

ORDINANCE NO. 2013-21

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF VENICE, FLORIDA, CHAPTER 86, LAND DEVELOPMENT CODE, ARTICLE IV, DEVELOPMENT REVIEW PROCEDURES, SECTION 86-41, PUBLIC WORKSHOP REQUIREMENTS; SECTION 86-42, CONDITIONAL USE; ARTICLE VIII, GENERAL ADMINISTRATIVE PROVISIONS, SECTION 86-570, DEFINITIONS AND CHAPTER 122, ZONING, ARTICLE V, SUPPLEMENTARY ZONING DISTRICT REGULATIONS, DIVISION 1, GENERALLY, SECTION 122-394, EXCLUSIONS FROM HEIGHT LIMITS; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HERewith; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. (TEXT AMENDMENT 13-2AM)

WHEREAS, pursuant to Section 163.3174, Florida Statutes, Venice City Council has duly designated the city's planning commission as the local planning agency for the incorporated area of the city; and

WHEREAS, the City of Venice is required by Florida Statutes to update the land development code for consistency with the comprehensive plan; and

WHEREAS, city council desires to comprehensively update the land development code and this amendment furthers that end; and

WHEREAS, the planning commission, has considered text amendment No. 13-2AM to the land development code and following a duly noticed public hearing on April 2, 2013, forwarded its recommendation for approval and findings of consistency with the comprehensive plan of the city to city council as required by law; and

WHEREAS, city council has received and considered the report of the planning commission recommending approval.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA, as follows:

SECTION 1. The Whereas clauses above are ratified and confirmed as true and correct.

SECTION 2. Chapter 86, Land Development Code, Article IV, Development Review Procedures, Section 86-41, Public Workshop Requirements is amended as follows:

Sec. 86-41. Public workshop requirements.

(a) No change.

The City of Venice Code of Ordinances is amended as follows with ~~strike-through text~~ identifying deletions and underlined text indicating additional language.

(b) *Applications requiring review.* The owner or agent applying for the following types of city land use approvals must conduct one public workshop prior to obtaining a finding of sufficiency for application submittal:

- (1) *Preliminary plat.* This includes all requests for preliminary subdivisions greater in size than one acre or five residential dwelling units ~~that will be decided by city council.~~
- (2) *Special exception.* This includes all requests for permissibility of certain land uses ~~that will be decided by the planning commission~~ approved by planning commission. Applications for variance, modification, or waiver of design standards, are not included in this requirement.
- (3) *Conditional use.* This includes all requests for ~~building height~~ allowances ~~that will be decided by city council~~ approved through a public hearing by city council upon recommendation by planning commission.
- (4) *Site and development plan.* This includes all requests for site plan approval greater in size than one acre or five residential dwelling units that will be decided by the planning commission.

(c) through (g) No change.

SECTION 3. Chapter 86, Land Development Code, Article IV, Development Review Procedures, Section 86-42, Conditional Use is amended as follows:

Sec. 86-42. Conditional Use.

(a) *Generally.* ~~A conditional use provides for building height allowances that exceed a build by right height threshold within certain zoning districts. Such building height allowances may be permissible in a zoning district as a conditional use if specific provision for such building height allowance is made in this chapter. A conditional use is an allowance with regard to height, density, or gated communities that may be approved~~ authorized only through approval by city council upon recommendation by planning commission. The city council may authorize the following allowances as a conditional use if the zoning district specifically allows for the conditional use and if the conditional use is approved by city council:

- (1) An allowance resulting in an increase to building height equal to or greater than ten feet over the maximum height of structures in each zoning district. Building height allowances less than ten feet over the maximum height of structures in each zoning district shall be handled as a variance, per Sec. 86-46.
- (2) An allowance that exceeds established density standards for the zoning district in which the development of affordable and/or workforce housing is proposed.

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(3) An allowance that permits the development of a gated community, characterized by physical barriers to automotive and pedestrian circulation.

