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Historic Landmark Commission Audit

March 23, 2010

Office of the City Auditor
Austin, Texas

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City of Austin



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Date: March 23, 2010
To: Mayor and Council
From: Kenneth J. Mory, City Auditor
Subject: Historic Landmark Commission Audit

I am pleased to present this audit report on the Historic Landmark Commission (HLC). This audit was requested and approved by the Audit and Finance Committee and was included as part of our office's FY 2010 Service Plan.

The purpose of this audit was to determine whether:

1. the HLC is operating in compliance with the City of Austin Code of Ordinances and HLC bylaws.
2. staff liaisons are providing support services to the HLC on a timely basis as prescribed by the applicable City Code and the City policies.

We found that HLC members appear to be complying with City Code requirements for taking actions, commission member eligibility, City training, and the filing of public finance statements. However, they are not consistently complying with all requirements related to Board meetings procedures. In addition, staff liaisons are not providing adequate support to HLC members to assist them in carrying out their duties.

We particularly appreciate the cooperation and assistance we received from the Historic Landmark Commission, the City Clerk's Office, the Law Department, and the Historic Preservation Office of the Planning and Development Review Department.



COUNCIL SUMMARY HISTORIC LANDMARK COMMISSION AUDIT



This report presents the results of our audit of the Historic Landmark Commission. We had the following findings:

Finding 1: Historic Landmark Commission members generally comply with eligibility requirements specified in the City Code.

Finding 2: The Historic Landmark Commission is partially complying with requirements for meeting procedures.

- Commission members generally comply with requirements related to meeting quorum and actions.
- The Commission did not adopt Commission bylaws, as required by City Code, in a timely manner.
- The Commission is not consistently complying with Texas Local Government Code requirements for sovereign boards, which require disclosing conflicts of interest and filing an affidavit with the City Clerk regarding any “substantial interest”. Commission members were not aware they were serving on a sovereign board.

Finding 3: The Historic Landmark Commission is not complying with the City Code requirements for annual reports and work plan reviews.

- The Commission has not submitted either an annual report or work plan as required in 2008 and 2009. Commission members thought that Historic Preservation Office staff were responsible for the reports rather than the Commission.

Finding 4: The Historic Landmark Commission staff liaisons are not providing adequate support to HLC members to assist them in carrying out their duties.

- Staff liaisons are not providing timely meeting information packets to Commission members.
- Staff liaisons have not consistently presented meeting minutes to the Commission for approval.
- Staff liaisons have not consistently provided sign-in sheets at Commission meetings, which help document attendance and conflicts of interest.



ACTION SUMMARY HISTORIC LANDMARK COMMISSION AUDIT



Recommendation	Management Concurrence	Proposed Implementation Date
To ensure that the Historic Landmark Commission complies with regulations for City Boards and to mitigate the risk of legal challenges:		
01. The Director of the Planning and Development Review Department should ensure that Historic Preservation Office staff are trained on code requirements and monitored to ensure that they provide sufficient guidance to Historic Landmark Commission members.	Concur	Ongoing
02. The Chair of the Historic Landmark Commission should ensure that the Commission, with the support of Historic Preservation Office staff, prepares an annual report and work plan as required by the City Code.	Concur	May 2010

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BACKGROUND

The Historic Landmark Commission Audit was approved by the Audit and Finance Committee as part of the Office of the City Auditor’s FY 2010 Service Plan.

The activities of the Historic Landmark Commission (HLC) are chiefly guided by the City of Austin Code of Ordinances, approved by the City Council, and the Historic Landmark Commission bylaws.

The HLC is a sovereign board composed of seven Austin residents appointed by the City Council. The HLC advises the Council on historic preservation issues. It also initiates and reviews zoning cases to establish or remove historic designation; reviews and issues Certificates of Appropriateness for exterior alterations to City Historic Landmarks; approves tax abatement applications for designated City Historic Landmarks; reviews building, relocation and demolition permits and signage in the historic districts; and develops and updates a historic preservation plan for the city. The exhibit below shows the types of issues addressed by the HLC during the period from January 2009 to January 2010.

**Number of Cases Addressed by the HLC
January 2009 to January 2010**

Meeting Date	Zoning Cases	Certificate of Appropriateness Cases (for changes to historically zoned properties)	National Register Historic District Cases	Demolition/Relocation Reviews	Tax Exemption Applications
Jan-09	1	4	9	4	0
Feb-09	5	0	6	2	1
Mar-09	7	6	2	4	0
Apr-09	1	1	3	9	398
May-09	4	3	0	2	4
Jun-09	7	2	4	1	0
Jul-09	14	4	3	4	0
Aug-09	4	4	3	2	0
Sep-09	11	5	6	5	0
Oct-09	18	2	0	0	0
Nov-09	14	4	0	5	0
Dec-09	4	3	2	2	0
Jan-10	6	8	5	2	0
Total	96	46	43	42	403

SOURCE: Historic Landmark Commission Meeting Minutes

The Historic Preservation Office (HPO) of the Planning and Development Review Department provides administrative and support services to the HLC. The HPO has three full-time equivalents reporting to a division manager.

