



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

EXHIBIT A. STAFF REPORT AMD-20-10 FOR ORDINANCE NO. 20-187-08 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"/>	Resolution	<input checked="" type="checkbox"/>	Ordinance
<input type="checkbox"/>	Formal Action	<input type="checkbox"/>	Report Only

DATE SUBMITTED: June 15, 2021
AGENDA DATE REQUESTED: June 22, 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, there is 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 to include qualified 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. The City Council should approve the request as recommended by the Planning Commission if it conforms to the approval criteria.

4. STAFF RECOMMENDATION

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

5. PUBLIC NOTIFICATION



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The City of John Day mailed public notice to all affected property owners on April 21, 2021 and published notice in the Blue Mountain Eagle on June 2, 2021 as required by the Development Code. Interested parties who participated in previous hearings were notified of the final hearing three weeks in 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

Exhibit B “Staff notes on Past changes” outlines the historic proposals and revisions presented regarding the code enforcement amendments. After discussion and consideration of public comments, the Planning Commission recommended adoption of the proposed amendment. The following issues were brought forth for discussion.

- (1) Riverside Home Park had expressed concern regarding proposed language which established that Code Violations could be addressed as a public nuisance. The proposed language would have allowed the City to use the existing abatement procedures adopted under Title 8, Chapter 2 of the John Day Municipal Code (the Nuisance Ordinance) to address Code Violations. At the request of the City Council, staff removed the provision linking the development code to the nuisance ordinance and dissolved the abatement procedures therein. Staff discussed replacing the provisions with an abatement structure specific to development code violations, but decided to remove it entirely. Administrative abatement of development code violations has proved to be a costly and ineffective endeavor for the City.
- (2) Sections B(1) and B(4). Section C Paragraph 1 prohibits the City from issuing permits or land use approvals for properties deemed to be in violation of the code, except for those conditions described in Paragraph 4(a) through 4(d) under which the City may issue permits to properties in violation of the Code. The City has recommended the addition of 4(e) to this ordinance to allow for approvals at the discretion of the City Planning Official where the proposed development meets all applicable code requirements. The purpose of this adjustment is to allow owners of home parks or other multi-family developments to continue with development actions that meet the standards of the code while unrelated violations are being adjudicated and/or abated.
- (3) Section B(1). At Riverside’s request, staff has included reference in B(1) to the nonconforming uses and developments chapter of the Code. This addition clarifies the fact that valid and existing nonconforming uses will not be subject to code enforcement on the legally non-conforming developments
- (4) Section B(2). The recommended language in subsection 2(a) includes the phrase “to the best of the applicant’s knowledge.” The planning commission considered the removal of this language in order to shift the burden of proof



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to the applicant to ensure code compliance, but recommended retaining the phrase due to lack of public familiarity with the code.

- (5) Section C. Revocation procedures created herein and imposed on applicants who fail to comply with those conditions and limitations placed upon the exercise of the permit or approval are consistent with similar provisions in state law. Specifically, the *2002 Oregon Manufactured Dwelling Park and Specialty Code (the "MD&P")*, Section 1-7.8 "Permit Validity" and Section 1-7.9 "Permit Suspension or Revocation," provide that "the issuance of a permit based on plans, specifications and related material shall not prevent the authority having jurisdiction from requiring the correction of errors in plans, specifications and related material or from preventing the building from being operated in violation of this code (Section 1-7.8)." The 2002 Specialty Code further authorizes suspension or revocation of permits "according to the provisions of the Oregon Administrative Procedures Act or *local ordinances* (Section 1-7.9, italics added)." Similar language exists in the *2010 Oregon Manufactured Dwelling Installation Specialty Code*, Section 1-11 Stop Work Orders, which requires "The stop work order shall be in writing and shall be given to the owner of the property involved, to the owner's agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume" (Section 1-11.2). Section D has been updated to reflect similar language for this ordinance.
- (6) Section D. The penalties section has been updated to include a provision prohibiting the city from imposing larger fines for subsequent violations of the same provision of the code within a 12-month period. The first violation is punishable by a fine of \$100-500 and a second/subsequent violation is punishable by a fine up to \$250 or the original fine, whichever is less.
- (7) Section I. Vicarious liability is imposed by this ordinance on both the property owner and its employees, agents, contractors, tenants, invitees, and any other occupant of the owner's real property. This section is consistent with Section 1-12 Violations and Penalties of the MD&P as it relates to manufactured home park developments: "When an inspection reveals a manufactured dwelling installation, alteration, repair, or conversion violates any portion of this code, law, rule, or regulation, the authority having jurisdiction shall serve a Notice of Violation upon the owner or contractor" (Section 1-12.1(a)). This vicarious liability is also consistent with Oregon Revised Statute (ORS) 446.111 Regulation of structures in parks, which states: "No stationary structure may be erected within a mobile home or manufactured dwelling park *without the consent of the owner or operator*; and when giving consent, it shall be the duty of the mobile home or manufactured dwelling park manager to advise the tenant or builder of the



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standards required by ORS 446.003 (Definitions for ORS 446.003 to 446.200 and 446.225 to 446.285 and ORS chapters 195, 196, 197, 215 and 227) to 446.200 (Exemption from additional regulations) and 446.225 (Administration and enforcement of federal manufactured housing safety and construction standards) to 446.285 (Advisory board training and education programs) and the rules issued thereunder. [1961 c.665 §3; 1967 c.247 §7; 1969 c.533 §22; 1973 c.560 §11; 1975 c.546 §11; 1989 c.648 §11]” (italics added). The Planning Commission elected to retain the vicarious liability provision.

- (8) Riverside requested that the amendment include a definition for the word “property” that would specify that in the context of mobile home parks, the term only include the specific residential lot designated for a single dwelling, rather than the entire park. The planning commission declined to recommend the change after considering the request. The primary concern with the request is that lots within a manufactured dwelling park are not legally defined and recorded as typical properties are. Because of this, lot lines and space boundaries within a park may be adjusted, removed, and expanded without land use approval or documentation. If an applicant wishes to apply for a code change amending the way property is defined within the city, the procedure for proposing the change must be followed.

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;***

FINDING: 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. The notices were provided as follows:



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- Notice was provided to DLCD on April 5, 45-days in advance of the first hearing.
- Notice was printed in the Blue Mountain Eagle on April 28, 22 days in advance of the first hearing.
- Notice was mailed directly to residents and participants on April 21, 30 days in advance of the first hearing.
- Notice of the City Council meeting was published in the Blue Mountain Eagle on June 2, 20 days before the meeting.

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.

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.



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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 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 Goals. 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



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

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 following motion is suggested:

“I move to recommend City Council approve AMD-20-10 based on the findings contained in the staff report [with conditions or amendments to Ordinance No. 20-187-08, if any].”

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

Respectfully submitted this 15th day of June, 2021

Nicholas Green
City Manager / City Planning Official
City of John Day

Enclosures:

- Adopting Ordinance No. 20-187-08
- Exhibit A—Staff Report AMD-20-10
- Exhibit B—Proposed Amendments
- Exhibit C—Staff Notes on Past Proposals