



CITY OF JOHN DAY

mayor
Ron Lundbom

December 2, 2020

city manager
Nicholas Green

Via: Certified Mail [Return Receipt Requested] and Regular Mail

secretary
Chantal DesJardin

Darrinn Manuel
385 Robinhood Trail
Brandon, MS 39042

council
Shannon Adair
Gregg Haberly
Dave Holland
Steve Schuette
Elliot Sky
Paul Smith

Boring Properties, LLC
756 SW Brent Drive
John Day, OR 97845

Boring Properties, LLC
35140 SE Brooks Road
Boring, OR 97009

Re: Cease and Desist – Code Violation(s) at 756 SW Brent Drive

Dear Mr. Manuel:

The City of John Day (“City”) has determined that certain activities on the property located at 756 SW Brent Drive, John Day, Oregon 97845 (the “Property”) violate the City of John Day Code of Ordinances (the “Code”). Specifically, trash and/or junk that has been accumulating around the Property, a recreational vehicle being used as a primary dwelling unit, an uncorrected water leak, and multiple structures in various states of advanced disrepair. You are receiving this letter because you are the owner of record and/or person(s) in charge of the Property.

Section 8-2-8(B1) of the Code (Enclosure 1) prohibits “The accumulation, exposure, or deposit of any garbage, rubbish, bulk solid waste, or solid waste on any public way or any private street, alley, or lot, or into a stream, well, spring, brook, ditch, pond, river, or other inland waters within the city, or the placing of such substances in such position that high water or natural seepage will carry the same into such waters”, and Section 8-2-4(B1) (Enclosure 2) states “No person will deposit or keep junk within a public right of way or out of doors on any premises within the city, or in a structure that is not wholly enclosed”.

The Code also provides in Section 8-2-6 (Enclosure 3) that derelict structures are prohibited. The Code defines derelict structures as “A building or structure that is unfit for human habitation, or poses an incipient hazard, or is detrimental to public health, safety, or welfare, as a result of one or more of the following conditions: a) is unoccupied and unsecured; b) is partially constructed; c) is an



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abandoned structure or attractive nuisance; d) is in condition of deterioration; and/or e) has an infestation of pests.”

Further, Section 7-4-11 of the Code (Enclosure 4) states that leaks must be repaired within 15 days of detection, at the sole responsibility and expense of the customer, as follows: “The customer is responsible for payment of costs associated with the installation of any service line(s) from the city's water meter to the customer's premises to be served. The customer service line(s) will be installed consistent with the Oregon state plumbing specialty code or other plumbing and/or specialty code(s) applicable to the particular installation. No pump equipment will be connected to a customer service line without prior written approval from the director. The customer will be responsible for maintenance and repair of the customer's service line. All leakage in the customer service line after the water meter will be the sole responsibility and expense of the customer. Leaks in the customer service line will be repaired within 15 days of detection.”

Finally, Section 5-4.9(C) of the Code (Enclosure 5) states “Temporary or permanent placement of a building, trailer or recreational vehicle per Chapter 5-2.5, kiosk, or structure, including but not limited to prefabricated building(s), for use on any real commercial or industrial property within the City shall require land use approval. Using a Type II procedure, as governed by Section 5-4.1.040, the City may approve, approve with conditions or deny an application for a placement of a building, trailer, kiosk, or structure for temporary use, or temporary placement, such as a temporary commercial or industrial use or space associated with the primary use on the property, for a period up to six months. Temporary uses exceeding six months may be approved by the Planning Commission through a Type III procedure”.

According to City officials and complaints received from your tenants, there are piles of trash and/or junk in multiple areas of the Property that constitute specific public nuisances as defined by the Code sections above. Derelict structures are also declared by the Code to be public nuisances, and there are multiple cabins and other structures on the Property that appear to meet the conditions to be considered derelict and, therefore, public nuisances. City officials are also aware of an ongoing, uncorrected water leak on the Property and according to the Code it will be the Owners responsibility to have the leak repaired. There also appears to be an RV on the Property that is being used as a dwelling and the City has no record of an application for Land Use Approval for the temporary placement of a trailer at the Property.

