



Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

11/18/2013

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Newberg Plan Amendment
DLCD File Number 004-13

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, December 05, 2013

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged

Cc: Steve Olson, City of Newberg
Gordon Howard, DLCD Urban Planning Specialist
Angela Lazarean, DLCD Regional Representative

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NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE

File No.: 004-13 (19998)

[17678]

Received:

NOV 15 2013

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See OAR 660-018-0040). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use Form 4 for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use Form 5 for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use Form 6 with submittal of an adopted periodic review task.

Jurisdiction: City of Newberg

Local file no.: DCA-13-002

Date of adoption: 11/4/13 Date sent: 11/14/2013

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

☒ Yes: Date (use the date of last revision if a revised Form 1 was submitted): 9/5/13☐ NoIs the adopted change different from what was described in the Notice of Proposed Change? ☒ Yes ☐ No

If yes, describe how the adoption differs from the proposal:

One small change - a requirement was added that permitted murals must be maintained in good condition.

Local contact (name and title): Steve Olson

Phone: 503-537-1215 E-mail: steve.olson@newbergoregon.gov

Street address: 414 E. First St (PO Box 970) City: Newberg Zip: 97132-

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

Change from to . acres. ☐ A goal exception was required for this change.Change from to . acres. ☐ A goal exception was required for this change.Change from to . acres. ☐ A goal exception was required for this change.Change from to . acres. ☐ A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address): .

☐ The subject property is entirely within an urban growth boundary☐ The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

Development code section 15.435.130 "Original Art Murals" was added.
Development code section 15.05.030 "Definitions" was amended.

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from	to	. Acres:
Change from	to	. Acres:
Change from	to	. Acres:
Change from	to	. Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: . Acres added: . Acres removed:

Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts: Newberg School District, Chehalem Park and Recreation District

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

NOTICE OF ADOPTED CHANGE – SUBMITTAL INSTRUCTIONS

1. A Notice of Adopted Change must be received by DLCD no later than 20 days after the ordinance(s) implementing the change has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) as provided in ORS 197.615 and OAR 660-018-0040.

2. A Notice of Adopted Change must be submitted by a local government (city, county, or metropolitan service district). DLCD will not accept a Notice of Adopted Change submitted by an individual or private firm or organization.

3. **Hard-copy submittal:** When submitting a Notice of Adopted Change on paper, via the US Postal Service or hand-delivery, print a completed copy of this Form 2 on light green paper if available. Submit **one copy** of the proposed change, including this form and other required materials to:

Attention: Plan Amendment Specialist
Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

This form is available here:

<http://www.oregon.gov/LCD/forms.shtml>

4. **Electronic submittals** of up to 20MB may be sent via e-mail. Address e-mails to plan.amendments@state.or.us with the subject line "Notice of Adopted Amendment."

Submittals may also be uploaded to DLCD's FTP site at

http://www.oregon.gov/LCD/Pages/papa_submittal.aspx.

E-mails with attachments that exceed 20MB will not be received, and therefore FTP must be used for these electronic submittals. **The FTP site must be used for all .zip files** regardless of size. The maximum file size for uploading via FTP is 150MB.

Include this Form 2 as the first pages of a combined file or as a separate file.

5. **File format:** When submitting a Notice of Adopted Change via e-mail or FTP, or on a digital disc, attach all materials in one of the following formats: Adobe .pdf (preferred); Microsoft Office (for example, Word .doc or docx or Excel .xls or .xlsx); or ESRI .mxd, .gdb, or .mpk. For other file formats, please contact the plan amendment specialist at 503-934-0017 or plan.amendments@state.or.us.

6. **Content:** An administrative rule lists required content of a submittal of an adopted change (OAR 660-018-0040(3)). By completing this form and including the materials listed in the checklist below, the notice will include the required contents.

Where the amendments or new land use regulations, including supplementary materials, exceed 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

7. Remember to notify persons who participated in the local proceedings and requested notice of the final decision. (ORS 197.615)

If you have any questions or would like assistance, please contact your DLCD regional representative or the DLCD Salem office at 503-934-0017 or e-mail plan.amendments@state.or.us.

