

ORDINANCE NO. 3121  
(Amend Henderson Municipal Code Chapter 15)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, TO AMEND TITLE 15 – BUILDINGS AND CONSTRUCTION - OF THE HENDERSON MUNICIPAL CODE BY ADDING CHAPTER 15.13 TO ESTABLISH THE – ABANDONED RESIDENTIAL REAL PROPERTY REGISTRY – OF THE HENDERSON MUNICIPAL CODE AND MATTERS PROPERTY RELATED THERETO.

WHEREAS, It is in the best interest of the public to establish a registration and maintenance program for residential real properties that are abandoned or in danger of being abandoned; and

WHEREAS, to provide for other related matters; and

WHEREAS, updates are currently required to ensure consistency with the Nevada Revised Statutes and policies and practices; and

NOW, THEREFORE, the City Council of the City of Henderson, Nevada, does ordain:

SECTION 1. Title 15.13 Abandoned Residential Real Property Registry is hereby established as follows:

Sections:

15.13.010 – Purpose and Scope

15.13.020 – Definitions

15.13.030 – Creation

15.13.040 – Registration

15.13.050 – Fees

15.13.060 – Inspection

15.13.070 – Continued Inspection Requirements

15.13.080 – Enforcement

15.13.090 – Appeal Process

15.13.100 – Limitations

15.13.110 – Expiration

15.13.010 Purpose and Scope.

It is the purpose and intent of this Chapter to establish a registration program (“Program”) pursuant to NRS 107.120 to oversee abandoned residential property and those in danger of becoming abandoned. This chapter is intended to reduce and prevent neighborhood blight, to mitigate conditions that threaten the health, safety, and welfare of the public, and to promote neighborhood stability. This Program creates a property registration requirement designed to assist in accomplishing the intent and purpose of this Chapter. Nothing in this section waives, relieves, or otherwise excuses an owner of residential real property from compliance with applicable building codes and ordinances, and the owner shall remain responsible and liable therefore.

15.13.020 Definitions.

Unless further clarified or defined in NRS Chapter 107 or the context herein otherwise requires, the following words and phrases used in this Chapter will have the meanings ascribed to them:

“Abandoned residential property” shall have the meaning contained in NRS 107.0795.

“Beneficiary,” shall have the meaning contained in NRS 132.050.

“Beneficiary Affidavit,” means a written statement provided by a beneficiary that must:

(A) Be signed and verified by the beneficiary;

(B) State that, upon information and belief of the beneficiary after investigation by the beneficiary or its agent, the property is abandoned residential property; and

(C) State the conditions or circumstances supporting the determination that the property is abandoned residential property. Documentary evidence in support of such conditions or circumstances must be attached to the affidavit.

“Certificate,” means written results provided by an agency or a contractor, created pursuant to NRS 107.130(2), to inspect residential real property to determine if it is abandoned.

“Certification,” see definition of Certificate.

“City” means City of Henderson.

“Default,” with respect to a mortgage, means that the obligor under the mortgage has breached or is in default of a repayment or other obligation in connection with that mortgage.

“Designated Agency,” means an agency or a contractor chosen by the City of Henderson, acting pursuant to NRS 107.130, that inspects real property and provides certificates that real property is abandoned.

“Foreclosure,” means the process by which residential real property placed as security for the repayment of a loan is to be sold to satisfy the debt concerning which the borrower has defaulted.

“Grantee,” means the person or entity to whom property is conveyed.

“Grantor,” means a person who holds title of record to the residential real property.

“Grantor Affidavit,” means a written statement, created under to NRS 207.120, by grantor or successor in interest of the grantor stating that the property is not abandoned residential property. A Grantor Affidavit may be recorded with the county recorder in the county where the real property is located.

“Inspect,” means to enter the real property, but not any dwelling or structure, to investigate whether the real property is abandoned residential property.

“Lender,” means a mortgagee, beneficiary of a deed of trust, or other creditor holding an instrument.

