to public health and safety.

3. PURPOSE

- 3.1 To enable the City to demolish public nuisance buildings under appropriate circumstances without creating undue legal exposure.

Approved:

Date Approved:

09/11/2013

Page 1 of 4

4. OBJECTIVE

4.1 To prohibit the City's demolition of privately owned buildings except by the protocol established by this Executive Order.

5. DEFINITIONS

5.1 In this Executive Order, words in italics are defined in Chapter 10, Article IX, of the Code of Ordinances, City of Houston, Texas (the "COH Code").

6. DEMOLITION BY THE CITY PROHIBITED; EXCEPTIONS

6.1 No person employed by or acting at the direction of the City shall cause the demolition of more than 5% of a privately owned building unless:

6.1.1 The demolition is ordered in writing by the fire chief (or his designee) pursuant to the Fire Code;

6.1.2 A final judgment by a court of competent jurisdiction authorizes the demolition by the City;

6.1.3 The City receives written permission for the demolition from (a) the holder of either fee simple title in the property or a legal interest in the property that by operation of law is materially equal to fee simple title (such as the interest that may held by an executor, receiver, or trustee, depending upon the terms of the appointment); and (b) the holder(s) of all validly recorded liens against the property; provided that every such permission is in a form and includes all assurances the City may require;

6.1.4 The building or a condition in the building constitutes a *serious and immediate hazard* and (a) the demolition is the only remedy reasonably likely to ameliorate the condition so that it no longer constitutes a *serious and immediate hazard*; and (b) the demolition is a *corrective action* ordered by *the building standards official* in compliance with Chapter 10, Article IX, Division 7 of the COH Code; or

6.1.5 A lawful and unequivocal administrative order explicitly (a) orders the owner of the property to demolish all or part of the building by a date certain; and (b) authorizes the City to demolish all or part of the building if the owner of the property fails to comply with the order; provided that more than thirty days have passed since the said date certain and the demolition is approved by, and conducted in accordance with, a written directive of the Demolition Assessment Panel created by this Administrative Procedure.

7. CREATION OF DEMOLITION ASSESSMENT PANEL

7.1 The Demolition Assessment Panel ("DAP" or the "Panel") of the City is hereby created. The DAP shall be 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.

Subject:

Demolition of Privately Owned Buildings

A. P. No.:

7-7

Page 2 of 4

7.2 Each member of the DAP shall be an employee of the City and shall serve at the pleasure of the Mayor.

8. DUTIES OF DAP; PROCEDURES

8.1 On occasion, any member of the DAP may assign another City employee to serve in the member's place at a meeting of the Panel, provided that all such assignees are well-informed regarding the contents of this Administrative Procedure.

8.2 The *building standards official* may recommend to the DAP that the City demolish an unoccupied building pursuant to this Administrative Procedure, the COH Code, and applicable law.

8.3 The DAP shall meet regularly to consider recommendations submitted by the *building standards official* pursuant to Section 8.2.

8.4 The DAP may act only by way of a meeting at which all members of the Panel or their respective assignees (collectively, the "Panelists") are present in person.

8.5 The DAP's consideration of recommendations submitted by the *building standards official* pursuant to Section 8.2 shall be guided by the following criteria:

8.5.1 Whether the *building standards official* has presented information (typically including multiple color photographs) from which the DAP reasonably may conclude the building constitutes a public nuisance on the date of the DAP's consideration;

8.5.2 Whether a partial or full demolition of the building is required to remove a serious threat to human health or safety;

8.5.3 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; and

8.5.4 Whether the building 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

8.6 The DAP shall respond with reasonable promptness to each recommendation submitted or resubmitted by the *building standards official* pursuant to Section 8.2, which response shall consist of a written directive that:

8.6.1 Accepts the recommendation and provides instructions pertinent to the demolition, which instructions at a minimum shall include a directive that the person responsible for the demolition document with contemporaneous color photographs that the building remained a public nuisance on the day of the demolition; or

8.6.2 Declines to accept the recommendation and, at the option of the DAP, proposes one or more alternatives or requests additional information.

The DAP may provide an explanation for its written directive but is not required to do so.

Subject:

Demolition of Privately Owned Buildings

A. P. No.:

7-7

Page 3 of 4

- 8.7 The Director of the Department of Neighborhoods 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 Department of Neighborhoods shall preserve each such record for at least three years after its creation and as otherwise may be required by law.
- 8.8 The DAP may promulgate such rules and procedures as may be advisable to fulfill the duties imposed by this Administrative Procedure.

9. CONFLICT AND REPEAL

- 9.1 This Administrative Procedure supersedes Executive Order 1-19, signed December 6, 2011; which shall be of no further force or effect.