

**CITY OF JOHN DAY  
CITY COUNCIL MINUTES  
JOHN DAY, OREGON**

**March 12, 2013**

**Adjourned Meeting**

**COUNCILORS PRESENT:**

Ron Lundbom, Mayor  
Steve Schuette, Council President  
Doug Gochnour, Councilor  
Don Caldwell, Councilor  
Paul Smith, Councilor

**COUNCILORS ABSENT:**

Gene Officer, Councilor  
Donn Willey, Councilor

**STAFF PRESENT:**

Peggy Gray, City Manager  
David Holland, Public Works Director  
Valerie Luttrell, Dispatch Manager  
Daniel Pelayo, Police Officer

**GUESTS PRESENT:**

Chuck Wright, P.O. Box 212, John Day  
Gregg Haberly, 821 W. Hwy 26, John Day  
Kathy Smith, John Day  
Chris B. Labhart, John Day  
Bryron Haberly, John Day  
Monty Bond, John Day  
Phil Gray, John Day

**Agenda Item No. 1 – Open and Note Attendance**

The John Day City Council meeting opened at 7:00 p.m. Mayor Ron Lundbom noted that all Councilors were present with the exception of Councilor Gene Officer and Councilor Donn Willey who are absent and excused.

**Agenda Item No. 2 – Oath of Office to Appointed Councilor Paul Smith**

Mayor Lundbom administered the Oath of Office to Councilor Paul Smith.

**Agenda Item No. 3 – Approval of City Council Minutes of February 26, 2013**

The minutes of the February 26, 2013 adjourned meeting were included in the agenda packets and presented for the Council's approval. **Councilor Doug Gochnour made a motion that the minutes of**

**February 26, 2013 be approved as presented; Councilor Don Caldwell seconded the motion. The motion passed unanimously.**

**Agenda Item No. 4 - Appearance of Interested Citizens**

Mayor Ron Lundbom thanked those in attendance and asked everyone to please sign in. He asked if there were any additional items that anyone would like to add to the agenda. There were none presented.

**Agenda Item No. 5 – Discuss for Appointment Louis E. Provencher to the John Day Budget Committee**

City Manager Gray stated Louis E. Provencher has made application to the John Day Budget Committee. He resides at 211 NW 4<sup>th</sup> Street, John Day. He is retired from the USDA Forest Service, City Manager Gray stated he has past experience with financial plans, grants and agreements and knows how to read a governmental budget. City Manager Gray recommended the Council appoint Louis Provencher to the John Day Budget Committee.

Councilor Doug Gochnour stated Mr. Provencher was the Grants & Agreements Specialist for region before he retired.

**Councilor Doug Gochnour moved to appoint Louis Provencher to the John Day Budget Committee. Councilor Steve Schuette seconded the motion, the motion passes unanimously.**

**Agenda Item No. 6 – Discuss for Adoption Ordinance No. 13-156-01, an Ordinance authorizing the operation of all-terrain vehicles on certain streets located within the boundaries of the City of John Day, Oregon**

City Manager Gray stated staff has been working with City Attorney Jeremy Green, Attorney Melissa Cobb of Bryant Lovlien and Jarvis and Burns City Manager Don Munkers since September 11, 2012 on drafting this ATV Ordinance. Jeremy and Melissa prepared a staff report to facilitate the council's review of the ordinance as follows:

- As a preliminary matter, there are four types of ATVs:
  - Class I ATVs (also known as quads, three-wheelers, or four-wheelers);
  - Class II ATVs (also known as four-by-fours, pickups, jeeps, sand rails, dune buggies, or SUVs);
  - Class III ATVs (also known as dual sport bikes, enduro, or dirt bikes); and
  - Class IV ATVs (also known as side-by-sides), a new ATV class created by the 2011 Or. Legislature.
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- Section 3 defines “all-terrain vehicles” as Class I ATVs, Class II ATVs, and/or Class IV ATVs.
- Section 3 defines a Class II ATV somewhat differently than the definition in the Oregon Vehicle Code. Specifically, the definition in the ordinance does not include the portion of the statutory definition that requires a Class II ATV to “actually be operated off a highway” and adds the requirement that the Class II ATV be street-legal and meet the requirements of Oregon law.
- Section 3 defines “streets” as “all highways, roads, streets, and alleys, other than State of Oregon

highways and two-lane gravel roads, within the boundaries of the City that are open, used, or intended for use of the general public for vehicles or vehicular traffic as a matter of right.”