Currently the City of Austin has 542 designated historical structures and 1 locally designated historic district.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives:

The purpose of this audit was to determine whether:

1. the HLC is operating in compliance with the City of Austin Code of Ordinances and the Historic Landmark Commission bylaws.
2. staff liaisons are providing support services to the HLC on a timely basis as prescribed by the applicable City Code and policies.

Scope:

The scope of this audit includes the activities of the HLC for the period from January 2009 to the present.

Summary of Methodology

In order to achieve the objectives of this audit we:

- conducted interviews of staff in the applicable departments and HLC board members.
- obtained and reviewed applicable information from HLC meeting documentation.
- obtained and reviewed applicable laws and regulations including the City Code, City policies, and the HLC bylaws.
- developed and administered a short survey of support staff for 12 City boards or commissions in addition to the HLC.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). 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.

AUDIT RESULTS

Some Historic Landmark Commission (HLC) activities comply with the City Code and the HLC bylaws. However, we also identified some cases of non-compliance with the City Code and City policy requirements for conducting meetings and reporting on HLC activities. In addition, we noted that HLC members are not receiving the necessary support to carry out required duties.

FINDING 1: Historic Landmark Commission members generally comply with eligibility requirements specified in the City Code.

The City Code requires that Commission members file certain documents and obtain training related to City Boards and Commissions.

The City Code lists the eligibility requirements for all City of Austin Board and Commission members. The Code requires each member to file an application and acknowledgement with the City Clerk in order to be eligible for appointment. We verified that all the HLC members submitted written applications to the City Clerk and signed the required written acknowledgements.

In addition, the City Code requires HLC members to file public financial disclosure statements with the City Clerk by the last Friday in April of each year. An HLC member who does not comply with this requirement automatically vacates the member's position. We verified that all HLC members filed the required Public Financial disclosure information for the year 2008 within the stipulated time.

The City Code also requires that City Board and Commission members complete an initial City Board course, not later than the 90th day after the date of a particular member's appointment to the Board. In addition, the City Code requires Board and Commission members serving as of December 10, 2007 to complete this initial training not later than December 31, 2008. The Code also requires Board and Commission members to annually complete a refresher course. Based on our review of the training records, all HLC members completed the required initial training and the refresher training for the year 2009 as required.

FINDING 2: The Historic Landmark Commission is partially complying with requirements for meeting procedures.

HLC members generally comply with the requirements of the City Code and the HLC bylaws related to Board and Commission meeting quorum and actions. The City Code states that if a Board or Commission has seven members, four members constitute a quorum and the four people must be physically present at a meeting to conduct business. In addition, for a seven-member Board or Commission, a board action must be adopted by an affirmative vote of four members. Based on our review of the meeting minutes from January 2009 to January 2010 and our review of selected HLC

meeting video recordings we found that the HLC members complied with the requirements for meeting quorum and actions.

In addition, HLC members are consistently complying with the City Code requirement for meetings that extend beyond 10 pm. The City Code states that a Board or Commission meeting may not extend beyond 10 pm, unless the Board or Commission members vote to continue. Based on our review of the minutes and video recordings, we noted that the HLC members complied with this requirement.

HLC members are not consistently complying with the City Code requirement that they sign in and indicate whether they have a conflict of interest at each meeting.

The City Code requires that all HLC members, at each Commission meeting, sign an attendance sheet and either indicate that they have no conflict of interest related to any item on the agenda or note the number of an agenda item for which they have a conflict of interest. From January 2009 to January 2010, we found evidence of the sign-in sheet being used for only 3 out of 13 regular Commission meetings. The Historic Preservation Office (HPO) staff are responsible for ensuring that this sign-in sheet is properly completed. However, HPO staff indicated that they were not aware of this requirement. The inconsistency in tracking the HLC members' conflict of interest declarations may potentially result in members voting on those issues for which they may have a conflict of interest, which may lead to legal challenges.

The HLC did not adopt Commission bylaws, as required by City Code, in a timely manner. The City Code requires that all City Boards and Commissions adopt the City's standard bylaws for Boards and Commissions not later than December 31, 2008. The HLC amended the City's standard bylaws, which were presented to and partially approved by the Audit and Finance Committee in September 2008. However, the HLC did not formally adopt the amended bylaws until the February 2010 regular Commission meeting. Based on our interviews and a review of the meeting discussion for the Commission's February 2010 regular meeting, causal factors include a general lack of guidance from the HPO staff regarding the procedures and steps that had to be followed by the Commission members.

