



**CITY COUNCIL MEETING MINUTES ~ APPROVED
APRIL 14, 2016 AT 7:00 PM**

City Hall ~ 82877 Spruce St., Westlake, OR

These proceedings of the Dunes City Council were recorded and are on file at Dunes City Hall. Upon approval by the City Council, these minutes will be available online at www.DunesCity.com

1. CALL TO ORDER

Mayor Rebecca Ruede called the April 14th meeting of the Dunes City Council to order at 7:01 pm.

2. ROLL CALL

Roll Call was taken by Interim City Administrator/Recorder, Jamie Mills.

Present: Mayor Rebecca Ruede, Council President Maurice Sanders, Councilor Ed Scarberry, Councilor Tom Mallen, Councilor Ken Platt, and Councilor Duke Wells. Councilor Sheldon Meyer was present via telephone.

Also Present: Interim City Administrator/Recorder Jamie Mills, Administrative Assistant Rapunzel Oberholtzer, LCOG Planner Jacob Callister, and several citizens.

3. PLEDGE OF ALLEGIANCE

All who were present stood for the Pledge of Allegiance.

4. APPROVAL OF THE AGENDA

Councilor Scarberry made a motion to approve the Agenda. Councilor Mallen seconded the motion. The motion passed by unanimous vote.

5. CONSENT AGENDA

Councilor Mallen made a motion to approve the Consent Agenda. Councilor Wells seconded the motion. The motion passed with five votes in favor. Council President Sanders abstained from voting.

6. ANNOUNCEMENTS / CORRESPONDENCE

Mayor Ruede read aloud the list of announcements from the meeting Agenda.

- A. Budget Committee meetings are scheduled for Tuesday, April 19th, 2016, beginning at 4:00 pm, and every Tuesday thereafter until a Committee-approved Budget is sent to the City Council.

- B. Dunes City continues to look for nominations for Volunteer of the Year. If you know someone who has contributed to the City and deserves recognition, go to our website at dunescityhall.com and fill out a nomination form under the Permits and Forms tab.
- C. April birthday wishes to Permit Tech Renee Green. Refreshments will be served after the meeting and everyone is welcome to join us.
- D. The Dunes City Triathlon will be held on May 7th. We are looking for sponsors and volunteers for the event. We are excited to announce the opportunity for our \$100 Community Sponsors to place an item in the “goody bags” that will be distributed to all of the athletes. We are also again offering an opportunity for the non-profit organization who brings out the most volunteers to receive a \$250 check.

City Administrator/Recorder Mills noted that a group of volunteers does not have to be a non-profit organization to qualify for the \$250 reward—it could be a neighborhood group, a scouting troop or a club. She also explained that this year volunteers’ names will be entered into a drawing for gifts donated by sponsors of the event.

Council President Sanders introduced Ms. Jan Murphy as the third member of Dunes City’s team. She will participate in the swim portion of the sprint triathlon.

Mayor Ruede thanked the City of Florence for its sponsorship of the event this year and noted that this year there are many Community Sponsors. All sponsors are greatly appreciated by the City.

- E. Annual Ethics Commission economic interests statements from the Mayor, City Councilors, Planning Commissioners and the Interim City Administrator/Recorder are due tomorrow, April 15th.

7. CITIZEN INPUT

Mayor Ruede recognized Ms. Suzie Navetta, a Dunes City resident. Ms. Navetta presented a packet of documents, requesting that they be added to the record of the hearing on proposed Ordinance No. 228. Included in Ms. Navetta’s packet was a Communication and Education Committee Survey from 2009 which listed No Taxes and Water Quality as the top two citizen concerns, followed by Police Protection, and several documents relating to water quality and septic maintenance ordinances. Ms. Navetta remarked that she was dismayed by how lax the City has been in taking care of its duties under Ordinance No. 203 and pointed out that in 2013 and 2014 no residents were notified that their septic inspections were due. Ms. Navetta went on to point out that also included in her packet was a copy of her comments on the Findings of Fact for Ordinance No. 228 prepared for the October 29, 2015 Planning Commission public hearing on the proposed ordinance, a copy of a 2015 Septic System Maintenance Report and a copy of Dunes City’s Comprehensive Plan. *A COMPLETE COPY OF THE PACKET PRESENTED BY MS. NAVETTA IS ON FILE AT CITY HALL AND ATTACHED TO THESE MINUTES IN EXHIBIT A.*

Mayor Ruede thanked Ms. Navetta for her comments and noted that her documents would be included in the record of the public hearing scheduled for later in the meeting.

Mayor Ruede recognized Ms. Mary Jo Leach, a Dunes City resident. Ms. Leach explained that she was unable to download the electronic version of the meeting packet from the City's website and was unaware of the "housekeeping" resolution concerning Dunes City's municipal services that was listed on the Agenda. She remarked that she takes exception to the services claimed to be provided by the City, noting that she pays for fire protection through her County taxes and she went on to point out that no brushing has been done on Huckleberry, the drainage on Alder is bad, Huckleberry is flooded all the time when it rains, and the big pot-hole on Huckleberry has never been repaired. She said that the City needs to get serious about the services it claims to provide to residents and added that the City does not have a contract with Siuslaw Valley Fire and Rescue for fire protection services.

Mayor Ruede thanked Ms. Leach for her comments and recognized Ms. April Dumas, a Dunes City resident. Ms. Dumas read aloud from a letter she presented to the City Council:

"My husband and I have owned property in Dunes City for 12 years and we were involved in the process of developing Ordinance 203. We met with large groups of residents for over a year hashing out and debating every point. (We were excited about living in a community where people were concerned about preserving resources.) We created an ordinance that met all of our desires to preserve and improve the quality of the water we drink from the Lakes and wells that are hydrologically connected to those lakes.

"We were disappointed when the newer City Council deleted the ordinance. We were relieved when LUBA ruled against Dunes City and ordered reinstatement of the ordinance. We were disappointed when Dunes City then discarded all penalties for violating the ordinance.

"We applaud the City Council's concerns for those members of our community that live on limited resources and your desire to not burden them financially. I do believe, however, not having a comprehensive septic ordinance in place that is enforced does not benefit all residences. We don't allow residents to pile up trash in their yards because it would be a financial burden to pay for trash collection. It's not healthy. Neither is having unmaintained septic systems.

