



**CITY OF HENDERSON
BOARD OF APPEALS
AGENDA
Regular Meeting**

**April 22, 2014
2:00pm
Meeting Inquiries: 702-267-3631**

**Council Chambers Conf Room
240 Water Street, 1st Floor
Henderson, NV 89015**

Notice to persons with special needs: For those requiring special assistance or accommodation to attend or participate in this meeting, arrangements for a sign language interpreter or services necessary for effective communication for qualified persons with disabilities should be made as soon as possible, but no later than 72 hours before the scheduled event. Listening devices are available for persons with hearing impairments.

Please contact Michelle Page at 702-267-3631 or TTY: 7-1-1, **at least 72 hours in advance** to request a sign language interpreter. You may also submit your request by using [Contact Henderson](#).

The Chairman reserves the right to hear agenda items out of order, combine two or more agenda items for consideration, remove an item from the agenda, or delay discussion relating to an item on the agenda at any time. All items are action items unless otherwise noted.

Individuals speaking on an item will be limited to three (3) minutes and spokespersons for a group will be limited to ten (10) minutes.

Backup materials for agenda items can be found at:
http://www.cityofhenderson.com/building_fire_safety/board_of_appeals.php
To request backup materials, please contact Michelle Page at (702) 267-3631.

I. CALL TO ORDER

II. CONFIRMATION OF POSTING AND ROLL CALL

III. ACCEPTANCE OF AGENDA (For Possible Action)

IV. PUBLIC COMMENT

Note: Items discussed under Public Comment cannot be acted upon at this meeting, but may be referred to a future agenda for consideration (NRS 241.020). Individuals speaking on an item will be limited to three (3) minutes and spokespersons for a group will be limited to ten (10) minutes.

V. NEW BUSINESS

1. Approval of Minutes – December 11, 2013 (For Possible Action)
2. Building & Fire Safety Update (For Discussion Only)
3. Adoption of Amended and Restated Bylaws (For Possible Action)
4. Update on Property Maintenance Code Training (For Discussion Only)
5. Review of Updated Code Enforcement Appeal Procedure (For Discussion Only)

VI. PUBLIC COMMENT

Note: Items discussed under Public Comment cannot be acted upon at this meeting, but may be referred to a future agenda for consideration (NRS 241.020). Individuals speaking on an item will be limited to three (3) minutes and spokespersons for a group will be limited to ten (10) minutes.

VII. CHAIRMAN/MEMBER COMMENTS

The Chairman and Members may speak on any subject under this section of the agenda. Chairman and Members may comment on matters including, without limitation, future agenda items, upcoming meeting dates, and meeting procedures. Comments made cannot be acted upon or discussed at this meeting, but may be placed on a future agenda for consideration by the Body.

VIII. SET NEXT MEETING – September 2014, 2:00pm

IX. ADJOURNMENT

Posted prior to 9:00 a.m., ***Wednesday, April 16, 2014***
at the following locations:
City Hall, 240 Water Street, 1st Floor Lobbies (2)
Multigenerational Center, 250 South Green Valley Parkway
Whitney Ranch Recreational Center, 1575 Galleria Drive
Fire Station No. 86, 96 Via Antincendio

**CITY OF HENDERSON
BUILDING AND FIRE SAFETY
BOARD OF APPEALS
SPECIAL MEETING
MINUTES
December 11, 2013**

I. Call to Order

Chairman Ed Bless called the City of Henderson Building and Fire Safety Board of Appeals meeting to order at 2:00 p.m., in the Council Chambers Conference Room, 240 Water Street, Henderson, Nevada.

II. Confirmation of Posting and Roll Call

Michelle Page, Administrative Assistant III, confirmed the agenda was posted three working days prior to the meeting in accordance with the Open Meeting Law by posting on the four Official Bulletin Boards within the City Limits of the City of Henderson.