FINDING 3: Historic Landmark Commission members are not complying with the City Code requirements for annual reports and work plan reviews.

The City Code states that periodically the Audit and Finance Committee will designate Boards and Commissions to conduct an annual review, complete a work plan, and prepare an annual review report. The annual review includes determining the Board or Commission's compliance with its mission as well as soliciting and recording comments from the public and staff. The annual review includes an analysis of the Board or Commission's past performance and the work plan includes goals and objectives as well as proposed activities for the following year. Although the HLC was required to conduct a review and submit an annual report for 2007 and 2008 and a work plan for 2008 and 2009, it has not done so.

Based on our interviews with HLC members, the City Clerk, and HPO staff, there is a general lack of clarity regarding roles and responsibilities of the key parties, especially regarding roles of the HLC members and HPO staff in the preparation of the annual reports. In addition, a lack of consequences for not complying with this requirement may contribute to the HLC's non-compliance.

Without an annual review, an annual report, and a work plan, the City Council as well as the HLC members may not be able to determine:

- if the HLC is complying with its mission,
- whether the HLC is achieving its objectives and goals,
- what objectives and goals the HLC members should achieve in the future,
- if the HLC should continue in operation,
- if the HLC's functions should be modified, or
- whether some of the functions should be transferred to another Board or Commission.

FINDING 4: HLC staff liaisons are not providing adequate support to HLC members to assist them in carrying out their duties.

The HLC relies on receiving administrative services and support from the HPO, the City Clerk, and the City Law Department to properly perform its duties. Without sufficient support from these entities, HLC members may not be able to comply with the regulations guiding their Board's activities and may potentially make wrong or uninformed decisions, which may lead to legal challenges and waste.

The HPO is required to provide the following administrative and support services for the HLC:

- provide guidance to the HLC members on regulation and City policy requirements;
- compile the agendas, maintain minutes, and track attendance information for the HLC meetings; and
- ensure the HLC complies with the annual review and work plan requirement, when applicable.

HPO staff and the HLC members noted that there were instances when information packets were delivered to HLC members either the evening before or on the actual day of HLC meetings. Based on interviews, HPO management indicated that these packages should normally be delivered at least two days before the HLC meeting. Late delivery of this information may lead to HLC members voting on issues without sufficient knowledge, especially for cases that involve demolition permit applications because these cases have a time constraint and generally cannot be deferred. Based on our survey of support staff for 12 other City Boards and Commissions, staff delivers supporting documentation to their respective Board or Commission an average of 3.8 days prior to meetings. HPO staff and the HLC members indicated that the cause of this delay is mainly a lack of sufficient staffing within the HPO.

Texas Local Government Code and the City Code prohibit local public officials from voting on issues where they have a conflict of interest. Public officials who vote on issues where they have a conflict of interest may expose the City to legal challenges. As discussed in Finding 2 above, HPO staff have not been consistently providing the sign-in sheets, a control which would help ensure HLC members' compliance with this Code requirement.

Because the HLC has some sovereign responsibilities, they are considered a sovereign board. Members of a sovereign board are subject to a State law that requires Board members to recuse themselves when they have a "substantial interest" in a person or entity that would be affected by a vote of the Board and to file a notarized affidavit with the City Clerk before the Board votes on the item with which a member has a conflict. Through our interviews with the HLC members, we noted that the members did not know that the HLC is a sovereign board. As such, they were not aware of their responsibilities as members of a sovereign board. Although we saw evidence of member recusals in the meeting minutes, none of the Board members filed an affidavit with the City Clerk.

HPO staff have not been consistently presenting the meeting minutes to the HLC for approval. We noted that in January 2010 the Commission had not received minutes for the months from September 2009 to December 2009. During the HLC's regular meeting for the month of February 2010, the HPO staff presented all the minutes for the period from January 2009 to January 2010 to the Commission for approval. This included approving new minutes for September to December 2009 and revised minutes for January to August 2009 due to some inconsistencies in the initial minutes presented to and approved by the Commission members. Not having timely access to such information may cause a delay in required annual reporting obligations. In addition, due to the time that may have elapsed between the date when the meeting was held and the date when the minutes are presented, there is a potential risk that the Commission members may not be able to verify that the minutes reflect what happened in the meetings.

As discussed in Finding 2 above, due to a lack of sufficient guidance from the HPO staff, the HLC members did not comply with the City Code requirement for the adoption of the Commission's bylaws.

Recommendations

To ensure that the Historic Landmark Commission complies with regulations for City Boards and to mitigate the risk of legal challenges:

01. The Director of the Planning and Development Review Department should ensure that Historic Preservation Office staff are trained on code requirements for Boards and Commissions and monitored to ensure that they provide sufficient guidance to Historic Landmark Commission members.

