

**City of Venice
Planning and Zoning Department**

MEMORANDUM

DATE: August 27, 2013

TO: Planning Commission

FROM: Scott Pickett, AICP, Senior Planner

SUBJECT: LDC Text Amendment 13-4AM – Vested Rights Determination

I. OVERVIEW OF LDC TEXT AMENDMENT

Upon request of the City Attorney and authorization from the City Manager, the Planning & Zoning Department has prepared a LDC text amendment creating a new process whereby City Council can hear and act on alleged property rights acquired by an owner by prior city action.

Rationale for Proposed Amendment

The proposed amendment provides the city another means to potentially resolve alleged land or property rights disputes out of court. The city has a long-standing practice of having all actions of the zoning administrator and Planning Commission appealable to City Council. The proposed provisions on vested rights determinations provides the city a means to review and act on matters that cannot be currently resolved through the administration of the existing Land Development Regulations. The provisions are consistent with and enhance the city's practice of providing an opportunity of appealing matters related to property rights to City Council.

Determination of a Vested Right

Any person alleging a vested right will need to affirmatively demonstrate to City Council two factors related to the property. First is a showing of good faith reliance on some act or omission of government. A governmental act may include the issuance of a permit, having inspections conducted, connection of utility service or receipt of a business tax. A government omission may be the issuance of a permit in error or a failure to issue a permit. Second is a showing of "substantial change in position or the incurrence of such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights that have been acquired. Topics that may be raised for this showing may include incurred indebtedness and expenditures, the duration in which the acquired rights have been enjoyed and the consequences of not having the acquired right affirmed.

Content of the Draft Ordinance

Nearly all of the content of the draft ordinance is derived from the existing city Code of

Ordinances. The language on vested rights determination was obtained from Chapter 94, Concurrency Management. The procedural provisions were obtained from existing LDC language.

Procedural Requirement for LDC Amendment

A public hearing is scheduled for September 3, 2013. The order and action of the required public hearing will first be review and recommendation by Planning Commission. The Planning Commission's recommendation, including findings of fact, will be forwarded to City Council for final action. The proposed text amendment shall be approved by ordinance and requires two City Council public hearings for adoption.

II. ACTION REQUIRED BY THE PLANNING COMMISSION

Planning Commission Determination

The Venice Code of Ordinances establishes the procedures and approval criteria for processing of amendments to the land development code. Section 86-47 provides the review standards to be used by Planning Commission and City Council in the development of findings, recommendations and a final decision concerning the amendment. Based on the standards included below, the following determination alternatives are available for Planning Commission consideration:

1. Amendment approval.
2. Amendment approval with modifications.
3. Amendment denial.

Sec. 86-47. Contents of Planning Commission Report

- (2) *Other amendments. When pertaining to other proposed amendments of this chapter, the planning commission shall consider and study:*
 - a. *The need and justification for the change.*
 - b. *The relationship of the proposed amendment to the purposes and objectives of the city's comprehensive planning program and to the comprehensive plan, with appropriate consideration as to whether the proposed change will further the purposes of this chapter and other city ordinances, regulations and actions designed to implement the comprehensive plan.*

III. CONSISTENCY WITH COMPREHENSIVE PLAN

The Comprehensive Plan established the goals, objectives, and policies that drive the City of Venice's planning practices. The proposed text amendment does not conflict with, any goals, objectives or policies within the Comprehensive Plan.