

**RULE NO.: R161-21.11**

**NOTICE OF RULE ADOPTION**

**ADOPTION DATE: 06/17/2021**

By: Denise Lucas, C.P.M., Director  
Development Services Department

The Director of the Department of Development Services has adopted the following rule. Notice of the proposed rule was posted on 04/23/2021. Public comment on the proposed rule was solicited in the 04/23/2021 notice. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code as explained below.

A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas.

**EFFECTIVE DATE OF ADOPTED RULE**

A rule adopted by this notice is effective on 10/01/2021.

**TEXT OF ADOPTED RULE**

R161-21.11: Notice of Adoption to the Building Criteria Manual does contain changes from the proposed rule.

**Summary of rule:**

- Implementing recommendations from 2018 Demolition Permit Process Report. Updating language to identify Development Services Department.
- Addition of affidavit of compliance as application requirement and reference to section 16.3.
- Moving section 1.2.6. to section 4.3.0.
- Addition of Pre-Demolition Inspection, Acknowledgement Form, and Demolition Notification Process.
- Updating section 5.4.0. as Commercial Building Inspections and referencing section 4.6.2.2.

**Changes from the original proposed notice:**

- Clarifying language added to 4.3.0(a)(1)(b)
- Clarifying language added to 4.3.0(b)(1)(b)
- References updated in 4.3.0(b)(1)(g)

## **SUMMARY OF COMMENTS**

Written comments (attached) were received from Benjamin Abzug regarding Rule R161-21.11, objecting to Affidavit of Compliance, Notification Requirements, and Survey Verification. The Development Services Department has reviewed the comments and determined that clarifying edits are warranted for sections 4.3.0(a)(1)(b), 4.3.0(b)(1)(b), and 4.3.0(b)(1)(g).

## **AUTHORITY FOR ADOPTION OF RULE**

The authority and procedure for adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is provided in Chapter 1-2 of the City Code. The authority to regulate construction is established in Chapter 25-11 of the City Code.

## **APPEAL OF ADOPTED RULE TO CITY MANAGER**

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED ON THE FIRST PAGE OF THIS NOTICE.** If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the City Clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

Notice that an appeal was filed and will be posted by the city clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the city clerk and provided to the City Council.

On or before the 16th day after the city clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City manager shall make a decision.

## **CERTIFICATION BY CITY ATTORNEY**

By signing this Notice of Rule Adoption R161- 21.11, the City Attorney certifies that the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

**REVIEWED AND APPROVED**



Denise Lucas, C.P.M., Director  
Department

Date: 06/07/2021

/s/ Deborah Thomas  
Anne L. Morgan  
City Attorney

Date: 6/11/2021

Staff Responses in red text.

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May 18th 2021

Dear Mr. Johnson:

I am writing to offer comment on Rule R161-21.11 regarding proposed changes to the Building Criteria Manual.

Respectfully Submitted,  
Benjamin Abzug

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#### **Residential Demolition 4.3.0(a)(1)(b) & Commercial Demolition 4.3.0(b)(1)(b)**

Compliance Affidavit:

I appreciate the introduction of the compliance affidavit as well as its inclusion by name of hazardous materials such as lead and asbestos, both driving concerns of Council's original resolution. However, I feel the affidavit should be improved by adding a direct reference to OSHA regulations, as at least in terms of residential demolitions, it may largely only be these rules that apply. To clearly refer to these standards would not only serve to make the permit-holder or contractor more specifically mindful of what they are agreeing to, but may also aid in any enforcement proceeding. A direct line can be drawn between issues of health and safety at the job site and the potential for negative health impacts to the surrounding public. Because of this, I feel it is important to highlight worker safety as a distinct item in the affidavit.

Additionally, I suggest adding the word "identification" to the list of actions the permit-holder/contractor is agreeing to perform in accordance with applicable regulation, as this appears to nearly always be a required first step prior to the handling, removal and disposal of these hazards. Please consider the small but purposeful edits offered below.

