



**CITY COUNCIL SPECIAL SESSION MEETING MINUTES ~ APPROVED
AUGUST 24, 2017 AT 2:00 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

Council President Sheldon Meyer called the August 24, 2017, special session of the Dunes City Council to order at 2:00 pm.

2. ROLL CALL

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

Present: Council President Sheldon Meyer, Councilor Robert Forsythe, Councilor Alan Montgomery, Councilor Tom Mallen, and Councilor Robert Orr.

Absent and Excused: Councilor Duke Wells.

Also Present: Administrative Assistant Rapunzel Oberholtzer, Mr. Jared Anderson, reporter for *The Siuslaw News*, several City residents, and others.

3. PLEDGE OF ALLEGIANCE

All who were present stood for the Pledge of Allegiance.

4. APPROVAL OF THE AGENDA

Council President Meyer opened discussion of the Agenda item by noting that Councilor Wells, who has been a leader in discussions about marijuana facilities in the City, was not present. He went on to say that he was tempted to table discussion of the marijuana-related ordinance until Councilor Wells could be involved but the size of the crowd in attendance indicated that the issue was of such significance that discussion could be started during the meeting.

Councilor Forsythe noted that he had not had an opportunity to thoroughly review the proposed ordinance's ORS references and would not be inclined to vote on it until he had done so. Councilor Orr commented that it would be unfortunate to proceed without Councilor Wells' input.

Councilor Orr made a motion to approve the Agenda. Councilor Mallen seconded the motion. The motion passed with three votes in favor and one opposed.

5. ANNOUNCEMENTS / CORRESPONDENCE

Council President Meyer read aloud from the Agenda, “It is with heartfelt sorrow that we announce the passing of our Mayor Rebecca Ruede on August 16, 2017. A memorial service will be held on August 30 beginning at 1:00 pm at the Florence Events Center.” He invited everyone to attend.

6. CITIZEN INPUT ON ITEMS NOT LISTED ON THE AGENDA

Council President Meyer recognized Catherine Caudle who stated that she was present to discuss a request to review permits allowed by the City regarding a well. Councilors were given copies of documents she had prepared on August 22 for this meeting, and they took a minute to review them.

Referring to page three of the documents, a Water Resources Department form, Ms. Caudle noted that the well located at Tax Lot 2806 owned by Valerie Mathis was drilled to a depth of 430 feet over a period of time. She went on to point out that on page two of the documents, a Lane County Property Information Search, showed that the same Tax Lot 2806 was owned by Ronald Smalley and Patricia A. Cain. She noted that the lot has both metered water and the well approved by the City and sent to the Water Master.

Ms. Caudle explained that she reviewed wells in the area and found that they hit water at 171 feet. She went on to say that Woahink Lake is at 80 feet and the well is 430. She asked why the well was drilled to 430 feet when the average in the area is 171 and noted that DEQ wanted to know as well. She also asked why the City would allow a well when the property has access to metered water. She expressed concern about why Ms. Mathis would have a well on property she doesn't own.

Ms. Caudle said that she would like a resolution to this and a 30-day notice so DEQ, EPA and the Water Master *have time or attend* (unintelligible). She asked if there were any objections. City Administrator/Recorder Mills noted that this was a public comment period. Councilor Forsythe noted that her comments would be taken into consideration and that the City Manager would contact the State Water Department to review the information and, if necessary, bring the issue back. He thanked her for her comments.

A COPY OF MS. CAUDLE'S REQUEST FOR COUNCIL ACTION IS ON FILE AT CITY HALL.

7. NEW BUSINESS

A. Appointment and Swearing In of New Mayor

Councilor Forsythe volunteered for appointment as Mayor.

Councilor Orr made a motion to appoint Robert Forsythe to the position of Mayor for the remaining of Mayor Ruede's term. Councilor Montgomery seconded the

Motion. The motion passed with a unanimous vote.

