



CITY OF JOHN DAY

mayor
Ron Lundbom

city manager
Nicholas Green

accounts clerk
Chantal DesJardin

council
Shannon Adair
Gregg Haberly
Dave Holland
Heather Rookstool
Elliot Sky
Paul Smith

ORDINANCE NO. 20-187-08 (AMD-20-10)

AN ORDINANCE AMENDING THE JOHN DAY DEVELOPMENT CODE TO STRENGTHEN AND CLARIFY ENFORCEMENT PROVISIONS WITHIN THE CODE. (TYPE IV PROCEDURE)

Type of Action Requested

<input type="checkbox"/>	<input type="checkbox"/>	Resolution	<input checked="" type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Formal Action	<input type="checkbox"/>	Report Only

DATE SUBMITTED: February 16th, 2021
AGENDA DATE REQUESTED: February 23rd, 2021

1. PROPOSAL SUMMARY

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 the City of John Day, and increased and/or more complex code enforcement cases, there is a need to refine the code enforcement provision of the Code. The City is proposing amendments to clarify compliance requirements, redefine violations as a violation rather than a criminal misdemeanor, and expand option for achieving compliance. The amendments also provide a definition for “Planning Official” that clarifies this role to include designees appointed by the City Manager to administer the Code.

2. APPLICABLE CRITERIA

This request is a legislative amendment to the John Day Development Code. The applicable approval criteria are found in section 5-4.050, which incorporates compliance with Statewide Planning Goals and the John Day Comprehensive Plan.

3. CITY COUNCIL CONSIDERATIONS

The City Council’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.

4. STAFF RECOMMENDATION



CITY OF JOHN DAY

mayor
Ron Lundbom

city manager
Nicholas Green

accounts clerk
Chantal DesJardin

council
Shannon Adair
Gregg Haberly
Dave Holland
Heather Rookstool
Elliot Sky
Paul Smith

Staff recommends that the City Council **adopt Ordinance 20-187-08 as presented in Exhibit B**, along with the findings in this report.

5. PUBLIC NOTIFICATION

The City of John Day mailed public notice to all affected property owners on December 17th, 2020 and published notice in the Blue Mountain Eagle on February 3rd, 2021 as required by the Development Code. Interested parties who participated in previous hearings were notified of the final hearing three weeks and advance. Staff reports were made available for public inspection and sent to interested parties seven days prior to the hearing date.

6. PLANNING COMMISSION DISCUSSION/PUBLIC COMMENTS

Set out below are the primary issues discussed during the proceeding before the Planning Commission. Staff has inserted comments where appropriate to facilitate the City Council's review of the proposed amendments. Ultimately, the Planning Commission recommended that the City Council approve the proposed amendments with a change to remove the "prior notice of a violation" provision discussed in more detail below.

- (1) Section B. Riverside Home Park ("Riverside") suggested that this provision removes procedural protections for those accused of a code violation. This provision, as originally drafted, does not remove any procedural requirements of code enforcement nor does it deprive persons of the due process. Rather, it establishes that Code Violations are a public nuisance and allows for use of the existing abatement procedures adopted under the Title 8, Chapter 2 of the John Day Municipal Code (i.e. the Nuisance Ordinance). Linking these sections of code avoids the need to create a separate set of abatement procedures in the Code. Staff has included some refinements to clarify this particular amendment. Abatement is only used where the City could physically remedy the violation and thus would not be employed for technical violations. Furthermore, it is not a preferred remedy because of the substantial amount of procedure necessary to ensure due process. For information purposes, the abatement procedures established under Section 8-2-8 of the John Day Municipal Code are attached hereto as Exhibit C.
- (2) Sections C(1) and C(4). Section C, Paragraph 1 prohibits the City from issuing permits or land use approvals for properties in violation of the Code except under the circumstances described in Paragraph 4(a)



CITY OF JOHN DAY

mayor
Ron Lundbom

city manager
Nicholas Green

accounts clerk
Chantal DesJardin

council
Shannon Adair
Gregg Haberly
Dave Holland
Heather Rookstool
Elliot Sky
Paul Smith

through 4(d). Following deliberations before the Planning Commission, City staff identified the potential for an additional exception to allow for permits to be issued for properties subject to a compliance agreement. Not all Code violations can be remedied immediately and the City should provide an avenue to allow for otherwise permissible development. A compliance agreement provides such as avenue as it requires the property owner to acknowledge the violation and memorializes a plan to resolve the violation.