*Suggested Change:*

(b) A notarized Development Services approved affidavit of compliance. The affidavit must be completed signed, notarized and confirm compliance with all City, State and Federal regulations including those for workplace safety (OSHA) and for the identification, handling or removal and proper disposal of asbestos, lead, refrigerants and all other hazardous materials.

Thank you for your suggestions. They align and clarify the intention of the proposed rules edits.

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#### **4.6.2.2 Residential Building Inspection & 5.4.3 Commercial Building Inspections (by reference)**

Notification Requirements:

The City Council's original demolition resolution (20171214-066) directed DSD to redesign its permitting process to require, among other goals, that "adequate and appropriate notice" of impending demolition work "is given to interested parties."<sup>1</sup> I am disappointed that the hang-tag notice provided for in the "Notification Diagram" of this section falls well short of the 400' distance recommended as minimally adequate by leading public health research, and in turn believe this proposal fails to satisfy Council's mandate.<sup>2</sup> Even if making a generous assumption of 100' wide lots, the diagram appears to provide less than half the prescribed warning radius, and because lot size varies greatly by neighborhood, would provide an unequal level of notification throughout the city.

I am aware that DSD has made available an online tool that allows for more expanded notification, but this may not be universally accessible and requires the citizen to initiate interest. It is also unclear from this diagram how notification for demolitions on corner lots, in cul-de-sacs, or in other possible scenarios are to be carried out. For all these reasons, I again ask staff to reconsider measuring notification distance by lots, and instead to generate an address list keyed to at least a 400' radius from the property being demolished.

Another issue with this section is that it does not sufficiently address how notification to adjacent multi-family residences would be handled. I see that the "permit-holder or other authorized agent" is required to send a "certified letter" to the building owner and a "letter" (this should be clarified to be a certified letter as well) to the leasing office with "a flyer template." Is this where the permit-holder's responsibility ends? If there is not also a codified duty for the owner/operator of the multi-family residence to print and distribute this information, then it should be the responsibility of the permit-holder/agent to place hang-tags on individual units themselves.

1. City of Austin: Resolution No. 20171214-066, December 14<sup>th</sup> 2017  
Available: <http://www.austintexas.gov/edims/document.cfm?id=290447>
2. Jacobs DE, Cali S, Welch A, et al. Lead and other heavy metals in dust fall from single-family housing demolition.  
*Public Health Rep.* 2013;128(6):454-62.  
Available: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3804089/>

Thank you for your feedback.

The proposed edits to the Building Criteria Manual are the necessary changes to implement Ordinance 20201001-040. The ordinance and the related edits to the Building Criteria Manual reflect the interests of multiple perspectives during the 2018 stakeholder engagement. Broad geographic notification parameters, contractor responsibilities, along with City of Austin administration and management of compliance, all informed DSD's tiered approach to "adequate and appropriate notice".

Adjacent property lots as the measurement scale provides standardization (ten immediate neighbors) within the Austin City Limits where a 400 ft. radius does not. A yard sign on the property to be demolished and doorhangers (or certified letter) delivered to adjacent properties informs the immediate neighbors of imminent (5-10 days) demolition activities. These neighbors can then prepare and make accommodations for their own health and safety during proposed demolitions.

Notification to adjacent multi-family residences was added in response to Austin City Council. The permit holder shall endeavor to notify adjacent properties. A certified letter to the building owner documents the notification in the event they are located outside of the City of Austin. The letter to the leasing office may be hand-delivered, and is not required to be certified, so that more immediate notification is provided with the flyer template ready for distribution to individual units. Notification of the building owner and the property manager (via the leasing office) is where the permit holder's responsibility ends.