Administrative Assistant Linda Stevens administered the Oath of Office, after which Mayor Forsythe took his place at the center of the dais.

B. Day and Times for Regular Meeting Sessions

Council President Meyer reminded Councilors that at a previous meeting they generally agreed to change the day and time of regular Council meetings from the second Thursday of every month at 7:00 pm to the second Wednesday at 6:00 pm, but they had not taken any action on the change.

Councilor Mallen made a motion to change Council meetings to the second Wednesday of the month at 6:00 pm. Councilor Montgomery seconded the motion. The motion passed by unanimous vote.

Mayor Forsythe noted that the next regular meeting of the Council would be Wednesday, September 13 at 6:00 pm.

C. Proposed Supplemental Budget

City Administrator/Recorder Mills explained that the proposed supplemental budget was posted and notice of change published as required by law. She went on to explain that the bottom line did not change—funds were moved from the General Fund’s Unappropriated Ending Fund Balance with an additional \$41,000 to Capital Outlay for the Community Center and \$40,000 was moved from the State Street Fund’s Unappropriated Ending Fund Balance to Capital Outlay to purchase an equipment shed.

D. Ordinance No. 245 Regarding the Ban of Marijuana Businesses and Facilities in the Dunes City Limits

Mayor Forsythe announced, “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.”

City Administrator/Recorder Mills explained that the posting and advertising requirements were met. Mayor Forsythe asked if any Councilors desired the ordinance be read in full. None did.

Councilor Mallen made a motion to read the ordinance by title only. Councilor Montgomery seconded the motion. The motion passed by unanimous vote.

Mayor Forsythe read aloud the title of Ordinance No. 245, “An ordinance of the City of Dunes City declaring a ban on medical marijuana producers, medical marijuana processing sites, medical marijuana dispensaries, recreational marijuana producers, recreational marijuana processors, recreational marijuana wholesalers, and recreational marijuana retailers; referring ordinance; and declaring an emergency.”

8. PUBLIC HEARINGS

A. Proposed Supplemental Budget

Mayor Forsythe opened the public hearing for the proposed supplemental budget at 2:18 pm and asked if there was anyone present who wished to comment. No one did and Mayor Forsythe closed the public hearing thirty seconds later.

B. Ordinance No. 245 Regarding the Ban of Marijuana Businesses and Facilities in the Dunes City Limits

Mayor Forsythe opened the public hearing for proposed Ordinance No. 245 at 2:19 pm and asked if there was anyone present who wished to comment.

Mayor Forsythe recognized Mr. Wesley Caudle, a Dunes City resident, who read from a prepared statement.

“Dune City charter vests it’s power with its council members who are elected by citizens having the right to vote within our city. The 7 member council includes 6 council members and 1 mayor. The council are entrusted by its voting citizens to act in the best interest of the citizens they represent.

“We are at a special hearing today August 24th having amended the agenda on Monday to include this action item. We have complied with the 24 hour posted requirement as required by our charter.

“This Ordinance is an Emergency and should be treated no differently than Dune’s City council members treated a similar Emergency Ordinance number 227 dated April 29th 2014 upon unanimous vote by the council making the Ordinance take effect that same day.

“The Citizens believe the emergency exists and in the protection of the peace, health, safety, and welfare of the citizens of Dunes City feel it should be declared allowing this Ordinance to go in effect today without delay.

“The citizens of Dunes City request Dune’s City council pass the Ordinance declaring and emergency. This signed Ordinance shall act as a moratorium until a general election occurs which will happen November 2018. At that time voters of Dunes City will decide.

“The citizens respectfully request the Mayor sign and date the OPT out form during this session. This form is needed along with a copy of the Ordinance.

“The citizens respectfully request that the Mayor direct the recorder to properly notice the OLCC and Department of Agriculture of the actions taken today. Doing so will stop all pending applications at OLCC and Department of Agriculture.

