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**STAFF REPORT AMD-20-10**

**Date Submitted:** Wednesday, March 31, 2021

**Agenda Date Requested:** Wednesday, April 7, 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**

**[ ] Resolution [ X ] Ordinance**

**[ ] Formal Action [ ] Report Only**

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**1. 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, create specific measures for resolving violations, and expand options 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. 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 prior to the previous hearings on this matter. Because a continuance was granted by the City Council on February 23, 2021 to a specified date and time, no additional notices are required. Staff reports were made available for public inspection on March 31—seven days prior to the hearing date and sent to participants.

**6. BACKGROUND AND STAFF CHANGES**

After the Planning commission recommended a prior version of this ordinance to the City Council for adoption on January 12, several changes were discussed among the councilors for revision- these changes are discussed in more detail below. As staff re-worked the ordinance the changes became more expansive, and staff recommended that the new version be remanded back to the planning commission for recommendation once more. On Tuesday, February 23rd, The City Council voted to remand the amendments to the planning commission on for further review.

Set out below are the primary issues brought forth for further discussion.

1. Riverside Home Park (“Riverside”) 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 Coed (i.e. the Nuisance Ordinance) to address Code Violations. The City Council suggested that a separate set of abatement procedures should be created specifically to address development code violations to avoid linking the two sections, so this provision has been removed in the current version of the ordinance. After considering several options, staff is recommending that the abatement procedures be removed altogether. Abatement of development code violations has proved to be costly and ineffective, as well as difficult to administer with consistency. The Amendments will require alledged violators to either correct development code violations or file an appeal through the existing land-use appeals process provided in the code.
2. Section B(2). The phrase “to the best of the applicant’s knowledge” has been removed from provision *a* to shift the burden of proof to the applicant to verify compliance with the Code.
3. Section B(3). “Prior notice” has been removed at Riverside’s request as a determination of a violation of the Code.
4. Sections B(1) and C(4). Section B 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(e) 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 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.
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 C has been updated to reflect similar language for this ordinance.

Additional language has also been added to include the public hearing distinctions to clarify that due-process will be required for any permit revocation.

1. Section D. Penalties of the development code have been clarified to include a reduced fine for each day the violation persists. The ordinance also includes a statement of remidies available to the city in lieu of abatement.

1. Section F. 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).*
2. Definitions. The definition of Planning Official has been amended to clarify the role to include city employees or contractors at the discretion of the Chief Planning Official. The inclusion of the ‘qualified’ designation in this section has been removed to avoid redundancy and further uncertainty regarding the meaning of “qualified.” The discretion of the Chief Planning Official is necessary in this definition, and the clarification that the appointee shall be “qualified” does not reduce ambiguity or create additional standards for the appointment.

**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;***

**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. 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.

**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 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 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.

**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 7th day of April, 2021.

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| Ayes: |  |  |  |
| Nays: |  |  |  |
| Abstentions: |  |  |  |
| Absent: |  |  |  |
| Vacancies: |  |  |  |
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| ORDERED:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Ken Boethin, Chair  ATTEST: |  |  |  |
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| Nicholas Green, City Manager |  |  |  |

Enclosures:

* Exhibit A. Ordinance No. 20-187-08 (proposed)