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#### **Commercial Demolition 4.3.0(b)(1)(g)**

Survey Verification:

4.3.0(b)(1)(g) lists “A completed TDH notification form (asbestos survey)” as a requirement for a commercial demolition permit. Since TDH is now DSHS, please check if this name change should be reflected here as well. Aside from this minor point, it is not apparent from the current language if the form itself is being regarded as a survey or if both items are required to be submitted for review. I do not feel that the form alone qualifies as the “evidence of the survey” required to be “presented to the building official” under § 25-11-38 of City Code. Examples of these forms that I have seen ask for a date of inspection, inspector's license number as well as other technical information. While they may reference an inspection taking place they are not exactly evidence that one occurred, and some examples I have seen do not look to have been filled out correctly.<sup>3</sup> Other issues with the city’s collection and processing of these forms were also noted in the recent demolition audit.<sup>4</sup>

As city code suggests, evidence of the survey should be verified by staff prior to issuing a permit (for commercial renovation projects as well) and this should include checking the existence of backing documentation. For improved clarity and to provide better assurance that the survey requirement has been met, please consider the following edits.

*Suggested Change:*

(g) A completed ~~TDH~~ **DSHS** notification form (~~asbestos survey~~) **as well as a valid asbestos survey**.

3. I have also found examples that look to have been completed correctly and include a PDF of the survey report.
4. Which found that the city “does not appear to have a process to verify that the form was completed by a qualified person as required by State law.” and that “evidence of an asbestos test did not appear to have been collected by the City in all required permit applications.” I am not aware of any formal process changes made in response to these concerns.

City of Austin Audit Report: Demolition Permits, August 2017:

Available: [http://www.austintexas.gov/sites/default/files/files/Auditor/Audit\\_Reports/Demolition\\_Permits\\_August\\_2017\\_.pdf](http://www.austintexas.gov/sites/default/files/files/Auditor/Audit_Reports/Demolition_Permits_August_2017_.pdf)

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The asbestos survey is not required since survey information is required to complete the DSHS asbestos notification form. As a state-level requirement, the Asbestos Demolition/Renovation Notification Form provides evidence acceptable to our municipality and meets Texas asbestos notification requirements.

The proposed rules edits will reflect updated references.

Proposed Criteria Manual Edits show additions in red and ~~deletions highlighted & struckthrough~~.

Relevant sections of Building Criteria Manual

1. 1.2.6 - Building Permit - Demolition and Relocation: Permit Submittal and Review Process
  - a. RESIDENTIAL DEMOLITION
  - b. COMMERCIAL DEMOLITION
2. 4.3.0 - RESIDENTIAL DEMOLITION
3. 4.6.2 – Residential Building Inspection
4. 5.4.0 – BUILDING CODE

## **1.2.6 - Building Permit - Demolition and Relocation: Permit Submittal and Review Process**

### **a) RESIDENTIAL DEMOLITION**

i) An applicant for a residential demolition permit shall provide the following:

(a) A completed application for residential demolition, including notarized signatures from the legal owner(s) as identified by the Travis Central Appraisal District authorizing the demolition of the structure. If the applicant is not the same person indicated as the legal owner, then connecting documents showing the transfer of the property to the applicant OR a notarized letter from the legal owner authorizing the applicant to apply for a demolition permit for the property is required. If the legal owner is deceased, a notarized letter from the deceased's Power of Attorney or Trust is required. If the owner is a corporation, proof that the person signing on behalf of the corporation is so authorized is required.

(b) A site plan or survey to scale showing the street address, location of the structure on the site and dimensions of the structure, clearly identifying the structure(s) or portions of each structure to be demolished. The plan shall be on paper not be larger than 8½ x 14 inches in size.

(c) A certified tax certificate for the property on which the structure is located from the Travis County Tax Appraiser's Office. Copies are not accepted. If the applicant is not the same person indicated on the tax certificate as the legal owner of the property, then connecting documents showing the transfer of the property to the applicant OR a notarized letter from the legal owner authorizing the applicant to apply for a demolition permit for the property is required. If the person shown on the tax certificate is deceased, a notarized letter from the deceased's Power of Attorney or Trust is required. If the owner is a corporation, proof that the person signing on behalf of the corporation is so authorized is required.