“The council members and citizens have been told there is nothing we can do. The authority of cities and counties to prohibit establishments of cannabis related businesses is based on law ORS 475B.800 ‘adoption of ordinances, referral to electors for approval.’ Council members should have a completed copy of this law.

“This authority was hard fought by senators to preserve ‘local rule.’ They understood that sec 133 chipped away local rule, so they passed ORS 475B.800 and added it to the ORS rules during 2015.

“Thank you for taking emergency action today addressing this urgent issue.”

ABOVE STATEMENT COPIED EXACTLY AS GIVEN TO CITY STAFF. A COPY IS ON FILE AT CITY HALL.

Mayor Forsythe recognized Mr. Charles Bang, a Dunes City resident, who read from a prepared statement.

“I found out about the Marijuana Grow operation near my house, 9 days ago, while getting a vegetation removal permit.

“Never having seen a Marijuana Grow building, but because of the unusual structure of a building, without windows, on Clear Lake and Doonbrae, I asked if this was a Marijuana Grow operation and was told it was. Also that there are 3 more already approved and there is nothing anyone can do about it. I was shocked! How could I not know of this?

“I then contacted several of my neighbors and they too were unaware and quite shocked! As more and more people in our area were asked, it became apparent that NO ONE KNEW!

“There are many reasons why these Federally illegal operations should not be here in our RESIDENTIAL pristine environment.

“I understand this type of business is unable to use banks so there is a huge amount of cash on their premises. This can attract CRIME and Dune City has no police force.

“Grow operations require large amounts of electricity. We have no commercial electricity lines to accommodate this type of business and this leads to Brown Outs.

“I am told, each marijuana plant requires about one gallon of water per day and a typical grow has thousands of plants. Eventhough the subdivision has a water source, the grower has dug a commercial well to a dept of 430’ or greater whereas Woahink Lake is 80’

deep. This could be very dangerous as intercepting saltwater is a strong risk and being so deep can cause dry wells in the area.

“This commercial process releases horrible skunk-like smells and some people have allergic reactions. A new crop maturing every two weeks. De-humidification in our humid climate and drying, a real problem.

“Dunes City is not prepared to have regulations, monitoring, and policing of such a business.

“We definitely need a TIME-OUT. Stop everything! This is an emergency!

“The Opt out option can give us a chance to give the Dune City residence an opportunity to get facts and educated on the issues of importance with this type of business and be able to vote for or against it in November, 2018.

“This is vital in giving Dune City an opportunity to remain a VERY SPECIAL PLACE. Very rare and unique.

“I totally support the passage of Ordinance 245 by our City Council members, the signing by our Mayor, notifying the O.L.C.C and the State. This will allow Dune City residences the opportunity to vote on this very critical issue, November, 2018. LET DUNE CITY’S VOICE BE HEARD!

“Thank you!”

ABOVE STATEMENT COPIED EXACTLY AS GIVEN TO CITY STAFF. A COPY IS ON FILE AT CITY HALL.

Mayor Forsythe recognized Mr. Tom Bassett, a Dunes City resident. Mr. Bassett explained that he is seriously allergic to marijuana, both by smelling it and by tasting it. He went on to explain that he is very concerned about the 430 foot well that has been drilled on property next door to his. His well is at 160 feet and two years ago he had to have water trucked in four times because his well was not able to keep up with the small demand he used. His concern is that the deep well will draw down the supply to his own well.

Mr. Bassett requested and was given permission by Mayor Forsythe to read a letter from Mr. Richard Bailey, a Dunes City resident, into the record.

“My name is Richard Bailey and, previously, I have spoken to the City Council regarding my concerns relating to marijuana grow sites in Dunes City.

