



MEMORANDUM

TO: JOHN DAY CITY COUNCIL
FROM: NICHOLAS GREEN, CITY MANAGER
SUBJECT: CODE ENFORCEMENT PROCEDURES
DATE: AUGUST 26, 2019
CC:

EXECUTIVE SUMMARY

The city council and budget committee approved funding for a new code enforcement officer and records specialist in this year's budget. As this is a new position, I wanted to describe the proposed approach to enforcement, the types of activities that we intend to enforce, and seek guidance from the city council on any changes or recommendations.

BACKGROUND

The City of John Day is governed by a Code of Ordinances adopted by the common council. The current version of the Code was updated October 30, 2018 and is available online:

https://library.municode.com/or/john_day/codes/code_of_ordinances?nodeId=CHTR

The Code includes the City Charter along with rules and regulations adopted by the city council over time. These rules govern the following activities:

- **Title 1. Administrative procedures** (includes general fees for code violations, public contracting regulations and other administrative procedures)
- **Title 2. Boards and Commissions**
- **Title 3. Business Regulations**
- **Title 4. Building Regulations** (includes building codes, flood hazard development regulations, and building numbering systems)
- **Title 5. Zoning Regulations**
- **Title 6. Subdivision Regulations**
- **Title 7. Public Ways and Property** (includes procedures for management of public rights of way and system development charges)
- **Title 8. Health and Sanitation** (includes nuisance ordinances, solid waste management, noise ordinances and marijuana prohibitions)

SUBJECT: CODE ENFORCEMENT PROCEDURES

- **Title 9. Fire Regulations**
- **Title 10. Police Regulations.**
- **Title 11. Motor Vehicles and Traffic**

When changes occur that affect these areas, such as passage of a new ordinance, the changes are “codified” through a Code update. Note that not all ordinances are codified, only those that affect specific regulations or governance procedures.

There are some aspects of the Code that are out of date and need to be revised. For example, aspects of our floodplain development code need to be updated to meet current state and federal standards. In these instances, the state and federal standards trump our local code, which is required to comply with state and federal law.

In other instances, there are code sections that have never been developed, have atrophied, or simply no longer apply. Obsolete sections can be updated, removed or rescinded by order of the council. Other regulations need to be adopted, such as those related to zoning enforcement and subdivisions, in order to conform with other policies, practices and procedures currently in use by city staff.

It is important to note that city staff do not create the code. The code is adopted by the city council as the governing body of the city. It is enforced by the city staff. Unless specifically authorized by provisions in the code, staff cannot make amendments or grant exceptions to code requirements. In some cases, the council also cannot grant exceptions and must amend the code in order to accommodate changing circumstances.

Other ordinances and resolutions of the city council, even if they are not included in the code, are enforceable and carry the full weight of law. For example, those provisions identified in the City of John Day Development Code, adopted November 5, 2005, and the John Day Comprehensive Land Use Plan, adopted June 10, 2003 are both still in force as regulatory mechanisms of the City. Other local ordinances and resolutions governing utility connections and service fees, even if they are not included in the Code of Ordinances, fall under the purview of our code enforcement activities.

DISCUSSION

As part of the Innovation Gateway area planning process and new code enforcement procedures, city staff evaluated zoning and land use regulations and met with various residents who have requested exceptions to existing standards. We also identified several code violations that need to be addressed prior to approving building permits.

These items are not a complete list but are intended to begin the discussion with the council about potential code amendments. Individual items are addressed within the following categories: Development Code and Zoning; Floodplain Development; Subdivisions and Annexation; Intergovernmental Agreements; Utility Connections; and Public Nuisances.

Development Code & Zoning

Per *Section 5-4.2.020 Applicability* of the John Day development code, Land Use Review or Site Design Review shall be required for *all new developments and modifications of existing developments* described below. Regular maintenance, repair and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing and similar maintenance and repair shall be exempt from review.

1. Change in occupancy from one type of land use to a different land use resulting in no increase in vehicular traffic;
2. Single-family detached dwelling (including manufactured home) on its own lot;
3. A single duplex, or up to two single family attached (town home) units not requiring a land division, and accessory parking on the same lot;
4. Non-residential building addition of up to 500 square feet;
5. Home occupation, except where Site Design Review is required under Chapter 5-4.9;
6. Temporary uses, except where Site Design Review is required under Chapter 5-4.9;
7. Accessory structures and accessory parking;
8. Development and land uses that are already approved as part of a Site Design Review or Conditional Use Permit application, provided modifications to such plans may be subject to Chapter 5-4.6;
9. Public improvements required by City standards or as stipulated by a condition of land use approval (e.g., transportation facilities and improvements, parks, trails, utilities, and similar improvements), as determined by the City Planning Official.

