

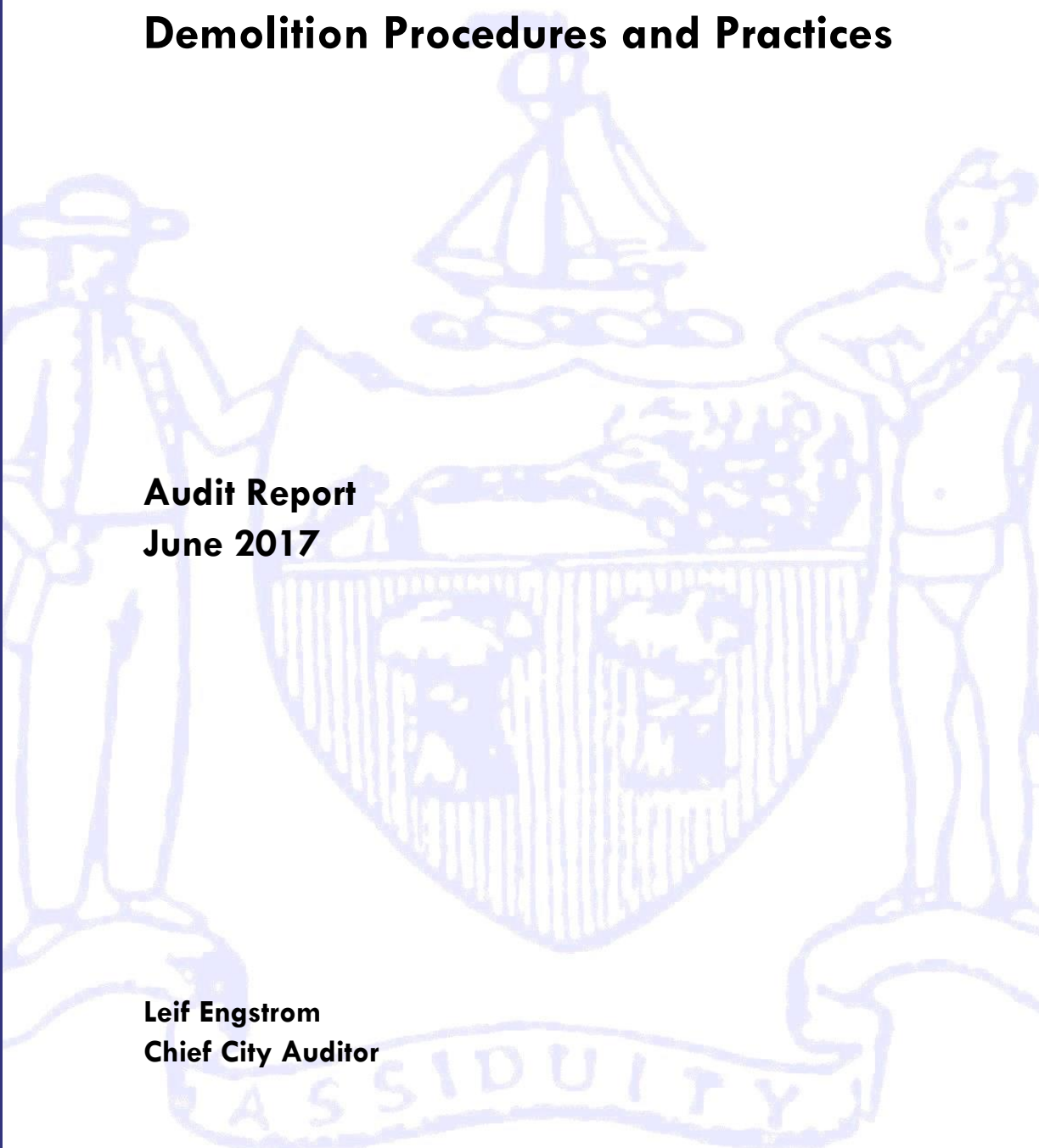
CITY OF ALBANY

Office of Audit and Control

Performance Audit of the City's Demolition Procedures and Practices

**Audit Report
June 2017**

**Leif Engstrom
Chief City Auditor**



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PREFACE

The Office of Audit and Control exists to provide oversight, transparency and public accountability as a means to improve City services. This performance audit is a part of that function.

When the Office of Audit and Control takes on an audit client and, absent evidence of misconduct, that client addresses the audit's findings; it is our commitment to support and encourage their use of the audit process to improve their operations.

This audit was conducted with the full cooperation of the Department of Buildings and Regulatory Compliance and the Director has committed to addressing its findings.