PRESENT: Chairman Ed Bless
Vice-Chairman David Pasquinelli
Kirk Brynjulson
Rocco Prock (arrived at 2:14 p.m.)
Kevin Robinson
Allyn Vaughn
Victor Vincent

EXCUSED: None

STAFF: Stephanie Garcia-Vause, Director of Community Development and Services
Tracy Foutz, Asst. Director of Community Development and Services
Mohammad Jadid, City Building Official
Majid Pakniat, Manager of Plans Examining Svs.
Alan Ellis, Manager of Inspection Services
Christopher Barnes, Tech Analyst III
Nechole Garcia, Assistant City Attorney I
Michelle Page, Administrative Assistant III
Tedie Jackson, Minutes Clerk

GUESTS: Barbara Geach, Neighborhood Relations Manager
Jeanine Abramo, Senior Code Enforcement Officer

III. Acceptance of Agenda

(Motion) Mr. Pasquinelli introduced a motion to accept the agenda as presented, seconded by Mr. Vaughn. The vote favoring approval was unanimous. Chairman Bless declared the motion carried.

IV. Public Comment

There were no comments presented by the public.

V. New Business

1. Recap of Board Hearing Code Enforcement Appeal Issues (for Discussion Only)

Mohammad Jadid, City Building Official, reminded the Board members of the discussion that occurred at the last meeting regarding whether the Board members are interested in hearings that pertain to the property maintenance code. He stated that this would expand the scope of responsibility for the Board. He stressed the need the City has to implement a process to address these appeals.

Regarding a question as to how many appeals will they hear, Mr. Jadid replied that not many are anticipated because staff works closely with residents to address the code violations.

Barbara Geach, Neighborhood Relations Manager, explained that under the Property Maintenance Code, Chapter 15, nuisance issues were supposed to be heard by a hearing officer, but that mechanism was never put in place. She reported that staff gets 80 to 90 percent compliance. She noted that residents who do not comply receive criminal citations or a lien is put on their property.

2. Review of Proposed Code Enforcement Appeal Procedure (For Possible Action)

Barbara Geach, Neighborhood Relations Manager, reviewed a three-page handout entitled "Appeal to the Board of Appeals Framework" and noted that staff updated this document and added more details. She stated that the Board would not make exceptions to the Ordinance and waive the issue, but would make a decision to uphold Code Enforcement's decision or reverse it.

Mr. Vincent pointed out under “Liability of Board Members,” a word is missing after “official.”

Mr. Prock referred to the portion regarding the chairman of board shall be responsible for reviewing the appeals application and expressed liability concerns of this responsibility. He suggested the application be reviewed by legal staff in the City Attorney’s Office.

Ms. Geach replied that it is a conflict of interest if a staff member reviews the application.

Mr. Vincent commented that it should be determined administratively.

Ms. Geach explained that the application will first be reviewed by Code Enforcement. Staff will provide guidance to Board members and will also provide training on code enforcement issues.

To address liability concerns, Nechole Garcia, Assistant City Attorney I, stated that under Nevada Revised Statutes Chapter 41, the Board members would not be held liable as long as they act in good faith.

Mr. Prock commented that the time frame for a person to submit information on the appeal is only five days.

Ms. Geach agreed that it is a short period, but she noted that if the time period is extended too long, it is a disservice to the person being harmed. The sooner the City can respond to the issue, the better.

No action was taken at this time.

3. Review of Proposed Amendments to Bylaws (Discussion Only)

Nechole Garcia, Assistant City Attorney I, reviewed a three-page handout outlining proposed amendments to the Board of Appeal Bylaws. She noted that these amendments include language if the Board decides to expand their responsibilities and hear code enforcement cases. Ms. Garcia said the Board members will have an opportunity to provide input to amend the bylaws and adopt all changes at the next meeting.

4. Expansion of Board of Appeals Purpose to include Hearing code Enforcement Appeals (For Possible Action)

(Motion) Mr. Vincent introduced a motion to approve expanding the Board of Appeals purpose to hear code enforcement appeals, seconded by Mr. Pasquinelli. The vote favoring approval was unanimous. Chairman Bless declared the motion carried.

Staff noted that the members can vote on the framework now or at the next meeting with the bylaws.

(Motion) Mr. Vincent introduced a motion to approve the Appeal to the Board of Appeals Framework document as submitted, seconded by Mr. Robinson. The vote favoring approval was unanimous. Chairman Bless declared the motion carried.