(b) *Written petition.*

(1) A written petition for conditional use shall be submitted indicating the provision of this chapter under which the ~~building height~~ allowance is sought and stating the grounds on which it is requested, with particular reference to the types of findings that the planning commission and city council must make. The petition shall include material necessary to demonstrate that the grant of conditional use will be in harmony with the general intent and purpose of this chapter, and will not be injurious to the neighborhood or to adjoining properties or otherwise detrimental to the public welfare. Such material may include, but is not limited to the following, where applicable:

- a. Site ~~and development~~ plans at an appropriate scale showing proposed placement of structures on the property, and provisions for ingress and egress, off-street parking and off-street loading areas, refuse and service areas, and required yards and other open spaces;
- b. Plans for screening and buffering with reference as to type, dimensions and character;
- c. Proposed landscaping and provisions for trees protected by city regulations as provided in Chapter 118, Article II of the code; and
- d. Proposed signs and lighting, including type, dimensions and character.

(2) Where a rezoning as well as grant of conditional use is requested simultaneously for the same parcel of land, both petitions may be processed concurrently in accordance with the procedures set forth in this article.

(3) ~~The city council, upon recommendation from the planning commission, has the authority to grant conditional use approval for height as established herein, subject to any limitations as specified in an applicable zoning district, and such requests shall~~ A conditional use petition may be filed concurrently with a site and development plan application.

(c) *Public notice.*

(1) No request for conditional use may be considered by the planning commission or city council until such time as notice of a public hearing on the proposed ~~amendment~~ conditional use has been given to the citizens of the city by publication of a notice of the hearing in a newspaper of general circulation in the city, at least once, 15 days in advance of the public hearing.

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- (2) In addition to the notice required by section (c)(1), a sign shall be posted on the land which is the subject of the hearing at least 15 days prior to the date of the public hearing. The sign to be posted on the land shall measure at least ten inches by 16 inches and shall contain substantially the following language:

A PUBLIC HEARING CONCERNING THE CONDITIONAL USE OF THIS PROPERTY WILL BE HELD BY THE ~~VENICE PLANNING COMMISSION~~ (Applicable Board) ON (Date) AT (Time). CALL (Phone Number) FOR INFORMATION.

It shall be a violation of this chapter for any person to remove or deface any such ~~poster~~ posted sign until ~~city council~~ the applicable board has acted on the petition. The sign shall be erected in full view of the public on each street side of the land by the zoning administrator. Where the property for which conditional use is sought is landlocked, the signs shall be erected on the nearest street right-of-way, with an attached notation indicating generally the distance and direction to the property for which conditional use is sought.

- (3) Notice of the time and place of the public hearing by the planning commission and city council shall be sent at least 15 days in advance of the hearing by mail to the owner of the subject property or his designated agent or attorney, if any, and to all owners of property within 250 feet of the property lines of the land for which conditional use is sought, or within 250 feet of the centerline of any right-of-way or water body adjacent to the subject property, whichever distance is greater; provided, however, that, where the applicant is the owner of land not included in the applicant's application, and such land that is not included in the application is a part of or adjoins the parcel for which the request is made, the 250-foot requirement shall be measured from the boundaries of the applicant's ownership, including the land not covered by the applicant's application up to a maximum of 600 feet. For purposes of this requirement, the names and addresses of property owners shall be deemed those appearing on the latest tax rolls of the county. Failure of a property owner to receive mail notice shall not invalidate the hearing or subsequent action related thereto. The city clerk shall execute and file a certificate that shall contain the names and addresses of those persons notified, and the dates the notice was mailed. The certificate shall be signed by the city clerk and the official seal affixed. The certificate shall be prima facie evidence of the fact that notice was mailed.

(d) *Submission of planning commission ~~report~~ recommendation to city council.* Within 15 days from the date a proposed conditional use has been heard by the planning commission, unless a longer time is mutually agreed upon between the city council and the planning commission in the particular matter, the planning commission shall submit its ~~report and~~ recommendation to city council.