MANAGEMENT RESPONSE: Concur

Historic Preservation Office staff will work to ensure that Historic Landmark Commission members are training as required and are provided sufficient guidance on code requirements through training of staff and weekly HPO staff meetings, coordination with the Law Department and the City Clerk's Office, and better communication/coordination with the HLC on the code requirements.

02. The Chair of the Historic Landmark Commission should ensure that the Commission, with the support of Historic Preservation Office staff, prepares an annual report and work plan as required by the City Code.

MANAGEMENT RESPONSE: Concur

The Historic Preservation Office staff will work with the Historic Landmark Commission Chair to prepare a work plan for this year that will be based on the outcomes of the February 2010 and December 2009 work sessions and the Historic Preservation Office will present for the HLC's approval an annual report.

Other Matters: We identified one issue related to the Historic Preservation Office that may require further consideration.

First, as discussed in the background section, the HPO staff provide administrative and support services for the HLC. Based on our interviews with the HPO management and staff there seems to be a lack of coordination among HPO staff, which may potentially impede their ability to effectively serve the Historic Landmark Commission. Without quality services from the support staff the HLC members may potentially make uninformed decisions which may lead to legal challenges. HPO management is aware of these problems and has communicated a plan to address them.

APPENDIX A
MANAGEMENT RESPONSE



MEMORANDUM

To: Kenneth J. Mory, City Auditor
Henry Katumwa, Auditor in Charge
Office of the City Auditor

From: Greg Guernsey, Director
Planning and Development Review Department

Date: March 18, 2010

Subject: Historic Landmark Commission Audit

Enclosed please find our response to the subject audit. As suggested, we have used the Action Plan template to address each audit recommendation.

The Audit Results section raises the issue of cooperation among Historic Preservation Office (HPO) staff possibly affecting the level of service to the Historic Landmark Commission. Management acknowledges that improvements in this area should be made. Management has initiated a weekly HPO staff meeting to improve communication among staff members. Also, management is working with HPO staff on reviewing job responsibilities and will begin preparing a training manual. Management has been attending the Commission's meetings and consulting with the Chair after the meeting. In addition, management may seek the assistance of the Organization Development Division of the Human Resources Department.

We trust this submittal provides you the necessary information to complete the process. If you have any questions or need additional information, please do not hesitate to contact us.


Greg Guernsey, Director
Planning and Development Review Department

Approved by: Sue Edwards, Assistant City Manager

Signature:  Date: 3/22/2010

Attachment: Action Plan

GG:SE jr

LIMBACHER & GODFREY
ARCHITECTS

March 19, 2010

Mr. Jerry Rusthoven
City of Austin
City Historic Preservation Office
Planning and Development Review Department
PO Box 1088
Austin, Texas 78767

RE: Preparation of Annual Report and Work Plan
Historic Landmark Commission
City of Austin

Dear Jerry:

The members of the City of Austin Historic Landmark Commission stand ready to assist and work with the City Historic Preservation Office staff to prepare annual report and work plan documents as might be needed for administrative and forecasting requirements. We recently completed a Commission retreat in which we set goals and priorities for the coming year. This information is intended to guide the Commission and the staff in activities through the year, and would be appropriate to incorporate in to an annual report and work plan document.

Please let me know if you have questions or need further information.

Sincerely,



Laurie Limbacher, Chair
City of Austin Historic Landmark Commission

cc: Historic Landmark Commission

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ACTION PLAN
Historic Landmark Commission Audit

Rec #	Recommendation Text	Concurrence	Proposed Strategies for Implementation	Status of Strategies	Responsible Person/ Phone Number	Proposed Implementation Date
01	The Director of the Planning and Development Review Department should ensure that Historic Preservation Office staff is trained on code requirements and monitored to ensure that they provide sufficient guidance to Historic Landmark Commission members.	Concur	Historic Preservation Office staff will work to ensure that Historic Landmark Commission members are trained as required and are provided sufficient guidance on code requirements through training of staff and weekly HPO staff meetings, coordination with the Law Dept and City Clerk's Office and better communication/coordination with the HLC on the code requirements.	Underway	Jerry Rusthoven, Current Planning Manager, 974-3207	Ongoing
02	The Chair of the Historic Landmark Commission should ensure that the Commission, with the support of Historic Preservation Office staff, prepares an annual report and work plan as required by the City Code.	Concur	The Historic Preservation Office staff will work with the Historic Landmark Commission Chair to prepare a work plan for this year that will be based on the outcomes of the Feb 2010 and Dec 2009 work sessions and the Historic Preservation Office will present for the HLC's approval an annual report.	Underway	Jerry Rusthoven, Current Planning Manager, 974-3207	The work plan will be presented for the Historic Landmark Commission's approval at its May 2010 meeting.

Office of the City Auditor
3/19/2010