The proper use of the audit findings in these circumstances is to provide for oversight of the resulting changes and as the basis for informed public policy discussions.

Given that the Department of Buildings and Regulatory Compliance has given their full cooperation, it would be unfair and damaging to the audit process for this audit's findings to be used for political gain. As such, the Office of Audit and Control will view the political use of this audit's findings as detrimental to our mission.

We thank the Department of Buildings and Regulatory Compliance for their cooperation and commitment.

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Executive Summary

With rare exceptions, Buildings and Regulatory Compliance meets its reporting requirements, and follows City and State laws when conducting emergency demolitions.

However, Albany is not utilizing important tools it has to manage and resolve vacant and abandoned building issues.

City should begin utilizing the powers granted by State and City laws to resolve the issues with vacant properties before decisions have to be made in an emergency situation.

This audit reviewed the City's demolition processes and concluded that Albany is not utilizing important tools it has to manage and resolve vacant and abandoned building issues. While the City has the power to stabilize or demolish vacant buildings outside of an emergency situation, the most common course of action is to wait until a structure is an immediate danger to public health and safety and then order its demolition.

Vacant and abandoned buildings drive down the value of the surrounding properties, are attractive nuisances for criminal activity, and they demoralize a neighborhood's efforts to maintain its public spaces. Vacant buildings also create the likelihood of additional vacant buildings. For these reasons, the City should utilize its non-emergency powers to act systematically to address the issue.

The Office of Audit and Control (OAC) recommends that the City begin utilizing the powers granted by State and City laws to resolve the issues with vacant properties before decisions have to be made in an emergency situation. However, before those non-emergency tools are utilized, the City should engage stakeholders including neighborhood associations and Historic Albany Foundation in doing an assessment of the vacant properties in order to prioritize them for stabilization, rehabilitation, or demolition. This assessment should be used to direct the City's non-emergency stabilization and demolition powers to resolve large portions of the vacant building inventory.

With the creation of the Neighborhood Stabilization Coordinator position and the enactment of recent state laws, the Department of Buildings and Regulatory Compliance has the ability to conduct this assessment and make it effective. In most cases, the cost of these activities would be rolled onto the property's tax bill, which would frequently put the property into default and eventually make it available for the Land Bank's programs.

As part of this audit, OAC reviewed the City's emergency demolition activities and found that the City does, with rare exceptions, follow its written procedures and City and State laws for emergency demolitions. Unfortunately, the City's procedures only provide guidance for emergency demolitions but do not include other available options, including emergency stabilization, non-emergency demolition, and non-emergency stabilization. The City should write procedures for these options, do the assessments

mentioned above, and utilize these tools so that demolition decisions are not made on an emergency basis.

This audit also reviewed the amount of overtime accumulated by one inspector, Dan Sherman, who earned more overtime in 2016 than his annual salary. He is also the Building inspector for the Town of Knox. To date OAC has not identified any evidence that there was misconduct involved. In attempting to determine whether he charged the City and the Town for the same time worked, OAC experienced a data limitation because the Town of Knox has no records of the dates or times that Mr. Sherman worked or conducted inspections. OAC is exploring other methods of examination and will issue an addendum to this report when more information is obtained.

Introduction

This audit was initiated because of the recent increase in the number of emergency demolitions ordered by the Department as well as one individual inspector earning more overtime in 2016 than his annual salary and far more overtime as compared to other overtime-eligible staff. The primary objective of the audit was to determine whether the Department follows City and State laws and its own procedures when it initiates emergency demolitions. OAC determined that, with very few exceptions, it does.

The Department is lacking procedures for emergency stabilizations, non-emergency demolitions, and non-emergency stabilizations.

Considering all practicable options is an important part of decision-making and an option is less likely to be considered when it has no written procedures.

In addition to exploring that objective, OAC examined whether the Department's procedures are adequate and whether it is being effective in its efforts to address the vacant and abandoned building issue in the City. OAC staff determined that the Department is lacking procedures for emergency stabilizations, non-emergency demolitions, and non-emergency stabilizations. Using these tools, the City can bring resolution to many of the vacant structures that are salvageable but need stabilization to prevent further deterioration or that are too far gone and need to be demolished.

While the audit did not examine any individual demolition decision, 119 of the 125 emergency actions were demolitions and there were no non-emergency City-ordered demolitions or stabilizations. While we cannot determine whether having the additional procedures would change those results, considering all practicable options is an important part of decision-making and an option is less likely to be considered when it has no written procedures.