"It would actually benefit the whole community for all the septic systems to work properly. If you would identify and apply for Grants to assist homeowners that find septic maintenance a financial burden the entire community would benefit.

"If we want Dunes City to remain a viable community we need to have an effective septic ordinance that is enforced, otherwise our quality of life and our property values are at risk. Ordinance 203 is a good ordinance, you just need to start enforcing it."

Mayor Ruede thanked Ms. Dumas for her comments. *A COMPLETE COPY OF THE LETTER PRESENTED BY MS. DUMAS IS ON FILE AT CITY HALL AND ATTACHED TO THESE MINUTES IN EXHIBIT B.*

8. NEW BUSINESS

A. Public Works Maintenance Supervisor Agreement

City Administrator/Recorder Mills explained that the City does not currently have anyone to take care of road problems but a volunteer has come forward and agreed to act as a public works maintenance supervisor if the City is agreeable to the idea. She went on to explain that the volunteer, Road Commissioner Richard Palmer, is willing to perform the supervisory role at no charge to the City and has been doing so for some time. She pointed out the draft contract in the meeting packets for Councilors' consideration and noted that the position described in this contract is different from the Director of Roads position in that the supervisor has a hands' on role in projects and the director oversees the larger scope of road maintenance and budget requirements.

Council President Sanders thought that contracting with Mr. Palmer was a good idea, noting that Mr. Palmer has been a roads volunteer for years and has lots of experience. He suggested that the draft contract be amended to state that Mr. Palmer would be paid One Dollar per year and the City would reimburse Mr. Palmer for the use of and expense of operating his equipment.

Council President Sanders made a motion to move forward with the contract as amended with the above stated provisions. Councilor Mallen seconded the motion. The motion passed by unanimous vote.

9. PUBLIC HEARINGS

A. Ordinance No. 235 – Amending Chapter 32 of the Dunes City Code regarding Committees and Commissions

Mayor Ruede read from a prepared script to open discussion of the proposed ordinance.

“A proposed ordinance requires two readings before it is enacted. City Charter Section 34(3) provides that both readings may be read by title only if (a) no council member present at the meeting requests it be read in full or (b) a copy of the ordinance is provided for each member and all requirements for posting and advertisement have been met.”

Mayor Ruede asked Interim City Administrator/Recorder Mills whether all of the requirements for posting and advertising had been met. They had been. Mayor Ruede then asked Councilors whether any would like the ordinance to be read in full. None did.

Councilor Scarberry made a motion to read Ordinance No. 235 by title only. Councilor Mallen seconded the motion. The motion passed by unanimous vote.

Mayor Ruede read aloud the title of Ordinance No. 235, “An Ordinance amending Chapter 32 of the Dunes City Code of Ordinances, entitled ‘Committees and Commissions’; eliminating all committees except Budget Committee and Water Quality Committee; eliminating the Road Commission; repealing Ordinance Numbers 225 and 229, and other matters properly relating thereto.”

Interim City Administrator/Recorder explained that the proposed Ordinance was in furtherance of the Goal adopted by the City Council to eliminate all committees and commissions except for the Planning Commission, the Budget Committee and the Water Quality Committee.

Mayor Ruede opened the public hearing at 7:29 pm and recognized Ms. Mary Jo Leach.

Ms. Leach asked what Ordinance Numbers 225 and 229 were. City Administrator/Recorder Mills explained that they were ordinances that revised and clarified the language and composition of the City’s various committees and commissions. She went on to explain that citizens could report concerns that would normally go to a committee to her at City Hall and then the concerns would be presented to the City Council to determine whether or not an ad hoc committee should be formed to address the concern.

There being no further comments, Mayor Ruede closed the public hearing at 7:31 pm.

Council President Sanders made a motion to accept the language of Ordinance No. 235 as presented. Councilor Mallen seconded the motion.

In discussion, Council President Sanders remarked that the Ordinance was appropriate for the City at this time due to the lack of volunteers to fully staff several committees, most notably the Road Commission where frequently over the last several months a quorum has not been present to allow the Commission to function properly. Mayor Ruede noted that the lack of volunteers has been a problem for other committees as well.

The motion passed by unanimous vote.

Councilor Scarberry made a motion to read Ordinance No. 235 for the second time by title only. Councilor Mallen seconded the motion. The motion passed by unanimous vote.

Mayor Ruede read aloud the title of Ordinance No. 235 for the second time, “An Ordinance amending Chapter 32 of the Dunes City Code of Ordinances, entitled ‘Committees and Commissions’; eliminating all committees except Budget Committee and Water Quality Committee; eliminating the Road Commission; repealing Ordinance Numbers 225 and 229, and other matters properly relating thereto.”

Council President Sanders made a motion to accept the wording of Ordinance No. 235 as presented. Councilor Wells seconded the motion. The motion passed by unanimous vote.

Council President Sanders made a motion to adopt Ordinance No. 235. Councilor Wells seconded the motion.

In discussion, Council President Sanders asked whether the Ordinance would be effective immediately as an emergency or effective in thirty days. City Administrator/Recorder Mills noted that the Ordinance, as written, would take effect in thirty days. Council President Sanders noted that he could not hold a Road Commission meeting during the next thirty days because there are not enough Commission members for a quorum. It was agreed to amend the language of the Ordinance so that it would be effective immediately.

Council President Sanders withdrew his motion to adopt Ordinance No. 235 and Councilor Wells withdrew his second.

Council President Sanders made a motion to adopt Ordinance No. 235 as presented and amended to take effect immediately as an emergency. Councilor Wells seconded the motion. In a roll call vote, Council President Sanders and all Councilors voted in favor of the motion.

Mayor Ruede declared the vote unanimous and Ordinance No. 235 in effect immediately.

B. Resolution Series 2016, No. 3 (04/14/2016) – Certifying Dunes City Provides Four Municipal Services

Interim City Administrator/Recorder Mills explained that Resolutions did not normally require a public hearing, but that this particular subject did require a public hearing so that the public could comment, as Ms. Leach did earlier in the meeting.

Mayor Ruede opened the public hearing for comments at 7:40 pm and recognized Ms. Mary Jo Leach.

Ms. Leach remarked that the process of entering into contractual agreement with a Road Maintenance Director is an example of how the City is not providing for street maintenance. The City has no formal say in it and, therefore, is not functioning as a City.

Mayor Ruede recognized Ms. Suzie Navetta.

