

**DSWD OPINION NO. 60 S. 2024**DRN: LS-L-LO-24-05-01433-C**MEMORANDUM**

**FOR : ATTY. KARINA ANTONETTE A. AGUDO**  
Director IV, Administrative Service

**FROM : THE ASSISTANT SECRETARY FOR GENERAL  
ADMINISTRATION AND SUPPORT SERVICES AND  
CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE**

**SUBJECT : REQUEST FOR LEGAL REVIEW ON DEMOLITION OF  
BUILDINGS IN THE FIELD OFFICE – NCR, LEGARDA,  
MANILA**

**DATE : 08 AUGUST 2024**

This refers to your endorsement<sup>1</sup> dated 13 May 2024 of the Memorandum from Field Office NCR (FO-NCR) dated 15 March 2024 on the existing laws, policies and guidelines in the demolition of buildings in the Field Office – NCR, Legarda Manila.

In your 15 March 2024 Memorandum, following were raised as queries:

- 1. What are the existing laws, policies, and guidelines in the demolition of existing structures to make way for the construction of new buildings?*
- 2. One of the structures targeted to be demolished is the Three story Pantawid building constructed in 2015 but has been undergoing structural assessment by the Hypervolt contractor and the Bureau of Design (BOD), Department of Public Works and Highways (DPWH) since 2017 up to last year due to cracks in some portions of the building. In relation to this, an appropriate legal advice from the central is being sought to preclude any legal problem that may occur in the future.*
- 3. The expertise of your office is being sought to provide other necessary advice and guidance to ensure that the implementation of the said proposed infrastructure project initiated by the Honorable Secretary will come to fruition without complication and obstacle.*

Subsequently, we received your follow-up Memorandum<sup>2</sup> dated 27 June 2024, wherein the proponent introduced another concern related to the subject matter at hand - *warranty of the Pantawid Building*. We observed that the property under the 15 March 2024 Memorandum referred to the structural assessment of the Kahusayan Building while in the Report submitted on your 27 June 2024 Memorandum pertained to Pantawid Building. Upon coordination with the focal person, Engr. Alfredo C. Evangelista, on 01 and 09 July 2024, respectively, he confirmed that Pantawid Building and Kahusayan Building is one and the same building.

Relative to your 15 March 2024 Memorandum, please consider our inputs and recommendations below:

<sup>1</sup> Annex "A" – Memorandum from Administrative Service dated 13 May 2024

<sup>2</sup> Annex "B" – Memorandum from Administrative Service dated 27 June 2024

**On your first query**

May we direct you to the following national laws and issuances, thus:

**National Building Code<sup>3</sup>****"SECTION 215. Abatement of Dangerous Buildings**

**When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482<sup>4</sup> and 694<sup>5</sup> to 707<sup>6</sup> of the Civil Code of the Philippines."**

**"SECTION 1105. Walkway**

- a. When the Building Official authorizes a sidewalk to be fenced or closed, or in case there is no sidewalk in front of the building site during construction or demolition, a temporary walkway of not less than 1.20 meters wide shall be provided.**

<sup>3</sup> Presidential Decree No. 1096

<sup>4</sup> Art. 482. If a building, wall, column, or any other construction is in danger of falling, the owner shall be obliged to demolish it or to execute the necessary work in order to prevent it from falling.

<sup>5</sup> Art. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

- (1) Injures or endangers the health or safety of others; or
- (2) Annoys or offends the senses; or
- (3) Shocks, defies or disregards decency or morality; or
- (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or
- (5) Hinders or impairs the use of property.

Art. 695. Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance is one that is not included in the foregoing definition.

Art. 696. Every successive owner or possessor of property who fails or refuses to abate a nuisance in that property started by a former owner or possessor is liable therefor in the same manner as the one who created it.

Art. 697. The abatement of a nuisance does not preclude the right of any person injured to recover damages for its past existence.

Art. 698. Lapse of time cannot legalize any nuisance, whether public or private.

Art. 699. The remedies against a public nuisance are:

- (1) A prosecution under the Penal Code or any local ordinance; or
- (2) A civil action; or
- (3) Abatement, without judicial proceedings.