Per a request, copies of Chapter 15.12, Property Maintenance Code, were provided to the Board members. Staff provided copies of Chapter 15.12: Property Maintenance Code.

VI. Public Comment

There were no comments presented by the public.

VII. Chairman/Member Comments

Responding to a question as to when training will be scheduled, staff will provide information on a framework for the training at the next meeting.

VIII. Set Next Meeting

A special meeting of the Building and Fire Safety Board of Appeals was set for January 22, 2014, at 2:00 p.m., in the Council Chambers Conference Room of City Hall, 240 Water Street, Henderson, Nevada, 89015.

IX. Adjournment

There being no further business to come before the Board, Chairman Bless adjourned the meeting at 2:46 p.m.

Respectfully submitted,

Tedie Jackson,
Minutes Clerk

AMENDED AND RESTATED BYLAWS

OF THE

BOARD OF APPEALS

ARTICLE I

Name

The name of this Board is the Board of Appeals.

ARTICLE II

Purpose

The purpose of such Board shall be to hear all appeals of any person aggrieved or alleged to be aggrieved by any final determination or decision of the Director of Community Development and Services Department, the Building Official, the Fire Chief, or their designee, in any determination or application of the technical codes adopted by the City, the Property Maintenance Code, and/or the Abandoned Registry Ordinance contained in Title 15 of the Henderson Municipal Code.

ARTICLE III

Members

- A. The seven (7) members of the Board of Appeals shall be appointed by the Mayor and City Council of the City of Henderson to serve at the pleasure of the appointing authority.
- B. The Board members shall elect one (1) member as Chairman, and one (1) member as Vice-Chairman. The term of office shall be one (1) year. However, nothing herein shall prohibit the Chairman or Vice-Chairman from being elected to consecutive terms.
- C. This Board is exempt from the Council policy on Board and Commission appointments.
- D. Any committee member who compiles more than three (3) consecutive unexcused absences shall be considered to have resigned.
- E. Excused absences are defined as absences due to illness of a member or a member's family, employment-related activities, or other instances as approved by the

Chairman on a case-by-case basis. Notification of absences is to be made to the Secretary of the Board of Appeals.

**ARTICLE IV
Powers and Duties**

- A. The Chairman shall preside at all meetings, call meetings, and review and approve the agenda for meetings.
- B. The Vice-Chairman shall act as Chairman and perform those duties in the absence of the Chairman.
- C. The decision of the Board is final and may not be appealed to the City Council.

**ARTICLE V
Meetings and Meeting Requirements**

- A. Meetings of the Board of Appeals will be held on an as-needed basis. The Board will meet at least twice a year, once in April for election of Chairman and Vice-Chairman and one other time during the calendar year.
- B. A quorum of the Board is a minimum of four (4).
- C. All meetings shall be properly noticed and posted according to Nevada Revised Statutes.
- D. Routine motions and resolutions require a majority vote of a quorum of the members. A second to a motion is necessary.
- E. The Board of Appeals will use a prepared agenda. Appropriate backup materials must be submitted with the item requested.
- F. The Secretary to the Board of Appeals shall prepare and mail all agendas and backup material to the Board and other desiring notification. The City of Henderson shall provide the service of a Minutes Clerk to take the minutes. The custodian of all records of the Board shall be the City Clerk.

**ARTICLE VI
Parliamentary Authority**

- A. The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the Board of Appeals in all cases where they are applicable and in which

Amended and Restated Bylaws-Board of Appeals
April 22, 2014

they are not inconsistent with the ordinance governing this board, these Bylaws, and any special rules of order the Board may adopt.

ARTICLE VII
Amendments of Bylaws

- A. Proposed amendments to the Bylaws shall require a majority vote of a quorum of the members, provided that the amendment has been submitted in writing to each member of the Board at least 30 days prior to the meeting at which action on the amendment is to be taken.

These Amended and Restated Bylaws were considered and adopted by the Board of Appeals on _____, 2014.