DEMAND IS HEREBY MADE THAT YOU IMMEDIATELY ABATE THE ABOVE CODE VIOLATIONS BY TAKING THE FOLLOWING ACTIONS a) remove, or have removed all accumulated trash and/or junk within SEVEN (7) DAYS of the date of this letter; b) bring all structures meeting the



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definition of “derelict” up to the standards of the Code within SIXTY (60) DAYS of the date of this letter; c) locate and repair any water leaks on the Property within FIFTEEN (15) DAYS of the date of this letter; and d) immediately cease and desist from allowing any RV dwelling until the City has received and approved an application for Land Use Approval for the temporary placement of an RV.

Violation of the Code constitutes a misdemeanor punishable by up to six months in jail and a \$500.00 fine for each offense as prescribed under Section 1-4-1 of the John Day Municipal Code. Per the Code, any person violating the Code is guilty of a separate violation for each and every day during any portion of which any violation of the Code is committed or continued by such person. Therefore, fines are currently accruing against you and may be assessed at a rate of \$500.00 for each day that the violations persist.

This letter does not constitute a full statement of facts and circumstances related to this matter. Further, this letter should not be construed as a waiver, release, and/or relinquishment of any rights and/or remedies available to City, whether legal or equitable, all of which are expressly reserved.

This is a serious matter with significant legal consequences. You may contact me if you have any questions regarding this letter. If you have legal representation, please forward this letter to your attorney. We trust this matter will receive your immediate attention. Thank you for your anticipated assistance and cooperation.

Sincerely,

Nicholas Green, City Manager
City of John Day

Enclosure(s)

- Section 8-2-8(B1)
- Section 8-2-4(B1)
- Section 8-2-6
- Section 7-4-11
- Section 5-4.9(C)

8-2-8: - PUBLIC NUISANCES:

- A. Public Nuisance Prohibited: A public nuisance is any thing, condition, or act which is or may become a detriment or menace to the public health, safety, or welfare. No person will cause, permit, or maintain a public nuisance on public or private property.
- B. Specific Public Nuisances: The following are specifically declared to be public nuisances, but this list will not be deemed to be exclusive:
1. The accumulation, exposure, or deposit of any garbage, rubbish, bulk solid waste, or solid waste on any public way or any private street, alley, or lot, or into a stream, well, spring, brook, ditch, pond, river, or other inland waters within the city, or the placing of such substances in such position that high water or natural seepage will carry the same into such waters;
 2. Any physical condition of a premises considered an attractive nuisance, including, without limitation, abandoned wells, shafts, basements (i.e., that portion of a building or structure which is partly or completely below grade), and unguarded machinery;
 3. An abandoned, unattended, or discarded icebox, refrigerator, or other container accessible to children which has an airtight door or lock which may not be released for opening from the inside;
 4. Dangerous pilings and unprotected excavations;
 5. Any premises that has unsanitary plumbing fixtures, or plumbing fixtures that permit the spillage of effluent outside of an approved sanitary sewer system, or the escape of sewer odors and gases;
 6. The maintenance of premises which are in such a state or condition as to cause an offensive odor;
 7. The accumulation of feces or manure (whether in piles, heaps, or otherwise) unless enclosed in containers capable of excluding flies and maintained in such a manner or condition that offensive odor is not emitted therefrom;
 8. The burning of any garbage, rubbish, rubber, cloth, or any other thing, the burning of which, or the smoke emitted from such burning, creates an offensive odor;
 9. The accumulation of stagnant water in which mosquitoes may breed;
 10. Violation of subsection 8-2-4B of this chapter by keeping more than five cubic yards of junk on any residentially zoned property or by keeping four or more neglected or wrecked motor vehicles on any residentially zoned property;
 11. Violation of subsection 8-2-6A, "Derelict Structures Prohibited," of this chapter;
 12. Violation of subsection 8-2-7A, "Pest Infestation Prohibited," of this chapter;
 13. Violation of subsection 8-2-7B, "Noxious Vegetation; Dry Vegetation Prohibited; Trees," of this chapter; and/or
 14. Any building or structure that is in a condition that poses an imminent hazard to public health, safety, or welfare.
- C. Notice of Public Nuisance and Order to Person Responsible:
1. Whenever the health officer or city designee has reasonable grounds to believe that a violation of subsection A of this section has occurred, a notice of public nuisance and order will be served to the owner(s) and occupant(s), if any, in any manner provided by subsection D1 of this section.
 2. A notice of public nuisance and order will be in writing and include the following: a) a description of the