Ms. Navetta asked how there could be a public hearing if there has been no announcement of it. Mayor Ruede pointed out that the subject is listed on the meeting Agenda which was published as required. Ms. Navetta asked whether the notice of public hearing had been published in the newspaper. Interim City Administrator/Recorder Mills explained that the only notice of public hearings which are required to be published in the newspaper are hearings related to land use code.

Mayor Ruede closed the comment portion of the public hearing at 7:43 pm.

Councilor Scarberry made a motion to adopt Resolution Series 2016, No. 3. Councilor Mallen seconded the motion.

In discussion, Council President Sanders asked City Administrator/Recorder Mills to comment on the remarks made by Ms. Leach about fire protection during citizen input. City Administrator/Recorder Mills explained that by paying dues to Siuslaw Valley Fire and Rescue, the City is a member of the West Lane Emergency Operations Group (WLEOG) which covers fire services for residential properties within its service area. She went on to explain that because there are so many organizations that are members of WLEOG, the costs to individual entities, such as Dunes City, can be kept to a minimum. She also explained that the assessment for fire protection, which appears on homeowners' tax statements, is for fire protection provided by the State's Department of Forestry in the event of wildfires outside of residential areas. She reiterated that the City's participation in the fire district (WLEOG) qualifies it as a City that provides fire protection and emergency services.

Council President Sanders asked whether the City had an agreement with the fire district from the dues the City pays it, in addition to the dues paid to WLEOG for services. City Administrator/Recorder Mills replied that she was not sure about an agreement, but the fire district provides service in Dunes City. Council President Sanders said he was satisfied that the City met the requirement for providing fire protection.

The motion passed by unanimous vote.

C. Ordinance No. 228 – Regarding Septic Maintenance

Mayor Ruede read aloud from a script prepared to open the public hearing on Ordinance No. 228.

“This evening we have a public hearing on Ordinance No. 228, an ordinance amending Dunes City Code provisions that relate to Septic System Maintenance.

“These proceedings will be recorded.

“This hearing will be held in accordance with the land use procedures required by the City and the State of Oregon. This is a Type IV Legislative Procedure.

“During the public hearing tonight, staff will identify the applicable substantive criteria. These are the criteria we must use in making a decision. All testimony and evidence must be directed toward these criteria or other criteria which you believe applies to the decision.

“Any party interested in a land use matter may challenge the qualification of any Councilor to participate in such hearing and decision. Such challenge must state facts relied upon by the party relating to a Councilor bias, prejudgment, conflict of interest, or other facts from which the party has concluded that the Councilor will not make a decision in an impartial manner.

“Such challenges shall be made prior to the commencement of the public hearing. The Mayor shall give the challenged Councilor an opportunity to respond. A motion to accept or deny the challenge will be accepted and voted. Such challenges shall be incorporated into the record of the hearing.”

Mayor Ruede asked whether any Councilor wished to declare a conflict of interest or bias. None did.

Mayor Ruede asked whether any member of the public wished to challenge a Councilor’s impartiality. Mayor Ruede recognized Ms. Mary Jo Leach.

Ms. Leach challenged the Councilors saying that they’ve taken an oath to uphold the laws of the City and the State, so any Councilor who is not in full, current compliance with Ordinance No. 203 should recuse themselves. She went on to say that there has been some verbiage from that side of the dais that is a capricious, deliberate dissemination of incorrect information about Ordinance No. 203, and finished her statement by adding that she would leave it to the Councilors to say whether or not they were in compliance.

Mayor Ruede asked if any Councilor wished to declare a conflict of interest or bias. None did, and Mayor Ruede opened the public hearing on Ordinance No. 228 at 7:50 pm. She read aloud from the script prepared for the public hearing, “A proposed ordinance requires two readings before it is enacted. City Charter Section 34(3) provides that both readings may be read by title only (a) if no council member present at the meeting requests it be read in full, or (b) if a copy of the ordinance is provided for each member and all requirements for posting and advertisement have been met.”

Mayor Ruede asked if any Councilor desired the Ordinance to be read in full. None did.

Council President Sanders made a motion to read Ordinance No. 228 by title only. Councilor Wells seconded the motion. The motion passed by unanimous vote.

Mayor Ruede read aloud the title of Ordinance No. 228, “An ordinance amending Title XV of the Dunes City Code of Ordinances by repealing Chapter 157 entitled ‘Septic System Maintenance,’ amending Title XIV of the Dunes City Code of Ordinances by adding Chapter 142 entitled ‘Subsurface Sanitation,’ and repealing Ordinance No. 203.”

Mayor Ruede requested the staff report. LCOG Planner Jacob Callister introduced himself and explained that his associate and primary consultant on this issue, LCOG’s Gary Darnielle, who drafted the ordinance and the staff report was unable to attend tonight’s meeting due to a prior commitment.

Mr. Callister read highlights from the staff report.

Background. On January 14, 2010, the Dunes City Council adopted Ordinance No. 203 which put in place maintenance, inspection, and reporting requirements for septic systems in Dunes City. On November 10, 2011, the Dunes City Council adopted Ordinance No. 211A, which repealed Ordinance No. 203 and replaced it with an educational program for septic system maintenance that was to be implemented within one year.

Ordinance No. 211A was appealed to the Oregon Land Use Board of Appeals. At the heart of this appeal was Dunes City Comprehensive Plan Policy E6 that provides: "The City shall adopt a program to improve maintenance of septic systems for the benefit of all residents." The City argued that this policy meant that the Council only had to require a program to improve septic system maintenance beyond the regulatory floor set by the state. The petitioners argued that the policy required that the City demonstrate how Ordinance 211A improved upon Ordinance 203. That is, that the educational program of Ordinance 211A would improve maintenance of septic systems compared to the mandatory maintenance program of Ordinance 203. LUBA remanded the case to the City because the City Council had not made a formal interpretation of Policy E6 and therefore there was no deference given to that argument. Ordinance 211A is not in effect as the City has not cured the cause of the remand.

On August 18, 2015, Dunes City initiated the adoption of Ordinance 228 by providing the Department of Land Conservation and Development with proper post acknowledgment notice. Ordinance 228 amends Title XIV of the Dunes City Code of Ordinances to add a new chapter 142 entitled "Subsurface Sanitation."