Notice checklist. Include all that apply:

- ☒ Completed Form 2
- ☒ A copy of the final decision (including the signed ordinance(s)). This must include city *and* county decisions for UGB and urban reserve adoptions
- ☒ The findings and the text of the change to the comprehensive plan or land use regulation
- ☐ If a comprehensive plan map or zoning map is created or altered by the proposed change:
 - ☐ A map showing the area changed and applicable designations, and
 - ☐ Electronic files containing geospatial data showing the area changed, as specified in OAR 660-018-0040(5), if applicable
- ☐ Any supplemental information that may be useful to inform DLCD or members of the public of the effect of the actual change



ORDINANCE NO. 2013-2765

AN ORDINANCE AMENDING THE NEWBERG DEVELOPMENT CODE TO PERMIT ORIGINAL ART MURALS THAT ARE LARGER THAN THE LIMITS FOR OTHER SIGNS AS LONG AS THEY MEET A SET OF CONTENT-NEUTRAL OBJECTIVE STANDARDS

RECITALS:

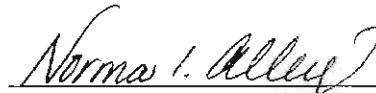
1. The city council initiated a potential amendment to the Newberg Development Code on August 5, 2013.
2. After proper notice, the planning commission held a hearing on October 10, 2013, to consider the amendment. The commission considered testimony, deliberated, and approved Resolution No. 2013-302, which recommended the city council amend the Newberg Development Code to permit original art murals as long as they meet a set of content-neutral objective standards.
3. After proper notice, the city council held a hearing on November 4, 2013, to consider the proposed development code amendment.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:


1. The city council finds that that original art mural program would be in the best interests of the city and therefore adopts the amendments to the Newberg Development Code as shown in Exhibit "A", which is hereby adopted and by this reference incorporated.
2. The findings shown in Exhibit "B" are hereby adopted and by this reference incorporated.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: December 4, 2013.

ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of November, 2013, by the following votes: **AYE: 6 NAY: 0 ABSENT: 1 [WOODRUFF] ABSTAIN: 0**


Norma I. Alley, MMC, City Recorder

ATTEST by the Mayor this 7th day of November, 2013.


Bob Andrews, Mayor

Development Code Text Amendment

Section 1. The Newberg Development Code shall be amended by adding a new code section as follows:

15.435.130 Original Art Murals

A. Purpose. The purpose of this section and the policy of the City of Newberg is to permit and encourage original art murals on a content-neutral basis on certain terms and conditions. Original art murals comprise a unique medium of expression which serves the public interest. Original art murals have purposes distinct from other types of signs and confer different benefits. Such purposes and benefits include: improved aesthetics; avenues for original artistic expression; public access to original works of art; community participation in the creation of original works of art; community building through the presence of and identification with original works of art; and a reduction in the incidence of graffiti and other crime. Murals can increase community identity and foster a sense of place and enclosure if they are located at heights and scales visible to pedestrians, are retained for longer periods of time and include a neighborhood process for discussion.

B. Allowed and Prohibited Original Art Murals

1. Allowed Original Art Murals.

Original Art Murals that meet all of the following criteria and which are not prohibited will be allowed upon satisfaction of the applicable permit requirements:

- a. The mural shall remain in place, without alterations, for a period of three years, except in limited circumstances to be specified in this code. The applicant shall certify in the permit application that the applicant agrees to maintain the mural in place for a period of three years without alteration. The applicant can remove the mural at any time, but may be prevented by the terms of this code from replacing the mural until the three-year period after the date of the mural permit approval is completed.
- b. The mural shall not extend more than 6 inches from the plane of the wall upon which it is tiled or painted or to which it is affixed. Murals with projecting features may also require a building permit and structural review; murals which consist only of paint on a wall will not require a building permit.
- c. Location of mural on the building:
 1. In the C-3 Central Business District zone murals are permitted only on walls that do not face First Street or Hancock Street.
 2. If the site abuts the Newberg-Dundee bypass (Oregon Highway 18) then murals are permitted only on walls that do not face the bypass until January 1, 2017.

3. In all other areas murals are permitted on any wall of a building.

d. Qualifying wall surfaces for murals:

1. Murals are permitted only on the flat planes of walls.
2. Murals are permitted only on walls that have not had a specific material, color or texture reviewed and approved through Design Review, unless a new design review has allowed the mural to change the originally approved color, texture or material.
3. Mural areas will not be painted on or obscure architectural features such as windows, doors, pilasters, cornices or other building recessed or projecting features.
4. The building on which the mural will be painted must have either a certificate of occupancy or be legally occupied, and the floor area of the building must exceed the square footage of the mural.

e. Number of mural permits per building wall: Only one mural permit may be obtained per wall.

f. Original Art Murals are allowed in commercial, industrial and institutional zones. In residential zones original art murals are allowed only on assembly and school uses.