Ed Bless, Chairman

ATTEST:

Michelle Page, Board Secretary

Appeal to the Board of Appeals

Framework

- I. Procedures for requesting an appeal and associated fees.
 - a. An owner, responsible person, firm or corporation, may request an appeal by filing with the Community Development and Services Department, through Neighborhood Services Division, an application within ten (10) calendar days after an administrative citation and/or notice to abate is issued. Parties may appeal the following: notice of recordation of violation, lack of due process, fines and fees associated with a violation, notices of abatement, and/or liens levied against a property.
 - b. Notices of violation are not appealable due to lack of ripeness.
 - c. The request for an appeal shall be made in writing on an application form provided by the Community Development and Services Director, or his/her designee, and shall state the grounds for requesting the hearing.
 - d. A non-refundable fee of fifty (\$50.00) dollars shall be paid at the time of filing an appeal application.
 - e. Upon request, the Community Development and Services Director may waive the filing fee for applicants who are seniors over the age of 65, those with disabilities, households below eighty percent of median income, or in the interest of justice.
 - f. The Board under an appeal process is not authorized to grant exceptions or modifications to the Property Maintenance Code. The Board may hear appeals as limited by this Chapter.

- II. Procedures for Notification of a Board of Appeals hearing.
 - a. The board's chairperson or the vice-chairperson, in chairperson's absence, shall review the appeals application within thirty (30) calendar days after submittal to verify if it meets the minimum standards for appealable rights. The board secretary shall notify the applicant in writing immediately following the decision.
 - b. The appeal process ends upon written denial notification to applicant.
 - c. Where the applicant has made a timely request and the violation of the appeal has met the appealable rights under this chapter, the board secretary shall notify the applicant by written notification of the appeal process. The board of appeals shall have fourteen (14) calendar days after the approval of the appeal to schedule a hearing before the board. There must be a quorum represented on the board before an appeal can be heard.
 - d. The secretary for the board of appeals will provide written notification of the hearing date, time, and location to the applicant at least ten (10) calendar days prior to the date of the hearing.

- e. Written requests for continuance of the hearing date shall be made to the secretary to be given to the chairperson or the vice-chairperson, in the absence of the former. If approved, the secretary will provide applicant with written notification of the new date, time, and location for the hearing. If not approved, the secretary will provide written notification to the applicant of the denial. Applicants may request a maximum of two (2) continuances.

III. Disqualification of Board Member.

- a. Any member of the appeal board shall not participate in an appeal of any matter wherein a conflict of interest, bias, or prejudice is present as defined in the Nevada Ethics in Government Law, NRS Chapter 281, as may be amended, and Henderson Municipal Code Chapter 2.40, as may be amended, or for any other reason for which a judge in a court of law may be disqualified.
- b. Whenever a board member has a personal, monetary, or business interest in the outcome of an appeal, the board member shall recuse himself or herself from participation in the hearing, and shall not communicate with any other board member hearing the matter.
- c. For other conflicts of interest not already mentioned, a board member may hear such appeal upon full disclosure of the conflict and approval of all parties appearing before the board.
- d. If it is unclear whether recusal of a board member is necessary, the board member shall recuse himself or herself from hearing the appeal.

IV. Failure to attend the Board of Appeals hearing.

- a. Any applicant who requests a hearing and who fails to appear at the hearing is deemed to waive the right to a hearing and all objections, provided that the hearing was properly noticed and no continuances were received.

V. Procedure at the Board of Appeals hearing.

- a. The appeal hearing will be open for public viewing and subject to open meeting laws.
- b. The board of appeals hearing is intended to be informal in nature. The board is not bound by the Nevada Rules of Civil Procedure or discovery.
- c. The City will have an opportunity to present facts, evidence, and statements to support its position. Any materials the City intends on presenting or using must be provided to the secretary of the board of appeals no later than seven (7) calendar days prior to the appeal hearing. These materials will be subject to Nevada's open meeting laws and will be accessible for public view.
- d. The applicant or his/her representative will have an opportunity to present facts, evidence, and statements that support his/her position. Any materials an applicant intends on presenting or using must be provided to the secretary of the board of appeals no later than seven (7) calendar days prior to the appeal hearing. These

materials will be subject to Nevada's open meeting laws and will be accessible for public view.