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(e) *Contents of planning commission ~~report~~ recommendation*. The planning commission shall make a ~~written finding~~ recommendation to the city council as to whether or not the granting of the conditional use will adversely affect the public interest; as to whether or not the specific requirements governing the individual conditional use, if any, have been met by the petitioner; and as to whether or not satisfactory provision and arrangement has been made concerning the following matters, where applicable:

- (1) Compliance with all applicable elements of the comprehensive plan;
- (2) General compatibility with adjacent properties and other properties in the district;
- (3) Scale of development. The relationship of the project or development in terms of its size, height, bulk, massing, intensity, and aesthetics, to its surroundings;
- (4) Required yards and other open space;
- (5) Screening and buffering, with reference to type, dimensions and character;
- (6) Transportation access management and congestion with particular reference to automotive and pedestrian safety and convenience, traffic flow and control;
- (7) Off-street parking and loading areas, where required;
- (8) Value added considerations including tax base diversification, employment, and affordable housing unit expansion;
- (9) Any special requirements set out in the schedule of district regulations of this chapter for the particular use involved.

(f) *Conditions of approval*. The city may impose conditions that are found necessary to ensure that the ~~building height allowance~~ conditional use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions may include, but are not limited to, the following:

- (1) Requiring site or architectural design features which substantially advance Venetian Mediterranean design standards or other appropriate architectural design compatible with the surrounding area;
- (2) Requiring larger setback areas, lot area, and/or lot depth or width;
- (3) Limiting the building structure height, size or lot coverage, and/or location on the site;

- (4) Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;
 - (5) Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;
 - (6) Requiring and designating the size, height, location and/or materials for fences;
 - (7) Limiting or setting standards for the location, design, and/or intensity of outdoor lighting and signage;
 - (8) Designating the size, number, location and/or design of vehicle access points or parking areas;
 - (9) Requiring street right-of-way to be dedicated and streets, sidewalks, curbs, planting strips, pathways, or trails to be improved;
 - (10) Encouraging the protection and preservation of natural features including existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources and/or sensitive lands; and
 - (11) Requiring the dedication of sufficient land to the public, and/or construction of pedestrian/bicycle facilities including, but not limited to, pathways, gazebos, public art displays and other such pedestrian amenities.
- (g) *Planning commission ~~report and recommendations~~ to be advisory only.* The ~~report and recommendations~~ of the planning commission regarding conditional use shall be advisory only and shall not be binding upon city council.
- (h) *Action by city council on planning commission ~~report and recommendation~~.* Upon receipt of the planning commission's ~~report and recommendations~~, the city council shall hold a second public hearing.
- (i) *Approval of restrictions, stipulations and safeguards.*
- (1) The city council, after receiving the recommendation from the planning commission on a conditional use request, may, after public hearing, grant or deny such application and may make the granting conditional upon such restrictions, stipulations and safeguards as it may deem necessary to ensure compliance with the intent and purpose of the comprehensive plan.
 - (2) Any conditional use shall expire ~~12~~ 24 months from the date of grant unless a complete building permit application has been issued filed for the following:

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(a) the building or buildings for which a conditional use for increased height was approved.

(b) an affordable and/or workforce housing dwelling unit.

(c) for the gated community for which the conditional use was approved.

~~, upon request, an extension of time is granted by the city council, to a date certain. Any conditional use shall expire 12 months following the discontinuation of the use for which the building height allowance was granted if the use has not then been recommenced. However, at the written request of the property owner prior to the expiration of the 24 month period, the city council may extend the 24 month period for an additional 12 months, provided that the property owner can demonstrate by competent and substantive evidence that financial or legal constraints or other events beyond the control of the applicant prevented application for a building permit.~~

(3) In cases where stipulations, restrictions or safeguards are attached, all representations of the owner or his agents at public hearings shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief. All conditions, restrictions, stipulations and safeguards that are a condition to the granting of the ~~building height allowance~~ conditional use shall be deemed contractual and may be enforced by suit for injunction or other appropriate relief. ~~The city shall be entitled to recover its costs, including reasonable attorney fees, in any action brought to enforce the provisions of this subsection.~~

(j) *Denial.* If city council shall deny a conditional use, it shall state fully in its record its reasons for doing so. Such reasons shall take into account the standards stated herein, or such of them as may be applicable to the action of denial, and the particular regulations relating to the specific conditional use requested, if any.

(k) *Limitation on reapplications for conditional use.*

(1) Whenever city council has denied an application for conditional use, the planning commission shall not thereafter consider any further application for that conditional use of any part or all of the same property for a period of 12 months from the date of such action.

