



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

03/03/2009

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: City of Veneta Plan Amendment
DLCD File Number 001-08[A]

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, March 19, 2009

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 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Zac Moody, City of Veneta
Gloria Gardiner, DLCD Urban Planning Specialist
Ed Moore, DLCD Regional Representative

<paa> YA/ph



ORDINANCE NO. 487

AN ORDINANCE AMENDING THE VENETA LAND DEVELOPMENT ORDINANCE 461, ARTICLE 2 AND THE VENETA LAND DIVISION ORDINANCE 462, ARTICLE 4 & ARTICLE 5

WHEREAS, on August 16, 2008 the City of Veneta properly notified the Department of Land Conservation and Development of proposed amendments to the Land Development Ordinance administrative provisions and the Land Division Ordinance subdivision and partition standards; and

WHEREAS, on October 6, 2008 the Veneta City Planning Commission conducted properly advertised public hearings on the proposed amendments to the Veneta Land Development Ordinance administrative provisions and the subdivision and partition standards and within 40 days after the public hearing made a recommendation for the City Council to adopt the proposed amendments; and

WHEREAS, on November 10, 2008 and January 26, 2009 the Veneta City Council conducted properly advertised public hearings on the proposed amendments; and

WHEREAS, based upon all materials relevant to the proposal, staff reports, findings made by the Veneta City Council, and testimony and comments submitted at both public hearings and/or in writing;

NOW, THEREFORE, THE CITY OF VENETA ORDAINS AS FOLLOWS:

SECTION 1. The Findings of Fact in support of amendments to the Veneta Land Development Ordinance 461, Article 2 amending the administrative provisions and to the Veneta Land Division Ordinance 462, Article 4 & 5 amending the subdivision and partition standards adopted by the Veneta City Council on January 26, 2009 in support of this ordinance, attached as Exhibit A, are hereby incorporated herein and made a part of this Ordinance.

SECTION 2. The Veneta Land Development Ordinance 461, Article 2, Sections 2.01 through 2.13 are hereby amended to read as follows:

SECTION 2.01 COMPLIANCE WITH ORDINANCE PROVISIONS

- (1) Land may be used and a structure or part of a structure may be constructed, altered, occupied or used only as this ordinance permits.
- (2) No lot area, yard, off-street parking area, off-street loading area or other open space existing on or after the effective date of this ordinance shall be reduced below the minimum required for it by this ordinance.
- (3) No lot area, yard, off-street parking area, off-street loading area or other open space shall be used as the required lot area, yard, off-street parking area,

off-street loading area or other open space of another use, except as provided for in this ordinance.

SECTION 2.02 INTERPRETATION

Where the conditions imposed by any provision of this ordinance are less restrictive than comparable conditions imposed by any other provisions of this ordinance or any other ordinance, the provisions which are more restrictive shall govern.

SECTION 2.03 ADMINISTRATION

The City Administrator or other official designated as the building and planning official by the City shall have the power and duty to enforce the provisions of this ordinance.

SECTION 2.04 CERTIFICATE OF OCCUPANCY AND FINAL INSPECTION

- (1) Building Inspector Requirements.
 - (a) The Building Inspector shall issue a Certificate of Occupancy for all Residential, Commercial and Industrial buildings. Certificates of Occupancy must meet the requirements in Veneta Municipal Code 15.05.210.
 - (b) The Building Inspector shall conduct a final site inspection for all other construction.
 - (c) The Building Inspector shall provide the City with copies of all Certificates of Occupancy and shall notify the City at the time any final inspection is completed and approved.
 - (d) The Building Inspector shall conduct an on-site inspection of the building site, after receiving notification of final inspection, to ensure that all requirements of this ordinance and approved site plans have been complied with.
 - (e) If the Building Inspector determines that a violation of this ordinance does exist, he shall immediately notify the property owner and follow procedures in accordance with Section 2.10, "Enforcement, Violations and Penalties" of this ordinance.

SECTION 2.05 AUTHORIZATION OF SIMILAR USES

The Building and Planning Official may permit in a particular zone a use not listed in this ordinance, provided the use is of the same general type as the uses permitted there by this ordinance. However, this section does not authorize the inclusion in a zone, where it is not listed, a use specifically listed in another zone. The decision of the Building and Planning Official may be appealed to the Planning Commission using procedures as spelled out in Section 2.07 of this ordinance.