The audit findings are as follows:

1. The Department's procedures for responding to potentially dangerous structures contain instructions for emergency demolition but do not contain a pathway for other options.
2. The Department has not recently conducted an assessment of the city's vacant and potentially dangerous structures to determine which should be prioritized for stabilization versus demolition.
3. The City has not utilized its non-emergency stabilization and demolition authority to prevent buildings that are unfit for human habitation from becoming an immediate danger to public health and safety.

Data Limitation:

This audit also reviewed the amount of overtime accumulated by one inspector, Dan Sherman. In 2016, Mr. Sherman earned \$65,166 in overtime on a base salary of \$48,486. The overtime total is also far more than the overtime earned by any other Department employee. The explanation given by the Department is that he was more willing than others to take on-call shifts. The Department also explained that due to staffing shortages, he was one of two acting supervisors during this period and that a supervisor is required at the scene of a potential demolition. The City's records that OAC has examined to date do not show anything to refute this explanation. The Department now has three supervisors and Mr. Sherman is not one of them. However, he does continue to earn more in overtime than he does with his base salary.

Mr. Sherman is also the building inspector for the Town of Knox. OAC staff submitted a FOIL request for the Town's records of his time worked including time and/or date of his inspections for the Town. We have been informed that these records do not exist. This is a limitation on our audit and we are exploring other options to examine Mr. Sherman's overtime. We will issue an addendum to this report when we have additional information. In the public interest, we have decided to move forward and publish this audit report without final conclusions on this issue.

Scope, Objectives and Methodology

Objectives:

The objectives of this audit were as follows:

1. Determine whether the City is following its internal policies and procedures when determining that a structure must be demolished on an emergency basis.
2. Determine whether the City is following all legal and external (County, State, Federal) requirements when determining that a structure must be demolished on an emergency basis.
3. Determine whether the City is following best practices in making emergency demolition decisions.
4. Determine why the City has paid one employee more in overtime than his base salary. Determine whether the Department is meeting its reporting requirements with regard to vacant buildings and demolitions.

This audit covers the demolition decision-making process and the overtime allocation process for the Department. The time frame covered for demolitions and overtime will be 2015 and 2016.

Scope:

This audit covers the demolition decision-making process and the overtime allocation process for the Department. The time frame covered for demolitions and overtime will be 2015 and 2016.

Methodology:

The overall audit methodology consisted of the following:

- Evaluating and reviewing the Department's written procedures and practices related to the demolition of hazardous structures.
 - Researching and reviewing New York State law, City of Albany law, and New York State case law related to the demolition of hazardous structures, and comparing these laws to the Department's written procedures and practices.
 - Collecting, reviewing, and evaluating the Department data and documentation.
 - Conducting meetings and interviews with personnel from the Department and personnel from the City's Law Department.
1. **In order to determine whether the City is following its internal policies and procedures when determining that a structure must be demolished on an emergency basis;**

The audit team reviewed the Department's document titled, "Emergency Demolitions Procedures Summary" and created a flow chart and a spreadsheet containing all steps from the document. While this document is specifically for emergency demolitions, the Department confirmed that there are no written procedures for other paths of action. The audit team then compared documents and spreadsheets provided by the Department with the OAC created flow chart and spreadsheet, and made note of any areas where procedures were not followed.

2. In order to determine whether the City is following all legal and external (County, State, Federal) requirements when determining that a structure must be demolished on an emergency basis;

The audit team conducted extensive research on laws related to emergency demolitions and stabilizations and the taking of hazardous structures by a municipality. The team also consulted with attorneys in the Law Department. Most analysis was of City of Albany law, New York State law, and New York State case law. The audit team created multiple documents summarizing these laws and compared these laws to the Department's written procedures and practices, including the OAC created flowchart, spreadsheets created by OAC, and data and documents provided by the Department.

3. In order to determine whether the City is following best practices in making emergency demolition decisions;

The audit team reviewed the Department's written procedures and practices, laws related to emergency demolitions and stabilizations, and data and documents provided by the Department, as well as all documents created by the audit team to determine ways in which the Department's practices could improve. The audit team also considered the multiple available procedures for demolishing or stabilizing vacant structures that are prescribed in City and State law.

4. To determine why the City has paid one employee more in overtime than his base salary;

The audit team analyzed the Department's written demolition procedures to determine if written procedures played a part in demolitions being conducted during overtime hours. During meetings with the Department, the audit team made multiple inquiries related to the office structure, job responsibilities, complaint response time, and staffing process for demolitions. The audit team also submitted a FOIL request to the Town of

Knox for Inspector Dan Sherman's inspection schedule for his job with the Town of Knox in an attempt to compare the schedule to the City of Albany's time sheets.