Art. 700. The district health officer shall take care that one or all of the remedies against a public nuisance are availed of.

Art. 701. If a civil action is brought by reason of the maintenance of a public nuisance, such action shall be commenced by the city or municipal mayor.

Art. 702. The district health officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance.

Art. 703. A private person may file an action on account of a public nuisance, if it is specially injurious to himself.

Art. 704. Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:

- (1) That demand be first made upon the owner or possessor of the property to abate the nuisance;
- (2) That such demand has been rejected;
- (3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and
- (4) That the value of the destruction does not exceed three thousand pesos.

Art. 705. The remedies against a private nuisance are:

- (1) A civil action; or
- (2) Abatement, without judicial proceedings.

Art. 706. Any person injured by a private nuisance may abate it by removing, or if necessary, by destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. However, it is indispensable that the procedure for extrajudicial abatement of a public nuisance by a private person be followed.

<sup>6</sup> Art. 707. A private person or a public official extra judicially abating a nuisance shall be liable for damages:

- (1) If he causes unnecessary injury; or
- (2) If an alleged nuisance is later declared by the courts to be not a real nuisance.

- b. The walkway shall be capable of supporting a uniform live load of 650 kilograms per square meter. A durable wearing surface shall be provided throughout the construction period.”

#### **SECTION 1108. Demolition**

- a. **The work of demolishing any building shall not be commenced until all the necessary pedestrian protective structures are in place.**
- b. **The Building Official may require the permittee to submit plans, specifications and complete schedule of demolition.** When so required, no work shall be done until such plans, specifications and schedule are approved by the Building Official.

In the Implementing Rules and Regulations of the National Building Code issued by the Department of Public Works and Highways (DPWH) in 2005, it specifically provides for a step-by-step procedure for demolition of buildings<sup>7</sup>, to wit:

#### **“PROCEDURE FOR ABATEMENT /DEMOLITION OF DANGEROUS/ RUINOUS BUILDINGS/ STRUCTURES**

1. There must be a finding or declaration by the Building Official that the building/structure is a nuisance, ruinous or dangerous.
2. Written notice or advice shall be served upon the owner and occupant/s of such finding or declaration giving him at least fifteen (15) days within which to vacate or cause to be vacated, repaired, renovated, demolished and removed as the case may be, the nuisance, ruinous or dangerous building/structure or any part or portion thereof.
3. Within the fifteen (15) day period, the owner may, if he so desires, appeal to the Secretary the finding or declaration of the Building Official and ask that a re-inspection or re-investigation of the building/structure be made.
4. In case the owner should ask the Building Official for a reconsideration on his order, same shall be given not more than fifteen (15) days within which to render his final decision appealable to the Office of the Secretary.
5. If the appeal is meritorious, the Secretary may designate a competent representative/s other than the Building Official to undertake the re-inspection or re-investigation of the building/structure. The representative/s so designated shall make or complete his/their report/s within the period of thirty (30) days from the date of termination of re-inspection or re-investigation.
6. If after re-inspection, the finding is the same as the original one, the Secretary through the Building Official shall notify the owner, giving him not more than fifteen (15) days from receipt of notice with affirmed finding to vacate or cause to be vacated and make necessary repair, renovation, demolition and removal of the subject building/structure or parts thereof, as the case may be.
7. If the Building Official has determined that the building/structure must be repaired or renovated, the Order to be issued shall require that all necessary permits therefor be secured and the work be commenced physically within such reasonable time as may be determined by the Building Official.
8. If the Building Official has determined that the building/structure must be demolished, the Order shall require that the building/structure be vacated within fifteen (15) days from the date of receipt of the Order, that all required