“Mortgage,” means a first mortgage or other first-priority security interest in real property that is placed as a security for the repayment of a loan, and includes a first deed of trust.

“Mortgagee,” means any person or firm who holds a first-priority mortgage or other first-priority security interest in real property to secure a loan, whether as the mortgagee of a mortgage or the beneficiary of a deed of trust.

“Notice of default event,” with respect to a mortgage, means that a default regarding that mortgage has occurred and either:

(A) A notice of breach or notice of default and election to sell has been provided to the obligor thereof and has been recorded in the County Recorder’s Office; or

(B) An action for judicial foreclosure has been commenced regarding that mortgage by the filing of a complaint or petition for foreclosure in a court of competent jurisdiction.

“Obligor,” means a person or entity owing a certain sum of money or other debt to another.

“Property in Danger of Becoming Abandoned,” means any property receiving a notice of default as defined by Nevada statute or show signs, in any combination, leading to abandonment as defined by NRS 107.0795.

“Property Owner” is a person or entity that holds legal title to residential real property located in the City of Henderson.

“Registry,” means the entity established by the City of Henderson, a governing body of an incorporated city, pursuant to NRS 107.120.

“Residential real property,” see definition of Abandoned Residential Property.

“Specified property,” means any parcel of residential real property located within the City of Henderson that has been abandoned or in danger of becoming abandoned as defined herein.

#### 15.13.030 Creation

Pursuant to NRS 107.120, the City of Henderson hereby creates a registry for abandoned residential properties and those in danger of becoming abandoned within the City limits.

#### 15.13.040 Registration

##### A. Requirements:

(1) A mortgagee that includes an Affidavit and Certificate with its Notice to Sell and Notice of Default shall within 10 days of recordation register, as described in HMC 15.13.040(B), and submit a copy of the Affidavit and Certificate to the Registry created by the City of Henderson.

(2) A mortgagee or property owner of any residential real property in danger of becoming abandoned shall within 10 days of inspection register, as described in HMC 15.13.040(B), with the Registry created by the City of Henderson.

(3) A mortgagee who files a Notice of Default with the Clark County Recorder's Office shall within 10 days of such filing register, as described in HMC 15.13.040(B), said residential real property with the City of Henderson's Registry.

##### B. Procedures for Registering Property

(1) The mortgagee or property owner shall register the property with the City of Henderson's Registry on forms approved by the Community Development Services Department, by and through the Neighborhood Services Division. Approved forms may be located online, at the office of the Neighborhood Services Division, and in any other manner as designated by the City of Henderson.

(2) By means of contract, the City of Henderson may assign and delegate to another person(s) or entity or entities the authority and responsibility to:

a. Effect, collect, and maintain registrations under this chapter.

b. Collect registration and modification fees under this chapter.

c. Inspect residential real property to determine whether it is abandoned or in danger of becoming abandoned as required under this chapter and provide certificates, if applicable.

(3) Registration pursuant to this Chapter shall contain, at a minimum, the following information:

a. The name and mailing address of the mortgagee or the property owner, and the physical address of the mortgagee or property owner if the mailing address is a post office box;

b. A direct contact name and phone number for purposes of contacting the mortgagee or property owner;

c. The current disposition and occupancy status of the property; and

d. The name, address and phone number of the local property manager, if applicable.

(4) Any property manager designated pursuant to this Section must be located within Nevada and must be:

a. A property management company or property preservation company located in and licensed by the State of Nevada;

b. A department or section of a mortgagee located in Nevada that is devoted to property management or preservation; or

c. A service provider located in Nevada specifically employed by a mortgagee to provide property management or preservation within the City of Henderson.

#### 15.13.050 Fees

The City of Henderson is authorized to charge a mortgagee or the property owner a fee of \$200.00 for each initial property registration required under this Chapter, and a fee of \$50.00 for each modification to a registration. On the yearly anniversary of each property registration, the City of Henderson is authorized to charge a mortgagee or the property owner an annual fee of \$200.00 for each property required to be registered under this Chapter.

