

ORDINANCE NO. 21-192-03

AN ORDINANCE OF CITY OF JOHN DAY ADOPTING POLICIES AND PROCEDURES GOVERNING THE DISPOSAL OF CERTAIN CLASSES OF CITY-OWNED REAL PROPERTY; AND DECLARING AN EMERGENCY.

WHEREAS, City of John Day ("City") has all the powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow City; and

WHEREAS, ORS 271.310(1) provides that a city may sell, exchange, convey, or lease real property no longer needed for public use or whenever the public interest may be furthered; and

WHEREAS, ORS 221.725 outlines certain notice, hearing, and approval requirements for a city to dispose of real property; and

WHEREAS, ORS 221.727 provides that a city council may, after notice and a hearing, adopt an alternative procedure for the sale of individual parcels of a class of City-owned real properties in lieu of the procedure under ORS 221.725; and

WHEREAS, the council finds that policies and procedures governing the disposal of certain classes of City-owned real property are necessary to ensure the efficient, consistent, and equitable transfer of such real property, including, without limitation, certain industrial, commercial, and low value real properties; and

WHEREAS, in accordance with ORS 221.727, City provided notice of and held a hearing on January 12, 2020 to consider the alternative procedures for the transfer of certain City-owned real property; and

WHEREAS, the council desires to adopt this Ordinance No. 21-192-03 (this "Ordinance") to establish policies and procedures governing the transfer of certain classes of City-owned real property.

NOW, THEREFORE, the City of John Day ordains as follows:

1. Findings. The above-stated findings contained in this Ordinance are hereby adopted.
2. Purpose; Scope. This Ordinance establishes certain policies and procedures concerning the transfer of certain classes of City-owned real property. Except as expressly provided otherwise by the council from time to time, City-owned real property will be transferred subject to and in accordance with this Ordinance. Nothing contained in this Ordinance will be construed to require additional procedures applicable to the transfer of City-owned real property classified under this Ordinance and/or limit the authority of the city manager to issue any permits or licenses authorized by other City ordinances, codes, rules, and/or regulations.
3. Definitions. Unless the context requires otherwise, when used in this Ordinance the following terms and phrases have the meanings assigned to them below, whether capitalized or not:

“Airport property” means any interest in City-owned real property located in the Airport Industrial Park, as defined in the John Day Development Code, whether now owned or hereafter acquired.

“City” means City of John Day, Oregon, an Oregon municipal corporation.

“City manager” means City’s then-appointed city manager or his or her designee.

“Commercial property” means any interest in City-owned real property in any commercial district, as defined in the John Day Development Code, whether now owned or hereinafter acquired.

“Council” means the John Day City Council.

“Industrial property” means any interest in City-owned real property in any industrial district, as defined in the John Day Development Code, whether now owned or hereinafter acquired.

“Low value property” means any interest in City-owned real property with an estimated market value of less than \$5,000.00 regardless of the real property’s zoning designation, which estimated market value determination will be made by the council or city manager.

“Person(s)” means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity.

“Transfer” means the sale, lease-option, disposal, exchange, and/or donation of real property.

4. Property Classifications. City hereby classifies City-owned real property as follows: (a) commercial property; (b) industrial property; (c) airport property; and (d) low value property. Prior to transferring any real property under this Ordinance, City will determine (y) that the real property is not needed for public use, and/or (z) that the public interest may be furthered by transfer of the real property. The council will make the determination required under the immediately preceding sentence prior to transferring the subject real property; provided, however, the city manager may assist the council in making the determination. Council’s approval and authorization of any real property transfer is prima facie evidence that the council determined that the subject real property is not needed for public use and/or that the public interest will be furthered by transfer of the real property.

5. Real Property Transfer – Procedures. Subject to the provisions contained in this Ordinance, City may transfer City-owned real property in accordance with the following procedures:

5.1 Market Value. When City desires to transfer any City-owned real property, the city manager will obtain an appraisal or other evidence of the real property’s market value, which evidence may include, without limitation, a broker price opinion.

