

**John Day City Council
November 13, 2012
7:00 PM
Council Chambers
AGENDA**

1. **OPEN AND NOTE ATTENDANCE**
2. **APPROVAL OF CITY COUNCIL MINUTES OF OCTOBER 9, 2012**
3. **APPEARANCE OF INTERESTED CITIZENS – At this time Mayor Lundbom will welcome the general public and ask if there is anything they would like to add to tonight’s agenda.**

ACTION ITEMS:

4. **PUBLIC HEARING UNDER JOHN DAY CITY CODE TITLE 4, CHAPTER 3 (DANGEROUS BUILDINGS) DETERMINATION OF DANGEROUS BUILDING LOCATED AT 405 SE HILLCREST, JOHN DAY, OREGON**
 - Attachments:
 - November 2, 2012 letter to owner of property w/photos
 - John Day City Code Title 4, Chapter 3 Dangerous Buildings
 - Notice of Public Hearing
 - Resolution No. 12-695-19
 - John Day City Code Title 1, Chapter 4 General Penalty
5. **DISCUSS FOR APPROVAL PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF JOHN DAY AND ENVIRO BOARD CORPORATION OF CAMDEN, NEW JERSEY OR A LIMITED LIABILITY COMPANY AFFILIATED WITH ENVIRO BOARD CORPORATION**
6. **DISCUSS FOR SIGNATURE ODOT MULTIMODAL TRANSPORTATION PROGRAM PROJECT APPLICATION**
 - Attachment:
 - US Highway 395 Sidewalk/Bicycle Lane Improvements Project grant application
7. **DISCUSS REQUEST FROM THE TIMBER TRUCKERS PARADE COMMITTEE**
 - Attachment:
 - Letter from Timber Truckers Parade Committee received November 1, 2012

OTHER BUSINESS:

8. **OTHER BUSINESS AND UPCOMING MEETINGS**

Attachments:

- October 26, 2012 and November 2, 2012 LOC Bulletins
- Flyer for Leadership Boot Camp for Newly Elected Officials

ADJOURN

TO: John Day City Council

FROM: Peggy Gray, City Manager

DATE: November 9, 2012

SUBJECT: Public Hearing under John Day City Code Title 4, Chapter 3 (Dangerous Buildings) Determination of Dangerous Building Located at 405 SE Hillcrest, John Day, Oregon

Attachments:

- November 2, 2012 letter to owner of property w/photos
- John Day City Code Title 4, Chapter 3 Dangerous Buildings
- Notice of Public Hearing
- Resolution No. 12-695-19
- John Day City Code Title 1, Chapter 4 General Penalty

BACKGROUND:

At the September 11, 2012 council meeting, Councilor Chris Labhart informed the John Day City Council about a dangerous building in the City. According to the John Day City Code Title 4, Chapter 3, Dangerous Building; thereupon the Common Council shall, within a reasonable time, fix a time and place for a public hearing thereon. Notice shall be mailed to the owner of record of the premises whereon said building is located, by the City Recorder, notifying said owner in general terms that a hearing will be held concerning said property, and the time and place thereof.

Attached is the Notice of Public Hearing under John Day City Code Title 4, Chapter 3 (Dangerous Buildings). The City Council will hold a public hearing on Tuesday, November 13, 2012 to determine whether the Building is dangerous.

In accordance with Section 4-3-2 of the Dangerous Building Code, (a) notice of the public hearing was mailed to the Building's owner of record (letter included in council packet), and (b) the public hearing notice was posted in three public places within the City for ten (10) days prior to the date of the hearing.

At said time and place, or at such other time and place, as the Council may adjourn to, said hearing shall be held, and the Council shall determine by resolution whether or not said building is dangerous. The Council may, as a part of said hearing, inspect said building, and the facts observed by said Council at such inspection may be considered by it in determining whether or not said building is dangerous. At said hearing the owner or other person interested in said property or building shall have the right to be heard, if such owner or person requests the same.

