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STAFF REPORT AMD-21-03

Date Submitted: Thursday, May 13th, 2021

Agenda Date Requested: Thursday, May 20th, 2021

To: John Day Planning Commission

From: Daisy Goebel, City of John Day
Associate Planner

Subject: An Ordinance Amending the John Day Development Code to Reduce the Notification Period for Type IV Procedures from 45 To 35 Days and Clarifying Other Provisions for Compliance with State Law; and Amending the John Day Comprehensive Plan to Reduce the DLCD Notification Period for Comprehensive Plan Amendments from 45 to 35 Days. (Type IV Procedure)

Location: Citywide

Type of Action Requested:

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

1. BACKGROUND

The Department of Land Conservation and Development (DLCD) requires local governments to submit written notification when proposing certain legislative changes including land use regulation changes, Comprehensive Plan amendments, and changes to the Urban Growth Boundary. These submittals are referred to as Post-Acknowledgement Plan Amendments or PAPAs as described in OAR 660-018-0020. At the time the City Development Code was written, this information had to be submitted to DLCD's Salem office on provided forms 45 days in advance of the first hearing on the matter. The City

of John Day Development Code and Comprehensive Plan contain provisions reflecting the 45-day requirement.

DLCD now prefers that notices be submitted electronically through their web-based program “PAPA Online” which allows for prompt review and eliminates the need for 45-day notice. These submissions can be amended by city staff as new information is added and records can easily be accessed electronically by the general public. As a result of these updates, this development code requirement has become burdensome and unnecessary. This code amendment will align the City requirement with state requirements by reducing the notification period from 45-days to 35-days. This amendment also removes the requirement for including a certificate of mailing to DLCD. In addition to these changes, the proposal also amends the mailing provision to only require notice to be mailed to property owners who will be directly affected by the change. This amendment aligns with state law and reduces the cost burden on the City to provide unnecessary notices to property owners who would not be affected.

The proposed amendments also include additional changes intended to align our code with legal precedent and state law.

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 21-193-04, as presented** and findings in this report.

5. PUBLIC NOTIFICATION

The City of John Day mailed public notice to all affected property owners on April 21, 2021 and notice was posted in the Blue Mountain Eagle on April 28, 2021 as required by the Development Code.

Public comments received: *None*

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.

Decision-Making Criteria. The recommendation by the Planning Commission and the decision by the City Council 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***
- 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 City of John Day Comprehensive Plan, in compliance with Oregon statute, mirrors the statewide planning goals and applies them in the context of the John Day community.

We do not have reason to believe that this ordinance would meaningfully impact citizen involvement (Goal 1) because it aligns with state laws and similar language in other local codes. The City of John Day makes citizen involvement an integral part of the planning process by publishing notice of quasi-judicial and legislative actions in the local newspaper, making ordinances broadly available online, and mailing notice of code changes to property owners that may be affected; in accordance with state law. As the designated Committee for Citizen Involvement (CCI), the planning commission engages with the general public to provide opportunities to participate in the planning process. In consensus with the state requirement, staff believes that 35-days is a sufficient time frame for interested citizens to provide input on legislative actions.

Each of the other Statewide Planning Goals addresses specific areas, needs, and resources which are not impacted by this amendment.

This ordinance does not affect a particular area of land, so the third criterion does not apply to this decision.

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-21-03 based on the findings contained in the staff report [with conditions, 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
20th day of May, 2021.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

ORDERED:

Ken Boethin, Chair

ATTEST:

Nicholas Green, City Manager

Exhibit A. Ordinance 21-193-04

AN ORDINANCE AMENDING THE JOHN DAY DEVELOPMENT CODE TO REDUCE THE NOTIFICATION PERIOD FOR TYPE IV PROCEDURES FROM 45 TO 35 DAYS AND CLARIFYING OTHER PROVISIONS FOR COMPLIANCE WITH STATE LAW; AND AMENDING THE JOHN DAY COMPREHENSIVE PLAN TO REDUCE THE DLCD NOTIFICATION PERIOD FOR COMPREHENSIVE PLAN AMENDMENTS FROM 45 TO 35 DAYS. (TYPE IV PROCEDURE)

- Strikeout language (**example**) is shown where language is proposed for removal
- Double Underlined language shows a proposed addition

COMPREHENSIVE PLAN AMENDMENTS

Following receipt of recommendations from the Planning Commission, if the City Council determines that proposed amendments should be considered, amendment of the Comprehensive Plan shall be based on the following procedure and requirements.