The Dunes City Planning Commission held two public hearings on Ordinance 228. The majority of the testimony was in opposition to the adoption of the ordinance, arguing that Ordinance 228 reduced the effectiveness of Ordinance 203. Testimony also was heard that complained that the city's inspection program of septic tank systems was behind schedule. At its November 19, 2015, meeting the Commission, by a two to one vote, passed a motion to recommend to the City Council that it take no action on Ordinance 228.

Mr. Callister proceeded to read highlights from the list of key differences between Ordinance No. 203 and Ordinance No. 228, prepared by Mr. Darnielle.

Inspections. Ordinance 203 requires an inspection once every five years at a minimum. More frequent inspections are required when the quantity or characteristics of the wastewater discharge change due to enlargement of the structure or change in use. Commercial buildings must be inspected annually or at other time intervals specified by the City. Under Ordinance 228, the time period for the required residential and commercial inspections and evaluations are set by a qualified inspector based upon the most current Oregon State University Extension Service Septic Tank Maintenance Table or other standards that are adopted by the City Council.

Inspectors. Under Ordinance 203, private system inspectors need only have a business license with the City. Under Ordinance 228, private system inspectors must have a business license with the City, be registered in accordance with ORS Chapter 700, and possess a current NSF International Onsite Wastewater Inspector accreditation.

Inspection Form. Ordinance 203 requires that the inspector use the City's "Septic Maintenance Record and Inspection Report" and document the reasons why the inspector requires pumping. Under Ordinance 228, the inspector must use the form required by the DEQ and recommend when the system should be next inspected and provide reasons why pumping is required.

Compliance. Ordinance 203 provides for a penalty of \$250 per day for violations of Chapter 157. Ordinance 228 defers to Chapter 36 of the Dunes City Code for violations of Chapter 142, which provides for penalties, the recovery of abatement and administrative costs, and the ability to lien property.

Summarizing the key differences between Ordinance Nos. 203 and 228, Mr. Callister pointed out the Ordinance No. 228 adds more stringent qualifications for inspectors and provides some flexibility in the best practices for addressing individual septic system needs, based on recommendations by inspectors who are qualified to make such recommendations.

Mr. Callister proceeded to read highlights from the Current Status section of the staff report, noting that Ordinance No. 203 is currently in effect.

Ordinance No. 203 is currently in effect. Compliance has been a problem. Currently, there are 13 lake-front properties with older systems (pre-1974) that have not complied with the ordinance. Under Chapter 36 of the Dunes City Code, the City may fine, abate, assess, and deny permits. In 2011, following the LUBA remand, the City Council directed staff not to enforce the septic ordinance. The current City Council has not addressed this issue and staff has re-initiated the enforcement of the ordinance, with emphasis on lake-front properties. In this regard, letters continually go out to the property owners based upon their proximity to the lakes.

Highlighting some of the ordinance adoption procedures, Mr. Callister noted that appropriate notices were sent to the community and to DLCD to advise that a new ordinance was being contemplated by Dunes City.

Mr. Callister went on to point out the key approval criteria applicable to the adoption of this ordinance: a Type IV Legislative procedure is required, different from a Quasi-Judicial action; the ordinance must meet Dunes City Comprehensive Plan elements pertaining to Citizen Involvement, Land Use and Air, Land and Water Quality; per ORS 197.610 local government notice of a proposed amendment or new regulation is required; ORS 227.186 requires notice to property owners; and relevant Statewide Planning Goals must be considered.

Mr. Callister noted that the staff report states that one of “the most important criterion is DCCP Sewage Systems Policy E6 which states, ‘The City shall adopt a program to improve maintenance of septic systems for the benefit of all residents.’” Reading further from the staff report discussion on approval criteria, Mr. Callister went on, “If the City Council wishes to adopt Ordinance 228 and be able to successfully defend it in an appeal to LUBA, it must state that Policy E6 means that the City must adopt a program that improves the maintenance of septic systems over that required by the State. The findings in Exhibit A would point out that the State does not require any maintenance program for septic tank systems and only gets involved when they fail.” Mr. Callister clarified the last sentence by explaining that the State is only involved in the “birth and death” of septic systems and Ordinance No. 228 is an improvement over the State’s baseline.

Mr. Callister noted that the Planning Commission recommends the City Council not adopt Ordinance No. 228. He also noted that staff does not have a recommendation to pass on to the City Council but believes that the City can adopt the findings of fact supporting Ordinance No. 228 that will survive legal scrutiny.

Reading further from the staff report’s Conclusion and Recommendation section, Mr. Callister noted, “If the Council wishes to adopt Ordinance No. 228, then it must formally interpret DCCP Policy E6...” and “If the City chooses not to adopt Ordinance No. 228 at this time it merely needs to notify DLCD of this decision. If the City Council decides to adopt Ordinance No. 228, adoption of the findings of fact in Exhibit A to Ordinance No 228 would meet all applicable criteria of the Dunes City Code, Dunes City Comprehensive Plan and Oregon State Laws.”

Mr. Callister explained that if the City Council wishes to adopt Ordinance No. 228, staff recommends changes to the Exhibit B (Title XIV, Chapter 142) of the draft ordinance, and he proceeded to read them aloud.

1. Section 142.005 should be changed to read:
“NOTICE. A written notification from the City to the owner of a wastewater disposal or septic system within the City limits. A notice should be considered given:
 - 1) *On the date of delivery if delivered in person.*
 - 2) *On the day after deposit if delivered by overnight courier; or*
 - 3) *Three (3) days after deposit if delivered by placing in the US mail, first-class, postage prepaid.*
2. Section 142.030.A.2 should be changed to *June 1, 2016* for compliance with the ordinance. The current date is March 31, 2016.
3. The second sentence of Section 142.030(B) should be changed to read:
“The time period for the required inspection and evaluation shall be the interval identified by the qualified inspector in the prior inspection and evaluation report, provided there has been no change in the usage of the system since the date of last inspection, but in any event, shall not be greater than Seven (7) years.”

4. Add a new paragraph F to Section 142.030 that reads as follows:
*“F. Transfer of ownership.
Prior to the consummation of the sale or transfer of a parcel of real property located within Dunes City that has on onsite wastewater disposal system, the current property owner, regardless if the proposed transfer is to a relative or to a family trust, will have the system inspected and evaluated at their expense by a qualified inspector and cause the inspection report, together with any requisite administrative fees, to be delivered to Dunes City within Forty-five (45) days of the date of inspection.”*

5. Add the following after the last word (*guideline*) in Section 142.060.B:
“provided, however, that the next inspection date shall not be more than Seven (7) years from the current inspection date.”