SECTION 2.06 FORM OF PETITIONS, APPLICATIONS, FINAL ACTION

- (1) Petitions, applications and appeals provided for in this ordinance shall be made on forms prescribed by the City.(2)
- (2) An applicant shall be advised that all permits or zone changes necessary for a development project may be merged into a consolidated review process. Zone changes and permits required through the application of the overlay district and discretionary permit procedures shall be available for a consolidated permit process. For purposes of this ordinance, a consolidated permit process shall mean that the hearing body shall, to the greatest extent possible, apply concurrent notice, public hearing and decision making procedures to the permits and zone changes which have been consolidated for review.
- (3) Applications shall be accompanied by plans and specifications drawn to scale, showing the actual shape and dimensions of the legal lot to be built upon; the sizes and locations on the legal lot of all existing and proposed structures; the intended use of each structure; the number of households, if any, to be accommodated thereon; the relationship of the property to the surrounding area; a narrative statement addressing the applicable criteria; and such other information as is needed to determine conformance with this ordinance.

Incomplete applications will not be accepted. Applications that appear to be complete will be reviewed and, within 30 days of its receipt, the applicant will be notified as to the completeness. If the City determines that the application is complete, the City will process the application in accordance with the review procedures for the type of application that has been submitted. If the City determines that the application is incomplete, the City shall advise the applicant in writing of the necessary missing information. Within 180 days after initial application submittal, the applicant shall submit to the City a written statement indicating either an intent to submit the missing information or a refusal to submit the missing information. The City shall begin review of the application when deemed complete for purposes of ORS 127.178 upon receipt of:

- (a) All of the missing information;
- (b) Some of the missing information and written notice from the applicant that no other information will be provided; or
- (c) Written notice from applicant that none of the missing information will be provided.

On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required above and has not submitted:

- (a) All of the missing information;

- (b) Some of the missing information and written notice that no other information will be provided; or
 - (c) Written notice that none of the missing information will be provided.
- (4) After the Building and Planning Official deems an application complete, it shall be sent to the City Engineer, Veneta Public Works Superintendent, affected regulatory agencies which may include but are not limited to the Lane County Fire District No. 1, Oregon Department of Transportation, Lane County Public Works Department, local utility companies, Division of State Lands, and US Army Corp of Engineers.
 - (5) Approval or denial of a land use regulation or limited land use application shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon and explains the justification for the decision based on the criteria standards and facts set forth.
 - (6) The decision of either the Building and Planning Official or the Planning Commission will be issued with a Final Order. If a written Notice of Appeal is not filed within fifteen (15) days of the date the Final Order of the Building and Planning Official or the Planning Commission decision is mailed, the decision becomes final.
 - (7) Final action on a permit or zone change application is required within 120 days from the date the application is deemed complete except where parties have agreed to mediation and for expedited land use decisions.

SECTION 2.07 APPEALS

- (1) An action or ruling of the Building and Planning Official pursuant to this ordinance may be appealed to the Veneta Planning Commission within fifteen (15) days after the Building and Planning Official has rendered its decision. An action or ruling of the Planning Commission pursuant to this ordinance may be appealed to the City Council within fifteen (15) days after the Planning Commission has rendered its decision and the final order has been signed. Written notice of appeal from a decision of either the Building and Planning Official or the Planning Commission shall be filed with the City within fifteen (15) days of the date the final order has been signed.
- (2) Issues of appeal must be raised with sufficient specificity to have afforded the decision maker and the applicant, if appropriate, an adequate opportunity to respond to and resolve each issue. The failure to raise an issue in person or by letter filed in a timely manner precludes appeal and the failure to specify to which criterion the comment is directed, precludes appeal based on that criterion. Appeals may only be made by an adversely affected or aggrieved person or an affected party who appears in person or to a timely presentation of written testimony to the Building and Planning Official or the Planning

Commission and who files a written "Notice of Appeal" within fifteen (15) days of the decision.

- (3) The written notice of appeal shall: (a) be made on the appeal form provided by the City and include applicant's valid signature; (b) be filed with the appropriate fee; and (c) include all matters specifically appealed, including a brief summary of the material presented to the Building and Planning Official or the Planning Commission upon which the decision which is being appealed was based. Specific statutory citations supporting the appeal shall also be included. Failure to comply with one or more of these appeal requirements constitutes a jurisdictional defect which precludes the Planning Commission or City Council from considering the appeal. Any issue not specifically raised in the written appeal shall be deemed waived and will not be heard by the Planning Commission or the City Council as part of the appeal. If the appeal is filed, the Planning Commission or City Council shall receive a report and recommendation thereon from the Building and Planning Official or the Planning Commission and shall hold a public hearing on the appeal. Review is de novo by both the Planning Commission and City Council. The Planning Commission or City Council may continue the hearing for good cause. Following the hearing, the Planning Commission or City Council may sustain, reject, or overrule any recommendations or rulings of the Building and Planning Official or Planning Commission, provided such action complies with the provisions of this ordinance.

