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VIA E-MAIL

City of John Day
Planning Commission
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RE: Comments on Proposed Text Amendments AMD-20-10; AMD-20-11
Our File No.: 135966-252955

Dear Chair Boethin:

Thank you for the opportunity to submit comments regarding the City of John Day's (the "**City**" or "**John Day**") proposed text amendments, AMD-20-10, AMD-20-11, AMD-21-01, and AMD-21-02. Our office represents the Riverside Home Park LLC ("**Riverside**"), which may be directly and negatively impacted by the proposed text amendments.

Riverside is a manufactured home park that provides roughly 15% of the housing supply for John Day and has been a valid and existing use since the 1960s. Riverside provides affordable housing to some of the poorest residences in the City, and indeed, in all of Oregon. In recent years, Riverside has worked hard to upgrade the park. This has been a relatively slow process as it is complicated and requires careful compliance with state law, including issues regarding landlord-tenant rights, equal housing, and the state's manufactured housing statutes. In the last 12-months alone, this has meant an investment of almost \$100,000 in upgrades.

Riverside has already provided various comments on previous versions of the proposed text amendments AMD-20-10 and AMD 20-11. To create a clear record, we will repeat these comments here, as well as address the new proposed amendments; AMD 21-01 and AMD-21-02.

Riverside notes that COVID-19 has significantly affected the people of John Day. Any changes, updates, or amendments to the City's municipal code will only increase the cost of development and compliance – including the costs associated with the City's own administration of its code. Given these budgetary constraints, additional development (and compliance) costs are counter-productive to the City's stated goals of furthering economic development and vitality for its citizens. As such, it would be reasonable for the City to "pause" on these proposed amendments pending the end of the COVID-19 crisis and its associated economic constraints.

I. AMD 20-10 – Ordinance No. 20-187-08, an Ordinance Amending the John Day Development Code to Strengthen and Clarify Code Enforcement Provisions within the Code

Riverside recognizes the City’s legitimate interest in protecting the health and safety of its citizens and ensuring code compliance. That said, Riverside has significant concerns regarding AMD 20-10. In particular, ordinances such as this one have recently been adopted in several jurisdictions, including Deschutes County and Multnomah County. In both instances, the result has been a weaponizing of the code enforcement provisions in an attempt to prevent those jurisdictions from approving land use permits because opponents allege code violations. As written, alleged code violations would similarly rob the City from exercising its land use approval authority and, potentially, expose the City to liability by failing to timely process land use applications.

Further, these provisions appear to be designed to punish alleged violators rather than to help secure compliance. This is evident in the attempt at adopting permit revocation proceedings – something that I have never seen adopted in a code except when an applicant knowingly makes false statements when securing a land use approval. Riverside is concerned that this provision will be used to force out land uses that the planning official finds distasteful despite their allowance under the relevant zoning designation.

More specific concerns also include the following:

- 5-1.2.100.B: “Violations” should not be “deemed” a nuisance. This raises significant due process concerns, and is ambiguous and subjective in nature. A violation needs to be adjudicated through a code enforcement or other hearing and may not be “deemed” to exist or “deemed” to be a nuisance. Further, a technical violation of the code which results in no land use impacts cannot be a nuisance.
- 5-1.2.100.C.3: Prior notice of a violation is not a violation. This raises significant due process concerns. As with any violation, a violation of the law must be adjudicated to have any impact or effect. A prior alleged “notice” of a violation is insufficient to afford due process under both the federal and state constitutions.
- These provisions leave no exception for valid and existing non-conforming uses, which must be recognized under state law.
- Administration is overly broad; allows the city to delegate to *any person* to “enforce.” If the City seeks to allege violations of the code or development permits, that person needs to have expertise in the matter and a clear appeal route that protects the rights of any alleged violator.
- Vicarious liability is wholly inappropriate. Being punished for an invitee’s actions raises due process issues, particularly because the code provides for fines. The person responsible for an adjudicated violation is the only one who should be punished. Further,

this raises foreseeable issues regarding private contracting, landlord-tenant, and other issues that the City has no business encroaching on.