Attached is Resolution No. 12-695-19 declaring the building located at 405 SE Hillcrest Road, John Day, Oregon, a dangerous building and ordering the building's owner of record to remove or abate the building within thirty (30) days. Section 3 of the resolution gives the Building's owner 30 days to "cure" the dangerous building by removal or abatement. Please note the City Code does not require the City to give 30 days. I conferred with our legal counsel and given that the owner is an out-of-town bank and unlikely to respond in less than 30 days, they think giving a 30-day cure period is fine under the circumstances. Legal counsel also advised that while a 30-

day cure period is longer than required and places the City in a potentially risky position if a situation were to occur on the property in the interim, practically speaking a cure period of less than 30 days could also be problematic. With that being said we do somewhat set precedent for a 30-day cure period in any other dangerous building issues that may arise in the future.

Section 4 addresses what will happen if the Building's owner fails to cure within 30 days. Section 4-3-2 generally provides that if the Building's owner does not obey the City Council's order to remove or abate the dangerous building, "then the Council shall have the power and duty to order said building removed or made safe at the expense of the property on which the same may be situated. In that event the Council must specify with convenient certainty the work to be done and shall file a statement thereof with the Recorder, and shall advertise for bids for the doing of said work..."

Based on the above provision, if the Building's owner fails to cure within 30 days, the City Council would then have the power and duty to order the Building removed or abated at the expense of the property on which the Building is located. This appears to require the City Council to approve a separate resolution to make that order and to specify the work to be done, among other things.

Note that Section 4-3-3 sets forth alternative procedures for abatement. If the City Council is required to approve a second resolution as discussed above, it would obviously take more time. The City could be looking at removal or abatement 60 days out. If you would like us to be more aggressive, we can discuss alternative procedures. However, given the extreme circumstances (i.e., possible removal of the Building and potential legal challenges), the more conservative approach is to follow the procedure set forth in 4-3-2.

- Section 5 addresses the penalty if the Building's owner fails to cure within 30 days. Please note that Section 1-4-1, which is cited in Section 4-3-4, does not allow each day that a violation occurs to constitute a separate offense. Section 1-4-2, however, provides authority for each day on which a violation occurs to constitute a separate offense and states that it is "applicable to every section of this City Code." Section 1-4-2 thus arguably applies to the Dangerous Buildings Code, so legal counsel is fine with including the separate offense language in the Resolution. If for some reason Section 1-4-2 was found not to apply to the Dangerous Buildings Code, Section 7 of the Resolution relating to severability would kick in.
- Section 6 requires the City Manager to cause a copy of the Resolution to be mailed to the Building's owner of record. Legal counsel proposes that they prepare and send a letter to Bank of America enclosing a copy of the signed Resolution. In the letter, they will summarize the Council's findings and order. The thought behind this is that perhaps the Bank will pay more attention to a letter coming from legal counsel.

RECOMMENDATION:

The John Day City Council adopts Resolution No. 12-695-19.

TO: John Day City Council

FROM: Peggy Gray, City Manager

DATE: November 9, 2012

SUBJECT: Discuss for Approval Purchase and Sale Agreement between the City of John Day and Enviro Board Corporation of Camden, New Jersey or a limited liability company affiliated with Enviro Board Corporation

BACKGROUND:

On November 5, 2012 William Peiffer of Enviro Board emailed a new proposal in regards to the Purchase and Sale Agreement for the purchase of Lot 28 of the Grant County Airport Industrial Park. Currently the buyer is responsible for \$15,000 for the transformer and the City of John Day is responsible for \$135,000 for bringing three phase power to Lot 28 (less an anticipated \$50,000 reimbursement by the Oregon Strategic Reserve Fund that would pass through the buyer) bringing the total cost to the City at \$85,000 (if the forgivable loan is approved).

Mr. Peiffer states the Oregon Strategic Reserve Fund is a solid opportunity for many circumstances; however, in this instance it complicates matters internally for countless reasons including but not limited to which entity makes the application, whether another entity guarantees the loan, different entity owners, the Forgiveness of Debt tax by the IRS of roughly \$18,000 on the owners of one or several entities (applicant(s) and possibly guarantor) which will likely include a bank as the buyer of tax credits, and the allocations among them of the tax each with each entity having separate legal counsel, etc. all of which is in the context of the size of the benefit which is \$50,000 (less the \$18,000 tax, legal fees relating to entities and shareholders etc.). Mr. Peiffer proposes the buyer pay the \$50,000 in electrical costs (in addition to the \$15,000 for the transformer) and waive the requirement to apply for the Oregon Strategic Reserve Fund. Mr. Peiffer states this puts the City of John Day in exactly the same position it would be in if the Reserve Fund was applied for and received.