2. Prohibited Murals.

The following are prohibited:

a. Murals for which compensation is given or received for the display of the mural or for the right to place the mural on another's property. The applicant shall certify in the permit application that no compensation will be given or received for the display of the mural or the right to place the mural on the property.

b. Murals which would result in a property becoming out of compliance with the provisions of the development code, or land use conditions of approval for the development on which the mural is to be located.

C. Relationship of Permitted Original Art Mural to other Regulations.

The exemption from other sign code restrictions applies only to Original Art Murals for which a permit has been obtained under this section and any adopted administrative processes. Issuance of an Original Art Mural Permit does not exempt the permittee from complying with any other applicable requirements of the Newberg Municipal Code, including but not limited to Titles 14 and 15.

D. Exceptions to this Section

Variances or adjustments to the regulations of this section are prohibited.

E. Alterations to or Removal of a Permitted Mural

1. Permitted murals may only be altered within the first three years of the date of completion under the following circumstances:

- a. The building on which the mural is located has an ownership change; or
- b. The building or property is substantially remodeled, altered, or damaged in a way that precludes continuance of the mural.
 - (1). Alterations are allowed per above but must be approved by obtaining a new permit.
 - (2). Alterations for reasons other than the circumstances described above are not permitted and are considered a violation of the mural permit approval. The mural would be required to be removed and this would preclude approval of a new mural permit at the site for a three-year period after the date of the original mural permit completion.

2. Permitted murals may be removed at any time. Removal of the permitted mural for reasons other than the circumstances described above in 15.435.130.E.1, however, precludes approval of a new mural permit at the site for a three-year period after the date of the original mural permit completion.

3. Permitted murals may be altered after the first three years of the date of completion through approval of a new mural permit.

4. Permitted murals may be removed for any reason after the first three years of the date of completion. Replacing the mural would require a new mural permit.

5. Permitted murals must be kept in good state of repair and in good condition.

F. Establishment of a Neighborhood Involvement Process and Community Arts Review for Permits.

1. Purpose. The purpose of the neighborhood involvement process and community arts review is to encourage community discussion and participation in the creation of original works of art that will be highly visible in the community. It is intended to enhance the final art product by providing information on the physical, social, and historical context within which the mural will be placed, and to provide creative suggestions on how the mural can contribute to the overall beauty and attractiveness of the community.

2. Neighborhood Involvement Process. The applicant for an Original Art Mural permit is required to provide notice of and to hold a neighborhood meeting on the mural proposal at which interested members of the public may review and comment upon the proposed mural. A notice sign must be posted at the site of the proposed mural at least 14 days before the neighborhood meeting. A notice of the meeting must be mailed to all property owners within 500 feet of the site at least 14 days before the neighborhood meeting, in the same manner as a Type II process. After the meeting, the applicant shall submit a letter to the city summarizing the public comments and stating how they have addressed the recommendations from the public.

3. Community Arts Organization Review. The Director shall establish a community arts review process requiring an applicant for an Original Arts Mural

permit to submit the application to a designated community arts organization for review. The community arts organization shall be designated by the Director, and shall be: 1) a non-profit; 2) not associated with the mural artist, property owner or tenant; and 3) must have at least three members. The community arts organization shall review the application, consider the artistic merit of the proposed mural, and provide a formal written recommendation to the applicant and the Director regarding the proposed mural within 14 days of receiving the application. The applicant shall submit a letter to the city stating how they have addressed the recommendations from the community arts organization.

4. No Original Art Mural permit shall be issued until the applicant certifies that he or she has completed the required Neighborhood Involvement Process and Community Arts Organization review. The applicant should carefully consider the recommendations from the public and the community arts organization, but they are not obligated to change the design based on these recommendations. This is a process requirement only and in no event will an Original Art Mural permit be granted or denied based upon the content of the mural.

G. Administrative process. The Director is authorized to create an application form and other administrative procedures necessary to administer this code section. A permit fee will be set by Council resolution.

H. Violations and Enforcement

1. Violations. It is unlawful to violate any provision of this section, any administrative rules adopted by the Director pursuant to this section, or any representations made or conditions or criteria agreed to in an Original Art Mural permit application. This applies to any applicant for an Original Art Mural permit, to the proprietor of a use or development on which a permitted Original Art Mural is located, or to the owner of the land on which the permitted Original Art Mural is located. For the ease of reference in this section, all of these persons are referred to by the term "operator."

