

**BUSINESS & HOUSING DEVELOPMENT
REAL ESTATE DIVISION
LEASES & OTHER CONTRACTS
AUDIT 05-31
APRIL 14, 2005**



CITY OF TAMPA

Pam Iorio, Mayor

Internal Audit Department

Wayne Boytim, Acting Internal Audit Director

April 14, 2005

Honorable Pam Iorio
Mayor, City of Tampa
1 City Hall Plaza
Tampa, Florida

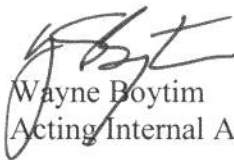
RE: Business & Housing Development, Real Estate Division, Leases & Other Contracts,
Audit 05-31

Dear Mayor Iorio:

Attached is the Internal Audit Department's report on Business & Housing Development, Real Estate Division, Leases & Other Contracts.

We thank the management and staff of the Real Estate Division, General Accounting's Banking Section, the Parking Division and the City Clerk's Office for their cooperation and assistance during this audit.

Sincerely,



Wayne Boytim
Acting Internal Audit Director

cc: Darrell Smith, Chief of Staff
Mark Huey, Administrator, Economic Development
Steve Daignault, Administrator, Public Works & Utility Services
Bonnie Wise, Director, Revenue & Finance
Cynthia D. Miller, Director, Business & Housing Development
Ron Ibarra, Chief Accountant
Jack Morriss, Director, Public Works
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Auditor



Acting Audit Director

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INTRODUCTION

The City, as the owner of real property, may grant a license (legal permission) or lease its real estate interest to other public/private entities. The City also may obtain a license or lease real estate owned by other public/private entities. The City is lessor/licensor to over 135 leases and licenses and lessee/licensee to about 50 leases and licenses.

According to the Real Estate Division's Policy and Procedures Manual (draft), the "Division is responsible for the proper management and administration of the various lease and license agreements for which the City is a party." This includes "insuring the City and other various public/private entities, as the parties to the agreements, meet and fulfill the obligations required of them by the terms of the agreements."

All lease and license agreements must be authorized by City Council resolution and subsequently executed by the Mayor. The original lease, license or other agreement, along with other supporting documents are maintained on file in the Real Estate Office. A database is also maintained to monitor compliance with insurance requirements and other contractual obligations.

General Accounting's Banking Section is responsible for billing and collecting the majority of lease payments. Real Estate becomes involved with this activity by providing payment escalation data and assisting with delinquent accounts. The Parking Division is responsible for billing and collecting payments on leases involving City-owned parking garages and lots, but does not ensure compliance with other contractual obligations. Other City departments may manage certain leases related to their unique activities.

STATEMENT OF OBJECTIVES

This audit was conducted in accordance with the Internal Audit Department's FY05 Audit Agenda. The objectives of this audit were to ensure that:

1. Lease receipts were properly collected and recorded;
2. Required insurance coverage was obtained and maintained; and
3. Lessees were compliant with additional lease terms, provisions and requirements.

STATEMENT OF SCOPE

The audit period covered leases and other contracts that were in effect as of November 30, 2004. Source documentation was obtained from the Real Estate Division, the City Clerk's Office and the Parking Division. Original records as well as copies were used as evidence and verified through physical examination.

STATEMENT OF METHODOLOGY

The sample size and selection were statistically generated using a desired confidence level of 90%, expected error rate of 3% and a desired precision of +/- 5%. Statistical sampling was used in order to infer the conclusions of test work performed on a sample to the population from which it was drawn and to obtain estimates of sampling error involved. When appropriate, judgmental sampling was used to improve the overall efficiency of the audit.

Government Auditing Standards require auditors to determine if computer processed data are sufficiently reliable to be used in the audit process. We performed certain procedures to assess the reliability of the information contained in Real Estate's Lease/License Agreement Database. Based on the results of our analysis, we concluded that the data was not reliable. Because of this assessment, additional audit procedures were performed in order to obtain sufficient evidence to support the audit's conclusions.

STATEMENT OF AUDITING STANDARDS

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to afford a reasonable basis for our judgments and conclusions regarding the organization, program, activity or function under audit. An audit also includes assessments of applicable internal controls and compliance with requirements of laws and regulations when necessary to satisfy the audit objectives. We believe that our audit provides a reasonable basis for our conclusions.

AUDIT CONCLUSIONS

Based upon the test work performed and the audit findings noted below, we conclude that:

1. Lease receipts were generally properly collected and recorded; however, controls should be strengthened and a division of responsibilities would improve the efficiency and effectiveness of these activities;
2. Required insurance coverage was not obtained and maintained; and
3. Lessees were not compliant with additional lease terms, provisions and requirements.