SECTION 2.08 FILING FEES

Application, petition and appeal fees shall be paid to the City Recorder upon filing as authorized in Veneta Municipal Code Chapter 3.30. A separate application and fee is required for each decision being appealed. All fees shall be established by a separate resolution adopted by the Council.

SECTION 2.09 WETLAND DEVELOPMENT

Development within a wetland is subject to compliance with Veneta's Wetland Protection Ordinance, Veneta Municipal Code Chapter 18.10.

- (1) Notification. The City shall provide notice to the Division of State Lands (DSL) the applicant, and the owner of record within five working days of the acceptance of any complete application for subdivisions; building permits for new structures; other development permits and approvals that allow physical alteration of land involving excavation and grading, including permits for removal or fill, or both, or development in the floodplain; conditional uses and variances that involve physical alteration of land or construction of new structures; and planned unit development approvals that are wholly or partially within areas identified as wetlands on the Statewide Wetlands Inventory. This provision does not apply if a permit from DSL has been issued for the proposed activity.

- (2) Approval. Approval of any activity described above shall include one of the following:
- (a) Issuance of a permit by DSL required for the project before any physical alteration takes place within the wetlands;
 - (b) Notice from DSL that no permit is required; or
 - (c) Notice from DSL that no permit is required until specific proposals to remove fill or alter the wetlands are submitted.

If DSL fails to respond within 30 days of notice, the City approval may be issued with written notice to the applicant and the owner of record that the proposed action may require state or federal permits. The City may issue local approval for parcels identified as or including wetlands on the Statewide Wetlands Inventory upon providing to the applicant and owner of record a written notice of possible presence of wetlands and the potential need for state and federal permits and providing DSL with a copy of the notification of comprehensive plan map or zoning map amendments for specific properties.

SECTION 2.10 ENFORCEMENT, VIOLATIONS AND PENALTIES

- (1) Responsibility. In any enforcement action the person or persons owning or occupying the premises at the time of the violation shall be presumed to be the person or persons who constructed, moved, caused or maintained the unlawful activity, use, condition, or structure. This presumption may be rebutted by either the city or the defendant both of whom shall have the right to show that the offense was committed by someone other than, or in addition to, the person charged. This provision shall not be construed as relieving a person in possession and control of property from any duty imposed upon him or her by this ordinance.

Records of the Lane County assessor showing the person or persons to whom the taxes are assessed for the premises shall constitute prima facia evidence that the person or persons are in possession or control of the premises. Evidence of the name of a person or persons displayed on a sign or signs located on premises which is zoned commercial or industrial shall constitute prima facia evidence that the person or persons whose name is displayed is in possession or control of the premises. This provision shall not be construed to relieve any agent, manager, employee or other person who actually committed a violation from responsibility.

- (2) Inspection and Right of Entry. When necessary to investigate a suspected violation of this land development ordinance, or an application for or revocation of any permit issued under this land development ordinance, the City Administrator and/or his designee may enter on any site or any structure open to the public for the purpose of investigation, provided entry is done in accordance with law. No site or structure that is closed to the public shall be entered

without the written consent of the owner or the occupant unless a search warrant is obtained..

(3) Procedures.

- (a) Within ten (10) days after notification of a violation of this ordinance, the Building and Planning Official shall notify the property owner that such a violation exists.
- (b) Where the violation, in the opinion of the City Administrator and/or his designee, may adversely affect the health, safety or welfare of an individual, group or the community as a whole if not corrected immediately, action to rectify the problem may be required immediately or within a reasonable time as established by the City Administrator and/or his designee.
- (c) Where the violation does not involve a structure, action to rectify such shall be made within ten (10) days. Where the violation involves a structure, action to rectify shall be made within thirty (30) days.
- (d) Any use or structure established, operated, erected, moved, altered, enlarged, painted, or maintained contrary to this land development ordinance is unlawful and a public nuisance, and may be abated as provided in Veneta Municipal Code Chapter 8.05. The City Administrator and/or his designee has the discretion of referring the matter to the City Attorney to institute any necessary legal proceedings to enforce the provisions of this land development ordinance.