5.2 Determination; Minimum Terms. Upon receiving the appraisal and/or other evidence of market value, the council will determine whether to offer the real property for sale or otherwise and will establish minimum acceptable terms for the subject real property’s transfer. In establishing the minimum acceptable terms for the transfer, the council may consider such information the council determines necessary and/or appropriate, including, without limitation, the appraisal(s)

and/or other evidence of market value. The council may, on recommendation of the city manager, hold a hearing to provide interested parties an opportunity to comment prior to offering any City-owned real property for sale; provided, however, nothing contained in this Ordinance will be construed to require the council to hold a hearing as a condition to completing the sale. In deciding whether to recommend that the council hold a hearing, the city manager may consider any factors the city manager determines necessary and/or appropriate, including, without limitation, the size and/or value of the subject real property. If the council decides to offer the real property for sale, the city manager will transfer the real property in accordance with Section 5.3 or as otherwise directed by the council.

5.3 Procedures. Unless expressly directed otherwise by the council, the city manager may, in the city manager's discretion, transfer City-owned real property through such method of transfer that the city manager determines is in City's best interests, including, without limitation, the following: (a) by listing designated parcel(s) of City-owned real property with a licensed realtor; (b) through a solicitation or bid process; (c) by auction or liquidation sale; (d) by direct sale to a private party; and/or (e) after providing public notice of the City-owned real property offered for sale.

5.4 Documentation. City's transfer of real property pursuant to the procedures contained in this Section 5 will be conditioned on the transferee entering into such agreements, documentation, and/or instruments City determines necessary and/or appropriate to effectuate the transfer, which may include, without limitation, a purchase and sale agreement. Notwithstanding anything contained in this Ordinance to the contrary, the transfer agreement(s), document(s), and/or instrument(s) will be in form and content satisfactory to City and contain such terms and conditions the city manager and/or city attorney determine necessary and/or appropriate, which terms and conditions may include, without limitation, that the real property will be transferred "as is" and "with all faults" and subject to all applicable federal, state, and/or local laws, rules, regulations, codes, and/or ordinances.

5.5 Conditions of Sale. In determining whether to transfer any City-owned real property under this Ordinance, City may, in its sole discretion, consider whether to establish certain requirements as conditions of the transaction, which conditions may include, without limitation, requiring that the real property be developed to a certain standard by a specified date, that the real property not be placed in tax-exempt status for a specified length of time, and/or such other conditions City deems necessary and/or appropriate.

6. Exemptions. The following transfer(s) of real property are exempt from the procedures contained in Section 5 of this Ordinance.

6.1 Transfer to Government Entities. Notwithstanding anything contained in this Ordinance to the contrary, City may transfer real property to any federal, state, and/or local agency, government, and/or political subdivision if the council finds (a) that the real property is not needed for public use, and/or (b) that the public interest may be furthered by disposal of the real property. City may transfer City-owned real property to another government entity with or without consideration.

6.2 Transfer of Low Value Property. Whenever the city manager and/or council finds (a) that low value property is not needed for public use, and/or (b) that the public interest may be furthered by disposal of such low value property, the city manager may direct the transfer of such low value property in such manner as the city manager deems necessary and/or appropriate, including, without limitation, by direct sale to a private party and/or by donation.

7. Alternate Procedures. Notwithstanding the provisions of this Ordinance, the council may, from time to time, adopt a resolution establishing a procedure for the sale of individual parcels of a class of City-owned real properties, or any interest in the properties, under a single program established within City for the sale of that class of properties. City may thereafter sell any parcel under that adopted procedure in lieu of the procedure established in this Ordinance.

8. Interpretation; Severability; Errors. All pronouns contained in this Ordinance and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. Any reference to a particular law, rule, regulation, code, or ordinance includes the law, rule, regulation, code, or ordinance as now in force and which may hereafter be amended. The provisions of this Ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, and/or portion of this Ordinance is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Ordinance. This Ordinance may be corrected by order of the Council to cure editorial and/or clerical errors. City staff and/or its designee may renumber, format, and make all other edits necessary to codify this Ordinance into the John Day City Code.

9. Emergency Declaration. The council finds that passage of this Ordinance is necessary for the immediate preservation of the peace, health, and safety of City’s citizens. The council further finds that a delay of thirty (30) days prior to the effective date of this Ordinance may result in acts, omissions, and/or conditions detrimental to City and the public welfare. Therefore, an emergency is declared to exist and this Ordinance will be in full force and effect as of January 26, 2021.

This Ordinance was PASSED by the City Council by a vote of ___ for and ___ against and APPROVED by the Mayor on this 26th day of January, 2021.

Ron Lundbom, Mayor

ATTEST:

Nicholas Green, City Manager