#### 15.13.060 Inspection

Pursuant to NRS 107.130(2)–(4), inclusive, the mortgagee or its agent as defined in Section 15.13.040(B)(2) above, is permitted to enter onto residential real properties to inspect whether such properties are abandoned or in danger of becoming abandoned. Alternatively, the mortgagee may request the agency, as designated by the City of Henderson, to inspect pursuant to this Chapter.

A. A mortgagee or its agent may inspect by entering the residential real property, but not any dwelling or structure, to investigate whether the real property is abandoned residential property pursuant to NRS 107.0795 or in danger of becoming abandoned residential property pursuant to NRS 107.120. Persons inspecting residential real property pursuant to this Chapter are not liable for trespass.

B. Should a mortgagee request the Designated Agency to inspect pursuant to this Chapter, the agency shall inspect by entering the real property, but not any dwelling or structure, to investigate whether the real property is abandoned residential property pursuant to NRS 107.0795, or in danger of becoming abandoned pursuant to NRS 107.120.

C. Should a mortgagee choose to expedite its sale of the abandoned residential property, the mortgagee pursuant to NRS 107.130(6) must submit an Affidavit and request the Designated Agency to inspect and issue a Certificate, if applicable.

D. Time Period:

(1) Notice of Default. An inspection by a mortgagee, its agent, or designated agency must be done within 30 calendar days after a notice of default has been filed with the Clark County Recorder's Office to determine whether such property is abandoned or in danger of becoming abandoned as defined in this Chapter.

(2) Notice of Abandonment or Property in Danger of Becoming Abandoned. A mortgagee, its agent, or a property owner must conduct an inspection within 30 calendar days after receiving notice that its residential real property may be abandoned or in danger of becoming abandoned as defined in this Chapter.

#### 15.13.070 Continued Inspection Requirements

A. Residential real property shall be maintained in accordance with applicable City and State codes and ordinances, including without limitation, ordinances pertaining to dangerous buildings, litter, nuisance abatement, and the Property Maintenance Code. Landscaping visible from the public right of way shall be maintained pursuant to the Property Maintenance Code, HMC Chapter 15.12 during the registration period.

B. For purposes of this Chapter:

(1) "Landscaping" includes without limitation to grass, turf stain, trees, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation.

(2) "Maintenance of landscaping" includes without limitation to regular watering and irrigation, weeding, staining, re-staining, cutting, pruning, and mowing of required landscaping and removal of all trimmings.

C. Pools and spas located on residential real property shall be kept in working order so the water remains clear and free of pollutants and debris or drained and kept dry. Such maintenance of pools and spas must comply with the applicable requirements of HMC Chapter 15.01 (Building and Fire Safety Administrative Code) and HMC Chapter 15.12 (Property Maintenance Code).

D. Residential real property shall be maintained in a secure manner to prevent accessibility to unauthorized persons. Doors of all kinds, windows, gates and other openings that make the property accessible must be closed and locked. Broken windows must be reglazed or boarded in accordance with applicable City standards.

E. Except as otherwise provided, compliance with this Section with respect to any specified property shall be the joint responsibility of the mortgagee and the property manager, as well as the property owner.

#### 15.13.080 Enforcement

A. It is unlawful for a person or other responsible party under this Chapter to violate any provision of this Chapter.

B. The provisions of this Chapter may be enforced by an employee and/or officer of the City of Henderson working on behalf of any department as charged with enforcing this Chapter. Such City employee and/or officer shall issue, including but not limited to, a notice, violation, and/or citation as necessary.

C. The provisions of this Chapter may be enforced by means of:

(1) Administrative fines and fees of \$150 per day per violation;

(2) Criminal prosecution, as permitted by NRS 266.105, which shall constitute a misdemeanor crime upon conviction;

(3) Any civil action in a court of competent jurisdiction to compel compliance;

(4) Any other civil mechanism established by the City Council for use in connection with this Chapter; and/or

(5) Any means as permitted by law.