- (4) Penalty. A person violating a provision of this Ordinance shall, upon conviction, be fined not less than \$105.00 nor more than \$500.00 for each violation. A violation of this ordinance shall be considered a separate offense for each day the violation continues.

SECTION 2.11 NOTICE OF PUBLIC HEARING

- (1) Each notice of public hearing authorized by this ordinance shall be published in a newspaper of general circulation in the City and posted at Veneta City Hall at least ten (10) days prior to the date of the hearing.
- (2) A notice of public hearing on an amendment to a zoning map shall be mailed to all owners of property located within not less than 500 feet from the exterior boundaries of the property for which the zoning map amendment has been requested. Notice shall also be provided to any neighborhood or community organization recognized by the City and whose boundaries include the site; to public notice subscribers; to the Lane County Assessor; and to the Lane County Land Management Division.

- (3) A notice of public hearing on a quasi-judicial land use decision shall be mailed to the property owner, applicant, anyone who has expressed interest in the application or public notice subscribers, and all owners of property located within 300 feet of the property, for which the quasi-judicial land use decision has been requested. A notice shall also be posted on the property for which the land use decision has been requested.
- (4) For the purpose of mailing notices of public hearing, the applicant shall provide the City with a list of property owners of record on the most recent property tax assessment roll. If the applicant fails to provide a list, the City may prepare the list and charge the applicant for the staff time involved as a part of the publication costs.
- (5) The notice of hearing shall be mailed at least:
 - (a) Twenty (20) days before the hearing; or
 - (b) If two (2) or more hearings are required, ten (10) days before the first hearing.
- (6) Failure of a person to receive the notice prescribed in this section shall not impair the validity of the hearing.
- (7) When an application is received to change the zone of any property which includes all or part of a manufactured dwelling park, written notice by first class mail shall be sent to each existing mailing address for tenants of the manufactured dwelling park at least ten (10) days, before the date of the first hearing on the application.
- (8) The public notice shall explain the nature of the application and the proposed use or uses which would be authorized; list the applicable criteria from the ordinance and the comprehensive plan that apply to the application; cite the street address or some other easily understood geographical reference to the subject property; state the date, time and location of the hearing; include the name and telephone number of the City representative to contact for additional information; state that a copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost and that a staff report will be available for inspection at no cost at least seven (7) days prior to the hearing and will be provided at reasonable cost. The notice shall also include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings and shall state that failure to raise an issue in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes appeal based on that issue. It shall also state that failure of the applicant to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the city to respond to the issues precludes an action for damages in circuit court.

- (9) The notice provisions of this section shall not restrict the giving of notice by other means.
- (10) A notice of hearing on an amendment to a zoning map or text amendment shall be mailed to the Land Conservation and Development Commission (LCDC) 45 days prior to the first evidentiary hearing date.
- (11) The City shall provide notice of the decision to the applicant and any person who submits written or oral testimony. The notice of the decision must identify the application, state the decision being made and the date it was signed, include an explanation of appeal rights, either at the local level or to the Land Use Board of Appeals (LUBA), and briefly summarize the local decision making process for the decision being made.

If the City Council approves a zone change, notice of the decision shall also be mailed to the Lane County Assessor's Office.

SECTION 2.12 CONTINUANCE, REQUEST FOR EXTENSION AND REOPENING PUBLIC HEARINGS

- (1) The Planning Commission may continue the public hearing to a time, date, and place certain if additional information is needed to make a decision.
- (2) Unless there is a continuance, if a participant so requests before the conclusion of the initial public hearing, the record shall remain open for at least seven (7) days after the hearing. Such an extension shall be subject to the limitations of the 120-Day Rule, unless the extension is requested or agreed to by the applicant. Unless waived by the applicant, the City must allow the applicant at least seven (7) days after the record is closed to all other parties to submit final written arguments in support of the application. This seven (7) day period is not subject to the 120-Day Rule.
- (3) When a local governing body, planning commission, council or hearings officer reopens a record to admit new evidence, arguments, or testimony, any person may raise new issues which relate to the new evidence, testimony or criteria for decision-making which apply to the matter at issue.

SECTION 2.13 NOTICE OF LIMITED LAND USE ACTIONS

Limited Land Use decisions do not require public hearings; however, the decision is subject to the following requirements:

- (1) The City shall follow the applicable procedures contained within its land use regulations and other applicable legal requirements.
- (2) Written notice shall be posted at City Hall and mailed to the property owner, applicant and all owners of property within 300 feet of the entire contiguous site