The purpose of land-use review, which is a ministerial approval by the City Planning Official, is to verify setbacks and other objective zoning standards. It also gives the City the ability to address existing code violations before approving new building permits.

The City Manager is designated as the City Planning Official and is responsible for objectively reviewing any new developments or proposed developments within the city limits as well as any developments in the City's urban growth boundary. These reviews verify that the proposed building/improvement is an allowed use within the applicable zone, meets design standards established for the zone, and meets any special restriction requirements such as those that apply in the special flood hazard area, greenway overlay zone, airport industrial zone, etc.

Current/pending enforcement actions:

SUBJECT: CODE ENFORCEMENT PROCEDURES

- Unpermitted development (construction in progress) at 400 NW 9th Avenue – owner began construction of apx. 500 SF of additions without applying for land use review or building permit. Currently under a stop work order.
- Unpermitted development (construction in progress) at Space Z of Riverside Home Park – tenant began construction of a covered garage without applying for land use review or building permit, also located in the special flood hazard area. Currently under a stop work order.
- Occupation of recreational vehicle at 861 NW Bridge Street. Permits issued for land use review and building but owner is believed to be occupying premise in an RV during course of construction, which is an unpermitted use in the Residential General (RG) zone.

Requests for Code Amendments:

- Dan & Chris Cronin are requesting the council review the Code restrictions on residential occupation of existing single-family homes in the Downtown and General Commercial zones to allow for businesses that operated prior to 2005 but that are in single family detached homes to be used for residential purposes. Deleting this section of the development code would require a legislative amendment that could be submitted in conjunction with the Innovation Gateway Area Plan.
- Patty Salvino has requested the council review the Code restrictions on occupation of recreational vehicles (RVs) outside of an approved manufactured home park or in a park overlay zone. The code only allows for RV's during medical hardships and those must be individually permitted and removed once the hardship is over. There are no exceptions for RVs in the city's residential, commercial or industrial zones outside of a manufactured home park. Council may also wish to consider course-of-construction exceptions for owners who are temporarily displaced during new home construction or major improvements.
- ODF and ODFW employees have requested RV hookups at public agency facilities for RVs to accommodate seasonal staff. These properties are zoned General Industrial. Some hookups were approved by prior administrations, but no new connections have been permitted. Public agency exceptions for RV use could be created as a conditional use or code amendment.

In each instance, council needs to consider not only the impact of allowing these non-conforming uses but also the affects on access, utility connections and service fees. Do new RV hookups require system development charges? What rate should properties be charged that have permanent or semi-permanent RV connections in addition to existing offices or residences? Should these be allowed within views of public streets (i.e. front yards, side yards) or only in back? Does residential occupation in these zones (where it is currently prohibited) promote or interfere with the council's vision for these zones and is it in the public interest?

Floodplain Development

The City Manager/City Planning Official is also the designated Floodplain Administrator for John Day. The City's new flood rate insurance maps (FIRMs) are nearing the end of the 90-day public comment window and are scheduled to take effect on September 15, 2019. Beginning that date, all prior maps are no longer in effect. Until then, the current maps from 1982 govern.

Floodplain violations, whether intentional or accidental, can result in increased flood insurance rates for all John Day property owners and could result in the city losing its eligibility for flood insurance under the National Flood Insurance Program.

Staff have recommended actions for the city to adopt based on a recent community assistance visit from DLCD. Staff are also undertaking several different enforcement actions to improve floodplain development compliance.

Recommended actions:

- John Day lacks a standardized floodplain development permit. Several different versions have been used in the past. Enclosed in the packets is a model floodplain permit recommended for adoption.
- John Day lacks standard operating procedures (SOPs) tailored to the City for floodplain development.
- Ordinance updates are needed for John Day flood ordinance. Model ordinance from DLCD is enclosed.
- Information brochures should be made available to all developers when applying for land use review/permits in a special flood hazard area.

DLCD has requested we review our floodplain development policies and adopt a floodplain development permit, SOPs and a new ordinance tailored to the City by 10/30/2019.

