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STAFF REPORT AMD-20-10

Date Submitted: May 3, 2021

Agenda Date Requested: May 20, 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"/>	Resolution	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	<input type="checkbox"/>	Formal Action	<input type="checkbox"/>	<input type="checkbox"/>	Report Only

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 on April 21, 2021. The notice was provided to the Department of Land Conservation and Development on April 5, 2021- 45 days in advance of the hearing. Notice was also published in Blue Mountain Eagle on April 28, 2021 in conformance with the City of John Day Development Code.

6. BACKGROUND AND STAFF CHANGES

See Exhibit B “Staff notes on Past Changes” for a complete Odyssey detailing historic public comments and revisions of the proposed ordinance.

Set out below are the primary issues brought forth for 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 Code (i.e. the Nuisance Ordinance) to address Code Violations. Staff has removed the provision linking the development code to the nuisance ordinance and dissolved the abatement procedures therein. 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 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 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 non-conforming uses will not be subject to code enforcement on the legally non-conforming developments or uses.
- (4) Section B(2). The recommended language in subsection 2(a) does not include the phrase "to the best of the applicant's knowledge." Staff is concerned that this specification would create a situation where a property owner may be absolved of the responsibility of ensuring the property is in compliance with the development code by claiming they didn't know the property was in violation. The removal of the statement will shift the burden of proof to the applicant to ensure compliance 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, but a second and subsequent violation is punishable by a fine of up to \$250 or the value of the original fine, whichever is less.
- (7) 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*).
- (8) Riverside requested that the amendment include a definition for the word “property” to 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. Staff considered this request and decided not to recommend the change, although it could be added at the request of the

Planning Commission. There are two primary issues that the staff considered when making the recommendation. First, the lots within a manufactured dwelling park are not legally defined and recorded as typical properties are. This creates a situation where lot lines and space boundaries within a park may be adjusted, removed, and expanded without land use approval or documentation. Second, the change would reduce the City's ability to hold a park owner accountable for Code violations occurring within the park by requiring abatement of active violations prior to the approval of new manufactured home placement permits. If the Planning Commission elects to incorporate the change recommended by Riverside, Staff would also like to require parks to submit official surveyed plat maps of the designated spaces within a park.

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 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:

- Notice was provided to DLCD on April 5- 45-days in advance of the hearing.
- Notice was printed in the Blue Mountain Eagle on Wednesday, April 28- 16 business days in advance of the hearing.
- Notice was mailed directly to residents and participants on April 21- 30 days in advance of the hearing.

Staff Reports are required to be posted publicly one week in advance of the

hearing. This staff report was made available seventeen days in advance. 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 20th day of May, 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. Staff Notes on Past Proposals
- Exhibit C. Prior comments on Code Enforcement (Items A-G)