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STAFF REPORT AMD-20-01

Date Submitted: May 11, 2020
Agenda Date Requested: May 12, 2020
To: John Day Planning Commission
From: Daisy Goebel, City of John Day
Associate Planner
Subject: An ordinance to adopt Development Code Amendments that clarify compliance provisions and strengthen the city's ability to enforce the Code.
Location: Citywide

Type of Action Requested

Resolution Ordinance
 Formal Action Report Only

1. BACKGROUND

The City of John Day Development Code (the Code) currently contains enforcement provisions that are unclear, insufficient and difficult to enforce and administer. With increased rates of development in John Day, the City has had an increased need and capacity for development code enforcement. The city is proposing a Code amendment to clarify compliance provisions, redefine violations as a nuisance rather than a misdemeanor, and provide provisions for remediation. The amendment will also provide a definition for "Planning Official" that clarifies this role as the person appointed by the City Manager to administer the Code.

2. APPLICABLE CRITERIA

This request is a legislative amendment to amend the John Day Development Code. The approval criteria in section 5-4.1.050.G apply.

3. PLANNING COMMISSION CONSIDERATIONS

The Planning Commission's review must focus on the relevant code criteria and follow the public hearing requirements for a Type IV Legislative Amendment under section 5-4.7.020. The Planning Commission should recommend the City Council approve the request if it conforms to the approval criteria.

4. STAFF RECOMMENDATION

Staff recommends that the Planning Commission make a recommendation to the City Council to **adopt Ordinance 20-180-01 as presented** along with the findings in this report.

5. PUBLIC NOTIFICATION

The City of John Day mailed public notice to all affected property owners on April 14th and published notice in the Blue Mountain Eagle on April 22nd and 29th as required by the Development Code.

Public comments received: None

6. ADOPTION PROCEDURE AND FINDINGS

The following section shown in italics and boldface provides the decision making criteria as required by John Day Development Code Section 5-4.1.050.G.

Decision-Making Criteria. The recommendation by the Planning Commission shall be based on the following factors:

- 1. Approval of the request is consistent with the Statewide Planning Goals;***
- 2. Approval of the request is consistent with the Comprehensive Plan; and***

Finding: The 19 statewide planning goals and the local comprehensive plan mirror one another and both instruments have guided the creation and modification of our development code. Neither of these documents address code enforcement directly, but improving the City's ability to monitor and correct violations of the development code will inherently promote the implementation of both the statewide planning goals and the city development code.

- 3. The property and affected area is presently provided with adequate public facilities and services, including transportation, sewer and water systems, to support the use, or such facilities and services are provided for in adopted City plans and can***

be provided concurrently with the development of the property.

Finding: This amendment affects the entire city of John Day, but does not interfere with the use or development of public facilities and services.

7. PLANNING COMMISSION MOTION

After hearing the staff presentation and any public testimony, including any rebuttal, the commission will close the hearing and deliberate. The following motion is suggested:

“I move to recommend City Council approve AMD-20-01 based on the findings contained in the staff report [with conditions, if any].”

The staff report may be amended during the course of the hearing.

RECOMMENDED TO THE CITY COUNCIL by the John Day Planning Commission this 12th day of May, 2020.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

ORDERED:

Ken Boethin, Chair

ATTEST:

Nicholas Green, City Manager

**CITY OF JOHN DAY
ORDINANCE 20-180-01**

**AN ORDINANCE AMENDING THE JOHN DAY DEVELOPMENT CODE
TO STRENGTHEN AND CLARIFY ENFORCEMENT PROVISIONS
WITHIN THE CODE**

SECTION 1: AMENDMENT “5-1.2.100 Enforcement” of the City of John Day Development Code is hereby *amended* as follows:

AMENDMENT

5-1.2.100 Enforcement

- ~~A. **Misdemeanor.** Any person violating or causing the violation of any of the provisions of this Code has committed a misdemeanor, and upon conviction thereof is punishable as prescribed in Section 1-4-1 of the City Code of John Day. Such person is guilty of a separate violation for each and every day during any portion of which any violation of this Code is committed or continued by such person.~~
- ~~B. **Abatement of Violation Required.** A finding of a violation of this Code shall not relieve the responsible party of the duty to abate the violation. The penalties imposed by this section are in addition to and not in lieu of any other remedies available to the City.~~
- ~~C. **Responsible Party.** If a provision of this Code is violated by a business or other entity, the officer or officers, or person or persons responsible for the violation shall be subject to the penalties imposed by this section.~~
- D. **Compliance with the Development Code.**
 - 1. No structure (or part of a structure) may be used, erected, moved, or altered, no land may be used, altered, or divided, and no other action shall be undertaken unless such action conforms with the regulations and requirements of this Development Code.
 - 2. Violations of conditions of approval set forth in permits and approvals issued pursuant to this Development Code are violations of this Development Code.
 - 3. No permits or approval for the use, construction, or alteration of any land or structures may be issued unless applicable applications with all required plans, specifications, and other supporting materials are submitted and approved by the City in accordance with the provisions of this Development Code.
- E. **Violation of this Development Code as a Nuisance.** Violation of this Development Code are hereby deemed a public nuisance and may be enjoined, abated, or removed pursuant to the procedures set forth in Title 8, Chapter 2 of the City Code of John Day.
- F. **Code Enforcement and Land Use.**
 - 1. If a property is in violation of this Development Code or any other City ordinance, the City shall not approve any permit or other land use approval including, without limitation, building permits, land divisions, and property line adjustments.
 - 2. As part of the application process, the applicant must certify:
 - a. That to the best of the applicant’s knowledge, the subject property, including any prior development phases of the property, is currently in compliance with both the Development Code and any applicable prior land use approvals for the