DATA & RECORDS MANAGEMENT AND COMPLIANCE MONITORING

Tampa City Code, Sec. 2-46, requires Departments to “create and maintain all records with adequate and proper documentation of the organization, together with the functions, policies, decisions, procedures, and essential transactions, of the department.” It continues that Departments “shall establish and maintain an active, continuing program for the economical and efficient management of the records of each respective department.”

The majority of the exceptions discovered directly relate to the reliability of the Real Estate Division’s database and to a lesser extent, the condition of lease files and filing cabinets. Over time, some leases were forgotten and compliance with contractual requirements was not enforced. The lack of accuracy and completeness of lease data resulted in some lost revenues (amount could not be determined) and increased the risk of potential liability due to the lack of adequate insurance coverage.

Real Estate’s lease database could not be relied on because:

- relevant data, such as rent amounts, resolution numbers and insurance information was often missing, out-of-date or inaccurate;
- data fields needed to properly monitor additional contractual obligations were not planned for when the database was designed; and
- nineteen leases, stored in Real Estate’s filing cabinets, were not included in the database.

Lease files and filing cabinets were not properly maintained. The following conditions were observed:

- many leases were misfiled (out of alphabetical order);
- old file holders remained in the filing cabinets;
- some documents bound with the lease agreements did not pertain to the lease;
- there was not a system in place to identify lease files removed from the filing cabinets;
- the naming convention used to identify leases was not consistent; and
- terminated or expired leases remained in the file cabinets.

The Real Estate Division has a Policies and Procedures Manual in “working draft” form. The manual places the responsibility for proper maintenance of the database to a designated Real Estate Contract Specialist and the Administrative Assistant Supervisor. It should be noted that the lease database was not in existence a year ago. The database was developed in response to a previous audit recommendation that the Division should establish a procedure to track insurance renewals. Some of the identified issues with the database may be attributed to the use of inexperienced and temporary help to enter lease data. The condition of the files and file cabinets happened over time.

Real Estate’s database contained 198 records. Of these, 137 records listed the City as the lessor. The amount of rent due to the City was blank on 55 (40%) of these records. To ensure agreements that should be generating revenue were being monitored, the missing data was obtained by reviewing each lease agreement.

The review discovered 3 leases that allowed companies to place pay phones on city-owned property. The leases called for payment of 20-25% of the gross receipts. While the leases dated as far back as 1995, they do not appear to have generated any revenue. To place the phones on city-owned property, the companies should have obtained a right-of-way permits and then notify the Real Estate Division of the locations. It could not be determined whether the companies ever applied for or were issued right-of-way permits.

Two of the files contained the locations of 19 pay phones placed on City right-of-ways. Site visits determined that 17 of the pay phones were either abandoned or removed. Two pay phones in Ybor City remained operational. The third lease file did not contain location information. The amount of revenue that should have been generated from these leases could not be determined.

In another audit test, 39 leases were statistically selected for testing revenue collections and compliance issues. There were 5 delinquent accounts at the time of selection, all of which were receiving appropriate attention. As of January 31, 2005, all accounts were current. Out of the 39 sampled leases, 35 required general liability insurance. Of these:

- 11 files (28.2%) contained evidence that insurance was current, but the database was either not updated with a new expiration date or the expiration date missing
- 18 files (46.2%) contained evidence that the insurance had lapsed. Of these:
 - 5 contained a letter requesting lessee compliance
 - 7 had expiration dates listed in the database, but no letter was in the file
 - 6 did not have expiration dates listed in the database
- 3 of the tenants were self-insured
- 3 leases had expired or were terminated

Out of the 39 sampled leases, 8 included additional obligations, such as periodic document submissions or non-rent related payments. Four of the 8 lessees were not compliant with these additional obligations. One of the four involved the use of a city-owned baseball field. The lessee should have reimbursed the City for all utilities and general maintenance of the field at the end of its season. It was determined that the lessee performs general maintenance during its season and pays for its electrical usage; however, the lessee has not reimbursed the City for the irrigation of the field and its insurance coverage had not been verified (see Recommendations 7 and 8).

RECOMMENDATION 1

A complete and accurate database would allow reasonable and proper monitoring of all contractual obligations. First, the Policies and Procedures Manual should be finalized in order to place the responsibility for database maintenance with the personnel assigned the monitoring activity. Next, the database should be modified to allow the requisite data for monitoring all contractual obligations to be captured. If necessary, applicable personnel should receive training in database use and maintenance. Finally, each lease file should be reviewed to capture all the required data.

AUDITEE RESPONSE (REAL ESTATE)

The Lease database is in its first draft. During the summer 2004 an intern examined the existing files and created the database. With current staffing and responsibilities, we do not have anyone committed to this database. Its updating and oversight is limited due to staff time.