The City of Henderson may use any of these remedies in any combination at any time during the procedures.

#### 15.13.090 Appeal Process

Unless otherwise provided in this Chapter, the Appeal Process procedure shall mirror that contained in the Henderson Municipal Code 15.12, Property Maintenance Code.

A. Standing: The person(s) or entities having standing to appeal under this Chapter shall be ones legally responsible for maintenance of the property including, but not limited to a mortgagee, its designated property manager, and/or the property owner. Legal responsibility for maintenance of the property cannot be deferred to an occupant.

#### 15.13.100 Limitations

A. Nothing in the Chapter:

(1) Requires a mortgagee or its agent or employee to violate any criminal law or ordinance or any court order, or to violate an automatic stay in a bankruptcy proceeding.

(2) Creates a duty or obligation that is owed to, or runs in favor of, any person other than the City of Henderson and those officers, employees or agents who are acting in the City of Henderson's behalf.

(3) Creates or implies a cause of action in favor of, or available to, any person other than the City of Henderson.

B. This chapter is limited by any legal holdings as ordered by a court of competent jurisdiction.

(1) The City of Henderson, a municipal corporation, may not control, limit, or require the compliance of federal government entities in a manner found to conflict with applicable federal law(s).

C. Liability of City employees arising under this Chapter shall be limited pursuant to NRS 41.032, HMC 15.12.060(E), and any applicable laws.

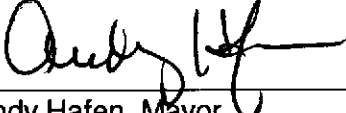
15.13.110 Expiration

The ordinance codified in this chapter shall be effective upon publication in the Las Vegas Review-Journal, and expires on June 30, 2017, in accordance with NRS Chapter 107.120 unless otherwise extended or permitted by statute.

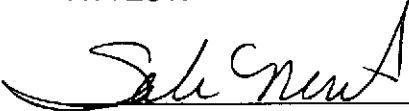
- SECTION 2. If any section, subsection, paragraph, clause or provision of this Ordinance shall for any reason be held invalid or unenforceable, the invalidity or unenforceability of such section or subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.
- SECTION 3. All ordinances, or parts of ordinances, sections, subsection, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Henderson, Nevada, in conflict herewith are repealed and replaced as appropriate.
- SECTION 4. A copy of this Ordinance shall be filed with the office of the City Clerk, and notice of such filing shall be published once by title in the Review Journal, a newspaper having general circulation in the City of Henderson, at least ten (10) days prior to the adoption of said Ordinance, and following approval shall be published by title (or in full if the Council by majority vote so orders) together with the names of the Councilmen voting for or against passage for at least one (1) publication before the Ordinance shall become effective. This Ordinance is scheduled for publication on February 7, 2014, in the Review Journal.



PASSED, ADOPTED, AND APPROVED THIS 4<sup>th</sup> DAY OF FEBRUARY, 2014.

  
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Andy Hafen, Mayor

ATTEST:

  
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Sabrina Mercadante, MMC, City Clerk

The above and foregoing Ordinance was first proposed and read in title to the City Council on January 21, 2014, which was a Regular Meeting, and referred to a Committee of the following Councilmen:

“COUNCIL AS A WHOLE”

Thereafter on February 4, 2014, said Committee reported favorably on the Ordinance and forwarded it to the Regular Meeting with a do-pass recommendation. At the Regular Meeting of the Henderson City Council held February 4, 2014, the Ordinance was read in title and adopted by the following roll call vote:

Those voting aye:     Andy Hafen, Mayor  
                                  Councilmembers:  
                                  Sam Bateman  
                                  Debra March  
                                  John F. Marz  
                                  Gerri Schroder

Those voting nay:     None  
Those abstaining:    None  
Those absent:         None

  
\_\_\_\_\_  
Andy Hafen, Mayor

ATTEST:

  
\_\_\_\_\_  
Sabrina Mercadante, MMC, City Clerk