<sup>7</sup> Page 31 of the Implementing Rules and Regulations of PD No. 1096

- permits be secured therefor within the same fifteen (15) days from the date of the Order, and that the demolition be completed within such reasonable time as may be determined by the Building Official.
9. The decision of the Secretary on the appeal shall be final.
  10. Upon failure of the owner to comply with the Order of the Building Official or of the Secretary, in case of appeal, to repair, renovate, demolish and remove the building/structure or any part thereof after fifteen (15) days from the date of receipt of the Order, the Building Official shall cause the building or structure to be repaired, renovated, demolished and removed, partly or wholly, as the case may be, with all expenses therefor chargeable to the owner.
  11. The building/structure as repaired or in case of demolition, the building materials gathered after the demolition thereof shall be held by the Office of Building Official (OBO) until full reimbursement of the cost of repair, renovation, demolition and removal is made by the owner which, in no case, shall extend beyond thirty (30) days from the date of completion of the repair, renovation, demolition and removal. After such period, said building materials of the building thus repaired, renovated or removed shall be sold at public auction to satisfy the claim of the OBO. Any amount in excess of the claim of the government realized from the sale of the building and/or building materials shall be delivered to the owner.
  12. The procedures, actions and remedies herein are without prejudice to further action that may be taken by the Building Official against the owner/occupants of the building/structure found or declared to be nuisance/s, dangerous, and/or ruinous under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.”

As to ensuring the safety of all government employees and other safety precautions of the personnel who will implement the demolition of the building, the Civil Service Commission (CSC), Department of Health (DOH) and Department of Labor and Employment (DOLE) issued Joint Memorandum Circular No. 1, series of 2020 entitled “Occupational Safety and Health (OSH) Standards for the Public Sector” which provides Rule 1417: Demolition of the Occupational Safety and Health Standards, as amended outlines the key factors that must be considered prior to the conduct of Demolition, thus:

**“RULE 1410  
CONSTRUCTION SAFETY**

xxx

**1417.01:** All demolition operations of building or other structure over six (6) meters high shall be under supervision of a competent person. No person except the workers who are directly engaged in the demolition shall enter a demolition area to within a distance equal to 1 1/2 times the height of the structure being demolished, where this distance is not possible the structure shall be fenced around and no unauthorized person shall be allowed within the fenced area.

**1417.02: Demolition Work**

- (1) On every demolition work, danger signs shall be posted around the structure and all doors and opening giving access to the structure shall be kept barricaded or guarded.
- (2) Demolition work shall not commence until:

- (a) all necessary steps have been taken to prevent injury to any person or damage to adjoining property, and
  - (b) all existing gas, electrical and other services likely to endanger a worker shall have been shut off or disconnected.
- (3) Prior to demolition all glass shall:
- (a) be removed from windows and other locations, or
  - (b) otherwise shall be protected so that there is no possibility of breakage at any stage of the demolition.
- (4) Shoring or other necessary measures shall be taken to prevent the accidental collapse of any part of the building or structure being demolished or any adjacent building or structure endangering the workers.
- (5) Demolition shall proceed systematically, storey by storey, in a descending order and the work on the upper floors shall be completely over before removing any of the supporting members of the structure on the lower floor. This shall not prohibit the demolition on section, in the same descending order if means are taken to prevent injury to workers and damage to property.
- (6) All precautions shall be taken to avoid damage from collapse of a building being demolished or any part of it when any part of the framing is removed from a framed or partly framed building.
- (7) No building or any part of the structure shall be overloaded with debris or materials to render it unsafe and hazardous to persons working.
- (8) Adequate precautions shall be taken to avoid danger from any sudden twisting, springing or collapse of any steel or ironwork cut or released.
- (9) No workers shall stand on top of wall, pier or chimney more than six (6) meters (18 ft.) high unless safe flooring or adequate scaffolding or staging is provided on all sides of the wall, three (3) meters (9 ft.) away from where he is working.
- (10) A truss, girder, or other structural member shall not be disconnected until it has been:
- (a) relieved of all loads other than its own weight, and
  - (b) provided with temporary supports.
- (11) Stairs and stair railings, passageways and ladders shall be demolished last.
- (12) When demolition is suspended or discontinued all access to the remaining part of the building shall be fenced or barricaded.

In case the demolition area shall be done by mechanical devices such as weight balls or power shovels, the demolition area shall be barricaded for a minimum distance of 1 ½ times the height of the structures, ensure that no unauthorized persons shall enter the premises and the mechanical devices shall not cause any damage to adjacent structures, power lines or public road.<sup>8</sup>

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<sup>8</sup> 1418: Mechanical Demolition, Occupational Safety and Health Standards

Records show that the existing structures in FO NCR to be demolished is situated in the City of Manila, thus, it is also prudent to consider referring to the local ordinances and issuances by the Local Government Unit (LGU) of Manila in relation to the conduct of demolition of the Department's Buildings for guidance.