- (3) Section E. The fees imposed for violations has been updated to change the current maximum fine to a minimum fine to better reflect current dollar values and to avoid the outcome where the significant effort of prosecuting a Code violation results in a de minimus fine.
- (4) Section I. The amendments hold the owner of the property responsible for violations on the property even when the owner didn't actually commit the violation. Riverside argued that to this provision as inappropriate as only the actual perpetrator of the violation should be subject to fines and because such liability interferes with private arrangements. Staff found that vicarious liability is appropriate because one of the obligations of property ownership is to ensure activities on the owner's land comply with the laws. Furthermore, it avoids situations where owner, occupants, or other parties simply blame each other as a means to avoid prosecution. Vicarious liability is consistent with most other City and state regulations concerning property violations such as the City's nuisance regulations.
- (5) The Planning Commission re-opened the public hearing to consider comments regarding the determination of violations under Section C(3). As originally proposed, the amendments specified four ways that a property could be determined not to be in compliance with the Development Code: (1) through a prior notice, (2) through a decision by the city or other tribunal, (3) through the review process of the current application, or (4) through an acknowledgement by the alleged violator. Riverside expressed concern regarding prior notice as a notice is an allegation of a violation and not necessarily a finding of a violation. After discussion, the Planning Commission recommended removal of a prior notice as a basis to determine the existence of a code violation and staff has no issue with such a change.
- (6) The amendments add a definition of "Planning Official" that includes persons designated by the Planning Official to perform functions of



CITY OF JOHN DAY

mayor

Ron Lundbom

city manager

Nicholas Green

accounts clerk

Chantal DesJardin

council

Shannon Adair

Gregg Haberly

Dave Holland

Heather Rookstool

Elliot Sky

Paul Smith

the Planning Official. Riverside argued that the definition of Planning Official should not include *any* designee. Rather, only “qualified” persons should be allowed to be designees. The introduction of some type of qualifications requirement would in turn require identification of the required qualifications, which Staff feels is an unnecessarily restrictive exercise. There is no incentive for the City Manager or Planning Official to designate someone that is unable to perform the duties to which they are assigned and, in any event, challenges to actions performed by a designee would be reviewed by the Planning Official and/or City Manager.

- (7) Riverside raised concern regarding the effect of the amendments on non-conforming uses. The amendments have no effect on non-conforming uses (or non-conforming structures or lots) as non-conforming uses, structures, and lots do not violate the Code. The Code already recognizes that non-conforming uses, structures, and lots are allowed to persist.
- (8) Public comment from Riverside suggested that revocation of land use approvals is an inappropriate remedy for code enforcement. No legal authority was cited in support of this claim, just philosophical argument as to the City’s approach to code enforcement. Staff views revocation as an additional tool for code enforcement, but a tool of last resort. Staff prioritizes voluntary compliance first and foremost and utilizes fines and other remedies if voluntary compliance is not provided. Only in the event that fines and other remedies are ineffective would staff consider revocation proceedings. Such proceedings would be conducted before the Planning Commission with the Planning Commission deciding whether the violation warrants revocation and whether alternative paths exist for the City to obtain compliance. Like all Planning Commission Decisions, an aggrieved party could appeal to the City Council and file further challenges to any decision of the City Council.
- (9) Finally, Riverside raised arguments about the applicability of ORS 446.200 and ORS 197.493. These statutes deal with the application of local regulations to lawfully placed manufactured dwellings and requirements for local governments to allow use of residential trailers as a dwelling in certain circumstances. The connection between the proposed amendments and these statutes was not identified by Riverside. Absent further clarification from Riverside, staff does not see any way in which the proposed amendments are in conflict with those statutes.



CITY OF JOHN DAY

mayor
Ron Lundbom

city manager
Nicholas Green

accounts clerk
Chantal DesJardin

council
Shannon Adair
Gregg Haberly
Dave Holland
Heather Rookstool
Elliot Sky
Paul Smith

7. 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;*

FINIDNG: Specific findings of compliance with statewide land use goals are addressed below.

Goal 1 – Citizen Involvement.

Finding: The Code establishes procedures for text amendments such as the subject proposal to implement Goal 1. The Code specifically calls for various forms of notice and public hearings. The City has provided the requisite notices and held the requisite public hearings to satisfy the Code and therefore Goal 1. This criterion is met.

Goal 2 – Land Use Planning.