- Section 4 authorizes the operation of ATVs on city streets but specifically prohibits the operation of ATVs on any State of Oregon highway within the boundaries of the City, except that a person may cross a State of Oregon highway to the extent permitted under applicable Oregon law.

- Section 5 requires ATVs to be operated in compliance with all applicable laws, regulations, and ordinances, all posted speed limits, and in a manner comporting with the public health, safety, and general welfare.

- Sections 6 and 7 address licensing and permitting requirements, respectively. Section 6 requires the ATV operator to be at least 18 and hold a valid driver license. Section 7 requires Class I and Class IV ATV operators to hold a valid Class I or Class IV ATV operator permit issued by OPRD (also known as an ATV Safety Education Card), respectively. OPRD does not issue operator permits for Class II ATVs. The Oregon Vehicle Code requires operators of a Class IV ATV “on public lands” to hold a valid driver license issued under ORS 807.040. The Oregon Vehicle Code is silent with respect to licensing and permitting requirements for the operation of Class I and Class IV ATVs on city streets. Thus, it is possible that a court may conclude that Sections 6 and 7 are not inconsistent with the Oregon Vehicle Code.

- Section 8 requires ATVs to be equipped with the safety equipment required under all applicable state traffic law, including ORS 821.040.

- Section 9 requires all passengers under 18 to wear a motorcycle helmet. The Oregon Vehicle Code requires all operators or passengers under 18 to wear a motorcycle helmet while riding an ATV “on premises open to the public,” unless the operator or passenger is riding in a Class II ATV that is registered under Oregon law and has a roof or roll bar. It is possible that a court may conclude that Section 9 is inconsistent with the Oregon Vehicle Code to the extent it does not recognize the exception permitted under the Oregon Vehicle Code.

- Section 10 requires all operators and passengers, regardless of age, to be secured with a safety belt or safety harness if the ATV was required to be equipped with such at the time the ATV was manufactured or safety belts or safety harnesses have been installed. The Oregon Vehicle Code requires that all persons under 16 wear a safety belt or safety harness while riding “on public lands,” unless the ATV was not required to be equipped with such at the time the ATV was manufactured (unless safety belts or safety harnesses have been installed). The Oregon Vehicle Code is silent with respect to the safety belt requirements for operation of ATVs on city streets. Thus, it is possible that a court may conclude that Section 10 is not inconsistent with the Oregon Vehicle Code.

- Section 11 requires ATVs to be operated in compliance with all posted speed limits and not in a dangerous manner.

- Section 12 prohibits operation of an ATV by a person whose driving privileges are currently suspended or revoked. This is consistent with Oregon law.

- Section 13 requires ATVs to meet the financial responsibility requirements under ORS 806.060, meaning that they must be able to respond in damages for liability, on account of accidents arising out of the ownership, operation, maintenance or use of an ATV, in one of two manners provided by ORS 806.060: (1) by obtaining a motor vehicle liability policy meeting the requirements under ORS 806.080 that will provide at least minimum limits necessary to pay amounts established under the

payment schedule under ORS 806.070, or (2) by becoming self-insured as provided under ORS 806.130. Under the Oregon Vehicle Code, Class II ATVs must meet these requirements; Class I and Class IV ATVs are exempted. It is possible that a court may conclude that Section 13 is inconsistent with the Oregon Vehicle Code to the extent it requires Class I and Class IV ATVs to meet the statutory financial responsibility requirements.

The insurability of ATVs operated on city streets is an unsettled issue. It is possible that an ATV owner/operator may not be able to obtain an insurance policy. In that event, such ATV owner/operator would be unable to comply with Section 13 unless he or she is or becomes self insured under applicable Oregon law.

- Section 14 requires ATVs to display headlights and taillights outside daylight hours and during any time when limited visibility conditions exist.

- Section 15 requires the City to post signs giving notice that the operation of ATVs is permitted on City streets under the provisions of the ordinance. The City will post such signs at locations necessary to inform the public that ATVs are permitted upon city streets, which sign locations will be determined by the City in its sole discretion. Under Oregon law, ATVs may be lawfully operated upon a highway where the highway is posted to permit ATVs. It is possible that a court may conclude that Section 15 is inconsistent with Oregon law to the extent the City does not post a sign on every City street where the operation of ATVs is permitted under the ordinance.

- Section 17 sets forth the penalties for violation of the ordinance. Violation of the ordinance is punishable by a fine not to exceed \$500.00.