premises sufficient for identification; b) a short and plain statement of the reason(s) why the notice and order is being issued; c) a correction order allowing a reasonable time for the repairs and improvements required to bring the premises into compliance with the provisions of this chapter; d) a statement that city may abate the nuisance pursuant to this chapter and that the person responsible will be responsible for the costs of such abatement; e) a statement of the right to appeal the notice of public nuisance and order to the hearings officer; f) a short and plain statement of the appeal procedure; and g) a statement that if a notice of appeal is not filed within the time allowed, the person will have waived the right to review of the notice of public nuisance and order.

3. Any notice of public nuisance and order issued in substantial compliance with subsection C2 of this section will be effective from and after the date the notice and order is issued. All notices served pursuant to this subsection C will be considered served on the date of personal service or as of the date of mailing if not personally served.

D. Method of Service:

1. The notice required by subsection C of this section will be: a) personally delivered to the owner(s) and occupant(s), if any, b) sent to the owner(s) and occupant(s), if any, by first class mail to their last known residence or business address, or c) posted at the premises and also sent by first class mail to the owner(s) and occupant(s), if any, to their last known residence or business address if they cannot be located. Any notice served by mail will be deemed received three business days after the date mailed.
2. Failure of the owner(s) or occupant(s) to receive such notice or an error in the name or address of an owner(s) or occupant(s) will not render the notice void and in such case, the notice will be sufficient.

E. Recording a Violation: City may record a notice of violation with the county clerk. Failure to record a notice of violation will not affect the validity of the notice as to persons who receive the notice. When the property is brought into compliance, a satisfaction of notice of violation will be recorded.

F. Joint Responsibility: If more than one person is responsible for a public nuisance, they will be jointly and severally liable for correcting the violation and for any costs incurred by city in abating the nuisance.

G. City Abatement Procedures:

1. If within time allowed, the violation has not been corrected, the health officer or city designee may cause the violation to be corrected. The health officer or city designee, or a person authorized by the health officer or city designee, may enter upon the property to abate the nuisance.
2. The health officer or city designee will keep an accurate record of the expense incurred correcting the violation and will include therein an administrative overhead fee in an amount of 20 percent of the actual cost of correction.

H. Assessment of Costs:

1. After abatement by city, the city manager will send to the owner(s) and occupant(s), if any, by first class mail to their last known residence or business address, a notice stating: a) the total cost of abatement, including the administrative overhead fee, and b) that the costs and administrative overhead as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.
2. If the costs and administrative overhead are not paid within 30 days after the billing date, the health officer or city designee will thereafter file with the hearings officer an itemized statement of costs and overhead, including an additional administrative fee in an amount of 20 percent of the actual cost of

correction to cover the additional expenses involved in collecting the unpaid balance.

