

# Council Communication

## August 4, 2014, Study Session

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### **Discussion of Making Holders of Security Interests in Abandoned Properties Responsible for Nuisance Abatement**

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**FROM:**

David H. Lohman, Ashland City Attorney, lohmand@ashland.or.us

**SUMMARY**

This is a discussion item to gauge Council's interest in possible ordinance revisions to make holders of security interests in abandoned properties responsible for nuisance abatement. Additions to definitions already provided in three existing chapters of the Ashland Municipal Code would effect that result. A draft ordinance amending those chapters' definitions sections is attached.

**BACKGROUND AND POLICY IMPLICATIONS:**

Ashland has lately been experiencing a marked increase in the number of nuisance claims requiring abatement on properties with respect to which the owners cannot be located and the owners' creditors do not take maintenance responsibility despite their security interests in the properties. In typical cases, a property owner who owes a lender more than the property could sell for simply abandons the property and stops making payments to the lender. Despite its security interest in the property, the lender then puts off foreclosure for one reason or another (sometimes waiting for a more favorable sellers' market) and takes no responsibility for upkeep of the property in the meantime. Often, mortgage insurance, which the lender required the owner to obtain as a condition of the loan, provides continued monthly payments to the lender. Receipt of monthly payments from the mortgage insurer effectively reduces the lender's incentive to undertake foreclosure to get the property into the care of a new owner or to assume any responsibility itself for care of the property. Where such lack of maintenance has led to significant risks to public safety and welfare, the City has sometimes undertaken abatement measures at the expense of City taxpayers; sometimes the City has been unable to do so for lack of resources.

Abandoned properties not only breed risks of fire, vermin, occupation by squatters, and injury to trespassers; they also undermine the desirability of neighborhoods and the property values of nearby homes.

Arguably, those who do or ultimately will receive compensation for their ownership interests or security interests in abandoned properties (or who knowingly acquired such interests in expectation of compensation) should bear the costs of any necessary abatement measures.

**FISCAL IMPLICATIONS:**

Apart from possibly having to defend a lawsuit of first impression over this novel municipal response to abandoned properties, there are no fiscal implications.



**STAFF RECOMMENDATION AND REQUESTED ACTION:**

Staff seeks Council input on whether to schedule consideration of adoption of an ordinance on abatement of nuisances on abandoned properties and on possible changes to the attached draft ordinance.

**SUGGESTED MOTION:**

N/A.

**ATTACHMENTS:**

Draft ordinance titled “An Ordinance Amending the Definitions to AMC Chapters 1.04 General Provisions, 9.04 Weed Abatement and 9.08 Nuisances.”



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE DEFINITIONS TO AMC  
CHAPTERS 1.04 GENERAL PROVISIONS, 9.04 WEED  
ABATEMENT AND 9.08 NUISANCES

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are **~~bold lined through~~** and additions are **bold underlined**.

**WHEREAS**, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City. The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.

**WHEREAS**, The City has been experiencing a marked increase in the number of nuisance claims requiring abatement on properties with respect to which the owners cannot be located and the owners' creditors do not take maintenance responsibility despite their security interests in the properties.

**WHEREAS**, Persons or entities which have ownership interests or security interests in property within the City, and which ultimately may receive compensation for sale of those interests, should bear the responsibility for removing unreasonable threats to public safety and welfare occasioned by their failure to maintain such property.

**THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapter 1.04 General Provisions, Section 1.04.010 Definitions (L) is hereby amended to read as follows:

**Section 1.04.010 General Provisions. Definitions.**

L. Owner, applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety, of the whole or a part of such building or land. **In the case of property subject to foreclosure as a result of bankruptcy or default of the legal owner, the City may deem the "Owner" to be the person, other than the legal owner, who has a primary lien, security, or mortgage interest in possession or control of the property or who is the deed of trust beneficiary of the property.**

**SECTION 2.** Chapter 9.04 Weeds and Noxious Vegetation, Section 9.04.005 Definitions (E) is hereby amended to read as follows:

**Section 9.04.005 Definitions.**

E. Owner: owner of real property, agent of the owner, and/or occupant of any lot or parcel of land. **In the case of property subject to foreclosure as a result of bankruptcy or default of the legal owner, the City may deem the “Owner” to be the person, other than the legal owner, who has a primary lien, security, or mortgage interest in possession or control of the property or who is the deed of trust beneficiary of the property.**

**SECTION 3.** Chapter 9.08 Nuisances, Section 9.08.010 Definitions (G) is hereby amended to read as follows:

**Section 9.08.010 Definitions.**

G. Person in Charge of Property means an agent, occupant, lessee, contract purchaser, or person, other than the owner, having possession or control of the property. **In the case of property subject to foreclosure as a result of bankruptcy or default of the legal owner, the City may deem the “Person in Charge of Property” to be the person, other than the legal owner, who has a primary lien, security, or mortgage interest in possession or control of the property or who is the deed of trust beneficiary of the property.**

**SECTION 4. Savings.** Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinances(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 5. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 6. Codification.** Provisions of this Ordinance shall be incorporated in the City Code, and the word “ordinance” may be changed to “code”, “article”, “section”, or another word, and the sections of this Ordinance may be renumbered or re-lettered, provided however, that any Whereas clauses and boilerplate provisions (*i.e.*, Sections Nos. 4-6) need not be codified, and the City Recorder is authorized to correct any cross-references and any typographical errors.

The foregoing ordinance was first read by title only in accordance with Article X, Section 2(C) of the City Charter on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, and duly PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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Barbara M. Christensen, City Recorder

SIGNED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2014.

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John Stromberg, Mayor

Reviewed as to form:

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David H. Lohman, City Attorney