6. Change Section 142.080.A to read:
“A. Owners of buildings served by onsite wastewater disposal systems shall have their system inspected and evaluated as provided in this Chapter 142 at such intervals as identified by the qualified system inspector, provided, however, that there has been no change in the use of the system and that such interval shall not exceed Seven (7) years.”

7. Change the first sentence of Section 142.100 to read:
“For violations of this Ordinance, the City may take the following actions: stop work orders, denial of permit applications, issuance of notice of violation, issuance of cease and desist orders, abatement, execution of a stipulated agreement, imposition of penalties and fines, assessment and collection of City costs, placement of liens for non-payment, and/or commencement of other civil proceedings as provided in Chapter 36 of the Dunes City Code of Ordinances.”

Not included in the list of recommended changes to Ordinance No. 228 was a suggestion that the Council might want to consider and Mr. Callister read it into the record. “The City Council may want to consider contracting on a flat rate basis with its own septic system inspector who does NOT do septic pumping for a living. The language of the Ordinance would need to be changed to reflect that owners can contract with the inspector of their choosing, or can pay for the City’s inspector to do the job.” Mr. Callister explained that this could be a solution to address the potential conflict of interest with inspectors who may be inclined to recommend more frequent inspections or pumping. ***A COMPLETE COPY OF THE CITY COUNCIL STAFF REPORT FOR ORDINANCE NO. 228 IS AVAILABLE AT CITY HALL.***

Mayor Ruede called for a meeting recess at 8:07 pm. She reconvened the meeting at 8:19 pm and asked Councilors if they had any questions for staff.

Councilor Mallen asked what agency requires Dunes City to have a septic program. Mr. Callister explained that this is not a State requirement but the City’s Comprehensive Plan at Policy E6 states that the City will have a program to improve maintenance of septic

systems for the benefit of all residents. He went on to note again that the State is only involved in septic systems at their birth and death.

Councilor Mallen recounted some of his past experience, noting that at one time he was an Oregon State plumbing inspector who inspected septic systems and sewers from clean out to their termination points at the septic tank or city connections. He has also been a back-flow inspector, owning his own company. He remarked that Dunes City operates on a tight budget and it seemed that the City is trying to have staff take on work related to inspections. He went on to note that his background also includes designing and installing septic systems and, in his opinion, the issues of septic systems are not being addressed correctly. His recommendation would be to scrap the discussion of an ordinance entirely because the City does not have budget to provide staff and does not have the expertise on septic systems, and then rely upon the expertise of the County.

Interim City Administrator/Recorder Mills interrupted to note a point of order, saying that this particular time period should be allocated to asking questions of staff and that there would be ample opportunity later for Councilors to express their opinions and recommendations. Councilor Mallen summarized his remarks by saying it was his recommendation to scrap the septic maintenance regulations due to lack of staff and expertise and rely upon County experts and regulations.

Councilor Scarberry raised a question about pumping frequencies required in Ordinance No. 203 and recommended in Ordinance No. 228, noting that neither takes into consideration part-time residents or very small households where pumping every few years would seem unnecessary. He also noted that pumping a septic tank too frequently could actually harm the system. He went on to say that at least Ordinance No. 228 relies on an expert to recommend pumping frequency. City Administrator/Recorder Mills clarified that pumping and inspections are different and that DEQ asserts that it is not necessary to pump in order to inspect. Mr. Callister noted, in his opinion, Ordinance No. 228 improves upon the existing maintenance ordinance by relying upon expert inspectors who can take into consideration the unique needs of each individual household when recommending an inspection schedule.

There was some further discussion about the differences in inspection/pumping frequencies required by both ordinances and whether or not Ordinance No. 228 was an improvement over Ordinance No. 203. Mr. Callister clarified that the Council must rely on its interpretation of DCCP Policy E6 to find that Ordinance No. 228 is an improvement over existing City or State requirements, but that staff believes that Ordinance No. 228 is an improvement.

In other discussion, Councilor Wells noted that over the years he has spoken with over 200 City residents and found that the majority seem to believe that they are required to have their systems pumped every five years when, in fact, the current ordinance only requires inspections every five years. Council President Sanders asked if a septic system could pass an inspection but actually be failing. Mr. Callister's response was that he wasn't sure but it sounded as if the inspector might not have been qualified to perform a

thorough inspection. Council President Sanders pointed out that the new ordinance would require all inspectors to be DEQ qualified.

There being no further questions for staff, Mayor Ruede opened the agenda item for public comment at 8:30 pm. Reading from the script prepared for the public hearing, Mayor Ruede went on, “We will be taking testimony from all those who wish to comment. If you have not already done so, please sign in and include your name and mailing address. The maximum time allowed for public comment is twenty minutes. Speakers will be limited to three minutes. If the number wishing to testify exceeds seven speakers, each speaker’s time may be reduced to fit within twenty minutes.”

Mayor Ruede explained that testimony from those opposed to Ordinance No. 228 would be heard and she recognized Mr. Richard Booth, a Dunes City resident, who signed in to give comments.

Mr. Booth opened his comments by saying that the City Councilors who passed Ordinance No. 203 were no longer Councilors because they adopted that Ordinance. In his opinion, that proves Ordinance No. 203 is not well liked by Dunes City residents. Mr. Booth went on to say that he recently received a notice about having his septic tank inspected. It was inspected some time ago and at that time he was told the inspector would send an inspection report to City Hall, which wasn’t done. He explained that he objected to having to spend \$275 every five years for an inspection on a septic tank used by two people for only about seven months out of the year. He went on to remark that it would be obvious to anyone with a septic system when that system was beginning to fail and the system would be fixed immediately. Mr. Booth concluded his remarks by saying that having an ordinance is over complicating a simple problem for the City and he suggested that the City rely on State and County regulations.

Mayor Ruede recognized Ms. Mary Jo Leach, a Dunes City resident, also signed in to provide comments. Ms. Leach proceeded to read from her written statement.

“For the record: 203 does not require City noticing. It is the owner’s responsibility to maintain compliance. 203 does not require any pumping after the initial pumping prior to the initial inspection.”