“I wish to re-iterate my position regarding this issue. My degree from Cal Poly in Horticulture/Floriculture – the commercial production of agricultural products – qualifies me to speak of this issue with you. You will and already have received myriad reassuranc-

es from these 'farmers' that the grow houses will be and are self contained and can not affect the surrounding environment. Without a doubt these assurances are false and empty. No one can possibly ensure that the activities involved in any agricultural concern will not affect the surrounding environment. Think if it this way, when you build a brand new house it is solid and sound. Over time things break down and age which requires maintenance. The long term inevitability that things will malfunction negates any and all assurances that have been given.

“Specifically consider these aspects of a commercial grow:

- “Air quality: Various technologies are employed to filter, mask, and/or eliminate odors from a grow site. They are not successful.*
- “Water usage/quality. It is claimed that water will be trucked in and that no water will leak into the surrounding area. It is absurd to believe that no water will escape any such facility. Ask yourself, why did the grow site on Doonbrae drill a well to over four hundred fifty feet when they hit water at just over a hundred fifty feet. What does that portend for our well at 160ft?*
- “Electrical usage/sound pollution. Grow facilities require vast amounts of energy. When power fails generators will be called upon to maintain the activities of the site.*
- “Neighborhood influence. The grow site on Doobrae is only half a block from where children are picked up and dropped off for school. Such proximity places children at risk both culturally and physically.*
- “Affect on adjoining property value. The significant decline in land values for properties adjacent to grow sites in residential areas is well documented.*
- “Toxic waste. The Doonbrae site located between Siltcoos and Woahink Lakes. To suggest the watershed will not be affected is insane. Need I say more?*

“Council Members, thank you for your attention.”

ABOVE STATEMENT COPIED EXACTLY AS GIVEN TO CITY STAFF. A COPY IS ON FILE AT CITY HALL.

Mayor Forsythe recognized Mr. Ron Stanley, a Dunes City resident. Mr. Stanley noted that he was in favor of the proposed ordinance. Mr. Stanley explained that he and his wife moved to Dunes City from Humboldt County seventeen years ago. He went on to say that one of his concerns was that growing is a commercial industry, not suited for residential neighborhoods and he compared the theoretical idea of starting a distillery in a residential zone as similar to growing marijuana in a residential zone.

Mr. Stanley explained that he and his wife lived in Humboldt County for over twenty years. Over time, he had to patrol his land to make sure that illegal marijuana grow sites were not encroaching on his property. He went on to note that some of the illegal growers attempted end runs around local and county regulations. Eventually, grow sites became huge, encompassing acres and resulting in forest land being cut down and destroyed. He noted that he attending the public hearing on the approval of the subdivision (on

Doonbrae) where he expressed concern about how many trees might be removed; at the time he had been assured by the developer that the area would be preserved as forest land as much as possible and not clear cut as it is now. Mr. Stanley closed by saying that his concerns are, in addition to zoning, that the Dunes City grow sites could, once established, expand their operations to the degree that local laws would be ignored or overwhelmed and that the environment would be destroyed.

Mayor Forsythe recognized Mr. John Stead, a Dunes City resident. Mr. Stead opened his remarks by noting that he anticipated that most speakers would address marijuana growing but he would speak to the well issue. Mr. Stead referred to prepared notes.

Mr. Stead explained that OAR 690-210-0005 applies to all methods of well construction and suggested that someone look at the OAR to ensure that the well is in compliance. He went on to note that OAR 340-040-0020 deals with groundwater protection and includes, "All groundwaters of the state shall be protected from pollution..." and he noted that a deep well could draw saltwater which would be pollution. Mr. Stead pointed out that groundwater may be legally diverted only if it is used under the terms of a valid water right for a beneficial purpose; he noted that he did not know if that was the case.

Mr. Stead pointed out that OAR 340-040-0030 refers to permitted operations and includes language relating to groundwater monitoring which include several requirements for well design, location, construction, water quality, minimum reporting levels, and a quality assurance and quality control plan. He suggested that somebody look into whether or not any of the requirements have been met.

A COMPLETE COPY OF MR. STEAD'S NOTES IS ON FILE AT CITY HALL.