1. Notice to DLCD ~~45~~ 35 days prior to the first public hearing on the issue.
2. The City shall set a public hearing date and publish public notice through a newspaper of general circulation in the City at least ten (10) days prior to the hearing.
3. Copies of proposed amendments shall be made available for review at least ten (10) days prior to the Planning Commission meeting.
4. Within ten (10) days after the close of the public hearing. The Planning Commission shall make findings of fact and recommend to the City Council adoption, revision or denial of the proposed amendments.
5. A public hearing, together with public notice as outlined above, shall be conducted by the City Council to review the Planning Commission recommendation and take additional public testimony. As applicable, such hearing shall be conducted jointly with the County.
6. Copies of proposed amendments and the Planning Commission recommendation shall be made available for review at least ten (10) days prior to the City Council or joint City-County hearing.
7. Within ten (10) days after the close of the public hearing, the city Council (and County Court as applicable) shall make findings of fact and adopt, adopt with changes, or deny the proposed amendments. Adoption of Plan amendments is effective upon:
 - A. City adoption in the case of amendments of the Plan Map for the area within the City Limits (with notice to parties who submitted oral or written comments);
 - B. City and County adoption in the case of amendment of Plan policies or the Plan Map for the urban growth area (with notice to parties who submitted oral or written comments); or
 - C. Notice of adoption sent to DLCD and no appeal has been filed with LUBA within twenty-one (21) days.

DEVELOPMENT CODE AMENDMENTS

5-4.1.050 Type IV Procedure (Quasi-Judicial/Legislative)

- A. Pre-Application Conference.** A pre-application conference is required for all Type IV applications initiated by a party other than the City of John Day. The requirements and procedures for a pre-application conference are described in Section 5-4.1.060. C.
- B. Timing of Requests.** The City may establish a schedule for when it will accept legislative code amendment or plan amendment requests. The City Council may initiate its own legislative proposals at any time. Legislative requests are not subject to the 120-day review period under ORS 227.178.
- C. Application Requirements.**
1. Application forms. Type IV applications shall be made on forms provided by the city Planning Official.
 2. Submittal Information. The application shall contain:
 - a. The information requested on the applicable form;
 - b. A map and/or plan if the proposed amendment is a map amendment; addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable);
 - c. The required fee; **and**
 - d. An analysis of the Transportation Planning Rule as required by OAR 660-012; and
 - e. One copy of a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.

D. Notice of Hearing.

1. Required hearings. A minimum of two (2) hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications.
2. Notification requirements. Notice of public hearings for the request shall be given by the City Planning Official in the following manner:
 - a. For quasi-judicial applications that affect a specific property (or properties), such as a proposed map amendment, aAt least twenty (20) days, but not more than forty (40) days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan map or any element thereof, or to adopt an ordinance for any Land Use District Map Change, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
 - (1) Each owner whose property would be rezoned in order to implement the ordinance (including owners of property subject to a comprehensive plan map amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan map amendment);
 - (2) Any affected governmental agency;
 - (3) Any person who requests notice in writing;
 - (4) For a zone map change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175;
 - (5) Owners of airports shall be notified of a proposed zone map change in accordance with ORS 227.175.

- b. For legislative items, such as Comprehensive Plan text amendments or Development Code text amendments, at ~~At~~ least ten (10) days before the scheduled Planning Commission public hearing date, and fourteen (14) days before the City Council hearing date, public notice shall be published in a newspaper of general circulation in the City.
- c. The City Planning Official shall:
 - (1) For each mailing of notice, file an affidavit of mailing in the record as provided by subsection a; and
 - (2) For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection b.
- d. The Oregon Department of Land Conservation and Development (DLCD) shall be notified electronically or in writing of proposed comprehensive plan and development code amendments at least ~~forty-five (45)~~ thirty-five (35) days before the first public hearing at which public testimony or new evidence will be received. ~~The notice to DLCD shall include a DLCD Certificate of Mailing.~~
- e. Notifications for annexation shall follow the provisions of this Chapter.