

**John Day City Council  
January 22, 2013  
6:00 PM  
Council Chambers**

**AGENDA**

**OPEN AND NOTE ATTENDANCE**

**ACTION ITEMS:**

- 1. Council Goal Setting Work Session – 6 p.m.**

**ADJOURN**

**TO:** John Day City Council  
**FROM:** Peggy Gray, City Manager  
**DATE:** January 18, 2013  
**SUBJECT:** Council Goal Setting Work Session – 6 p.m.\*

**BACKGROUND:**

The Council Goal Setting Work Session will begin at 6 p.m. Listed below are the major projects the City has been working on or have completed to assist you in your preparation for the goal setting session:

- The Citizens Fire Advisory Committee has been working with PARC Resources for fundraising and capital campaign advisory services for the construction of a new fire station. The latest meeting with PARC was held on December 13, 2012. Concerns were expressed that PARC was not following the “proposed schedule of work” as per our agreement. PARC was instructed to develop the Feasibility Study/Capital Campaign Plan, a “Case for Support” and a “Working Budget” for the John Day Fire Station. I have attached these documents for your review prior to the work session. Also, attached is a letter from Robert Batten, Chairperson of the Rural Fire District. Representatives from PARC will be at the January 22, 2013 council meeting to update the City Council on the work that has been accomplished, next steps and be available to answer all questions and/or concerns. Representatives from the Rural Fire Board will also be present at the meeting.
- Transportation Enhancement (TE) Program – ODOT has completed the survey work on the US26/Main Street & S. Canyon Blvd. Sidewalk/Beautification Project. The Preliminary Design Approval (DAP) has been moved forward a couple of months; it was scheduled for completion on January 17, 2013. However, due to several ODOT projects already in the works; ODOT asked if they could move our project up a couple of months. Sean Maloney stated the project will still be on schedule to go out for bid in 2014.
- The City received a Special City Allotment (SCA) grant in the amount of \$50,000. This grant is to backup any out of pocket expense that we may not foresee in the planning and construction phases of our US26/Main Street & S. Canyon Blvd., Sidewalk/Beautification Project.
- DEQ approved the City’s John Day Water Quality Goals and Planning Document - Total Maximum Daily Load (TMDL) and Management Plan on August 12, 2012. The City must report annually to DEQ about the status of the interim goals and measures contained in the Plan. The City’s first annual report is due on August 16, 2013.
- City Attorney Jeremy Green and I have been working on the final draft of a new employee handbook for the past year. The project was placed on hold due to other priorities; however, we are getting back on track and hope to complete the first draft in the next few weeks.
- Industrial Park – as you know we are in negotiations with Enviro Board for the purchase of lot 28 of the Grant County Airport Industrial Park. The City followed ORS 221.725 Sale of city real property; publication of notice; public hearing. However, ORS 221.727 states a city council may adopt, after public notice and hearing, a procedure for the sale of individual parcels of a class of

city-owned real properties. The city may thereafter sell any parcel under that adopted procedure in lieu of the procedure under ORS 221.725. City Attorney Jeremy Green recommends the City Council consider adopting a procedure for the sale of individual parcels at the industrial park. This would streamline the procedure for prospective buyers making the purchase process less cumbersome.