2. Notice of Violations. The Director must give written notice of any violation to the operator. Failure of the operator to receive the notice of the violation does not invalidate any enforcement actions taken by the City.

3. Penalty. Violation of any provision of this code is a city Class 2 civil infraction and shall be processed in accordance with the uniform civil infraction procedure ordinance, Chapter 2.30 NMC. Each day of a continuing violation constitutes a separate violation.

Section 2. The definitions in Newberg Development Code Section 15.05.030 shall be amended by adding the new definitions as follows:

Mural-related definitions include:

"Alteration" means any change to the Permitted Original Art Mural, including but not limited to any change to the image(s), materials, colors or size of the Permitted Original Art Mural. "Alteration" does not include naturally occurring changes to the Permitted Original Art Mural caused by exposure to the elements or the passage of time. Minor changes to the Permitted Original Art Mural which result from the maintenance or repair of the Permitted Original Art Mural shall not constitute "alteration" of the Permitted Original Art Mural. This can include slight and unintended deviations from the original image, colors or materials that occur when the Permitted Original Art Mural is repaired due to the passage of time, an accident, or as a result of vandalism such as graffiti.

"Changing Image Mural" means a mural that, through the use of moving structural elements, flashing or sequential lights, lighting elements, or other automated method, results in movement, the appearance of movement or change of mural image or message. Changing image murals do not include otherwise static murals where illumination is turned off and back on not more than once every 24 hours.

"Compensation" means the exchange of something of value. It includes, without limitation, money, securities, real property interest, barter of goods or services, promise of future payment, or forbearance of debt. "Compensation" does not include:

1. goodwill; or
2. an exchange of value that a building owner (or leaseholder with a right to possession of the wall upon which the mural is to be placed) provides to an artist, muralist or other entity where the compensation is only for the creation and/or maintenance of the mural on behalf of the building owner or leaseholder, and the building owner or leaseholder fully controls the content of the mural.

"Original Art Mural" means a hand-produced work of visual art which is tiled or painted by hand directly upon, or affixed directly to an exterior wall of a building. Original Art Mural does not include:

1. mechanically produced or computer generated prints or images, including but not limited to digitally printed vinyl;
2. murals containing electrical or mechanical components; or
3. changing image murals.

"Permitted Original Art Mural" means an Original Art Mural for which a permit has been issued by the City of Newberg.

Findings

I. Statewide Planning Goals - relevant goals

Goal 1, Citizen Involvement, requires the provision of opportunities for citizens to be involved in all phases of the planning process.

Finding: The city council initiated the potential development code amendment at a public meeting on August 5, 2013. Interested parties were sent draft versions of the code amendment and were invited to comment on the code and testify at the public meetings. The planning commission, after proper notice, held a public hearing on October 10, 2013 to consider public testimony and the proposed code amendment. The city council will consider the recommendation of the Planning Commission at a future public hearing date, and decide whether or not to adopt the development code amendment. Finally, the code amendment includes a neighborhood involvement process for all proposed murals.

Goal 2, Land Use Planning, requires the development of a process and policy framework that acts as a basis for all land use decisions.

Finding: The original art murals proposal is supportive of this goal because it was developed following city procedures for legislative action.

II. Newberg Comprehensive Plan - relevant policies

Policy G.3. Historic Resources Policies

a. The continued preservation of Newberg's designated historic sites and structures shall be encouraged.

Policy J. URBAN DESIGN

GOAL 1: To maintain and improve the natural beauty and visual character of the City.

1. g. Community appearance should continue to be a major concern and subject of a major effort in the area. Street tree planting, landscaping, sign regulations and building improvements contribute to community appearance and should continue to be a major design concern and improvement effort.

Finding: The original art mural program will provide an opportunity for public art that can add to the visual character of the city and strengthen community identity. It will protect the many historic building facades in the downtown C-3 zone by prohibiting murals on walls that face First Street or Hancock Street. Historic residential houses are also protected, as murals will not be permitted on residential houses.

Conclusion: The proposed development code amendments meet the applicable requirements of the Statewide Planning Goals and the Newberg Comprehensive Plan, and should be approved.

\$01.12¢

US POSTAGE



CITY OF NEWBERG

P.O. BOX 970

NEWBERG, OR 97132

PLANNING



ATTN: PLAN AMENDMENT SPECIALIST
DEPT. OF LAND CONSERVATION & DEVELOPMENT
635 CAPITOL ST NE, SUITE 150
SALEM, OR 97301-2540