(d) At least one photograph of the structure, showing an oblique (front and one side) view. In cases of partial demolition, the photograph must show the portion or portions of the building to be demolished.

(e) Verification from WPDRD that new construction will be permitted at this location.

(f) Verification that the Historic Preservation Office has released the permit, if required.

### **b) COMMERCIAL DEMOLITION**

i) An applicant for a commercial demolition permit shall provide the following:

(a) A completed application for commercial demolition, including notarized signatures from the legal owner(s) as identified by the Travis Central Appraisal District authorizing the demolition of the structure. If the applicant is not the same person indicated as the legal owner, then connecting documents showing the transfer of the property to the applicant OR a notarized letter from the legal owner authorizing the applicant to apply for a demolition permit for the property is required. If the legal owner is deceased, a notarized letter from the deceased's Power of Attorney or Trust is required. If the owner is a corporation, proof that the person signing on behalf of the corporation is so authorized is required.



(b) A site plan or survey to scale showing the street address, location of the structure on the site and dimensions of the structure, clearly identifying the structure(s) or portions of each structure to be demolished. The plan shall be on paper not be larger than 8½ x 14 inches in size.

(c) A certified tax certificate for the property on which the structure is located from the Travis County Tax Appraiser's Office. Copies are not accepted. If the applicant is not the same person indicated on the tax certificate as the legal owner of the property, then connecting documents showing the transfer of the property to the applicant OR a notarized letter from the legal owner authorizing the applicant to apply for a demolition permit for the property is required. If the person shown on the tax certificate is deceased, a notarized letter from the deceased's Power of Attorney or Trust is required. If the owner is a corporation, proof that the person signing on behalf of the corporation is so authorized is required.

(d) At least one photograph of the structure, showing an oblique (front and one side) view. In cases of partial demolition, the photograph must show the portion or portions of the building to be demolished.

(e) An approved red-stamped site plan or an approved site development determination/exemption form.

(f) A completed TDH notification form (asbestos survey).

(g) Verification that the Historic Preservation Office has released the permit, if required.

### **4.3.0 - RESIDENTIAL DEMOLITION**

For demolition and relocation of structures, refer to the Austin website at:  
<http://www.austintexas.gov/department/demolition-relocation>

Source: [Rule No. 161-15.19, 12-29-15.](#)

#### **a) RESIDENTIAL DEMOLITION**

i) An applicant for a residential demolition permit shall provide the following:

(a) A completed application for residential demolition, including notarized signatures from the legal owner(s) as identified by the Travis Central Appraisal District authorizing the demolition of the structure. If the applicant is not the same person indicated as the legal owner, then the applicant may provide a notarized letter from the legal owner authorizing the applicant to apply for a demolition permit for the property OR documentation that demonstrates the applicant has authority to apply for a demolition permit. If the legal owner is deceased, a notarized letter from the deceased's Power of Attorney or Trust is required. If the owner is a corporation, proof that the person signing on behalf of the corporation is so authorized is required.

(b) A notarized Development Services approved affidavit of compliance. The affidavit must be completed signed, notarized and confirm compliance with all applicable City, State and Federal regulations including those for workplace safety (OSHA) and for the identification, handling or removal and proper disposal of asbestos, lead, refrigerants and all other hazardous materials.

(c) A site plan or survey to scale showing the street address, location of the structure on the site and dimensions of the structure, clearly identifying the structure(s) or portions of each structure to be demolished, and all trees required to be identified according to Environmental Criteria Manual section 3.3.0. The plan shall be on paper not be larger than 8½ × 14 inches in size.

(d) A certified tax certificate for the property on which the structure is located from the Travis County Tax Appraiser's Office. Copies are not accepted. If the applicant is not the same person indicated on the tax certificate as the legal owner of the property, then connecting documents showing the transfer of the property to the applicant OR a notarized letter from the legal owner authorizing the applicant to apply for a demolition permit for the property is required. If the person shown on the tax certificate is deceased, a notarized letter from the deceased's Power of Attorney or Trust is required. If the owner is a corporation, proof that the person signing on behalf of the corporation is so authorized is required.