5. In order to determine whether the Department is meeting its reporting requirements with regard to vacant buildings and demolitions;

The audit team reviewed data and documents provided by the Department, requested additional information during meetings with the Department, and consulted with other City Departments such as the Assessor's Office.

Audit Results

Findings:

1. **The Department's procedures for responding to potentially dangerous structures contain instructions for emergency demolition but do not contain a pathway for other options.**

Written procedures for responding to potentially dangerous structures should include all likely options

The Department's written procedures for responding to potentially dangerous structures should include all likely options provided by City and State law, including emergency demolition and stabilization, non-emergency demolition and stabilization, and other code enforcement actions.

The Department's Emergency Demolition Procedures Summary document contains a detailed set of procedures, starting with receiving an initial complaint through the demolition and payment process. However, these procedures lead to only one path of action: emergency demolition. The written procedures do not include instances where the Department may make the determination that a building is not "a direct hazard or an immediate danger to the health, safety or welfare of the occupants of a building or of the public."

This lack of inclusion of other viable courses of action makes it less likely that the Department employees, when responding to potentially dangerous structures, will consider courses of action other than emergency demolition. Of the 125 emergency actions taken in 2015 and through December 22, 2016, 119 were emergency demolitions, three were emergency stabilizations, and three were emergency demolitions of porches, which the Department categorizes as stabilizations. To be clear, we have not done an assessment of any individual emergency demolition decision and are not suggesting that any of these demolitions were inappropriate.

Recommendation:

Write new procedures for responding to potentially dangerous structures. The new written procedures should include five potential paths that could occur as a result of the Department inspecting a potentially dangerous structure. The five potential paths are:

1. Emergency Demolition as a result of an "immediate danger to the health, safety..." (Detailed in City of Albany Code §133-55)

2. Emergency Stabilization as a result of an “immediate danger to the health, safety...” (Detailed in City of Albany Code §133-55)
3. Demolition as the result of a “hazard to the health or safety...” (Detailed in City of Albany Code §133-28) or “unfit for human habitation” (Detailed in City of Albany Code §231-120 through §231-123).
4. Stabilization as the result of a “hazard to the health or safety...” (Detailed in City of Albany Code §133-28) or “unfit for human habitation” (Detailed in City of Albany Code §231-120 through §231-123).
5. No city mandated demolition or stabilization/all other codes enforcement actions.

Written procedures should also include requirements for contacting property owners before conducting demolitions. In cases where emergency measures are taken, written procedures should require the Department to call the property owner before the demolition takes place when possible. In cases where demolitions or stabilizations take place that are not conducted in an emergency manner, then contact must be made with the property owner, as State and City law require the property owner to be notified and be provided with the opportunity to be heard.

2. The Department has not recently conducted an assessment of the City’s vacant and potentially dangerous structures to determine which should be prioritized for stabilization versus demolition.

The Department should take a strategic and systematic approach to managing and addressing the City’s vacant and potentially dangerous structures. The City has the power and means to take action when it comes to vacant properties and should not use emergency demolitions as the primary tool for dealing with the City’s vacant building issue.

The Department regularly makes decisions on whether or not to stabilize a structure, demolish a structure, or take some other course of action without knowledge of an existing assessment of the priority of the structure in regards to demolition versus stabilization. Having access to this information would allow the Department to make more informed decisions in emergencies.

The Department should use the assessment on the priority of structures to initiate the use of the city’s non-emergency powers to demolish and stabilize buildings that are unfit for human habitation.

The Department should take a strategic and systematic approach to managing and addressing the city’s vacant and potentially dangerous structures.

By not having access to information on a structure's priority in regards to stabilization or demolition, the Department is forced to make important decisions affecting an individual or entity's property and potentially the overall makeup of a neighborhood with limited information. Since many of these actions are emergency measures, decisions on whether to stabilize or demolition a structure often must be made very quickly. These time constraints make it even less likely and more difficult for the Department to evaluate criteria such as the historical value of the structure.

The lack of an assessment on the priority of structures to stabilize or demolish may also be a barrier to the Department developing an overall plan for the vacant buildings and potentially dangerous structures in the city. An assessment would allow greater ability to develop a systematic plan for resolving the issues with these structures. While conducting an assessment that prioritizes vacant and potentially dangerous structures would involve a significant time commitment, the issue will not be resolved without it.

Recommendation:

Conduct a city-wide assessment of all of the City's vacant and potentially dangerous structures and prioritize the structures for stabilization, demolition, or other action. A set of criteria should be developed that includes factors such as the historic value of the structure, cost of stabilization and rehabilitation, potential monetary value of the structure, and importance of the structure to the neighborhood. Work with impacted neighborhood associations, the Historic Albany Foundation, the Albany County Land Bank, and other stakeholders in conducting the assessments.