Mayor Lundbom asked about people living on Hillcrest, where can they cross a state highway; you can't go anywhere. He also used an example on the northwest section of town; people at the bowling alley can't cross the street to get to McDonalds. Monte Bond reminded the Mayor that Police Chief Tirico said when they are that far (or where the streets don't match) he will allow a 45 degree crossing in that instance. City Manager Gray reminded everyone that is what our John Day Police Officers will allow; however, that doesn't mean that OSP will allow that type of crossing and people need to be aware that they could be cited. Mayor Lundbom stated he hopes we all use common sense doing this and it won't be an issue.

Councilor Paul Smith stated he read through the ordinance twice and had a question on the posting of the signs, he stated his interpretation was that the signs weren't mandatory. City Manager Gray stated the signs weren't mandatory on all City streets; however, it is the City's intention to post signs at the three entrances (east, west and south) to the City. He also wanted it clarified to ride a four-wheeler on a City street, you have to have liability insurance, an ATV permit sticker, and an operator's permit on the person and be eighteen years of age. Councilor Smith also question riding at night; it was noted that ATVs can only be operated during daylight hours; "daylight hours" means one-half hour before sunrise to one-half hours after sunset. City Manager Gray referred him to Section 14.

City Manager Gray clarified this ordinance does not pertain to golf carts, golf carts are not considered an ATV and are not allowed under this ordinance. Mayor Lundbom noted that side-by-sides (Class IV) is allowed under this ordinance.

Mayor Lundbom asked for further council discussion. Councilor Doug Gochnour stated he has five reasons why he will vote against the ordinance. 1) the majority of the people he spoke to are opposed to allowing it (ATVS); 2) unfair to the people who live on Franke, Hillcrest, Hwy 26 by the Mormon Church; 3) he is opposed to the ordinance because we won't require the wearing of helmets; 4)

commercial's on the local radio station state (paraphrasing) that ATV's are not for highway use and always wear a helmet; and 5) the cost of posting and maintaining the signs.

Councilor Paul Smith stated he doesn't see too many issues but cautions that this "privilege" to ride four-wheelers on city streets wouldn't be abused. He would ask the police department that they look for underage users and don't let people be squirrely and to be responsible. Gregg Haberly stated Pilot Rock, Prairie City, have had no problems.

Mayor Lundbom stated everyone he has spoken with have been in favor of the ordinance. Crossing the street with limited places to cross is an issue but he thought it was a step in the right direction.

Councilor Don Caldwell stated he had no issues with the ordinance. Councilor Steve Schuette echoed what Councilor Smith stated, hopefully people will ride responsibly. His only concern was that ATVs are not designed for highway use and stated you can get in trouble by going too fast and making sharp turns on pavement. It was noted that most city streets are posted at 20 mph.

Chuck Wright stated he thought requiring people to wear a helmet should be in the ordinance; you have to wear a helmet when you ride a motorcycle. Monte Bond stated that is a state requirement, but when you ride on certain city streets at 20 mph, he didn't feel it should be required. But stated if you want to wear a helmet, you can wear a helmet.

**Councilor Don Caldwell moved to read Ordinance No. 13-156-01 by title only. Councilor Steve Schuette seconded the motion, the motion passed unanimously.**

**Mayor Lundbom read by title only Ordinance No. 13-156-01, an ordinance authorizing the operation of all-terrain vehicles on certain streets located within the boundaries of the City of John Day, Oregon.**

**Councilor Don Caldwell moved to adopt Ordinance No. 13-156-01. Councilor Steve Schuette seconded the motion, the motion passed 4-1 with Councilor Doug Gochnour voting no.**

**Agenda Item No. 7– Discuss for Adoption Ordinance No. 13-157-02, an ordinance amending and restating Title 7, Chapter 4 of the John Day City Code, commonly known as the “Water Use Regulations Ordinance,” which ordinance establishes the rules and regulations for the City of John Day water system utility, provides for rates, changes and penalties for violations, superseding and repealing any and all ordinances, resolutions, and/or policies in conflict with this ordinance; and declaring an emergency**

City Manager Gray gave a background of the events that resulted in the drafting of this ordinance. The City Council discussed this topic at their October 9, 2012 council meeting approving the recommendation of the Public Works Committee recommending the City council review their water leak policy and Water Use Regulations Ordinance working with City Attorney Jeremy Green to develop a new Water Use Regulations Ordinance.