- property; or
- b. That the application is for the purpose of bringing the property into compliance with the Development Code and/or prior land use approvals.
3. For purposes of this section, a violation means the property has been determined to not be in compliance with the Development Code or other applicable law either through a prior notice or decision by the City or other tribunal, through the review process of the current application, or through an acknowledgement by the alleged violator.
 4. Notwithstanding anything herein to the contrary, the City may issue a permit or other approval if:
 - a. Approval, and compliance with such approval, would result in the property coming into full compliance with all applicable provisions of federal, state, or local laws including, without limitation, the Development Code;
 - b. It is necessary to protect the public health or safety;
 - (1) For the purposes of this section, “public health and safety” means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger life, health, personal property, or safety of the residents of the property or the public.
 - (2) Examples of that situation include, but are not limited to, issuance of permits to replace faulty electrical wiring; repair or install heat sources; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failure.
 - c. It is for work related to and within a valid utility or right-of-way easement over, on, or under the affected property; or
 - d. It is for emergency repairs to make a structure habitable or a right-of-way passable.

G. Revocation.

1. The Planning Commission may revoke any permit or approval granted pursuant to the provisions of this Development Code if it is determined that the permit or approval was issued on account of false statements contained in the application form or false representations made at a public hearing.
2. The Planning Commission may revoke any permit or approval granted pursuant to the provisions of this Development Code for failure to comply with those conditions and limitations placed upon the exercise of the permit or approval.
3. Prior to revocation, a revocation hearing shall be held by the Planning Commission pursuant to the procedures for a Type III action.

H. Penalties of Violation.

1. A violation of any provision of this Development Code, with each violation constituting a separate offense, is punishable by:
 - a. A fine of not more than \$500 for each violation.
 - b. An additional fine of not more than \$250 for each day that the violation persists.

I. Administration; Remedies. The City Planning Official and any public safety officer may enforce the provisions of this Development Code. In pursuing enforcement, the City Planning Official may pursue any remedy provided by this Development Code or otherwise available at law or equity including, without limitation, injunctive relief without prejudice to any other remedy available to City. The City Planning Official may enter into voluntary compliance agreements with the violator. The remedies available to City are not exclusive and it is within the discretion of City to seek cumulative remedies for a violation of the Development Code.

J. Vicarious Liability. The owner of real property is vicariously liable, jointly and severally, for any violations of this Development Code related to the owner’s real property committed by the owner’s employees, agents, contractors, tenants, invitees, and any other occupant of the owner’s real property.-

SECTION 2: AMENDMENT “5-6.1.030 Definitions” of the City of John Day Development Code is hereby *amended* as follows:

AMENDMENT

5-6.1.030 Definitions

The following definitions are organized alphabetically and some related terms are also grouped together and cross-referenced under group headings (*e.g.*, Transportation-Related, Environment-Related, etc.).

A

Abutting. Contiguous or adjoining. **Access.** See Transportation-Related terms. **Accessory.** Secondary or incidental to a primary use or structure.

Accessory Dwelling. See Residential Structure Types. **Accessory Parking Facility.** A parking facility that provides parking for one or more primary use and may be located on or off the site of the use or uses to which it is accessory. **Accessory Structure.** A structure of secondary importance or function on a site. In general, the primary use of the site is not carried on in an accessory structure. Accessory structures are detached from the primary structure. Examples of accessory structures include but are not limited to: garages, decks, fences, arbors, gazebos, heat pumps, workshops and other structures. See also Primary Structure. **Accessory Use.** A use or activity that is a subordinate part of a primary use and that is clearly incidental to a primary use on a site. See also Primary Structure. **Adjacent.** Abutting or located directly across a street right-of-way or easement. **Administrative.** A discretionary action or permit decision made without a public hearing, but requiring public notification and an opportunity for appeal. **Adverse Impact or Effect.** Negative effect that can be measured (*e.g.*, noise, air pollution, vibration, dust, property values, etc.). **Affordable.** Housing affordable to a certain percentage of the population earning a specified level of income and spending no more than 30 percent of their income on housing expenses. For more information, contact the federal Department of Housing and Urban Development and the Oregon Department of Housing and Community Services. **Airport-Related Definitions.** The airport-related definitions of the Oregon Department of Aviation’s Land Use Compatibility Handbook are hereby incorporated by reference. **Alley.** See Transportation-Related definitions. **Alteration.** See Development-Related definitions. **Ambient.** Normal or background environmental conditions, as in the level of light, dust or noise. **Applicant.** A person who applies for a land use review. An applicant can be the owner of the property, a contract purchaser, or someone who is legally authorized to represent the owner, such as a builder, developer, contract purchaser, consultant, architect, or similar individual. **Arterial.** See Transportation-Related definitions. **Attached House (Townhouse or Rowhouse).** See Residential Structure Types. **Attached Structure.** See Development-Related definitions.

