



**Compliance Audit 2019-06
Code Violation Enforcement and
Collections**

August 2019

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Provide independent, objective assurance and consulting services designed to add value and improve the City of Fayetteville’s operations.

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EXECUTIVE SUMMARY

The Office of Internal Audit conducted a performance audit of code violation enforcement and collections for cases under the City Code of Ordinances Chapter 14 – Housing, Dwellings and Buildings; Chapter 16 – Motor Vehicles and Traffic, and Chapter 22 – Solid Waste. The audit was approved in the Fiscal Year 2018-2019 Internal Audit Plan. The audit period covered code enforcement cases initiated from January 1, 2018 through May 15, 2019. The objectives of the audit were to evaluate whether:

1. Applicable code enforcement penalties and abatement costs were properly and completely imposed following established City adopted fee schedules and ordinances; and
2. The internal controls were sufficient to identify risks.

This report addresses control weaknesses within the code violation enforcement and collection processes that negatively impacted the control environment. As a result, three findings were noted:

1. Current written policies and procedures were not all inclusive causing inconsistent enforcement of City code violations.
2. Processes were not always in compliance with the City Code of Ordinances and adopted fee schedule.
3. Financial oversight for code violation enforcement and collections needed improvement.

Internal Audit determined internal controls related to the code violation enforcement and collection process needed improvement. The audit did not find evidence of intentional fraud. However, because the departmental policies and procedures did not provide enough guidance to ensure code violations were enforced in a consistent manner and the code violation enforcement and collection processes were based on the discretion of Housing and Code Enforcement personnel, Internal Audit could not ensure fraud, waste and abuse did not exist.

BACKGROUND

The Housing and Code Enforcement Division of the Development Services Department provides abatement of a wide variety of housing and nuisance code violations through City ordered cleanups and demolition of blighted and dangerous structures. The Housing and Code Enforcement Division's program objective is to protect and improve the quality of life and environment through efficient and effective violation abatement in support of high quality, affordable housing and revitalized neighborhoods. The Housing and Code Enforcement Division responds to concerns from citizens, and oversees nuisance enforcement and ongoing compliance with City codes and regulations, such as overgrown lots or yards, inoperative vehicles, maintenance of structures, illegal signs and public nuisances.

When code violations are required to be enforced, a series of notices are issued to the property owner. For instances where property owners fail to correct violations and no expectation of privacy exists, Housing and Code Enforcement personnel will abate the nuisance. Abatement efforts are performed by independent contractors as directed by the Housing and Code Enforcement Division and a lien is placed on the real property for the costs incurred and applicable fees.

In circumstances where property owners fail to abate the violation and an expectation of privacy exists, Housing and Code Enforcement personnel assess a civil penalty against the property owner or work with the City Attorney's office on pursuing action through Environmental Court. If the property owner fails to pay the civil penalty, after notice is made, the debt is reported to a collection agency. Additionally, if the violation continues once the civil penalty has been issued and reported, the City Attorney's office prepares a summons which is served requiring the property owner to attend Environmental Court for continued abatement efforts.

AUDIT OBJECTIVES

The objectives of this audit were to evaluate whether applicable code enforcement penalties and abatement costs were properly and completely imposed following North Carolina General Statutes, established City adopted fee schedules and ordinances; and the internal controls were sufficient to identify risks.

AUDIT SCOPE

The scope of the audit included Code Enforcement substandard housing, vehicle and solid waste cases initiated from January 1, 2018 through May 15, 2019.

During the planning phase of the audit, process walkthroughs, to include consultations with Development Services management and case reviews were conducted. Based on information obtained, Internal Audit noted several steps in the code enforcement processes were being performed inconsistently, due to the nature of the enforcement and inspection, and no clear written guidance existed. Therefore, Internal Audit did not select a sample of cases to determine if approvals and necessary documents in support of the penalties and liens were being obtained; penalties were charged correctly; and verify the timeliness of intake, contact, investigation and follow-up.

AUDIT METHODOLOGY

In order to accomplish the objectives of the audit, the Office of Internal Audit performed, but was not limited to, the following:

- Interviewed Development Services personnel;
- Reviewed case files in Cityworks, the software in which the code enforcement cases were maintained;
- Reviewed the City of Fayetteville Municipal Code of Ordinances, North Carolina General Statutes, and departmental policies and procedures for compliance;
- Compared the code violation amounts received in JD Edwards, the City's financial system, against case files in Cityworks;
- Reconciled abatement costs to lien assessment accounts in JD Edwards; and
- Considered risk of fraud, waste and abuse.

FINDINGS, RECOMMENDATIONS, AND MANAGEMENT'S RESPONSES

Finding 1

Current written policies and procedures were not all inclusive causing inconsistent enforcement of City code violations.