As to the possible legal implications of the demolition of buildings, this level opines that the strict compliance to the documentary requirements of the national law and local issuances should be adhered to and the compliance with the law and rules are not negotiable. In the event that the proponent fails to secure the necessary requirements being sought by the law or rules, a corresponding penalty will be meted, thus:

**"SECTION 213. Penal Provisions<sup>9</sup>**

**It shall be unlawful for any person, firm or corporation, to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy, or maintain any building or structure or cause the same to be done contrary to or in violation of any provision of this Code.**

**Any person, firm or corporation who shall violate any of the provisions of this Code and/or commit any act hereby declared to be unlawful shall upon conviction, be punished by a fine of not more than Twenty Thousand Pesos or by imprisonment of not more than two years or by both such fine and imprisonment:"** (emphasis supplied)

**On your second query**

The FO NCR mentioned that there is an undergoing structural assessment being done by the Hypervolt Contractor and the BOD, DPWH since 2017 up to last year due to cracks in some portions of the building which was constructed in 2015.

Government Procurement Policy Board (GPPB) Resolution No. 22-2007 entitled "*Guidelines for the Procurement and Implementation of Contracts for Design and Build Infrastructure Projects*" provides that, if there may be defects on the infrastructure project, the engineer and architects may be held liable, thus:

**"13.10. All design and build projects shall have a minimum Defects Liability Period of one (1) year after contract completion or as provided for in the contract documents. This is without prejudice, however, to the liabilities imposed upon the engineer/architect who drew up the plans and specification for a building sanctioned under Section 1723<sup>10</sup> of the New Civil Code of the Philippines."** (underscoring supplied)

On warranty, Article XIX of Republic Act (RA) No. 9184<sup>11</sup>, Section 62 (b) provides that the contractor shall assume full responsibility for the contract work from the time project construction commenced up to a reasonable period, thus:

**"SEC. 62. Warranty.**

xxx

<sup>9</sup> Presidential Decree No. 1096

<sup>10</sup> Article 1723. The engineer or architect who drew up the plans and specifications for a building is liable for damages if within fifteen years from the completion of the structure, the same should collapse by reason of a defect in those plans and specifications, or due to the defects in the ground.

<sup>11</sup> Government Procurement Reform Act

(b) For the procurement of infrastructure projects, the **contractor shall assume full responsibility for the contract work from the time project construction commenced up to a reasonable period as defined in the IRR taking into consideration the scale and coverage of the project from its final acceptance by the government and shall be held responsible for any damage or construction of works** except those occasioned by force majeure. The contractor shall be fully responsible for the safety, protection, security, and convenience of his personnel, third parties, and the public at large, as well as the works, equipment, installation and the like to be affected by his construction work and shall be required to put up a warranty security in the form of cash, bank guarantee, letter of credit, Government Service Insurance System bond, or callable surety bond.

The contractor shall undertake the repair works, at his own expense, of any defect or damage to the infrastructure projects on account of the use of materials of inferior quality within ninety (90) days from the time the Head of the Procuring Entity has issued an order to undertake repair. In case of failure or refusal to comply with this mandate, the government shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred therein upon demand.

Any contractor who fails to comply with the preceding paragraph shall suffer perpetual disqualification from participating in any public bidding and his property or properties shall be subject to attachment or garnishment proceedings to recover the costs. All payables of government in his favor shall be offset to recover the costs." (emphasis supplied)

Further, Section 62 (62.2.3) (62.2.3.1) and (62.2.3.2) of the Implementing Rules and Regulations (IRR) of RA No. 9184 provides:

"62.2.3 From final acceptance of the project up to the period prescribed in Section 62.2.3.2 of this IRR.