- The City applied for an ODOT Enhance Project – US Highway 395 Sidewalk/Bicycle and Improvement Project. On November 13, 2012, the Council authorized Mayor Lundbom to sign the grant application for the above project. This project will create 3,500 lineal feet of wider travel lanes (max. of 13 ½') of vehicle traffic; 6' sidewalks with 6" curbs for pedestrians; increase bike lanes for bicyclists to 7 ½'; increase parking lanes to 8' and provide bus shelters for school children and clients of the Grant County Transportation District (People Mover) on US Highway 395 from SW 2<sup>nd</sup> Ave., south to MP 0.84 (Grant Union Junior-Senior High School). The total cost of the project is \$1,004, 701.
- **City of John Day and Canyon City Flood Map Project** - Representatives from John Day, Canyon City and Grant County met with the Army Corps of Engineers on July 12, 2012 to discuss the purpose of the Flood Map Project. Our flood plain maps date back to 1982; since 1982 the John Day River and Canyon Creek have seen many channel changes and there has been some "diking" done during floods along these areas. The maps are difficult to read and are not accurate. The Army Corps of Engineers received \$200,000 to begin the process of gathering data. This spring they hired surveyors to shoot the evaluations. The Army Corps of Engineers gathers the data and give the information to the cities to do with it what they want. They can submit the information to FEMA and request new Floodplain maps or the community can adopt their own maps. If the city chooses to give the information to FEMA, FEMA would conduct public hearings; the community would be responsible for the application fee. The Army Corps of Engineers flew the project area and shot the same cross sections that are on the existing FEMA maps for comparison purposes. The Army Corps of Engineers' fiscal year begins 10-1-12; this year they will be doing the data collection; engineering next year. They hope to have the maps done before September 30, 2013.
- New Water Regulations Ordinance – Last year the Council discussed updating the City's water leak policy. It was the consensus of the City Council to have City Attorney Jeremy Green update the City's Water Regulations Ordinance regarding the City's water leak policy and giving the city authority to place liens on properties for uncollectible utility bills. City Attorney Jeremy Green is in the process of developing the ordinance.
- ATV Ordinance – City Attorney Jeremy Green and his associate Melissa Cobb met with CIS Legal Counsel Mark Rauch on January 18, 2013 to discuss if CIS would defend and indemnify a city against a related claim if the City passed an ordinance permitting the operation of ATV's on city streets. Below is the response written by Mr. Rauch:

First, to answer your specific question as directly as I can...**if a city in our liability program passed an ordinance permitting the operation of ATV's on city streets, would CIS defend and indemnify that city against a related claim?** As discussed, it's hard to predict what type of claim that would be and the ultimate answer, as on any claim, would depend on the specific allegations made. Ultimately coverage hinges on the terms and conditions of the coverage agreement applied to the specific facts and allegations of a claim are complaint. But if a tort or civil rights claim were to be asserted, e.g., that an ATV-related accident and injury was somehow a result of negligence on the city's part in passing the ordinance or that passing the ordinance had

somehow violated a constitutionally protected right resulting in damages, I see nothing that would interfere with coverage for such a claim. If it was clear from statutory language, or case law interpreting the statutes, that a city is precluded by law from passing or enforcing such an ordinance, then it is possible that Exclusion Z would apply. That excludes liability arising out of “*The willful violation of any federal, state, or local statute, ordinance, or regulation by the governing body of the named member, or agent of the named member acting within the authority and consent of the named member.*” But as it stands we are not aware of any statute or law precluding the city from passing such an ordinance (as further discussed below).

I think we are on the same page as far as the statutory scheme being somewhat confusing on the issue of whether a city has the authority to pass an ordinance(s) allowing ATV operation on city streets and, if so, with what limitations. Specific statutory provisions we discussed are:

1. The last sentence of ORS 801.040(3) seems to recognize a local government authority to regulate the operation of Class I ATV’s “...on streets or highways within its boundaries...if such regulations are not inconsistent with ORS 821.150 to 821.292.” At least that subsection “does not prohibit” such regulation. (Not sure what that means or implies as to Class II or IV ATV’s.)
2. ORS 821.190 prohibits operation of all classes of ATV’s on highways unless an exemption specified in ORS 821.200 applies. (“Highways” by definition includes streets and roads. ORS 801.305.)
3. Then 821.200(2)(c) provides an exemption “*Where the highway is posted to permit snowmobiles or all-terrain vehicles.*” If we infer this means “posted” by a governing body with authority to post the signs, and it is done pursuant to legislative action (e.g., an ordinance), this seems to suggest a city could pass such an ordinance and post signs on its streets permitting ATV use that is otherwise in statutory compliance with laws (age, equipment, speed, etc.).

Now that we have CIS’s stance on the issue; the only thing that we are waiting on are comments from ODOT; once we have heard back from ODOT, we will proceed with presenting an ATV Ordinance to the City Council.

\*Dinner will be served at the work session