Ms. Leach pointed out that Ordinance No. 228 does not require initial pumping so that the system could be laid bare and inspected. She explained that she spoke with Mr. Randy Trox from DEQ and asked several questions, and she read from her written statement.

“Question. On an existing septic system, in order to assure that all the components of the tank and accompanying hardware are in perfect working order, does the tank have to be empty to answer that question?” Answer. I would say the more exposed components are, the more information can be collected. A clean, empty tank is easy to see if there is a crack in the tank, broken or rotten—steel tanks rot.

“Question. Can you always tell when inspecting a full tank if the baffles are working okay; can you determine that there are no cracks or rot in the tank and that all is well... Answer. Pumping the tank is about the only way I know to determine the integrity of the tank, baffles and all that. If the tank has a leak or been vacant a long time the liquid level may be low enough to look at baffles, and that would be the exception more than the rule.”

Ms. Leach noted that omitting this requirement is a flaw in Ordinance No. 228 and is not referenced as a key difference between Ordinance No. 228 and Ordinance No. 203. Moving on to the issue of whether or not the proposed ordinance should be a land use issue or a water quality issue, Ms. Leach pointed out that both Mr. Trox and Mr. George Ehlers (also of DEQ) agree that subsurface sanitation is a land use issue.

Ms. Leach went on to refer to comments made by a Planning Commissioner during a Planning Commission public hearing, “Dunes City is not Levittown. Each parcel and structure are unique, all manners of construction, over decades of time, extending back into the 1940s, maybe the 1930s, are reflected in the systems in use here today. It is imperative to lay each system bare and take a look at all of its parts at the outset; it is a one-time only requirement.”

Ms. Leach expressed concern about the Mapping Requirements in Section 142.060(A) [sic] of Ordinance No. 228, noting that DEQ has specific requirements for mapping septic systems, that some properties in the City have no maps on file and County maps from when structures were originally built do not fulfill the Ordinance No. 203 mapping requirements. Ms. Leach went on to point out that Dunes City does not have the authority to allow a failed system to continue to be used, it is a DEQ responsibility and must be referred to the County. Further, she pointed out that in November she asked what Title XIV was and was told that it was Public Utilities but it is now Water Quality; she noted that she did not understand how the name of the title was changed.

Ms. Leach proceeded to read from her written statement regarding the staff report:

- “1. Subsurface sanitation” is a land use issue, by definition.*
- “2. No initial pumping is required prior to the initial inspection—the key difference in 203 vs 228 and the staff report is disingenuous on this point.*
- “3. Inspectors are required to have NSF accreditation, originally in 173 and removed in 203.*
- “4. The Planning Commission vote is not as stated by staff, the motion was ‘to recommend that the City Council reject Ordinance No. 228 and leave Ordinance No. 203 in place as it is.’*
- “5. The testimony of the State Hydrologist is disingenuous in its approach to this issue as only affecting lakefront properties—all properties in the basin are affected.*
- “6. LUBA made a very narrow determination that focused on E6, there are numerous other points in the Comprehensive Plan that argue equally, or better, for a really effective septic ordinance to be enforced in order to protect our single most important asset...”*

Ms. Leach remarked that she could not imagine the impact on the community if the City had to provide water and sewer systems when the cost for individuals to do their part in maintaining something that protects the health of citizens and property values is fairly minimal. *A COMPLETE COPY OF THE WRITTEN STATEMENT PRESENTED BY MS. LEACH IS ON FILE AT CITY HALL AND ATTACHED TO THESE MINUTES IN EXHIBIT C.*

There being no further citizens signed in to present testimony opposed to the proposed ordinance, Mayor Ruede asked whether any Councilors had any questions for those who testified in opposition. None did.

Mayor Ruede announced that the Council would hear testimony from those in favor and recognized Mr. John Stead, a Dunes City resident.

Mr. Stead requested that the Council keep the record open for at least fourteen days after the close of the public hearing to allow other citizens to submit testimony for or against the proposed ordinance.

Mr. Stead went on to provide some history. On October 14th, 2004, Mayor Ward announced that Mr. George Ehlers, the Lane County Environmental Health Manager, would attend the next Water Quality Committee meeting to discuss a septic maintenance ordinance that would ensure the maintenance of septic systems in Dunes City. On January 13th, 2005, Councilor John Scott (the Water Quality Committee Chairman at the time) announced that the septic maintenance ordinance would be discussed and a representative from DSL would be present. On March 10th, 2005, the City Council held its first reading of Ordinance No. 173, an ordinance to establish a new chapter 157 within the Dunes City Code of Ordinances entitled "Septic System Maintenance." At that time Mr. Gary Darnielle said that in 1977 he had worked on a septic tank maintenance program for rural Lane County and he suggested that it may be necessary for inspectors/pumpers to have a business license or a franchise.

Mr. Stead continued. On June 8th, 2006, Resolution 06/08/06, a Resolution directing Dunes City to collect and monitor data in accordance with the Septic System Maintenance Ordinance was adopted by the City Council by a vote of five votes in favor, none against and one person absent. A motion was approved by the same vote requiring septic system inspectors to obtain a business license from the City and pay an annual fee of \$500. Mr. Stead went on to note that he was grateful to the people who worked diligently behind these actions.

Mr. Stead went on to explain that he recently received a courtesy notice from Dunes City saying that he appeared to be in violation of City Code Chapter 157 regarding maintenance of his septic system in that five years had passed since his initial inspection, and advising him of the public hearing tonight. The letter also stated that if he did not comply within thirty days further action would be taken. Ordinance No. 157, he noted, states that the inspection is to be done by one of Dunes City's approved inspectors and he was responsible for providing a copy of the inspection report to the City Recorder. Chapter 157

also states that the City would provide him with a copy of the inspection form, a list of qualified inspectors and educational material. Unfortunately, Mr. Stead said, he has not received any of that material, other than the courtesy notice. This is how the City is operating today. He went on to note that he did not know if Ordinance No. 228 would fix this but when he reviewed the proposed ordinance and the findings of fact, he thought that Ordinance No. 228 looked good. His question is, "Do we really need it?"

Mayor Ruede recognized Ms. Mary Jo Leach. She commented that she thought Ordinance No. 228 is very close to the solution but it needs to have a requirement for an initial pumping because many of the systems that have not been inspected have not been looked at in decades. She reminded everyone that the State is only concerned with the "birth and death" of septic systems and does not otherwise involve itself in septic regulations unless a system fails.