Finding: Staff is following the prescribed procedure for a text amendment to ensure adequate review of the proposed text amendment. This staff report identifies the basis for making a decision on the subject proposal pursuant to applicable code criteria. Staff finds Goal 2 is met.

Goals 3 and 4, Agricultural and Forest Lands

Finding: These Goals are not applicable as the proposed text amendments will not have any known impact on either Agricultural or Forest Lands.

Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces.

Finding: The proposed text amendments have no impact on Natural Resources, Scenic and Historic Areas, and Open Spaces. This Goal does not apply.



CITY OF JOHN DAY

mayor

Ron Lundbom

city manager

Nicholas Green

accounts clerk

Chantal DesJardin

council

Shannon Adair

Gregg Haberly

Dave Holland

Heather Rookstool

Elliot Sky

Paul Smith

Goal 6 – Air, Water and Land Resources Quality.

Finding: The proposed text amendments have no impact to air, water, and land resources. This Goal does not apply.

Goal 7 – Areas Subject to Natural Hazards.

Finding: The proposed text amendments have no impact on the City's ability to plan for natural hazards or do not otherwise amend the City's land use regulations governing natural hazards. This Goal does not apply.

Goal 8 – Recreational Needs.

Finding: The proposed text amendments have no impact on recreational needs or resources. This Goal does not apply.

Goal 9 – Economic Development.

Finding: The proposed amendments do not affect the City's supply of lands available for industrial or commercial uses or otherwise inhibit development of lands within the City for such uses. This Goal does not apply.

Goal 10 – Housing.

Finding: The proposed text amendments do not affect the City's supply of land available for residential development or otherwise inhibit residential development. This Goal does not apply.

Goal 11 – Public Facilities and Services

Finding: The proposed amendments do not impact the City's ability to plan for or supply public facilities or services. This Goal does not apply.

Goal 12 – Transportation

Finding: The proposed text amendments have no impact on the City's ability to plan for supply an adequate transportation system. It does not allow for higher levels of development than presently permitted or



CITY OF JOHN DAY

mayor
Ron Lundbom

city manager
Nicholas Green

accounts clerk
Chantal DesJardin

council
Shannon Adair
Gregg Haberly
Dave Holland
Heather Rookstool
Elliot Sky
Paul Smith

otherwise change the function or classification of any transportation facility. This Goal does not apply.

Goal 13 – Energy Conservation

Finding: The proposed text amendments have no impacts on energy use. This Goal does not apply.

Goal 14 – Urbanization

Finding: The proposed text amendments do not impact that transition of rural land to urban uses. This Goal does not apply.

Goals 15 through 19.

Finding: Goals 15, 16, 17, 18 and 19 are not applicable because they only pertain to areas within Western Oregon.

2. Approval of the request is consistent with the Comprehensive Plan; and

Finding: The goals and policies of the City’s Comprehensive Plan largely mirror the Statewide Land Use Goal. Accordingly, those goals and policies are either satisfied or not applicable for the same reasons set out in findings for the corresponding statewide land use goal. There are no provisions of the Comprehensive Plan that directly address code enforcement. However, the proposed amendments support the broader goals and policies identified in the Comprehensive Plan pertaining to ensuring development actually occurs in a regulated manner and otherwise in accordance with the principals outlined in the Comprehensive Plan.

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: The amendments affect the entire city of John Day, but do not propose or allow for any particular use. Therefore, the amendments have no impact on the City’s ability to plan for or supply public facilities and services.



CITY OF JOHN DAY

mayor

Ron Lundbom

city manager

Nicholas Green

accounts clerk

Chantal DesJardin

council

Shannon Adair

Gregg Haberly

Dave Holland

Heather Rookstool

Elliot Sky

Paul Smith

8. CITY COUNCIL MOTION

After hearing the staff presentation and any public testimony, including any rebuttal, the Council will close the hearing and deliberate. The City Council has three options:

1. Adopt Ordinance No. 20-187-08, as presented.
2. Amend Ordinance No. 20-187-08 and adopt as amended.
3. Adopt findings demonstrating that the ordinance does not comply with the John Day Comprehensive Plan and do not adopt Ordinance No. 20-187-08.

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

Respectfully submitted this 16th day of February, 2021

Nicholas Green

City Manager / City Planning Official

City of John Day

Enclosures:

- Exhibit A. Staff Report
- Exhibit B. Ordinance No. 20-187-08 with recommended amendments
- Exhibit C. John Day Nuisance Ordinance No. 15-165-03