Currently, the Division is conducting a best practices evaluation with the help of private sector real estate professionals. We intend to review the recommendation with them to determine whether additional staffing is necessary or whether the work can be done with current employees. Upon the determination of the approach to be utilized, the procedure will be documented in the Policies and Procedures Manual.

RECOMMENDATION 2

As the Real Estate Division is responsible for the proper management and administration of the City's lease agreements, compliance with insurance requirements and other contractual obligations should be routinely monitored and enforced.

AUDITEE RESPONSE (REAL ESTATE)

This recommendation will also be reviewed with our best practices team. Current staff or newly-assigned staff will be assigned to review leases, licensee agreements etc. for compliance with terms and conditions. Staff will resolve deficiencies and bring these deficiencies into compliance. We will consult with Risk Management and other professionals to determine the best approach for the monitoring of insurance certificates.

RECOMMENDATION 3

The Real Estate Division should investigate the pay phone leases and initiate actions to recover any payments due to the City. The Division should also take appropriate actions to have any abandoned phones removed from the City's right-of-ways.

AUDITEE RESPONSE (REAL ESTATE)

The two pay phone companies in the file cabinet were contacted. One company said that they no longer operate pay phones. The other phone company was unaware of the lease. A copy of the lease was faxed to them. They claim that they no longer have phones on city property. We will determine if the lease can be terminated by operation of the lease or default. This matter will be referred to legal for review and we will attempt to have the phones removed within 60 days.

RECOMMENDATION 4

The condition of the files and file cabinets is everyone's responsibility. A systematic review of all lease files should be performed in order to ensure all required documents and only those documents applicable to the lease are contained in the respective lease file (the database could be updated at the same time). A system should be developed and implemented to account for files removed from the file cabinets. Old file holders should be removed from the filing cabinets. A naming convention used to identify leases should be developed and consistently applied. If terminated or expired leases need to be retained, they should be segregated from active lease files.

AUDITEE RESPONSE (REAL ESTATE)

The files in the cabinets will be opened at the beginning of the day and locked at the end of the day. Staff will be instructed on the procedure to use a file. FILE OUT cards will be placed in the file cabinets and staff will be required to sign the FILE OUT card with using the file. The FILE OUT card will be put in the file holder when the file is removed. The FILE OUT card will be returned to the front of the drawer and the file returned to the file folder when staff is through using the file.

All files will be named according to the name of the other party to the transaction and placed in the file cabinets alphabetically. The address will be placed under the name along with any special building or location name. The files will be reviewed periodically to insure consistency between the file name and the database.

RESOLUTION MONITORING

A lack of controls allowed a few leases to be overlooked by the entities responsible for monitoring contract provisions and billing and collections. At times, the entities responsible for these activities are not involved with the negotiations or the resolution and execution processes. If the departments responsible for the processes do not notify or forward the executed documents to these entities, they may never be aware of them.

Because the data contained in Real Estate's database could not be relied on, several audit tests were developed to detect any leases that should be generating revenue. One of the tests was developed based on the agreement execution process. One step of the process is to obtain City Council's approval via resolution. A file of all resolutions passed by City Council from 1993 to 2004 was obtained from the City Clerk's Office and queried for the words "license" and "lease." A list of 298 resolutions was created and reviewed to identify any agreements that could have the potential for generating revenue to the City.

As a result of the tests, three leases were identified that should have been generating revenue to the City. The first involved the addition of antennas to a water tank located on City-owned property. The 2002 agreement called for an increase of the annual rent of \$8,381 plus tax, which was then subject to an escalation based on the Consumer Price Index. The agreement was negotiated by the Water Department, approved by the Legal Department, authorized by City Council and executed. The agreement was apparently never routed to the entities responsible for monitoring compliance or billing and collection activities. Based on the contract terms, approximately \$18,000 is owed to the City.

The second agreement involved parking spaces at Centro Ybor Garage. According to the 2000 agreement, 12 spaces should have been rented for \$400 per year with escalation tied to any monthly parking rate increases. The Parking Division was unaware of the financial terms of the agreement. Based on the contract terms, approximately \$3,571 is owed to the City.

The third agreement provided the lessee with oversight of the retail space on the south side of the South Regional Garage. The agreement specified that the "Lessee shall use its reasonable best efforts to construct interior improvements on the Premises in a reasonable amount of time and to continuously lease the Premises or otherwise cause the Premises to be occupied at all times." The agreement stipulated that the City was to receive 25% of the net cash flow from operations after specific deductions were taken. The Parking Division was unaware of the 1996 agreement.