When developing new written procedure related to responding to potentially dangerous structures, the procedures should factor a structure's priority for stabilization or demolition into its decision-making process.

The City should not wait until a property is an immediate danger to public safety before taking action.

It is better to make evaluations and decisions outside of emergency situations.

3. The City has not utilized its non-emergency stabilization and demolition powers to prevent buildings that are unfit for human habitation from becoming an immediate danger to public health and safety.

The Department should proactively use powers given to it by both City and State law to conduct non-emergency demolitions and stabilizations. In 2015 and 2016, the Department did not conduct any non-emergency demolitions or stabilizations.

Within City of Albany Code there are three different laws allowing the City to order action to repair or demolish

hazardous structures and each law provides the City with a different mechanism for doing so. §133-55, which is most commonly used by the Department, details procedures for emergency demolition and stabilization. §133-28 and §231-120 through §231-123 detail the process for non-emergency demolition and stabilization.

§133-28 provides a process in which the Director of the Department can make an order to demolish or repair a structure in instances where, “by reason of its use, mode or construction or which upon the demolition of an adjoining building shall be discovered to be unsafe or shall be determined to be unfit for human habitation or is a hazard to the health or safety of the occupants or public.” The law requires the city to give the parties in interest a written or printed notice and a reasonable opportunity to be heard.

§231-120 through §231-123 provides a process in which the Director of the Department can make an order of intent to demolish or repair a structure in instances where the Director “designates a building unfit for human habitation, as provided in this code, and determines that the cost necessary to correct the violation is not reasonably related to the value of the building.” This law requires the city to give the property owner the opportunity to demolish or repair the structure and if the property owner does not comply, the Department can take action.

Both §133-28 and §231-120 through §231-123 are similar tools that the Department could use to address the City’s vacant building problem. Unlike §133-55, these laws are for instances in which there is not an “immediate danger,” and also allow for notice and greater input from the property owner and public.

By ignoring available non-emergency stabilization and demolition powers, the City is missing opportunities to repair or demolish buildings which have structural deficiencies but do not yet require “immediate action.” This may result in buildings that could be rehabilitated eventually requiring demolition. A proactive use of non-emergency stabilizations and demolitions could help the City manage and improve the vacant building issue in the long run.

Recommendation:

Develop a proactive strategy for addressing vacant and potentially dangerous structures buildings that includes ordering and/or performing non-emergency stabilizations and demolitions. A vacant building should not sit indefinitely with the

Department taking no action if there is an action in the Department's toolbox that could resolve the building's situation. This proactive strategy should be used in conjunction with the recommended city-wide priority assessment conducted with the input of community stakeholders.

APPENDIX 1-A

Management Response



KATHY M. SHEEHAN
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ROBERT G. MAGEE
DIRECTOR

June 9, 2017

Leif Engstrom
Chief City Auditor
City of Albany Office of Audit and Control
24 Eagle Street
Albany, NY 12207

Re: *Performance Audit of the City's Demolition Procedures & Practices*

Dear Chief Auditor Engstrom,

Thank you for the work you, Sam, and Aindrea put into this report and for the insight you have provided into how we can better manage this critical aspect of our business as a Department. You and your team delved deeply into the issues, thoroughly reviewed our practices and records, and have produced a report on our emergency demolition practices that we will take to heart and do our best to implement in the future. We are happy to have your office confirm that we have upheld our obligations with respect to emergency demolitions and look forward to implementing your recommendation to exercise our non-emergency stabilization and demolition authority in appropriate cases.

Any emergency demolition or stabilization undertaken by this Department is the culmination of a multitude of failures accrued over years by a diverse company of actors, including ourselves, no matter how necessary it is in the present moment. We have been glad for the opportunity to confer with your office about better ways to approach this problem so as to protect public safety while reducing costs for the City and protecting our invaluable building stock.

What follows is the updated version of our May 9 response to your Performance Audit of the City's Demolition Procedures & Practices. You will see that we agree with your conclusions. Our response is chiefly to point out obstacles we have identified to implementing some of your proposed solutions which were not a part of the report itself. We do this here with an eye towards overcoming those obstacles so that we can achieve the vision of a more deliberate and considered stabilization process presented by your report. We have also already made some changes to our internal procedures as a result of the audit which we believe address some of your concerns. Those are discussed as well.

Thank you again for your work.

Truly yours,

A handwritten signature in black ink, appearing to read 'R. Magee', with a stylized flourish extending from the end.

Robert G. Magee
Director
City of Albany Department of Buildings &
Regulatory Compliance

ADDRESSING FINDING 1:

“The Department’s procedures for responding to potentially dangerous structures contain instructions for emergency demolition but not contain a pathway for other options.”