3. Upon receipt of such notice, the city recorder will set the matter for prompt public hearing before the hearings officer and will, not less than 15 days prior to the hearing, cause notice thereof to be served via certified or registered mail, return receipt requested, or express mail, to the owner(s) at the owner's address as reflected on the most recent tax rolls of the county assessor, and on the occupant(s), if any. Failure of the owner(s) or occupant(s) to receive such notice or an error in the name or address of an owner(s) or occupant(s) will not render the notice void and in such case, the notice will be sufficient. Refusal to accept any notice provided under this chapter via registered or certified mail will not be deemed to, and will not, render the notice invalid.
 4. After the hearing, the hearings officer will declare the correctness of such statement and declare the same to be a lien upon the property.
 5. An error in the contents or service of any notice will not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void but it will remain a valid lien against the property.
- I. Summary Abatement: The abatement procedure provided by this section is not exclusive, and city may use any other procedures for abatement authorized by law. The general procedures set forth herein may be used in conjunction with other abatement actions or procedures.
- J. Appeals Generally: A person may appeal a notice or order of the health officer or city designee, other than an order pursuant to subsection 8-2-61 of this chapter, issued pursuant to this chapter only as provided in subsections K through M of this section.
- K. Reconsideration by Health Officer or City Designee:
1. Any person affected by a notice or order of the health officer or city designee under this chapter may request reconsideration by filing a request with the health officer or city designee. The request must be received by the health officer or city designee within ten days after the effective date of the notice or order.
 2. The request for reconsideration must be in writing and include: a) the name, address, and telephone number of the person requesting reconsideration, b) a copy of the notice or order being requested for reconsideration, and c) a statement that the person wishes the health officer or city designee to reconsider the notice or order.
 3. The request for reconsideration may be granted or denied by summary order.
 4. The health officer's or city designee's response to the request for reconsideration will be personally delivered to the person requesting reconsideration, or sent to the person by first class mail at the address listed on the request for reconsideration. If the health officer or city designee's response is served by mail it will be deemed received three business days after the date mailed.
- L. Appeal to Hearings Officer:
1. Any person affected by a notice or order of the health officer or city designee may appeal the notice or order to the hearings officer by filing a notice of appeal with the city recorder, subject to the provisions of this subsection L.
 2. A person must first request that the health officer or city designee reconsider the notice or order as provided in subsection K of this section.
 3. The notice of appeal must be filed within ten days after the date the health officer's or city designee's

response to the request for reconsideration is delivered to the person or the notice is deemed to have been received by the person under subsection K of this section. A copy of the notice of appeal must also be filed with the health officer or city designee.

4. The notice of appeal must be in writing and include: a) the name, address, and telephone number of the appellant, b) a copy of the notice or order being appealed, c) a statement that the person wishes to appeal the notice or order, and d) the basis for the appeal, stating with specificity why the notice or order was issued in error, based on one or more of the following: 1) city failed to follow the procedures prescribed in this section and that failure has prejudiced the person in respect to some substantial right; 2) no violation exists on the premises that are the subject of the notice or order; and/or 3) the time for or method of compliance required in the notice or order is impossible to comply with or, because of circumstances peculiar to the person or property, would work an unreasonable hardship.
 5. The hearings officer's hearing upon the appeal will be limited to the reasons the notice or order is incorrect, as set forth in the notice of appeal. A notice of appeal that is filed after the period provided for filing an appeal will be dismissed by the hearings officer as untimely. Failure to appeal as provided in this subsection L will be a waiver of all right to review of the notice of order.
 6. The person requesting the appeal will be afforded the opportunity to provide evidence or a statement in opposition to the notice or order, and the person requesting review will be afforded the opportunity to cross examine any witness presenting testimony.
 7. The health officer or city designee will be afforded the opportunity to present any evidence, argument, or statement in support of the notice or order, and city will be afforded the opportunity to cross examine any witness presenting such testimony.
 8. The hearings officer will adopt findings and conclusions supporting a decision which either: a) affirms the notice or order as given, b) modifies the notice or order, or c) rescinds the notice or order.
 9. The filing of a notice of appeal will stay all proceedings for abatement until the final disposition of the appeal.
 10. Upon a final disposition ordering abatement of a nuisance, and unless another period for compliance is provided in the decision, the person responsible for abatement will have a period equal to that specified in the original notice, commencing from the date of the final disposition, in which to abate the nuisance prior to action by city.
 11. The hearings officer will provide a written determination within 20 days of receipt of the appeal.
- M. Appeal of Hearings Officer's Decision or Order:
1. Appeal of a final decision or order of the hearings officer must be made to the city council within 30 days after notice of the final decision or order. The appeal must be submitted to the city recorder and contain: a) the name and address of the appellant, b) the nature of the determination being appealed, c) the reason the determination is incorrect, and d) the determination the appellant believes is correct. An appellant who fails to file a statement within the aforementioned 30 day appeal period waives all rights to object to the determination.
 2. The city council will hear and determine the appeal on the basis of the written statement and any additional evidence the city council considers appropriate or relevant, including any information provided by the health officer or city designee. The city recorder will provide the appellant with written notice of the hearing on the appeal not less than ten days prior to the hearing.