Criteria: Policies and procedures are a component of administrative controls and are necessary to ensure sound business practices. Clearly written, readily-available policies and procedures provide accountability for personnel by providing performance expectations to ensure consistent and impartial decisions to avoid the perception of unfair practices to citizens. Formal policies can clearly make the connection between procedures and how they support an organization's goals and strategic plan.

Condition: Steps within the code violation enforcement and collection processes were based on the Housing and Code Enforcement Division Manager's and two Code Enforcement Supervisors' review of individual case evidence, and the discretion of Housing and Code Enforcement personnel. Based on Internal Audit inquiry, the standardization of all code violations to comprehensive departmental policies and procedures did not exist. Internal Audit noted the need for comprehensive departmental policies and procedures in the following areas:

1. Acceptable timeframe to correct code enforcement violations by categories of violations;
2. Inspecting properties for compliance immediately after the compliance due date; and
3. Determining the allowable maximum number of re-inspections and extensions before issuing civil penalties.

Cause: Overall, the current departmental policies and procedures for substandard housing, vehicle and solid waste violations addressed parts of the code violation enforcement and collections processes, but did not provide enough guidance to ensure code violations were enforced in a consistent manner for all like cases.

Effect: Comprehensive policies and procedures are necessary to ensure continuity of operations in often conflicting personal and public property rights. Carefully designed policies and procedures create a balance of competing priority interests for areas with potential limited personnel resources to complete. When code enforcement cases are not enforced consistently, practices can be perceived as unfair by the public and the risk of preferential treatment without detection exists.

Recommendation

The Office of Internal Audit recommends management:

1. Develop comprehensive policies and procedures that provide consistent code enforcement, to include but not limited to: (a) number of re-inspections and extensions allowed; (b) number of days allowed to correct specific code enforcement violations; (c) expectations of timely re-inspections; (d) when exceptions are applicable to the standard enforcement process; and (e) approval and documentation process for exceptions.
2. Ensure personnel are trained on comprehensive policies and procedures.
3. Develop a documented quality review program to ensure compliance with comprehensive policies and procedures.

Management's Response

We concur. Management is in full agreement with the recommendation.

The development of the policies and procedures must be in accord with the city attorney practices which create multiple, non-linear paths for code compliance. We will work various departments to continue creating the balance of not becoming “too policy-constrained to be responsive and one that permits too much freedom to generate focused activity”(O’Malley, 2010) with more written policies and procedures than presently exist. Currently, 69 types of city code violations are handled by the division. Design by category of city ordinance violations will be initially categorized to create designs for code violation types standardizing all case types with the to-be-revised city code ordinances that also will become more standardized.

The immediate application of the city’s newly created nuisance properties ordinance is underway. The newly formed nuisance ordinance will have relatable policies and practices to blend in the existing citation letters and then fold this provision into the new procedures. The division will further coordinate with the Fayetteville Police Department in encouraging activities connected to the RAMP program that presents opportunities for additional code enforcement of the most challenging rental housing properties.

The division manager and supervisors presently meet weekly with the code enforcement team. They will immediately begin an element of training as a team and individual inspector training as new written policies are created. Fine tuning of draft policies will occur in conjunction with the front-line enforcement team and the legal team to ensure defensible practices exist with all personnel. Quarterly quality reviews will occur with evidenced reports presented back to the Development Services Assistant Director.

Responsible Party: Housing & Code Enforcement Division Manager

Implementation Date: 06/30/2020

Finding 2

Processes were not always in compliance with the City Code of Ordinances and adopted fee schedule.

Criteria: Processes developed by management should not only ensure proper controls, safeguards and segregation of duties are in place, but that processes comply with federal, state and local requirements. The City Code of Ordinances is local law adopted by City Council to not only assist in compliance with federal and state law, but to also address issues of local concern and priority.

Cause: Based on Internal Audit inquiry, the City Attorney's office provided a proposal in April 2011 to improve the collection efforts of code enforcement civil penalties by allowing for a "realistic" penalty when violations are abated by the property owner and a maximum for non-abated violations due to the likelihood of "exorbitant" penalties. The duration, openness and consistency of these practices, could be considered an implied agreement by continued practice. However, whenever processes are changed, management should ensure the processes still comply with federal and state requirements and meet the local requirements set forth by City Council in the City Code of Ordinance.

Condition: Internal Audit reviewed applicable North Carolina General Statutes and the City Code of Ordinances Chapters 1, 14, 16 and 22 against current processes. Upon review of these guidelines against the processes, the following observations were made:

1. City Code of Ordinances provides each day to be a separate offense and does not provide a maximum number of days for which the penalty will be assessed. However, the on-going practice of City personnel, to include Code Enforcement and the City Attorney's office, did not adhere to these requirements and provided a maximum number of days cited based upon abatement efforts;
2. City Code of Ordinances Section 1-9 Appeal of Civil Penalties allows for the hearing officer to either decide in favor of the individual receiving the citation, or determine the civil penalty is due to the City. However, the hearing officer also reduced code enforcement civil penalties;
3. Civil penalties and abatement liens are allowed to be assessed simultaneously based on the City Code of Ordinances; however, Code Enforcement did not adhere to the defined regulations set forth in the City Code of Ordinances and only charged based upon specific situations;
4. Administrative fees were not assessed when the property owner abated the violation as allowed by City Code of Ordinances;
5. Time periods reflected in the City Code of Ordinances, to include the notices and citations sent to property owners were inconsistent; and
6. Language between City Code of Ordinances and the adopted fee schedule were inconsistent.