Current/pending enforcement actions:

- Corrective action (construction in progress) at 611 S. Canyon Blvd. – permits were filed and approved for land use review and building but flood gates are needed in foundation for unit located in special flood hazard area prior to proceeding.
- Code violation (improper anchoring) at Riverside Home Park, 677 W Main St., John Day – Zone A4 on Panel 41700770001C, effective 2/23/1982: Manufactured dwellings do not appear to be placed in compliance with community floodplain regulations and the minimum NFIP and state standards.

SUBJECT: CODE ENFORCEMENT PROCEDURES

- Corrective action (cut and fill activity) along John Day River, near fairgrounds and RV park, where there is currently an unpaved walking trail – Zone A4 on panel 4100770001C, effective 2/23/1982: Evidence of excavation and fill placement. Requires floodplain permit and compliance with community floodplain regulations.
- Unpermitted development (construction in progress) at Space Z of Riverside Home Park located in the special flood hazard area under the 1982 maps but will be removed in the September 15 map update.

Subdivisions and Annexation

The city's Comprehensive Land Use Plan requires that the Urban Growth Boundary be used as the official guideline by which to plan all public services, future annexations, and land uses to the year 2023. The purpose of the UGB is to provide an efficient transition from urbanizable to urban use. It also requires that standards for development within the UGB shall be uniform between the City and County.

As noted in the Plan, "It is vitally important that improvements within all developments (including minor land partitionings and non-residential uses) be at a level commensurate with applicable City specifications, both inside and outside the City Limits" (page 82). The purpose for this is to ensure any developments within the UGB can be accommodated within the city upon annexation.

The Plan specifically sets forward the following minimum requirements as criteria that must be met before approval of development:

- A. City water and services should be available or provided to the boundaries of the property being proposed for development.
- B. City water and sewer services will not be provided unless an area has been annexed to the city, or a consent to annex has been set forth and approved by the City.
- C. The developer must provide roads, sidewalks, curbs, street lighting, water and sewer facilities as required by the City within the development to City standards and specifications at the developer's expense.
- D. Roads, water mains, and sewer lines shall be sized to meet the requirements of current and future developments which will be serviced by the facilities, based upon the City's facilities plans or other regulations.

On numerous occasions, the City has approved extensions of utility lines (water and sewer) outside the city limits without requiring annexation. In some instances, only one line was extended. In other instances, private "developers" installed water services with the intention of having them adopted by the city, but never provided as-builts and/or

engineering certifications. As a practice of the city, any private utility lines requested for adoption must be warranted by the property developer for a period of one year from the date of adoption. In yet other instances, land divisions and property line adjustments were approved by the County in the UGB but appropriate access and utility easements, as well as public rights-of-way, were never established. In the majority (if not all) of these instances, the developments occurred without requiring annexation and without requiring roads and sidewalks to be improved to city standards.

Recommended actions:

- The Ansel Krutsinger development along 4th Avenue/Airport Road was part of a land exchange agreement recorded on 8/2/2004, which was after the adoption of the comprehensive plan. Water and sewer utility lines with stub-outs were installed by Krutsinger but no as-builts were provided to the City and the city never adopted the infrastructure. In 2011, the property was annexed as an incomplete development. Land partitions were completed by the county when the property was in the UGB, but no public access easements or public utility easements were created for the lines servicing the properties. Krutsinger has since sold all of the properties within the development. Two existing homes and one under construction are connected to his private utility lines. The City must now create the appropriate easements, including land condemnation if necessary, to attempt to bring this property into conformance with the code. As the developer was responsible for improving the streets prior to annexation, City will need to determine when (and if and how) the future street should be improved to city standards once the appropriate easements are in place.
- The 4-K overlook development has three homes connected to a 10-inch private water line running east from the airport. Land partitions have been established for eight lots. It is unclear if any easements for public access along this street are in place. Sewer lines are not established. Private developer has as-builts but has not requested the city adopt the water line. This partially completed development needs to have the water line adopted by the city, be brought to city standards for utility and access connections and annexed to conform with the code before any future utility connections are allowed in this neighborhood.
- Apple road is a UGB development at the western city limits. The road has a name but is not actually a street since no public access easements are in place. All property owners and customers patronizing the businesses along this "road" are driving on private property to access the buildings. The entire area would need utility and access easements to be established prior to annexation. In most cases, this would be required of the developer, but since there is no developer, the city and county would have to coordinate on how to bring this area up to city standards.
- Ferguson road and other areas of the city, like the homes at the east end of Charolais Heights, have already been annexed and were allowed to develop without conforming to the comprehensive plan (most homes pre-dated the City's 2005 development code). In some cases, homes in this area are charged in city utility rates. In others, they are charged out of city rates.

