ORDINANCE NO. 4042

Amend Henderson Municipal Code Chapter 11.03 – Obstructions or Encroachments Within City Rights-of-Way

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HENDERSON, NEVADA, TO AMEND THE HENDERSON MUNICIPAL CODE CHAPTER 11.03, SECTION 11.03.010– OBSTRUCTIONS OR ENCROACHMENTS WITHIN CITY RIGHTS-OF-WAY.

WHEREAS, On January 3, 2017, the City of Henderson (City) adopted Ordinance No. 3380, which repealed and re-enacted Title 11 in its entirety, which included defining standards related to obstructions and encroachments within city rights of way; and

WHEREAS, Ordinance No. 3380 did not explicitly define landscaping encroachments and obstructions; and

WHEREAS, the City seeks to ensure free passage along public streets and ensure public streets are free from obstructions and encroachments that may prevent or delay emergency response vehicles; and

WHEREAS, both the City Charter and the Nevada Revised Statutes grant the City the authority to address obstructions of rights-of-way, standing, stopping, and parking on public streets and to abate any conditions relating thereto; and

WHEREAS, it is in the best interest of the public to adopt rules and regulations related to obstructions of: public rights-of-way, public streets, and the parking and storage of certain vehicles; and

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

SECTION 1. HMC Chapter 11.03.010 – Obstructions or encroachments within city rights-of-way is hereby amended as follows:

11.03.010 Obstructions or encroachments within city rights-of-way.

A. Except as otherwise provided in this section or another provision of this Code, it is unlawful for any person to erect, place or maintain any obstruction, or to cause or permit any obstruction to encroach within, upon, or over any public right-of-way, including any public street, public sidewalk, or public alley. Each day any unauthorized obstruction is allowed to remain after 24 hours notice to remove the obstruction shall constitute a separate offense. Such notice may be provided by:

1. Any officer of the Henderson Police Department;

2. Any officer or employee of the department of public works[, parks and recreation] *or department of community development and services office of public response (code enforcement)*; or

3. Any other officer or employee of the city who has been specifically authorized to enforce this section.

B. An obstruction otherwise prohibited by subsection A may be permitted by means of an encroachment agreement approved by the city in accordance with this section. The agreement must be in a form prepared by, or otherwise acceptable, to the city. Approval by the city of an encroachment agreement:

1. Is entirely within the city's discretion;

2. Is contingent upon a determination by the director of public works[, parks and recreation,] or designee, that the obstruction or encroachment can be accomplished without negatively impacting traffic, public safety, pedestrian safety, or the use of and access to utility facilities; and

3. May be denied based on plans for future improvements to the affected right-of-way, street, sidewalk or alley.

C. An encroachment agreement under this section:

1. May include conditions reasonably calculated to mitigate any impact, including without limitation a time limit, provisions regarding ongoing maintenance, and appropriate remedial measures; and

2. May be required to be recorded against property that is benefitted by the agreement.

3. May be recorded against the property of the party seeking the encroachment agreement.

D. Except as otherwise provided in subsections E and F, the approval authority for an encroachment agreement under this section shall be the director of public works[, parks and recreation,] or designee. Typical items qualifying under this subsection D include:

1. Encroachments related to subdivision improvements;

2. Encroachments for monitoring wells;

3. Encroachments necessary for compliance with a building-related code; and

4. Other minor encroachments related to signage, outdoor dining, landscaping, fencing, and similar minor intrusions into public right-of-way.

E. The approval authority for the following items shall be the city council:

1. Encroachments which, in the judgment of the director of public works [parks and recreation,] or designee, are of a significant nature, character or size so as to warrant consideration by the city council; and

2. Encroachments concerning which a member of the city council, prior to administrative approval of an agreement pursuant to subsection D, has requested that the encroachment be considered by the city council.

F. In the case of encroachment agreements to be forwarded to the city council for consideration pursuant to Subsection E, the director of public works [, parks and recreation,] or designee, shall schedule the encroachment agreement for council consideration at the next regular meeting of the city council that is reasonably available.

G. If the director of public works[, parks and recreation,] or designee, denies administrative approval of an encroachment agreement pursuant to subsection D, the person seeking encroachment approval may appeal the decision to the city council within ten days after the denial decision is made. The appeal shall be in writing, shall be filed with the director or designee, and shall state the factual basis for the appeal. The director or designee shall schedule the matter for consideration by the city council within 30 days following receipt of the appeal. The decision by the city council shall be final.

H. Unless approved by city council, encroachment agreements approved administratively pursuant to subsection D shall be signed by the director of public works[, parks and recreation,] or designee.

I. Nothing in this section shall apply to obstructions or improvements installed:

1. By or on behalf of the city; or

2. By another governmental agency acting in accordance with an interlocal or cooperative agreement with the city that has been approved by city council.

J. For purposes of this chapter:

1. "Encroachment agreement" includes any agreement, however named, that by its terms authorizes an encroachment or obstruction.

2. "Obstruction" means a structure, installation, amenity or improvement of any kind within the right-of-way, street, sidewalk or alley. *This term includes any tree, plant, or shrub that overhangs a sidewalk less than 10 feet above the sidewalk or less than 16 feet and 4 inches above any street, or any overhanging foliage that presents a danger to the public.*

SECTION 2. If any section, subsection, sentence, clause, phrase, provision, or portion of this Ordinance, or the application thereof to any person or circumstances, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or provisions of this Ordinance or their applicability to distinguishable situations or circumstances.

Editor's Note: Pursuant to City Charter Section 2.090(3), language to be omitted is read and enclosed in [brackets], and language proposed to be added is *in blue italics and underlined*.

SECTION 3. All ordinances, or parts of ordinances, sections, subsections, 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 Las Vegas Review-Journal, a newspaper having general circulation in the City of Henderson, at least ten (10) days prior to the adoption of said Ordinance (Initial Publication). Following adoption by the City Council, this Ordinance shall be published by title together with the names of the Council members voting for or against passage (Final Publication). This Ordinance is scheduled for Final Publication on November 8, 2024, in the Las Vegas Review-Journal, at which time it will become effective.

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PASSED, ADOPTED, AND APPROVED THIS 6TH DAY OF NOVEMBER, 2024.

_____
Michelle Romero, Mayor

ATTEST:

_____
Jose Luis Valdez, CMC, City Clerk

The above and foregoing Ordinance was first proposed and read in title to the City Council on October 15, 2024, which was a Regular Meeting, and referred to a Committee of the following Councilmen:

"COUNCIL AS A WHOLE"

Thereafter on November 6, 2024, 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 November 6, 2024, the Ordinance was read in title and adopted by the following roll call vote:

Those voting aye:

Michelle Romero, Mayor
Councilmembers:
Carrie Cox
Jim Seebock
Dan K. Shaw
Dan H. Stewart

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

_____
Michelle Romero, Mayor

ATTEST:

_____
Jose Luis Valdez, CMC, City Clerk

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