Effect: Without policies and procedures in place for exceptions to the City Code of Ordinances (See Finding No. 1), personnel can be placed in situations which deviate from the City Code of Ordinances, resulting in practices that are not equitable.

Recommendation

The Office of Internal Audit recommends:

1. Development Services management should coordinate with the City Attorney's office to update the City Code of Ordinances as deemed necessary and ensure comprehensive policies and procedures are in agreement. Any updates to the City Code of Ordinances should ensure compliance with North Carolina General Statutes.
2. Management should obtain written guidance from the City Attorney's office for the enforcement of code violations that deviate from the standard code enforcement cases.
3. Management should develop a process for reviewing the City's Code of Ordinances, as it pertains to code enforcement, to ensure updates are made as necessary.

Management's Response

We concur. Management is in full agreement with the recommendation.

The current city ordinances create varying times for compliance and different citation charges. US Supreme Court (Timbs v. Indiana, 2019) implications of due process and prohibiting excessive fines will help frame the review of existing ordinances, fee schedules, and practices.

Development Services will coordinate with the City Attorney's office in producing suggested City Ordinance changes to address existing incongruities. Prior city policies will be updated with the City Attorney's office as in prior practice. City Ordinance revisions and adjustments will need City Council approval.

Existing practices will be converted to more formal written processes dealing with site and structure specific circumstances and general best practices for case management.

An existing practice of an annual review of betterment practices for the department will continue to fold in the meetings with the City Attorney's office has occurred prior to this audit which identified this need, independent of the audit, and has resulted in City Ordinance changes earlier in 2019.

Responsible Party: Assistant Director, Development Services

Implementation Date: 03/30/2020

Finding 3

Financial oversight for code violation enforcement and collections needed improvement.

Criteria: Comprehensive policies and procedures showing clear lines of responsibility on the code violation and enforcement processes should exist. When processes cross departmental boundaries, all departments involved must discuss and come to an agreement on the processes that will be established. These processes must include controls over the assessment and collections of the abatements costs, civil penalties and administrative fees. Periodic reconciliations should be established within these processes.

Condition: Internal Audit conducted several reconciliations to determine if all abatement costs and administrative fees paid by the City were levied and collected from the property owner; all citations were assessed a civil penalty, and the civil penalties were either collected or sent to a collection agency. Based on these reconciliations, Internal Audit noted sufficient controls were not in place which allowed the following:

1. Abatement costs waived/reduced with no policies and procedures identifying authority; and
2. Insufficiently tracked civil penalties, to include collection agency reporting.

Cause: Policies and procedures were not established that clearly outlined departmental expectations in the tracking and collecting of abatement liens and civil penalties.

Effect: Without adequate policies and procedures in place to track abatement liens and civil penalties, personnel responsible for assigning and releasing liens and civil penalties are not able to track the monies appropriately and could potentially impact abatement liens and collection agency records being erroneously recorded or not being released.

Recommendation

The Office of Internal Audit recommends:

Development Services management should coordinate with the Finance Department to develop comprehensive policies and procedures showing clear lines of departmental responsibilities regarding the

assessment and collections of abatements costs, civil penalties and administrative fees, to include but not limited to the authority to waive/reduce abatement costs, collection agency reporting and periodic reconciliations.

Management's Response

We concur. Management is in full agreement with the recommendation.

The lack of delineation was determined in January 2019 by the Development Services Director and Assistant Director. Coordination began with the newly appointed Chief Financial Officer to work through the roles of each department. The formalizing of these policies is targeted to occur within the first six months of the current vacant position being filled. The first three months of the new person as the Assistant Director will allow an acclimation of overall duties and documentation of the process in place and issues to resolve.

Responsible Party: Assistant Director, Development Service

Implementation Date: 03/30/2020

CONCLUSION

Internal Audit has concluded work on the audit of code violation enforcement and collections. Based on Internal Audit's review, the internal controls surrounding the processes require improvements in order to provide reasonable assurance that continuity of operations exists. The implementation of the audit recommendations should result in consistent enforcement of code violations, to include the collection of civil penalties and abatement costs. In particular, comprehensive policies and procedures should be established, followed and provide for exceptions to the City Code of Ordinances.

Although the management responses are included in the audit report, Internal Audit does not take responsibility for the sufficiency of these responses or the effective implementation of any corrective actions.

Internal Audit would like to thank Department personnel for their assistance and numerous courtesies extended during the completion of this audit.

Signature on File

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