The emergency demolition procedure we’re currently applying assumes that other avenues to address the safety risk posed by the building have been tried and have failed. It will benefit us to include in these procedures an explicit confirmation that these steps have been tried and failed or formal consideration of whether they should re-tried so as to avoid a demolition in a given case.

We currently ensure staff takes a moment to consider all means of eliminating the safety risk posed by the building. In EnerGov, case types have been created that such a complaint about a potentially dangerous structure will be initiated as a standard code enforcement case to avoid the creation of an assumption that an emergency demolition or stabilization will have to be performed based solely on the nature of the complaint. Procedurally, then, emergency action will not be taken traditional enforcement options have been evaluated. The demolition code case type has also been named “emergency action” so as to reduce any presumption that an engineer will conclude that the building will have to be demolished.

Traditional enforcement is, of course, the vast majority of what we do as a Department. We encounter potentially dangerous structures countless times in while performing traditional code enforcement work without activating our emergency action procedure. Such buildings will be cited as unsafe and unfit for human habitation, with a notice to that effect going to the property owner. In 2015 and 2016 we issued 1067 such citations (428 in 2015 and 639 in 2016).

It is exceedingly rare that a building subjected to an emergency demolition will not have been the subject of multiple traditional code enforcement proceedings prior to the demolition. These citations will result in several notices of violation being sent to the owner of record by regular and certified mail as well as a petition and notice of appearance and court notices. These prosecutions are meant to notify the owners of deteriorating buildings of their legal responsibility to maintain them in order to compel them to make necessary repairs but often fail to do so.

This is most often because the owner does not want to be found. To address this, the City has recently hired a paralegal who will be working with us to track down such owners. As a Department, we have also opened up channels of communication with the Police Department to seek their assistance to locate owners of blighted properties. The Department has recently greatly improved its ability to document violations with implementation of the EnerGov software.

While owner contact is not a necessary precondition to the exercise of our authority to abate an imminent safety threat and is difficult given the timeframes imposed by a demolition, we have undertaken to improve the rate at which we are able to contact owners prior to a demolition. Our standard emergency action workflow in EnerGov formally requires that an attempt be made to contact the last known owner (prior to now efforts had been informal). It is our hope that these notices will impel negligent owners to take emergency action themselves but we have not had success with this yet, even when owners have been identified and contacted.

These measures should compel negligent property owners to take better care of buildings and reduce the number of emergency stabilizations and demolitions in the years to come.

ADDRESSING FINDING 2:

“The Department has not recently conducted an assessment of the City’s vacant and potentially dangerous structures to determine which should be prioritized for stabilization versus demolition.”

As the final report acknowledged, our new Neighborhood Stabilization Coordinator began on May 8, 2017. When the Department applied for the grant that will fund this position we did so expressly because we needed a fresh and comprehensive assessment of the City’s vacant and abandoned buildings.

The Neighborhood Stabilization Coordinator’s job will be to do precisely what the report recommends: coordinate with community stakeholders in assessing the City’s vacant building stock. This work has already begun as of this writing.

It is our hope that we can use the information gathered by the Neighborhood Stabilization Coordinator in a funded non-emergency stabilization effort that will preserve Albany’s building stock, protect neighborhood cohesion, and halt decline with the City’s many neighborhoods, particularly our historic ones. As your report correctly notes, in the case of emergency action we’re confined to considering only public safety. We look forward to solving the problems discussed below and being able to consider other factors in the course of a non-emergency stabilization effort.

ADDRESSING FINDING 3:

“The City has not utilized its non-emergency stabilization and demolition powers to prevent buildings that are unfit for human habitation from becoming an immediate danger to public health and safety.”

The report is correct that the Department has not taken advantage of the non-emergency powers afforded it by Albany City Code §133-28 and §231-120 et seq. In exercising these powers, we’re engaged in open discussions with the Law Department about the best way to use these powers while affording due process. Procedures for obtaining applicable court orders have also been discussed.