B Bed and Breakfast Inn. Any establishment located in a structure designed for a single family residence and structures appurtenant thereto, regardless of whether the owner or operator of the establishment resides in any of the structures, that: (a) Has more than two rooms for rent on a daily basis to the public; and (b) Offers a breakfast meal as part of the cost of the room. **Berm.** A small man-made rise or hill in a landscape, which is, intended to buffer or visually screen certain developments, such as parking areas. **Bikeway.** See Transportation-Related definitions. **Block.** All of the property bounded by streets, rights-of-way (pedestrian or vehicle ways), water features, or any combination thereof, but is not divided or separated in any way by streets or water features. **Block Face/Frontage.** All of the property fronting on one side of a street that is between intersecting or intercepting streets, or that is between a street and a water feature, or end of a dead end street. An intercepting street determines the boundary of the block frontage only on the side of the street that it intercepts. See Figure.

Nonconforming Use. A use that was allowed by right when established or a use that obtained a required land use approval when established, but that subsequently, due to a change in the zone or zoning regulations, the use or the amount of floor area of the use is now prohibited in the zone. See Chapter 5-5.2. **Non-native Invasive Plants.** Plants listed by Oregon State University Extension Service, Grant County, or other government agency as non-native invasive plants in Oregon. **O Off-street Parking.** All off-street areas designed, constructed, used, or required or intended to be used for the parking of motor vehicles. See Chapter 5-3.3 for parking standards. **On-street Parking.** Parking in the street right-of-way, typically in parking lanes or bays. Parking may be “parallel” or “angled” in relation to the edge of the right-of-way or curb, as provided by applicable standards of the roadway authority. See Chapter 5-3.3 for parking standards. **Open Space (public/common/private/active/passive).** Land within a development that has been dedicated in common to the ownership within the development or to the public specifically for the purpose of providing places for recreation, conservation or other open space uses. See also, Common Area.

Orientation. To cause to face toward a particular point of reference (e.g., “A building oriented to the street”). See also, Pedestrian-Oriented Development. **Outdoor Commercial Use.** A use supporting a commercial activity that provides goods or services, either wholesale, retail or entertainment, where the amount of site area in outdoor use (e.g., storage of materials, display of merchandise, or entertainment) exceeds the total floor area of all buildings on the site. Examples of outdoor commercial uses include automobile sales or services, nurseries, lumber yards and equipment rental businesses, and outdoor amusement. **Overlay Zone/District.** Overlay zones impose and/or relax requirements of an underlying land use district, or base zone, where characteristics of the land or neighborhood, or the types of development planned for an area, require special regulations. See Article 5-2. **Owner.** The owner of the title to real property or the contract purchaser of real property of record, as shown on the latest assessment records in the Office of the County Assessor. Owner also includes a deed holder or contract purchaser whose name does not appear in the latest assessment records, but who presents to the City a copy of a deed or contract of sale signed by the owner of record. **Ownership.** An ownership is one or more contiguous lots that are owned by the same person, partnership, association, or corporation. Ownership also includes lots that are in common ownership but are separated by a right-of-way. See also, Lot and Site.

P Parcel. A legally defined area of land created through a partition. **Parking Area.** A parking area is all the area devoted to the standing, maneuvering, and circulation of motor vehicles. Parking areas do not include driveways or areas devoted exclusively to non-passenger loading or fire apparatus lanes. See also, Driveway, Garage, Structured Parking, and Vehicle Areas. **Parking Lot Perimeter.** The boundary of a parking lot area that usually contains a landscaped buffer area. **Parking Space.** An improved space designed to provide standing area for a motor vehicle. See Chapter 5-3.3 for parking space standards. **Partial Street/Half Street.** See Transportation-Related Definitions. **Parking Versus Storage.** Parking is to leave a motor vehicle for a temporary time, no longer than 24 hours. Storage is to place or leave in a location for storage, maintenance, repair, future sale or rental, or future use more than 24 hours. See also, Exterior Display. **Partition.** To divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. See ORS 92.010(8). **Paved Area.** See Development-Related definitions. **Pedestrian Amenity(ies).** See Development-Related definitions.

Planning Official. The person appointed by the City Manager to administer the City’s Development Code and perform land use planning functions. The Planning Official may be a City employee or a contractor. This term includes any designee of the Planning Official.