(2) The time limits of subsection (j)(1) of this section may be waived by four affirmative votes of city council when such action is deemed necessary to prevent injustice or to facilitate the proper development of the city.

SECTION 4. Chapter 86, Land Development Code, Article VIII, General Administrative Provisions, Section 86-570, Definitions is hereby amended as follows:

Section 86-570. Definitions.

The City of Venice Code of Ordinances is amended as follows with ~~strike through text~~ identifying deletions and underlined text indicating additional language.

(a) No change.

(b) Any word not specifically defined herein shall be interpreted as meaning its most commonly used definition in general society.

Building, height of means the vertical distance measured from the grade greater of the following; FEMA first habitable floor requirement, 18 inches above the Florida Department of Environmental Protection requirement for the first habitable floor structural support, 18 inches above the elevation of the average crown of the adjacent roads, or the average natural grade unaltered by human intervention; to the highest finished roof surface in the case of flat or mansard roofs, or to a point at the average height of the highest roof having a pitch peak of the roof or the highest point of any non-exempt appurtenance attached to the roof. ~~For buildings set back from the street line, the height of the building shall be measured from the average elevation of the finished grade along the front of the building, provided its distance from the street line is not less than the height of such grade above the established curb level. Where minimum floor elevations in flood prone areas have been established by law which exceed the minimum point of measurement established by this section, the building height shall be measured from such required minimum floor elevations.~~

Conditional use means an allowance with regard to increased building height equal to or greater than ten feet or increased density for affordable and/or workforce housing use of the property to permit an increase in building height allowance that would not be appropriate generally or without restriction throughout a zoning division or district. A conditional use permit is usually justified after approved through a public hearing process and a finding that the increased height fits with the goals of the community's master plan and is generally compatible with neighboring developments. Gated communities may be allowed in certain zoning districts by the approval of a conditional use. All approved conditional uses shall be authorized by a permit, which states the required finding and reasons therefore, the conditions imposed on the use, structure, the location of the conditional use and the time limit, if any.

Exempt building appurtenance(s) means limited structural elements excluded from building height standards including spires, belfries, cupolas, antennas in all districts except RSF, water tanks, ventilators, chimneys, elevator shaft enclosures or other appurtenances not intended for human occupancy that are placed above the roof level as necessary for function or safety; however, such limited structural elements shall not exceed height standards prescribed by the Federal Aviation Administration or by zoning regulations within the flight approach zone of airports airport zones regulated by this chapter, whichever provides for a lower height.

SECTION 5. Chapter 122, Zoning, Article V, Supplementary Zoning District Regulations, Division 1, Generally, Section 122-394, Exclusions from height limits is deleted as follows:

The City of Venice Code of Ordinances is amended as follows with ~~strike through text~~ identifying deletions and underlined text indicating additional language.

Sec. 122-394. – Exclusions from height limits. Reserved.

~~Unless otherwise provided, the height limitations contained in the schedule of district regulations set out in article IV, division 2 of this chapter do not apply to spires, belfries, cupolas, antennas in all districts except RSF, water tanks, ventilators, chimneys, elevator shaft enclosures or other appurtenances usually required to be placed above the roof level and not intended for human occupancy; however, the heights of these structures or appurtenances thereto shall not exceed any height limitations prescribed by the Federal Aviation Agency or airport zoning regulations within the flight approach zone of airports.~~

SECTION 6. If any part, section, subsection, or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this ordinance, and all applications thereof not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The city council specifically declares that no invalid or prescribed provision or application was an inducement to the enactment of this ordinance, and that it would have enacted this ordinance regardless of the invalid or prescribed provision or application.

SECTION 7. This Ordinance shall take effect immediately upon approval and adoption as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA THIS 13TH DAY OF AUGUST, 2013.

First Reading: July 23, 2013
Final Reading: August 13, 2013
Adoption: August 13, 2013

John W. Holic, Mayor

ATTEST:

Lori Stelzer, MMC, City Clerk

(SEAL)

Approved as to form:

The City of Venice Code of Ordinances is amended as follows with ~~strike through text~~ identifying deletions and underlined text indicating additional language.

David Persson, City Attorney

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