Stabilization is typically more expensive than emergency action or typical enforcement. The new procedures and the City budget will have to take this into account. Within the scope of the audit, for example, the emergency stabilization at 10 Hall Place cost \$68,527, far more than the average emergency demolition cost of roughly \$30,500.¹ There are several reasons for this. Stabilizations are more dangerous and require that workers enter dangerous buildings to perform

¹ The stabilization of 48 Hudson Ave which occurred in conjunction with the demolition of 50 Hudson Ave after it collapsed was also uniquely expensive. The cost of that total project was \$139,000, more than twice as much as the second-most expensive demolition ordered by the Department within the audit’s scope (\$61,000 for the demolition at 77 Clinton Ave). The stabilization that occurred at 71 N Manning Blvd, which involved only the removal of siding, cost much less, \$1,125, than a demolition would have, but we assume this isn’t the kind of stabilization action envisioned by the report.

work that could trigger collapse. This imposes greater liability on contractors and the City because the work is more dangerous. Stabilizations take longer and require more time on the part of contractors and more overtime on the part of the Department. Also, a post-stabilization collapse, even months or years later, could be deemed the fault of the City or the contractor.

Non-emergency stabilizations and demolitions would likely be more expensive than emergency ones as they would trigger obligations to follow Department of Labor regulations related to asbestos removal (see 12 NYCRR part 56 et seq.) which are time consuming and expensive to comply with. Contractors acting under an emergency order are allowed to take advantage of quick and often less expensive asbestos remediation procedures per 12 NYCRR 56-11.2(b). This presumably would not be available for a non-emergency order. There may be similar regulatory compliance obligations which are waived in the context of an emergency action which would not be for non-emergency action. We have not been able to do an exhaustive accounting of these as of this writing and a review of such regulations would have to be done to ensure that non-emergency actions are as safe and cost-effective as possible.

There are also questions of fairness implicated in non-emergency stabilizations. Any stabilization, but a non-emergency stabilization in particular, amounts to the use of taxpayer money to the repair a negligent private property owner's building. It is easy to understand City tax-payers objecting to such an arrangement, particularly where the cost of a non-emergency stabilization is not recovered (which could occur where the cost of stabilization is more than the building and the owner is insolvent or where we may be compelled to waive a lien so that a property can be rehabilitated by a responsible owner). It will be convincingly argued that absent an emergency we should instead be doing what we do now: insisting that the owner make the repair with their own money. To address this we should at least provide a substantial penalty in the City Code that can be levied against the owner of a building where this non-emergency stabilization or demolition action is undertaken.

There is no guarantee that stabilization work in a building will save it or prevent the need for demolition in the future. 10 Hall Pl, for instance, remains in the same legal limbo it did when we performed an emergency stabilization there more than two years ago. There is hope with 10 Hall Place that a tax foreclosure by Albany County will return this building to the market and productive use, but not all buildings will be subject to tax foreclosure. In implementing the recommendations of the report, we should ensure that information tracking the eventual re-occupation of stabilized buildings is captured systematically so that we can evaluate non-emergency stabilizations for long term viability.

The administration of non-emergency stabilization hearings under Albany City Code §133-28 will encounter the same problems as traditional code enforcement methods given that our goal is always to compel property owners to take proper care of their buildings themselves. Owners who receive such notices will often be outside our jurisdiction or financially unable to act. Other owners will have made themselves unreachable or will have passed away. In all such cases, the City will be left in a similar position to that which it is in now: compelled by the owner's inaction to act ourselves.

These obstacles are daunting but not impossible of being overcome. We look forward to doing so.

ADDRESSING DANIEL SHERMAN'S OVERTIME

As you stated in the job start letter of December 12, 2016, "[t]he purpose of this audit is to determine whether the City is following its internal as well as external policies, procedures, and requirements when making the decision to demolish a structure on an emergency basis." In this final report your office has concluded that "the City does, with rare exceptions, follow its written procedures and City and State laws for emergency demolitions" and suggested useful ways in which we can better address deteriorating buildings.

As I said in my memo of May 3, 2017, because Daniel Sherman's overtime allocation and/or the Department's overtime allocation procedures were not initially a part of this audit and your audit of them is continuing we, respectfully, do not see the need to include a discussion of it here. It's our position that discussing an ongoing investigation in the context of a final report is misleading and tends to cast doubt on whether Daniel Sherman was properly compensated for or assigned his overtime work. We of course continue to offer you any and all information or records access you will need to conclude this audit and look forward to and welcome your final report on this issue. In the meantime, it is our position that any City employee is entitled to the benefit of the doubt with respect to an audit of their earnings and that the discussion of Daniel Sherman's overtime in the context of a final audit report denies him that benefit for no clear purpose.

With respect to the amount of overtime allocated to Dan Sherman over other overtime eligible employees, we have discussed the process by which overtime is awarded. As noted in the report "[t]he explanation given by the Department is that he was more willing than others to take on-call shifts". Each of our code enforcement officers is assigned a week in which they are assigned as the "on-call" inspector who will be called to off-hours calls. They have the option of offering this "on-call" assignment to other code enforcement officers or building inspectors who are willing to cover it. This is a typical arrangement and we are unable to change it except at the conclusion of a bargained for contract change with our code enforcement staff's union. The negotiation of that contract is ongoing. As you continue this audit, we encourage you to interview our overtime-eligible staff to verify this explanation.