62.2.3.1 The following shall be held responsible for "Structural Defects," i.e., major faults/flaws/deficiencies in one or more key structural elements of the project which may lead to structural failure of the completed elements or structure, or "Structural Failures," i.e., where one or more key structural elements in an infrastructure facility fails or collapses, thereby rendering the facility or part thereof incapable of withstanding the design loads, and/or endangering the safety of the users or the general public:

a) Contractor – Where Structural Defects/Failures arise due to faults attributable to improper construction, use of inferior quality/substandard materials, and any violation of the contract plans and specifications, the contractor shall be held liable;

xxx

62.2.3.2 The warranty against Structural Defects and Failures shall cover the following periods from final acceptance, except those occasioned by force majeure:

a) Permanent Structures: Fifteen (15) years

Buildings of types 4 and 5 as classified under the National Building Code of the Philippines and other structures made of steel, iron, or concrete which comply with relevant structural codes (e.g., DPWH Standard Specifications), such as, but not limited to, steel/concrete bridges, flyovers, aircraft movement areas, ports, dams, tunnels, filtration and treatment plants, sewerage systems, power plants, transmission and communication towers, railway system, and other similar permanent structures;”

Relative thereto, the IRR also required the contractor to post a warranty security to ensure that the contractor will perform its responsibilities in accordance to 62.2.3.1.(a), to wit:

“62.2.3.3 To guarantee that the contractor shall perform his responsibilities as prescribed in Section 62.2.3.1(a) of this IRR, it shall be required to post a warranty security in accordance with the following schedule:

Form of Warranty Security	Amount of Warranty Security (Not less than the required percentage of the Total Contract Price)
a) Cash or Letter of Credit issued by a Universal or Commercial Bank: Provided, however, That the Letter of Credit shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. For biddings conducted by LGUs, the Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	Five percent (5%)
b) Bank guarantee confirmed by a Universal or Commercial Bank. For biddings conducted by LGUs, the bank draft/guarantee may be issued by other banks certified by the BSP as authorized to issue such financial instrument.	Ten percent (10%)
c) Surety bond callable upon demand issued by GSIS or a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)”

Pursuant to Non-Policy Matter No. 33-2014 with subject: Warranty Security and Warranty against Structural defects, it discussed the difference of warranty security and warranty period:

“xxx During the warranty period, the contractor shall be responsible for reimbursing the procuring entity for necessary restoration or reconstruction works brought by structural defects or structural failures due to improper construction, use of inferior quality/substandard materials, and any violation of the contract plans and specifications. During the warranty security period, the contractor’s performance of this responsibility is guaranteed by the warranty security. xxx”

Thus, the warranty security posted by the contractor shall be retained by the procuring entity for the duration of the warranty security period and after the lapse of the warranty security



period, the contractor shall still be liable for any structural defect/failure that will occur on the infrastructure facility due to its fault for the duration of the applicable warranty period<sup>12</sup> which is fifteen years.

In this regard, this level recommends that the issuance of the Assessment Report by the Contractor and DPWH must be secured first by the Field Office prior to the conduct of demolition. The Report would serve as basis for the next steps or other courses of action to be taken by the DSWD FO NCR. After the issuance of the Assessment Report, then the particular Procurement Contract on the construction of the buildings should also be enforced, particularly on the provision on warranties and liabilities of the Contractor, its engineers and architects, if any.

**On your third query**

In connection with our earlier recommendation, we would like to reiterate that the FO NCR must adhere with the provisions of the National Building Code, Local Government Ordinances and other relevant issuances of the government.

Since what is involved are government infrastructure project, this level suggests that the FO NCR should be advised to obtain all documentary requirements, such as but not limited to the permits, feasibility case analysis, and procurement contracts and ensure that these are complete and compliant with the laws, rules and regulations before implementing the proposed infrastructure project.

Lastly, we suggest that the FO-NCR should invite the LGU of Manila and the DPWH through BOD for a regular coordination meeting to further guide our concerned Field Office especially on the technicalities and steps to be taken for the implementation of the infrastructure project.

Please be informed that the foregoing legal opinion is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

For consideration.

Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

Thank you.

**ATTY. GINA V. WENCÉS LAO**

**MCMUG/MMBP/ESD/10065**

<sup>12</sup> Ibid.