The following major revisions were highlight for the City Council:

- **4.1 Application.** City will begin using an updated application for water service. When application is made for water service at a non-owner occupied premises (rental), the owner of the rental, will sign an agreement, that the owner will, in the event of nonpayment or delinquency of

any fee(s) or charges(s), expenses, losses, damages, and/or fines incurred by the applicant for the water service and be jointly and severally liable to the city for the full payment.

- 8.3 Adjustment for Water Loss. If it is determined that water loss occurred on the customer's side of the meter and the leak has been repaired, the city will adjust the customer's billing for up to fifty percent (50%) of the excess use. Adjustments will not be available when the excess use appears due to the failure to repair any water leak (i.e. toilets, showers etc.)The City will not provide more than one adjustment per customer, per calendar year.
- 9.3 Notice of Service Termination. This section states the customer will be assessed and required to pay any applicable posting charges imposed by the city (door hangers).
- 12 Customer Service Lines and Maintenance. Leaks in the customer service line will be repaired within fifteen (15) days of detection. We had originally thought seven (7) days; however, City Attorney Jeremy Green thought fifteen days was more reasonable.
- 20 Violation-Civil Penalty; Other Relief. Any person violating any of the provisions of this Ordinance will be subject to a civil penalty of One Thousand Dollars (\$1,000) for each violation; and the city may seek recovery of its attorney fees.
- 23. Water Charge Liens. Water service charges will be a lien against the premises served from and after the date of billing and entry on the ledger or other records of the city pertaining to the water system. Whenever a bill for water service remains unpaid ninety (90) days after it has been rendered, the lien thereby created may be foreclosed in a manner provided for in ORS 223.610, or in any other manner provided for by law or by city ordinance.

City Manager Gray gave an example of Grant Union Junior-Senior High School having two major water leaks within months of each other resulting in water loss of over one million gallons. Our current ordinance allows for 100% credit of the water loss if the property owner fixes the leak within 30 days of the leak being discovered. She stated this resulted in the City having to pay for the production of the water and places the burden on our other citizens to pay for that water loss. City Manager Gray stated the only way to make up water loss is to raise the water rates accordingly as needed. Another example given was the Grant County Fair Grounds, their water system is old; they have several water leaks per year. Again, according to our current policy, we have to give them 100% credit for their water loss every time they have a leak. Councilor Doug Gochnour stated our current policy gives the property owner no incentive for them to fix the problems.

City Manager Gray stated another issue is with rentals. An example of an apartment complex that is currently in bankruptcy, the owner has basically abandoned the property. The bank that is involved sees no value in the property and wants no further involvement. There are renters that are still living in the property, no one is paying the water and sewer bills; the city can't put a lien on the property because our current ordinance doesn't allow it. This new ordinance allows the City to place a lien against the premises whenever a bill for water service remains unpaid ninety days after it has been rendered.

Discussion followed on the requirement when a renter is delinquent in their utility bills; the property owner will be responsible. City Manager Gray stated we have several renters that pay part of their water bill to just keep us from turning their water off. This ordinance will make the property owner responsible for the renter's water bill should the renter become delinquent.

Councilor Doug Gochnour stated no longer will we give credit for a toilet leak or a running faucet; we are only talking about giving credit for underground leaks. He explained if a customer has a toilet leak or a leak in their shower head, they will not receive a 50% credit.

Chuck Wright stated it seems to him that you're asking the property owner to be responsible for a service that you supply to a third party. Mr. Wright stated several years ago he entered into an agreement with the City stating that he would not be responsible for his renter's water/sewer bill. City Manager Gray stated she has never seen that agreement and asked him to please bring in the form. Public Works Director stated we allow the renter to pay their own water bill, but we don't have a form that states the property owner is not responsible for their renter's bills. Councilor Paul Smith asked if there is anything in his rental agreement that could address this issue. Mr. Wright stated he would have to get a new form.

Chris Labhart stated he is a landlord and under state law he has to provide electricity and water to his renters. How they get it is beside the point and he is in total agreement with the change. Mr. Labhart stated he was on the city council for several years; the arrears came mostly from renters.

Mayor Lundbom stated he thought the landlord could put some kind of language in their contract to charge more for their deposits to get their money back when this happens. First and last month deposits were discussed as an alternative.