There were no other citizens signed in to provide testimony on the proposed ordinance. City Administrator/Recorder Mills noted that two written statements, one opposed and one for the proposed ordinance, were received prior to the hearing with requests that both be read into the record. There were no objections from the Council.

City Administrator/Recorder Mills read aloud a letter from Woahink Lake Association, opposed to the proposed ordinance.

"Re: Ordinance 203

"In an attempt to provide a compromise solution to Ordinance 203 the Board of the Woahink Lake Association recommends an amendment to achieve the objectives of those opposed to Ordinance 203 while maintaining the original intent of that Ordinance. The proposed amendment follows:

"C. Frequency of Inspections. Septic systems shall be inspected at the following frequencies unless it is determined that public health or environmental conditions require more frequent inspections.

"1. Every system shall be inspected at a minimum of once every five years following the initial inspection. At the discretion of the City Recorder, extensions may be granted based on individual circumstances for no longer than one year and any requests beyond one year will be presented to and granted at the discretion of the Council.

"2. Following the initial inspection or any subsequent inspection, if a qualified inspector determines that an inspection after five years is not required, the inspection period may be extended to a length of time determined by the qualified inspector that will be assumed adequate to assure continued safe operation of the septic system.

"The Board is very concerned that efforts to repeal Ordinance 203 and its replacement with the proposed Ordinance 228 will result in LUBA action and unnecessary legal fees."

City Administrator/Recorder Mills read aloud a letter from Dunes City resident Mr. Brett McKnight.

“I’ve spoken with a number of my neighbors regarding the requirements in 142.030(B) Periodic Inspections and I offer the following comments to the City Council:

*“Under section 142.030(B) Periodic Inspections, I’d propose that language be added that provides Homeowners the option of completing the inspection **or** proceeding with having their septic tank pumped regularly (every 5-6 years) as complying with regular septic maintenance requirements of the Ordinance.*

“Regular pumping could be defined as once every 5 years or be defined as a time period such as once every 5-6 years. I think both provide good maintenance to a septic system, however a set year might be easier to implement in the Ordinance over a time period.

“It seems burdensome to a Homeowner to have his septic system inspected on year only to be told that now he needs it pumped the following year or even maybe the same year.

*“Providing Homeowners the choice of performing an inspection **or** pumping would address concerns raised by homeowners who are part-time residences where they could opt for the less expensive inspection and full-time residences could opt for regular maintenance by having their system pumped regularly every 5-6 years.*

“Both Oregon State University and DEQ recommend regular pumping of a septic tank as maintenance to a septic system and they both use 5-6 years as good guidance for regular pumping for a normal household family.”

COMPLETE COPIES OF THE WRITTEN STATEMENTS PROVIDED BY WOAHIK LAKE ASSOCIATION AND MR. MCKNIGHT ARE ON FILE AT CITY HALL AND ATTACHED TO THESE MINUTES IN EXHIBIT D.

Mayor Ruede asked Councilor if they had any questions for those who testified in favor of the proposed ordinance. None did.

Mayor Ruede noted that there were requests to keep the record open for at least fourteen days to allow more citizens to submit comments. Mr. Callister explained that because this is a legislative matter, not a quasi-judicial matter, the Council is not required to keep the record open but may do so.

Councilor Mallen made a motion to keep the record open for fourteen days. Councilor Wells seconded the motion.

Councilor Meyer requested clarification of the purpose for leaving the record open. Mr. Callister explained that doing so allows additional written testimony to be submitted to the record for consideration in the future. He went on to explain that if the record is kept open the Council cannot deliberate the adoption of the proposed ordinance during this evening’s

meeting. He added that once the record is closed there will not be another public hearing, but the Council will deliberate and consider all of the testimony submitted until the record was closed.

The motion passed with a vote of five in favor and one against (Councilor Meyer).

Mayor Ruede declared that the record would remain open for fourteen days, until April 28th. It was generally agreed that the record would remain open and testimony accepted at City Hall until close of business (4:00 pm) on Thursday, the 28th.

Mayor Ruede closed the public hearing at 8:55 pm, and requested that deliberation of Ordinance No. 228 be included on the agenda for the May City Council meeting.

10. UNFINISHED/OLD BUSINESS

A. Resolution Series 2016, No. 4 (04/14/2016) Regarding Sick Leave Policies

Mayor Ruede opened this agenda item for public comment at 9:01 pm. There were no comments and Mayor Ruede closed the public comment session at 9:02 pm.

City Administrator/Recorder Mills explained that during the March Council meeting there was some discussion about whether sick leave would be accumulated on an accrual basis or frontloaded at the beginning of each calendar year. She reminded Councilors that during discussion it was determined that Councilors preferred the accrual method, but staff preferred frontloading. Mayor Ruede pointed out that frontloading is a better option for employees noting that if they become ill at the beginning of the year and have no sick leave accrued, they have to take sick leave off without pay. She recommended frontloading sick leave.

City Administrator/Recorder Mills provided Councilors with new language for the Resolution that addressed the frontloading option and Mayor Ruede read it aloud. *On January 1st of each year, sick leave as required by Oregon Revised Statutes will be credited to the account of each employee in the amount of Forty (40) hours per year on a frontload basis.*

Councilor Scarberry made a motion to amend the Resolution by adding the language presented above. Councilor Platt seconded the motion.

Councilor Sanders pointed out that with frontloaded sick leave an employee could potentially take the paid time off and then quit working for the City, an option he could not, as a steward of tax payers' dollars, support. He asked: 1) What is the City policy on misuse of sick leave, 2) What is the City policy on abuse of sick leave, 3) What is the City policy of restricted sick leave if it is misused or abused, and 4) Is sick leave considered part of family medical leave? He commented that the way the Resolution is written encourages employees to use sick leave whether or not they are actually sick.

City Administrator/Recorder Mills explained that the Resolution addresses the issue of sick leave for temporary employees paid through Cardinal Services, not City employees and Cardinal Services has sick leave policies. She went on to note that family leave includes some limited use of sick leave and sick leave is supposed to be used only when an employee is truly sick. There was a discussion about how the City would know whether or not an employee is abusing or misusing paid sick leave. It was agreed that one way or another, the City would have to pay for sick leave based on the State law that requires employers with more than ten employees to provide paid sick leave; in other words, Cardinal is required to provide it and will pass the cost on to the City.