(e) At least one photograph of the structure, showing an oblique (front and one side) view. In cases of partial demolition, the photograph must show the portion or portions of the building to be demolished.

(f) Verification from Development Services that new construction will be permitted at this location.

(g) Verification that the Historic Preservation Office has released the permit, if required.

(h) Verification from all utilities that serve the site (i.e., Austin Energy, Austin Water, Texas Gas, or other utility providers) that service will either be terminated, made safe or appropriately addressed throughout the demolition process and for new construction.

ii) Verification that Tenant Notification and Submittal Requirements are met if applicable. Tenant Notification and Submittal Requirements are in Section 16.3

## **b) COMMERCIAL DEMOLITION**

i) An applicant for a commercial demolition permit shall provide the following:

(a) A completed application for commercial demolition, including notarized signatures from the legal owner(s) as identified by the Travis Central Appraisal District authorizing the demolition of the structure. If the applicant is not the same person indicated as the legal owner, then the applicant may provide a notarized letter from the legal owner authorizing the applicant to apply for a demolition permit for the property OR documentation that demonstrates the applicant has authority to apply for a demolition permit. If the legal owner is deceased, a notarized letter from the deceased's Power of Attorney or Trust is required. If the owner is a corporation, proof that the person signing on behalf of the corporation is so authorized is required.

(b) A notarized Development Services approved affidavit of compliance. The affidavit must be completed signed, notarized and confirm compliance with all applicable City, State and Federal regulations including those for workplace safety (OSHA) and for the identification, handling or removal and proper disposal of asbestos, lead, refrigerants and all other hazardous materials.

(c) A site plan or survey to scale showing the street address, location of the structure on the site and dimensions of the structure, clearly identifying the structure(s) or portions of each structure to be demolished, and all trees required to be identified according to Environmental Criteria Manual section 3.3.0.. The plan shall be on paper not be larger than 8½ x 14 inches in size.

(d) A certified tax certificate for the property on which the structure is located from the Travis County Tax Appraiser's Office. Copies are not accepted. If the applicant is not the same person indicated on the tax certificate as the legal owner of the property, then connecting documents showing the transfer of the property to the applicant OR a notarized letter from the legal owner authorizing the applicant to apply for a demolition permit for the property is required. If the person shown on the tax certificate is deceased, a notarized letter from the deceased's Power of Attorney or Trust is required. If the owner is a corporation, proof that the person signing on behalf of the corporation is so authorized is required.

(e) At least one photograph of the structure, showing an oblique (front and one side) view. In cases of partial demolition, the photograph must show the portion or portions of the building to be demolished.

(f) An approved red-stamped site plan or an approved site development determination/exemption form.

(g) A completed Texas Department of State Health Services (DSHS) "Asbestos Demolition/Renovation Notification Form".

(h) Verification that the Historic Preservation Office has released the permit, if required.

(i) Verification from all utilities that serve the site (Austin Energy, Austin Water, Texas Gas, or other utility providers) that service will either be terminated, made safe, or appropriately addressed throughout the demolition and for new construction..

ii) Verification that Tenant Notification and Submittal Requirements are met if applicable. Tenant Notification and Submittal Requirements are in Section 16.3.

## **4.6.2 - Residential Building Inspection**

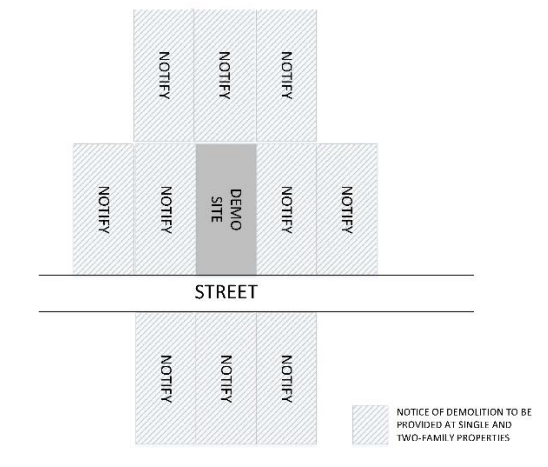
### **4.6.2.2 - Pre-Construction Inspection (Pre-Con):**