With respect to the amount of overtime we allocate as a Department, it is worth noting that the Buildings Department provides support to and is involved in many of the calls that go to the Fire, Police, and Water Departments. While we have twelve staff members (when we are fully staffed) eligible to go out on overtime calls, Fire, Police, and Water have dozens of employees covering 24 hour shifts. While we have informally considered moving to a 24 hour shift coverage system, the operational cost of devoting staff to non-business hours would be simply shifting, not saving costs. This is, however, something we are open to more fully exploring, particularly if your office finds that it would save the City money and/or improve the administration of services.

We are happy that you have had the opportunity to review the time for which Dan Sherman earned overtime in his employment with the City of Albany and appear to have concluded that Mr. Sherman has in fact worked the time for us for which he has been paid by the City of Albany. We cannot say what might be the conclusion of your office into the accounting practices of the Town of Knox but we look forward to your final report regardless.

We understand that this response may be premature as you have not come to a final conclusion on the overtime question, but given that it was part of the final report we did feel compelled to provide a response here. If your audit has progressed such that any of the points we've made here are no longer relevant, we apologize. As with the audit of our emergency demolition practices, we are eager to offer you anything you might need in the course of your ongoing audit.

Auditor's Response



CITY OF ALBANY
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6/13/2017

Dear Director Magee,

We appreciate your response to our audit report and appreciate your willingness to implement our recommendations. We also appreciate your statement that you plan to work toward overcoming the obstacles you identified in implementing our recommendations. We do want to clarify that we believe the obstacles are not as daunting as you anticipate. Vacant buildings are a major blight in this City. As such we believe that you will be surprised at the level of political and public support a well-planned, aggressive initiative would receive. Our analysis is as follows:

You identified making contact with property owners as an obstacle to implementing the recommendations. It's important to note that the inability to find an owner does not prevent the City from taking non-emergency action to repair a problem that caused the City to declare a structure unsafe-unfit. If the City makes adequate efforts to contact the owner (including checking Assessor's records, County Clerk records, google, etc.) the City can hold a publicly noticed hearing and move forward with the repairs or demolition, even without successfully contacting the owner. This would allow the City to quickly return the property to being potentially occupied, or at least prevent it from deteriorating. If the bill is unpaid, it will be attached to the property taxes and the County will eventually foreclose on the now occupied property that still retains value.

You mentioned that the Department has encountered potentially dangerous structures countless times without activating emergency demolition or stabilization procedures, issuing 1,067 unsafe-unfit for human habitation citations in 2015 and 2016. We recommend that an unsafe-unfit declaration trigger an aggressive process to remove this status. The property owner should be ordered to take action on the property. If the owner does not take action, the City can conduct non-emergency repairs or demolition (after a hearing). As noted above, this is true even if efforts to contact the owner are unsuccessful.

In addressing Finding 3, you made many points about procedural obstacles to increasing non-emergency stabilizations and demolitions. We agree that that these factors should be taken into consideration. However, the procedural work associated with these issues should not stand in the way of conducting more non-emergency actions. Additionally, we question whether non-emergency

stabilizations would necessarily require more overtime, as non-emergency stabilizations would not require Department staff member to be on site during the entire process (no imminent danger to public safety).

On page 5, you stated that stabilizing a structure could be viewed as unfair by City residents, as they would not want tax money used on a property with a negligent owner. We believe this concern is misplaced. The costs of non-emergency stabilizations would be billed to the owners as described in the City Code. If a property owner pays the bill, there would be minimal costs to the City. If the owner does not to pay the bill, it would roll onto their property taxes. In due time, the owner would lose his or her property to County foreclosure, meaning that the property owner gets no benefit from the stabilization and the property gets a more responsible owner.

You also mentioned that there is no guarantee stabilization will save a building or prevent the need for demolition. This is true, but repairing or stabilizing a building, particularly an important one, makes it much more likely to be rehabilitated. You also mention that buildings often go into a legal limbo after stabilizations are made. We do not agree with the assertion that this legal limbo should be considered an obstacle in the rehabilitation of a building, as this legal limbo is temporary. After about three to five years of taxes not being paid, the County will foreclose on a viable building and the stabilized building will likely be transferred to the Land Bank where a strong effort can be made to sell and rehabilitate the building.

Thank you for your commitment to achieving the recommendations identified in this audit. We stand ready to help as you move forward.

Sincerely,

Leif Engstrom
Chief City Auditor