As of February 3, 2005, the space was used by the lessee and/or other entities for the storage of supplies, parts and materials. No signage offering the space for lease was observed. It appears the lease was designed to create and lease retail space and this is not being accomplished. However, the agreement also allows the Lessee to "use the Premises for any lawful purpose, including without limitation . . ." The long list that followed may or may not include the current use. A legal opinion will be required to determine whether the lessee is fulfilling its obligations under the terms of the agreement.

RECOMMENDATION 5

As City Council's draft and action agendas are readily available to all departments, the Real Estate and Parking Divisions and General Accounting's Banking Section should ensure someone is responsible for reviewing them for items related to their leasing activities.

AUDITEE RESPONSE (REAL ESTATE)

Real Estate will review the City Council Agenda and monitor for leases, licenses etc. not generated from the Real Estate Division.

AUDITEE RESPONSE (GENERAL ACCOUNTING)

Revenue and Finance concurs with this comment. The Banking Section will meet with Real Estate to determine best procedures to ensure all City leases are monitored and rents collected.

AUDITEE RESPONSE (PARKING DIVISION)

In the future, the Parking Manager will request the Real Estate Department to forward all drafts/lease agreement for review, prior to submittal for Council Agenda. All City Council action agendas will be reviewed by the Parking Manager to ensure that any leasing activity relating to the Parking Division is recognized and the terms of the lease are properly executed.

RECOMMENDATION 6

The Real Estate and Parking Divisions and General Accounting's Banking Section should take appropriate actions to enforce the leases identified in this audit (baseball field, water tower and parking) and collect any payments due to the City.

AUDITEE RESPONSE (REAL ESTATE)

Real Estate will assist in resolving any problems that arise from a condition or obligation under a particular agreement. Real Estate will coordinate with Revenue and Finance to develop procedures for timely collection of amounts due to the City.

AUDITEE RESPONSE (GENERAL ACCOUNTING)

Revenue and Finance concurs with this comment. The Banking Section will work with Real Estate to collect any rent due to the City.

AUDITEE RESPONSE (PARKING DIVISION)

We are in the process of contacting the Lessee of the 12 spaces in the Centro Ybor Garage. The division will enforce the terms of the lease as executed. This will include the collection of monies owed for back rents.

RECOMMENDATION 7

The Parking Division should request a legal opinion as to whether the lessee in the third case cited above (garage) is meeting its contractual obligations and then take appropriate actions based on that opinion.

AUDITEE RESPONSE (PARKING DIVISION)

The Parking Division will contact the Legal Department and ask for their interpretation of the Lease in order to determine if the Lessee's current use of the space is in violation of the Lease Agreement. If current use is determined to be a violation, we will take appropriate action to correct the situation.

DIVISION OF DUTIES & RESPONSIBILITIES

While General Accounting's Banking Section bills and records lease payments, the Real Estate Division is responsible for cost escalation calculations and collecting on late and delinquent accounts. The Parking Division performs billing and collections on parking garage and lot leases, but does not ensure compliance with other contract provisions, such as, insurance coverage. As noted above, other City departments may be responsible for ensuring compliance with the terms of certain leases that relate to their unique activities.

Separating the accounting functions from the monitoring functions would enhance the efficiency and effectiveness of both activities. Centralizing the billing and collecting activities of all (other than Parking Leases) leases under the Banking Section would help ensure the timely and consistent collection of lease revenues. Centralizing the monitoring function under the Real Estate Division would help ensure compliance with insurance and other contract obligations.

RECOMMENDATION 8

The Real Estate Division should be responsible for monitoring compliance with insurance and other contractual obligations for all lease and license agreements for which the City is a party.

AUDITEE RESPONSE (REAL ESTATE)

This recommendation will also be reviewed with our best practices team and we will consult with Risk Management. Staff will review leases, licensee agreements etc. for compliance with terms and conditions. Staff will resolve deficiencies and bring these deficiencies into compliance.

RECOMMENDATION 9

General Accounting's Banking Section should be responsible for all aspects of the billing and collecting activities for all lease and license agreements except for those relating to City parking garages and lots. To improve the efficiency of this activity, the Banking Section should consider replacing its manual system of tracking payments with a database or similar application.

AUDITEE RESPONSE (GENERAL ACCOUNTING)

Revenue and Finance concurs with this comment. Banking Section will bring existing database up to date and procedures will be put in place to ensure that it is maintained. Banking Section will assume the responsibility of collecting rents, past due invoices and calculation and notification of CPI increases.

RECOMMENDATION 10

The Parking Division should continue its billing and collecting activities for any parking garage and lot-related agreements.

AUDITEE RESPONSE (PARKING DIVISION)

We agree that the Parking Division is best equipped to handle all parking-related leases. We will continue our billing and collection activities regarding any parking garage- and lot-related agreements.