A pre-construction inspection shall be required for any residential project with a non-complying or non-conforming structure, a special exception or any time City of Austin staff identifies an atypical situation that would merit a pre-construction inspection. If construction begins prior to the pre-con inspection, then the property owner risks losing the non-complying status for the property and a re-submittal may be required. Inspection staff will photo document all non-complying portions of the structure and attach them to the permit.

**4.6.2.2(1) Pre-Demolition Inspection:** All total demolition projects will require a pre-demolition inspection. Permit holders or their authorized agents are required to be present for this inspection. DSD inspection staff will provide door hangers/yard signs, and a demolition notification acknowledgement form. For adjacent multi-family properties, the permit holder or other authorized agent is required to notify the owner of the multi-family property of the demolition activity via certified mail. In addition, the permit holder or other authorized agent is required to notify the leasing office of the multi-family Leasing Office of the demolition activity by letter. The notification to both the owner and leasing office shall include a flyer template that documents notification information for the residents of the multi-family property.

- A. If the acknowledgement form is issued and there are no additional deficiencies observed the inspection will receive “partial” approval.
- B. If no one is present for the inspection it will fail and be subject to re-inspection fees.

### ***Notification Diagram***



**4.6.2.2(2) Acknowledgement Form:** This form will provide instructions for notification and serve as acknowledgement of the following:

- A. Receipt of door hangers/yard signs
- B. Receipt of the placement diagram; and

- C. The permit holder or other authorized agent agreeing to place door hangers/yard signs 5-10 business days before demolition activity begins

#### **4.6.2.2(3) Pre-Demolition Inspection and Notification Process:**

- A. After inspections required prior to demolition have been passed, the pre-demolition inspection can be scheduled
- B. During the pre-demolition inspection, the inspector will check that the plumbing and mechanical permits are active (other permits as applicable, such as tree and electric); Inspector to confirm utilities (Austin Energy, Austin Water, Texas Gas, or other utility providers) have been capped, made safe or appropriately addressed; if not pre-demolition inspection will fail
- C. If the inspection has failed, the permit holder or other authorized agent will need to reschedule the pre-demolition inspection and notification materials will not be provided.
- D. If the permits are active and the inspector has confirmed utilities have been appropriately addressed then the inspection will be considered “partially approved”.
- E. The Inspector will then provide door hangers, a yard sign, a notification diagram, and a “Demolition Notification Acknowledgement”.
- F. The permit holder or other authorized agent will sign the acknowledgement form and will need to upload a copy of the signed acknowledgement form through the City’s portal. The copy of the acknowledgement will be stored in AMANDA.
- G. If the pre-demolition inspection is “partially approved” and the acknowledgment form is uploaded into AMANDA:
- Demolition permit will be placed in active status
  - The permit holder or other authorized agent will need to place the door hangers (or Certified letter mailed) at single family, two-family and multifamily properties surrounding the demolition site in accordance with the notification diagram) 5-10 business days prior to demolition activity.
  - The permit holder or other authorized agent will need to place the yard sign parallel to the street within the extents of the private property with wording facing the street (of which the property is addressed). (Reference sign setback requirements LDC 25-10-191). Demolition activity can commence 5 - 10 business days after approved pre-demolition inspection and all required notification is placed

#### **5.4.0 - BUILDING CODE COMMERCIAL BUILDING INSPECTIONS**

**5.4.3(1) Pre-Demolition Inspection: REFERENCE Section 4.6.2.2(1)**

**5.4.3(2) Acknowledgement Form: REFERENCE Section 4.6.2.2(2)**

**5.4.3(3) Demolition Notification Process: REFERENCE Section 4.6.2.2(3)**