- Revocation of a permit is wholly inappropriate. The entire reason for code enforcement is to seek compliance with the code and to protect the health and safety of the general public. Using revocation as a punishment for uses the City simply does not like, but are authorized under state law and local code, leads to potential abuses of this authority. Code compliance is sufficient. The only other revocation code that we are aware of at this time, permits revocation only in the instance of material false information provided as part of a land use application – and not for mere technical or other violation of the code.

Riverside again notes that to the extent that the John Day Municipal Code conflicts with ORS 446.200 and/or ORS 197.493, state law trumps. This could lead to technical violations of the City’s adopted code that cannot be adjudicated because of controlling positions in state law.

II. AMD 20-11 – Ordinance No. 20-188-09, an Ordinance Amending the John Day Development Code to Revise Code Language Related to Manufactured Homes and Manufactures/Mobile Dwelling Parks

Riverside understands that this amendment was intended to be amended consistent with the Planning Commissions previous meeting (11/18/2020), including such amendments requiring not less than 5,000 square feet of play area and to address the needed housing statutes. It appears that these amendments *were not made*. Therefore, Riverside asks the Planning Commission to again direct staff to make such amendments and present such changes at the next Planning Commission Meeting.

Riverside also submits that to the extent these amendments conflict with ORS 446.200 and/or ORS 197.493, state law trumps and pre-empts the City’s attempt at additional regulation.

III. AMD 21-01 – Ordinance No. 21-190-01, an Ordinance Amending the John Day Comprehensive Plan to Adopt the Recreation Economy for Rural Communities Action Plan

Riverside applauds the City’s attempt to increase and promote economic vitality in the area. That said, Riverside has some concerns regarding this ordinance and the adoption of the Recreational Economy for Rural Communities Action Plan (“*REP*”).

For more than a year, the City and Riverside have been engaged in various communications regarding the use and status of the park. This has ranged from the City Manager’s asking whether the park would be willing to sell its real property, to allegations of code violations and park illegality, to seeking to fine the park using criminal citations that were ultimately dismissed by a court of law. Riverside believes this pattern of communication and practice is a direct result of the City’s preparation and proposed adoption of the REP.

In particular, the REP seeks to improve large areas of river front property with connected walking and recreational trails. Some of these trails are proposed to traverse Riverside's property – yet the City has yet to ask for permission to include such public-access across Riverside's private property. Although Riverside may be amenable to such public improvements, it is mindful of its own property right and will protect and object to any taking by the City that does not include just compensation and/or reduces the amount of housing that the park can provide.

IV. AMD 21-02 – Ordinance 21-191-02, an Ordinance Amending the John Day Development Code to Reduce the Notification Period for Type IV Legislative Procedures from 45 days to 35 Days

This amendment seeks to reduce the time required to provide notice to the Oregon Department of Land Conservation and Development (“*DLCD*”) or proposed comprehensive plan and development code amendments. Riverside notes that over the past year, the City has been forced to continue multiple legislative processes for failure to comply with notice and other procedural requirements. Rather than comply with the current procedures, the City now seeks to change the rules to *reduce* the amount of time that the public and DLCD have to provide comment on any particular amendment. This is a curious turn policy choice. Taken in the totality and considering the slough of other amendments the City is presently seeking, this seems to show an intent to limit public participation and transparency. Therefore, Riverside asks that the Planning Commission vote to not recommend adopting Ordinance 21-191-02 to the City Council.

V. Conclusion

We ask that the Planning Commission review these comments and recommend modifications for consistency with these comments and state law, or to recommend that City Council not adopt the proposed amendments.

Yours very truly,

/s/ Kenneth Katzaroff

J. Kenneth Katzaroff

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