3. At the hearing, the appellant may present testimony and oral argument, personally or through legal counsel additional evidence; provided, however, the rules of evidence as used by courts of law do not apply. The decision of the city council is final and conclusive. The decision of the city council will be recorded in the city council's minutes.
- N. Collections: Collection of abatement costs, fees, and penalties are in addition to any other remedies, civil or criminal, available to city under applicable law.

(Ord. No. 15-165-03, 6-9-2015)

8-2-4: - JUNK:

A. Outside Storage Prohibited:

1. Unless otherwise specifically allowed by law, it will be unlawful to store items of personal property out of doors or outside of a building or structure that is not wholly enclosed.
2. Notwithstanding subsection A1 of this section, the following items of personal property may be stored outside of a building or structure:
 - a. Firewood that is stacked and usable. "Usable" means firewood that has more wood than rot and is cut to lengths that will fit a lawful fireplace or wood stove on the premises;
 - b. Construction material, if the construction material is stored in a manner to protect its utility and to prevent its deterioration and the construction material is reasonably expected to be used for construction on the premises;
 - c. Open storage of materials directly associated with the primary activity of a business, provided the business is a permitted, special, or conditional use within any commercial or industrial zone, and the materials are safely stacked, bundled, or otherwise source separated, and will remain in the stream of commerce with an articulable future use; and/or
 - d. All other items of personal property which are of a type, condition, or quantity consistent with normal and intended use. By way of illustration, but not limitation, as used in this subsection A2d, items of personal property include barbecue grills, lawn furniture, and solid waste disposal containers.

B. Keeping Junk Prohibited:

1. No person will deposit or keep junk within a public right of way or out of doors on any premises within the city, or in a structure that is not wholly enclosed.
2. Notwithstanding subsection B1 of this section, the following junk may be deposited or kept out of doors on premises within the city:
 - a. Any wrecked, neglected, or derelict motor vehicle, or parts thereof, kept in a motor vehicle wrecking business licensed by city;
 - b. Any derelict or neglected motor vehicle displayed by a business offering new and used motor vehicles for sale in a commercial or industrial zone;
 - c. Any wrecked motor vehicle stored outside an approved enclosure at a business offering motor vehicle repair as defined in the "Standard Industrial Classification Manual" as industry group no. 753, provided that no more than eight vehicles in an industrial zone or four vehicles in a commercial zone will be kept outside of an approved enclosure at any one time;
 - d. Any neglected or derelict vehicle stored at a business offering motor vehicle repair as defined in the "Standard Industrial Classification Manual" as industry group no. 753;
 - e. Recyclable solid waste that has been source separated and collected in conformance with this chapter;
 - f. Recyclable materials or source separated solid waste kept at a scrap and waste material establishment, as defined by the "Standard Industrial Classification Manual" as industrial group no. 5093, operating in compliance with all applicable laws and where the materials or solid waste are

enclosed by a sight obscuring fence or otherwise stored in a manner conforming with applicable zoning ordinances or in a container; and/or

- g. Any waste tire kept for storage, collection, transportation, or disposal by a person licensed for that purpose by the state of Oregon.

C. Abatement of Junk Motor Vehicles: The abatement of junk motor vehicles from private or public property is subject to the abatement provisions of this chapter.