A vote on the motion resulted in three votes in favor and three votes opposed to amending the language in the Resolution. Mayor Ruede voted in favor of the motion. She noted that she voted in favor based on the fact that staff had stated that they prefer the frontloading option and the City values it staff.

Councilor Scarberry made a motion to adopt Resolution Series 2016, No. 4 dated 04/14/2016 as amended. Councilor Platt seconded the motion. The motion passed with four votes in favor and two votes against.

B. Resolution Series 2016, No. 6 (04/14/2016) Regarding WLEOG Emergency Operations Plan

Interim City Administrator/Recorder Mills explained that this Resolution was considered during the March 10th meeting and voted upon. The vote was two in favor, two abstentions and two absences. Although the motion to adopt Resolution Series 2016, No. 6, as presented was declared passed, the vote was not sufficient to actually pass the motion. City Administrator/Recorder Mills went on to explain that the Resolution was presented again for reconsideration and a new vote.

Mayor Ruede opened the agenda item for public comment at 9:12 pm. There were no comments and Mayor Ruede closed the public comment session at 9:13 pm.

Council President Sanders made a motion to approve Resolution Series 2016, No. 6. Councilor Meyer seconded the motion. The motion passed by unanimous vote.

C. Director of Roads Agreement

City Administrator/Recorder Mills explained that a proposed agreement was provided to the City by the current Director of Roads, Mr. Gary Baker. The agreement was reviewed by the City Administrator/Recorder and changes mutually agreed upon. She explained that this contract essentially removes responsibility for oversight of regular road maintenance from the Director of Roads and puts that responsibility on the Public Works Maintenance Supervisor.

Council President Sanders made a motion to authorize the City Administrator to enter into the agreement with Mr. Gary Baker as Director of Roads. Councilor Wells seconded the motion. The motion passed by unanimous vote.

D. Oregon Dunes Triathlon

City Administrator/Recorder Mills pointed out two versions of the proposed purchase agreement with Best in the West Events, one containing City Attorney edits and comments and the other a clean copy incorporating the City Attorney changes. She went on to note that it was her understanding that the Council wished to enter into a purchase agreement and, if that is still the case, Councilors may want to discuss the finer points of the agreement in Executive Session.

After discussion, it was generally agreed to table further discussion until the May Council meeting.

E. Hiring of New City Administrator/Recorder

Mayor Ruede explained that the hiring committee members each received copies of the five applications that were submitted and independently reviewed all of the applications and resumes. Following their independent review, committee members agreed that one candidate was superior. Mayor Ruede reported that the position of City Administrator would be offered to Mrs. Jamie Mills.

Council President Sanders made a motion for the City of Dunes City offer the position of City Administrator/City Recorder to Mrs. Jamie Mills and that the Mayor and the Council President enter into salary negotiations with her. Councilor Wells seconded the motion.

Mayor Ruede expressed full faith and confidence in Mrs. Mills' abilities, noting that she has been doing an extraordinary job as interim City Administrator. Council President Sanders asked Mrs. Mills if she was agreeable to the offer and she replied that she was.

The motion passed by unanimous vote.

F. Oregon Department of Forestry Fire Assessment

Newly hired City Administrator/Recorder Mills explained that this subject was on the agenda to provide an opportunity for Councilor Mallen to provide a report on the recent meeting that was hosted by Senator Roblan to discuss this issue. She noted that both she and Councilor Mallen attended the meeting that was held at the fire station in Florence.

Councilor Mallen reported that he told the Senator that Dunes City residents were angry about the assessment and the way it is being forced upon City residents, essentially

amounting to theft of taxpayer money, and that City residents should not only not pay the assessment but those who have been paying it should be given refunds. City Administrator/Recorder Mills reported that ODF is planning to form a committee that will visit Dunes City and determine whether or not the City should still be considered forest land.

Councilor Mallen further reported that prior to the assessment, a committee should have been formed to approve the taxation of Dunes City residents and that was never done.

11. REPORTS

Mayor's Report: Mayor Ruede suggested filing reports for audit unless there were specific issues that Councilor Chairs wished to mention. There were no objections.

City Administrator/Recorder Mills reported on an incident in which a man in Portland was injured at a City Park and subsequently successfully sued the City of Portland. In light of that incident, and potential hazards in City parks, Dunes City's insurance carrier, CIS, has sent letters to all cities in Oregon recommending that cities close their parks. As an alternative, CIS recommended, among other things, that cities install signage advising park patrons that they are using the parks at their own risk. Specific to Dunes City, CIS recommended that the City remove the gazebo and the fire pit from Petersdorf Park and the tire swing from Byrd Park.

City Administrator/Recorder Mills noted that Dunes City has two other parks, the Overlook by City Hall and another little park off Huckleberry. She went on to note that it was likely that the State Legislature would take some type of action to address cities' liabilities from their parks. She suggested that the Council authorize her to install "Use at Your Own Risk" signs in the parks and remove the tire swing. There were no objections from the Councilors but Mayor Ruede suggested also adding signage at the portage.

REPORTS ARE ON FILE AT CITY HALL.

12. FOR THE GOOD OF THE ORDER

Councilor Scarberry issued an invitation to citizens who watch the Council meetings on television, to submit testimony or comments about Ordinance No. 228 and/or Ordinance No. 203, noting that the record will be open for another fourteen days. He went on to note that this is a good opportunity for residents who do not attend Council meetings, or otherwise express their opinions, to weigh in on a matter that is a great concern to all residents—the more opinions the Council hears, the more informed about public opinion the Council will be. He reminded everyone that the Council represents all residents of Dunes City so the more opinions and relevant facts on the record, the better prepared the Council will be to make a well-informed decision. Councilor Scarberry also expressed concern about misleading and erroneous statements submitted during testimony and the "personal attacks" on Councilors.

13. ADJOURNMENT

Mayor Ruede requested a motion for adjournment. Council President Sanders made the motion to adjourn. There was no second and no vote taken.

Mayor Ruede adjourned the meeting at 9:32 pm.

APPROVED BY THE DUNES CITY COUNCIL ON THE 12th DAY OF MAY 2016.

[Signed copy available at City Hall]

Rebecca Ruede, Mayor

ATTEST:

[Signed copy available at City Hall]

Jamie Mills, City Administrator/Recorder