Additionally Mr. Peiffer states in the context of tax planning, buyer improvements to the site are tax deductible to the buyer but site purchase costs are not. Mr. Peiffer would like to explore the possibility with the City Council of paying an additional \$36,034 in electrical costs and reduce the site purchase price by that exact amount. To summarize, Mr. Peiffer proposes the following:

- Buyer would pay OTEC \$15,000 for the transformer
- Buyer would pay OTEC \$86,034 in electrical costs (\$50,000 plus \$36,034)
- Buyer would pay the City of John Day \$1.00 for the site (Lot 28).
- City of John Day would pay OTEC \$48,965 in electrical costs.

The economic benefit to John Day remains unchanged from the transaction as originally proposed and Mr. Peiffer states the new proposal sheds enormous complexity for the buyer.

Mr. Peiffer ends his proposal stating they are open to either (i) a pro-rata sharing cost overages and cost underages, or (ii) John Day bearing cost overages and retaining cost underages.

Please note this new proposal is not what was agreed upon in the signed Letter of Intent we currently have with the buyer. Also the new proposal is not what was stated to the general public at our Public Hearing that was held on September 11, 2012 and could cause problems should someone challenge accepting the new proposal.

In a conference call with Mr. Peiffer and City Attorney Jeremy Green we discussed the proposed language to revise the Purchase and Sale Agreement. City Attorney Green stated the new proposal does not change from an economic standpoint and is just a structural change. However, the structural change language needs to be included in the revised Purchase and Sale Agreement stating that the \$1.00 purchase price is in lieu of development improvements for bringing the three phase power to Lot 28 in the amount of \$36,034.

RECOMMENDATION:

William Peiffer offered to draft the revised Purchase and Sale Agreement; unfortunately he will not have it available until the end of the week. To that end, it doesn't give the City time to review the agreement by the time of this council agenda. I hope to have a revised agreement by early next week or at the latest by the time of the council meeting. In the interim, I will forward on any information I receive by email to each councilor.

TO: John Day City Council

FROM: Peggy Gray, City Manager

DATE: November 9, 2012

SUBJECT: Discuss for Signature ODOT Multimodal Transportation Program Project Application

Attachment:

- US Highway 395 Sidewalk/Bicycle Lane Improvements Project grant application

BACKGROUND:

At our last city council meeting the City Council approved the recommendation of the Public Works Committee to have staff apply for as many projects as possible for ODOT's new Multimodal Transportation Enhance Program/Project Application for the 2015-2018 STIP. As we discussed this application replaces several other separate application processes. This allows local governments and transportation agencies to focus on what investments are best for their area while ODOT determines the appropriate funding programs.

The City Council selected the sidewalk/bicycle lane project from SW 2nd going south to Grant Union Junior-Senior High School as their top priority; the second priority were the sidewalks extending from City Hall east to Meadowbrook Apartments on Highway 26 with sidewalks on 7th Street to the 7th Street Sports Complex being third.

Included in your council packets you will find the application for the Council's top priority named US Highway 395 Sidewalk/Bicycle Lane Improvements Project. This project will create 3,500 lineal feet of wider travel lanes (max. of 13 ½') for vehicle traffic; 6' sidewalks with 6" curbs for pedestrians; increase bike lanes for bicyclists to 7 ½' and increase parking lanes to 8' and provide bus shelters for school children and clients of the People Mover on US Highway 395 from SW 2nd Ave south to MP 0.84 Grant Union Junior-Senior High School.

We were informed that applications that involve multiple funding sources and agencies are very competitive. This application is being co-sponsored by Grant County with the People Mover and School District No. 3 being participants in the project. At their November 7, 2012 County Court meeting, the County agreed to provide the base rock for the project if the application is awarded. The estimate for the base rock is \$59,408; this helps provide the 10.27% match requirement. The City's contribution is estimated at \$43,775 as in-kind service by saw cutting pavement; concrete and pavement removal, plant dirt removal, pavement and concrete recycle and relocating fire hydrants. Both the People Mover and School District No. 3 have committed to provide their expertise regarding the bus shelters helping with the location and design of the bus shelters.

