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## STAFF REPORT AMD-20-10

**Date Submitted:** January 5, 2021  
**Agenda Date Requested:** January 12, 2021  
**To:** John Day Planning Commission  
**From:** Daisy Goebel, City of John Day  
Associate Planner  
**Subject:** 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)  
**Location:** Citywide

### Type of Action Requested

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

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### 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, 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 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 20-187-08 as presented in Exhibit A**, along with the findings in this report, subject to applicable comments submitted to the Planning Commission as part of the public hearing.

### 5. PUBLIC NOTIFICATION

The City of John Day mailed public notice to all affected property owners on December 17<sup>th</sup> and published notice in the Blue Mountain Eagle on December 23<sup>rd</sup> as required by the Development Code. Staff reports were made available for public inspection on January 5—seven days prior to the hearing date.

Staff note(s): Following a teleconference with Riverside Home Park, the City agreed to clarify and reconsider portions of the proposed amendment, as follows:

- (1) Section B. The intent of declaring violations of the Code as a public nuisance as noted in Section B is to provide an opportunity for due process of development code violations by using the City's existing enforcement and abatement procedures adopted under the John Day Nuisance Ordinance, rather than defining and adopting a separate set of procedures for enforcement of development code violations. These due process procedures are described in Sections 33-46 of the Nuisance Ordinance (Exhibit B).
- (2) Sections C(1) and C(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 is evaluating the option of adding a 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 would be 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 D. 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.

- (4) Section E. The fees imposed for violations has been updated to be consistent with the language in Section 47.1 of the Nuisance Ordinance, except that additional fine of *not more than* \$250 may be assessed for each day that the violation persists, which differs from the Nuisance Ordinance, which assesses fines of *not less than* \$250. The fines and penalties imposed by Section E of this ordinance 20-187-08 shall supercede those of the Nuisance Ordinance.
- (5) 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 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*).

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.

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*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-20-10 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.*

**RECOMMENDED TO THE CITY COUNCIL** by the John Day Planning Commission this 12<sup>th</sup> day of January, 2021.

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_

Abstentions: \_\_\_\_\_  
Absent: \_\_\_\_\_  
Vacancies: \_\_\_\_\_

ORDERED:

\_\_\_\_\_  
Ken Boethin, Chair

ATTEST:

\_\_\_\_\_  
Nicholas Green, City Manager

Enclosures:

- Exhibit A. Ordinance No. 20-187-08 (proposed)
- Exhibit B. John Day Nuisance Ordinance No. 15-165-03

EXHIBIT A

CITY OF JOHN DAY  
ORDINANCE NO. 20-187-08

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

Added language in double underline

Deleted language in ~~strikethrough~~

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.~~

A. 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.

B. 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.

C. 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.

#### D. 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 written stop work order shall given to the owner of the property involved, to the owner's agent, or to the person doing the work. The stop work order shall state the reason for the order, and the conditions under which the cited work will be permitted to resume, or shall state that a revocation hearing shall be held by the Planning Commission pursuant to the procedures for a Type III action.

#### E. 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 less than \$100 and not more than \$500 for each violation.
- b. An additional fine of not more than \$250 for each day that the violation persists.

F. 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.

I. 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:

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.).

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**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 qualified designee of the Planning Official.

**Planter Strip.** A landscape area for street trees and other plantings within the public right-of-way, usually a continuous planter area between the street and a sidewalk. See also, Tree Well.