(Ord. No. 15-165-03, 6-9-2015)

5-4.9.010 Temporary Use Permits

Temporary uses are characterized by their short term or seasonal nature and by the fact that permanent improvements are not made to the site. Temporary uses include, but are not limited to: construction trailers, leasing offices, temporary carnivals and fairs, parking lot sales, retail warehouse sales, and seasonal sales such as Christmas tree sales and vegetable stands. [Note: For Temporary Medical Hardship Dwellings, please refer to Section 5-2.2.100K.] Three types of temporary uses require permit approval (See A, B and C):

A. Seasonal and Special Events. These types of uses occur only once in a calendar year and for no longer a period than thirty (30) days. Using the Type II procedure under Section 54.1.040, the City shall approve, approve with conditions or deny a temporary use permit based on findings that all of the following criteria are satisfied:

1. The use is permitted in the underlying land use district and does not violate any conditions of approval for the property (e.g., prior development permit approval);
2. The applicant has proof of the property-owner's permission to place the use on his/her property;
3. No parking will be utilized by customers and employees of the temporary use, which is needed by the property owner to meet their minimum parking requirement under Chapter 5-3.3 - Vehicle and Bicycle Parking;
4. The use provides adequate vision clearance, as required by Section 5-3.1.020, and shall not obstruct pedestrian access on public streets;
5. Ingress and egress are safe and adequate when combined with the other uses of the property; as required by Section 5-3.1.020 - Vehicular Access and Circulation;
6. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner in which other uses allowed outright in the district do not affect the adjoining use; and
7. The use is adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits.)

B. Temporary Sales Office or Model Home. Using a Type I procedure under Section 54.1.020, the City may approve, approve with conditions or deny an application for the use of any real property within the City as a temporary sales office, offices for the purpose of facilitating the sale of real property, or model home in any subdivision or tract of land within the City, but for no other purpose, based on the following criteria:

1. Temporary sales office:

- a. The temporary sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold;
- b. The property to be used for a temporary sales office shall not be permanently improved for that purpose;
- c. Conditions may be imposed regarding temporary utility connections, and as necessary to protect public health, safety, or welfare.

2. Model house:

- a. The model house shall be located within the boundaries of the subdivision or tract

of land where the real property to be sold is situated; and

- b. The model house shall be designed as a permanent structure that meets all relevant requirements of this Code and other applicable codes and permit requirements.

C. Temporary Building, Trailer, Kiosk, or Structure. Temporary or permanent placement of a building, trailer or recreational vehicle per Chapter 5-2.5, kiosk, or structure, including but not limited to prefabricated building(s), for use on any real commercial or industrial property within the City shall require land use approval. Using a Type II procedure, as governed by Section 5-4.1.040, the City may approve, approve with conditions or deny an application for a placement of a building, trailer, kiosk, or structure for temporary use, or temporary placement, such as a temporary commercial or industrial use or space associated with the primary use on the property, for a period up to six months. Temporary uses exceeding six months may be approved by the Planning Commission through a Type III procedure. Temporary uses must be based on following criteria:

1. The temporary trailer or building shall be located within the specified property line setbacks of the parcel of land on which it is located;
2. The primary use on the property to be used for a temporary trailer is already developed;
3. Ingress and egress are safe and adequate as demonstrated by an approach permit approved by the road authority, as applicable. See also, Section 5-3.1.020 - Vehicular Access; and
4. There is adequate parking for the customers or users of the temporary use as required by Chapter 5-3.3 - Parking;
5. The use will not result in vehicular congestion on streets;
6. The use will pose no impediment or hazard to pedestrians in the area of the use;
7. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use;
8. The building complies with applicable building codes;
9. The use can be adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits); and
10. The length of time that the temporary building will be used does not exceed 6 months under a Type II procedure. When a temporary building exceeds this time frame, the applicant shall be required to remove the building, or renew the temporary use permit using a Type III procedure; and
11. Conditions may be imposed regarding temporary utility connections, and as necessary to protect public health, safety, or welfare.