As you can see this is a very complex and detailed application and requires project site maps, vicinity maps, and typical cross section drawings. As we submitted this project to ODOT previously; we already had the maps and cross sections completed. However, for the sidewalks on Highway 26 to Meadowbrook and sidewalks on 7th Street, we do not have the maps or cross sections completed that are required for the other two applications. As we did not anticipate this grant in our budget process, consequently, we did not budget for engineering expense for the other two sidewalk projects. We estimate it would cost several thousand dollars out of our

current street fund to apply for the other two sidewalk projects. Sean Maloney of ODOT suggested we only apply for applications that are realistic and competitive. Public Works Director David Holland and I believe the Highway 395 Sidewalk/Bicycle Lane Project will be a very strong and competitive application and think we should only apply for this project for the 2015 -2018 STIP. However, if the Council wants us to proceed with the other two applications, we believe we can get it accomplished by the November 27th deadline. But with the street funds being so tight, do we really want to expend money on engineering costs when the application(s) realistically will not be awarded.

RECOMMENDATION:

The John Day City Council allows Mayor Lundbom to sign the Multimodal Transportation Program Project application for the US Highway 395 Sidewalk/Bicycle Lane Improvements Project.

TO: John Day City Council

FROM: Peggy Gray, City Manager

DATE: November 9, 2012

SUBJECT: Discuss Request from the Timber Truckers Parade Committee
Attachment:

- Letter from Timber Truckers Parade Committee received November 1, 2012

BACKGROUND:

Attached is a letter from the Timber Truckers Parade Committee announcing the upcoming Timber Trucker's Light Parade; this year's parade will be held on December 8^h. In the past the John Day City Council sponsored the \$100 Driver's Drawing award. The funds were expended from the community promotions line item in the General Fund.

Due to budget constraints we had to decrease our community promotions line item to \$400.00 for the past three years. We have expended \$100 from this line item for the League of Oregon Cities Scholarship Foundation Fund.

RECOMMENDATION:

The John Day City Council sponsors the \$100 Driver's Drawing award for the 2012 Timber Truckers Light Parade.

TO: John Day City Council

FROM: Peggy Gray, City Manager

DATE: November 9, 2012

SUBJECT: Other Business and Upcoming Meetings
 Attachments:

- October 26, 2012 and November 2, 2012 LOC Bulletins
- Flyer for Leadership Boot Camp for Newly Elected Officials

OTHER BUSINESS:

1. The October 26, 2012 and November 2, 2012 LOC Bulletins are included in your council packets.
2. Included in your council packets is a message from Director of the Center for Public Service, Phil Keisling. On Saturday, December 8th, Portland State University's Center for Public Service is offering a one-day "boot camp" for Newly Elected Local Government Leaders. This session is designed to complement "Governing Basics: What You Need to Know" offered by the Oregon Local Leadership Institute. They are offering a \$50 discount if you do both trainings. As our insurance company encourages all councilors to be trained each year; I think this "boot camp" would be beneficial to all city councilors as a great refresher course. Please let me know if you are interested in attending this training and I will get you registered.
3. On November 2, 2012 I had a conference call with City Attorney Jeremy Green and Burns City Manager Don Munkers regarding the proposed ATV ordinance. As Burns is facing the same issue and retains Jeremy Green as their legal counsel, we agreed to work together on the proposed ordinance and share the cost of legal fees. Jeremy stated he is working a draft ordinance and should have something to us by the end of this week.

UPCOMING MEETINGS:

November 12, 2012	City Hall Closed	Veteran's Day Holiday
November 14, 2012	5:30 p.m. Interpretative Center	Friends of Kam Wah Chung Board meeting
November 22 – 23, 2012	City Hall Closed	Thanksgiving Holiday
November 26, 2012	10:00 a.m. – 2:00 p.m. Malheur County	SE Regional Alliance Board meeting
November 27, 2012	7:00 p.m. Council Chambers	City Council meeting