The lack of continuity in our development planning and lack of enforcement has created several complex planning problems. As a first step, staff are recommending all future development in these areas be prohibited until a corrective plan of action is put in place to ensure future development does not exacerbate the current problems.

Intergovernmental Agreements (IGA)

The City has an IGA with Grant County to manage development in our urban growth boundary but lacks an IGA with the county to manage building permits. The result is a lack of clarity around enforcement activities and which jurisdiction will lead enforcement actions for code violations.

Recommended actions:

- City should review the UGB IGA and create an IGA with Grant County for processing our building permits
- Standards in the IGA should be enforced by the city and the county to prevent future development that does not meet city standards

Utility Connections

Minor revisions are needed to the utility rate resolutions to bring them into conformance with the city's ordinances. Proposed language is being developed by the city attorneys. Rates are currently under review and will be updated as part of the new wastewater treatment plant planning. Standardization is needed for which meters will be charged in-city versus out-of-city rates. City staff will provide a separate memo to the council documenting the necessary changes at a future date.

Public Nuisances

Ordinance No. 15-165-03, the John Day Public Nuisance ordinance, establishes several categories of nuisance violations. These are defined in the ordinance as:

- "Bulk Solid Waste";
- "Derelict structure";
- "Attractive Nuisance";
- "Building Code";
- "Corrosive Substance(s)";
- "Deterioration";
- "Derelict Structure(s)";
- "Dry Vegetation";
- "Food Waste(s)";
- "Fowl"; "Garbage";
- "Hazardous Thicket(s)";
- "Imminent Hazard(s)";
- "Incipient Hazard(s)";
- "Indoor Fixture(s)";
- "Indoor Furnishing(s)";
- "Infestation(s)";
- "Junk";
- "Livestock Animal(s)";
- "Noxious Vegetation";
- "Partially Constructed";
- "Rank Vegetation";
- "Rubbish"; "Skilled Manner";
- "Solid Waste(s)";
- "Unfit for Human Habitation";
- "Waste Tire(s)";
- "Yard Debris";

SUBJECT: CODE ENFORCEMENT PROCEDURES

Most nuisance code violations can be resolved with a simple phone call. In some cases, written notifications are needed with specific timelines for remediation as described in the ordinance. More complex abatements and/or abandoned structures take longer and require more tailored solutions.

Current/pending enforcement actions:

- Abandoned premise at 125 NW 2nd Avenue; coordinating with bank's legal counsel and have filed multiple property liens / posted notice of violation(s).
- Incipient hazard (hazardous tree) and derelict structure violations at 248 NE Dayton.

Staff recommendations:

- Residents have reported concerns about a specific property that is housing up to seven dogs on the premise. Some cities require kennel licenses and specific zoning requirements but otherwise restrict the number of dogs allowed on a property to 3-4 without a kennel license. Residents have complained about noise and smells, both of which are already violation of the public nuisance ordinance, but stricter limits on the number of animals may be necessary in the code, similar to the restrictions on livestock and swine.

ENFORCEMENT APPROACH

City staff intend to take the following code enforcement approach:

- Unintentional code violations will be noticed; if remediated and/or abated no fines will be issued. If left unabated, city will pursue code violations at current rates (\$500 per violation plus \$500 per day for continued violations).
- Deliberate code violations will be fined. Fines may be appealed subject to city procedures. City Planning Official will exercise judgement in determining whether violations were deliberate (i.e. continuing to work after a Stop Work order has been issued, whether verbal or in writing, would constitute a deliberate violation).
- Licensed general contractors who deliberately violate city building codes and/or who have multiple offenses will be reported to the Oregon Construction Contractors Board (CCB) and city will pursue its rights and remedies under the law to enforce compliance.

The intention behind this approach is not to fine our residents and contractors but to ensure an orderly process for complying with local ordinances. The council ultimately has the discretion to adjust the code based on resident requests, however, codes should not be altered to accommodate single-use cases that are not in the public interest.