- e. Any materials the parties intend to present or use during the appeal hearing shall be provided to the opposing party no later than seven (7) calendar days prior to the hearing date.
- f. During the appeal hearing, the board of appeals may inquire, seek clarification, or gather any necessary information to assist in making a final decision.
- g. Any member of the board of appeals has the power to issue subpoenas for attendance of witnesses at the hearing, or for production of records or other tangible or intangible things either prior to or at such hearing, and may issue such subpoenas at the request of any party to such proceeding or upon the request or action of any board member. Enforcement of any duly-issued subpoena shall rest with the Henderson Municipal Court. The board of appeals may, if deemed appropriate, continue a hearing upon cause where justice requires.
- h. Stay of Enforcement. Appeal of notices and orders (other than imminent danger notices) shall stay the enforcement of the notice and order until the appeals board hears the appeal and issues its decision.

VI. Appeal Decision from the Board of Appeals

- a. The board of appeals shall conduct a hearing to determine whether to uphold or reverse the existence of due process, fines and fees associated with a violation, notices of abatement, and/or liens levied against a property. Upon upholding any notices and orders, such action(s), fines, and fees shall become due.
- b. The board of appeals shall make a determination by a majority vote of a quorum.
- c. The board of appeals shall issue a written decision within thirty (30) calendar days of the conclusion of the appeal.
- d. Board secretary shall mail the written decision to the applicant no later than seven (7) calendar days following the decision.
- e. Failure to comply with a board of appeals decision constitutes a misdemeanor.
- f. The decision of the Board may not be appealed to the City Council.
- g. Appeal Rights by Applicant. An applicant may appeal an order by the board to the Henderson Municipal Court within ten (10) calendar days of the issuance of the order.

VII. Liability of Board Members

- a. The liability of board members acting in their official capacity shall be limited by the Nevada Revised Statutes and applicable law.

Appeal to the Board of Appeals

Training

- I. Overview of the Property Maintenance Code
 - a. History
 - b. Purpose
 - c. Parts
 - i. General Property Maintenance Standards
 - ii. Non-Residential Building and Structures Maintenance Standards
 - iii. Residential Building and Structures Maintenance Standards
 - iv. Enforcement Provisions
- II. General Property Maintenance Standards
 - a. Most Common Violations
 - i. Litter
 - ii. Weeds and Dead Landscape
 - iii. Inoperable vehicles
 - iv. Stagnant Pools
 - b. Substantial Compliance Standard – controlled by standards of a particular area.
 - c. Complaint Driven
 - d. Code Enforcement Staffing and Area Assignment
- III. Non-Residential Building and Structures Maintenance Standards
 - a. Most Common Violations
 - i. Commercial v. Residential (apartments, condos, etc.)
 - ii. Weeds and Dead Landscape
 - iii. Substandard Building Quality (entrance while occupied)
 1. Reasonable Notice Required Prior to Entrance
 2. Examples – non-working appliance
 - b. Standard – as the manufacture intends the appliance to function
 - c. Substantial Compliance Standard – exterior
 - d. Complaint Driven
- IV. Residential Building and Structures Maintenance Standards
 - a. Most Common Violations
 - i. Peeling Paint
 - ii. Broken Windows
 - iii. Unsecured Property
 - iv. Fence - Broken or Missing Slats
 - v. Walls – Broken, missing, or damaged block
 - b. Substantial Compliance Standard
 - c. Complaint Driven

V. Enforcement Provisions

- a. Verbal Warning
- b. Corrections Notice
- c. Notice of Violations
 - i. 10 days to correct
 - ii. CE Officer may use discretion to extend time based upon individual circumstances.
- d. Remedies – Voluntary Compliance, Criminal, Administrative Fines and Fees, and/or Abatement
- e. Assistance Programs – Neighborhood Services