Public Works Director Dave Holland reminded Mr. Wright that he wouldn't be able to rent his rental if the city didn't provide the service. The ordinance just states that the property owner will also be responsible for the water bill, if the renter leaves a delinquent bill we won't turn the water back on unless that bill has been paid. Public Works Director Dave Holland stated the new ordinance places more strict timelines for the customers to pay their bills to help solve the delinquent issue and asked Mr. Wright if he had a suggestion to solve the problem. Mr. Wright stated there are other people in this town that have more rental property than he does and he was surprised that they weren't here. Mayor Lundbom stated he received four phone calls this week; they said they would rather the city take the loss than them. Mayor Lundbom stated that was putting your head in the sand. Mayor Lundbom stated he thought everyone should be responsible. If someone skips and leave a delinquent bill, we won't turn the water back onto that property until the bill has been paid.

Mayor Lundbom stated he would entertain any other ideas that would help alleviate the problem. Mr. Wright stated he wished he had a better suggestion for you but he didn't have one.

Councilor Steve Schuette stated we can't keep losing money for the city and it's not fair to the people who pay their bills. Councilor Doug Gochnour stated we've had to eat 10 or 12 different bills just in the past year.

Mayor Lundbom asked Mr. Wright what he would do if a renter left without paying his water bill and we told you that we won't turn the water back on until that bill is paid. Mr. Wright stated he wouldn't have any choice but to pay the bill and try to collect the money. He said he would have to put some language into his next rental contract to cover that. Mayor Lundbom stated that is what we are getting at. Mr. Wright stated he understood where the city was coming from, but asked the city to understand where he was coming from. Councilor Steve Schuette stated what this ordinance is going to do is to force the landlords to try to find a way to protect themselves from their renters.

**Councilor Doug Gochnour moved to read Ordinance No. 13-157-02 by title only. Councilor Steve Schuette seconded the motion. The motion passed unanimously.**

**Mayor Lundbom read by title only Ordinance No. 13-157-02, an ordinance amending and restating Title 7, Chapter 4 of the John Day City Code, commonly known as the “Water Use Regulations Ordinance,” which ordinance establishes the rules and regulations for the City of John Day water system utility, provides for rates, charges, and penalties for violations; superseding and repealing any and all ordinances, resolutions, and/or policies in conflict with this ordinance; and declaring an emergency.**

**Councilor Doug Gochnour moved to adopt Ordinance No. 13-157-02. Councilor Don Caldwell seconded the motion, the motion passed unanimously (5-0).**

### **Agenda Item No. 8 – Discuss City Manager’s Annual Evaluation**

City Manager Gray stated each year the Council evaluates the city manager’s performance. City Manager Gray presented a City Manager’s report showing what she has accomplished during the past year to the Council. Included in the report is a Local Government Management Certificate (LGMC) Credit Standing Report. City Manager Gray explained that she is in the process of getting her Local Government Management Certificate through the League of Oregon City. She has completed 79.30% of the program and has 29 more hours left to complete the program.

It was the consensus of the City Council to have City Manager Gray email the word document of the evaluation form to the City Councilors (except newly appointed councilor Paul Smith); the councilors were instructed to complete the evaluation form and email it back to Mayor Lundbom by Friday, March 22, 2013. Mayor Lundbom instructed City Manager Gray to place an executive session on the March 26, 2013 council agenda to review the City Manager’s performance.

### **Agenda Item No. 9 – Other Business and Upcoming Meetings**

1. LOC Bulletins were presented to the City Council for their information and review.
2. Newsletters from Representative John Huffman and Representative Dennis Richardson were included in the council packets.
3. The Council was informed that the Solicitation of Proposals for the removal of the dangerous building located at 405 SE Hillcrest Rd. was put on hold. On March 1, 2013 the City was informed that it appeared that the owner-bank may be moving forward with the demolition of the building; it is in the city’s best interest to have the bank perform the demolition work, the City has put the bid on hold for now.
4. Councilor Steve Schuette asked about a timeline for Enviro Board’s escrow payment. City Manager Gray stated City Attorney Jeremy Green is working on the addendum to the Purchase and Sale Agreement this week.

### **Adjourn**

**There being no further business before the Council, Councilor Don Caldwell made a motion to adjourn the meeting. Councilor Steve Schuette seconded the motion and the motion passed unanimously. The meeting was adjourned at 8:10 p.m.**



Respectfully Submitted:

Peggy Gray  
City Manager

ACCEPTED BY THE CITY COUNCIL, MARCH 26, 2013.

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Mayor Ron Lundbom