VI. Abandoned Residential Property Registry

- a. Abandoned and Those in Danger of Becoming Abandoned
 - i. Purpose
- b. Expectations
 - i. Keep Track of Abandoned Residential Properties and Those in Danger of Becoming Abandoned
 - ii. Secure Point of Contact for Maintenance Requirements
 - iii. Reduce Blight, Nuisance, and Other Issues Surrounding Such Properties
- c. Origin – banks, complaint, notice of default
- d. Inspections
 - i. Notice of Default – within 30 calendar days of filing (purpose: maintenance of property while registered)
 - ii. Notice of Abandonment or Property in Danger of Becoming Abandoned – within 30 calendar days after receiving notice
 - iii. Continued Inspection – once a month
- e. Registry
 - i. Affidavit / Certificate – register 10 days after recordation
 - ii. Inspection – register 10 days after inspection
 - iii. Notice of Default – register 10 days after recordation
- f. Maintenance
 - i. Definition – HMC 15.13.070
 - ii. Comply with HMC Chapter 15.12 (Property Maintenance Code) and HMC Chapter 15.01 (Building and Fire Safety Administrative Code)
- g. Enforcement – Administrative Fines and Fees, Criminal Prosecution, Civil Action, Civil Mechanisms Established by the City Council, and Means as Permitted by Law.

VII. Appeal Process

- a. How does it begin?
 - i. Notice to Abate
 - ii. Administrative Fines and Fees
 - iii. Lien
- b. Who may appeal?
 - i. Owner

- ii. Responsible Person
 - iii. Responsible Firm or Corporation
- c. What needs to be filed?
 - i. Application filed within 10 calendar days after administrative citation and/or notice is issued.
- d. Who reviews the appeal application?
 - i. Board's Chairperson or Vice-Chairperson, in the Absence of the Chairperson
 - ii. Time Period - 30 calendar days after appeal submittal
- e. Who notifies applicant of acceptance or denial of appeal application?
 - i. Board secretary shall notify the applicant in writing immediately following the decision.
 - ii. The appeal process ends upon written denial notification to applicant.
- f. Approval of Appeal
 - i. Notice to Applicant - board secretary shall notice applicant of the appeal process.
 - ii. Schedule a Meeting - The board of appeals shall have fourteen (14) calendar days after the approval of the appeal to schedule a hearing before the board.
 - iii. Quorum Must be Present
- g. Who sets the appeal hearing date?
 - i. Board of Appeals
 - ii. Written notification shall be served by the secretary to the applicant at least ten (10) calendar days prior to the date of the hearing.
- h. How do you continue a hearing date?
 - i. Written requests shall be made to the board secretary to be given to the Board chairperson or vice-chairperson.
 - ii. Decision by the chairperson or vice-chairperson (chair's absence) - written notification to applicant.
 - iii. Maximum of two (2) continuances.
- i. Failure to attend hearing
 - i. Waive right to hearing
 - ii. Waive right to all objections
 - iii. Must have proper notice and no continuance received
- j. Discovery
 - i. Any materials the parties intend to present or use during the appeal hearing shall be provided to the opposing party no later than seven (7) calendar days prior to the hearing date.
- k. Roles of Parties
 - i. City
 1. Present facts, evidence, statements, and other materials
 2. Provide board secretary with any materials and/or evidence it will use during hearing
 3. No later than seven (7) calendar days prior to appeal date

- ii. Applicant
 - 1. Present facts, evidence, statements, and other materials
 - 2. Provide board secretary with any materials and/or evidence it will use during hearing
 - 3. No later than seven (7) calendar days prior to appeal date
 - i. Board Powers
 - i. Conduct hearing
 - ii. Inquire, seek clarification, or gather any necessary information in making a final decision
 - iii. Subpoena
 - iv. Continue the hearing
- VIII. Board Decision
 - a. Quorum – majority vote
 - b. Written decision within 30 calendar days
 - c. Board secretary shall mail written decision to applicant no later than 7 calendar days following the decision
- IX. Failure to Comply with Board Decision
 - a. Misdemeanor
- X. Appeal Board Decisions
 - a. Not to City Council
 - b. Henderson Municipal Court – no later than 10 calendar days following decision
- XI. Review of Mock Applications
- XII. Mock Trial
- XIII. Voluntary Ride-Along