Mayor Forsythe recognized Ms. Valerie Cain-Mathis. Ms. Cain-Mathis introduced herself as a future resident of Dunes City. Ms. Mathis explained that the well on her property was a requirement of OLCC, was drilled by a licensed driller and has been tested. She also explained that there are underground tanks on the property that will be filled once a month. She mentioned that a video is available for anyone who wants more information.

Ms. Cain-Mathis went on to explain that her grow is an agricultural business, not commercial as she will not be selling any product. She also mentioned that she had a background in law enforcement and used to live in Humboldt County, where growing marijuana is a much different process than her grow operation will be. Ms. Cain-Mathis requested an extension of time for a decision on the proposed ordinance so that her attorney can respond and consult with the Dunes City attorney. She went on to invite anyone who wanted to know more to call her and make arrangements to see her property.

There was some discussion by members of the audience who did not sign up to give comments. The remarks included some discussion about the benefits of medical marijuana, which is what Ms. Cain-Mathis intends to grow. A Dunes City resident who stated that she lived across the street from the grow site and that she had a background in environmental science expressed her concern about the removal of trees, noting that with the

amount of rain Dunes City receives, the absence of trees could lead to erosion or flooding of property downhill. Another audience member emphasized that the intended grow site is in a residential zone and is not appropriate for agricultural use.

When several audience members began talking at the same time, Mayor Forsythe closed the comment period.

City Administrator/Recorder Mills explained that if the public hearing is left open everyone will have the opportunity to submit, in writing, comments on this issue. Those written statements would be given to Councilors prior to the next meeting. Mayor Forsythe suggested that the record be left open.

Mayor Forsythe called for a voice vote on his suggestion, all Councilors voted to leave the record open.

9. EXECUTIVE SESSION

Mayor Forsythe adjourned the City Council special session to go into Executive Session held pursuant to ORS 192.660(2)(e) to conduct deliberations with persons designated by the governing body to negotiate real property transactions at 3:02 pm.

Mayor Forsythe reconvened the City Council special session at 3:15 pm.

10. OLD BUSINESS

A. Resolution Series 2017, No. 14 Adopting the 2017-2018 Fiscal Year Supplemental Budget

Council President Meyer made a motion to approve Resolution Series 2017, No. 14, adopting the 2017-2018 fiscal year supplemental budget. Councilor Orr seconded the motion. The motion passed by unanimous vote.

B. Resolution Series 2017, No. 16 Regarding the Purchase of Real Property

Councilor Mallen made a motion to approve Resolution Series 2017, No. 16, regarding the purchase of real property, and specifically authorizing the City Administrator to execute all documents necessary to effect the purchase of the real property located across the street from City Hall for the sum of \$100,000 together with closing costs. Councilor Montgomery seconded the motion. The motion passed by unanimous vote.

C. Ordinance No. 245 Regarding the Ban of Marijuana Businesses and Facilities in the Dunes City Limits – Second Reading and Deliberation

City Administrator/Recorder Mills pointed out that Councilors agreed to leave the record and public hearing on Ordinance No. 245 open and explained that the matter could be dis-

cussed at the September Council meeting, or at another meeting on a date the Council could determine. Mayor Forsythe suggested leaving the subject on the agenda for the September meeting, along with the Resolution item D, to give Councilors time to review public comments and do their own additional research on the issue. Councilors did not object to the suggestion.

- D. Resolution Series 2017, No. 17 Referring the Question of Banning Medical and Recreational Marijuana Processors, Dispensaries, Producers, Wholesalers, and Retailers Within the City Limits

Tabled until the September meeting.

11. FOR THE GOOD OF THE ORDER

City Administrator/Recorder Mills pointed out that an email complaint about her by Mr. Wesley Caudle needed to be addressed by the Council. Mayor Forsythe suggested that, as Mayor, he discuss the complaint with Mrs. Mills in closed session as the complaint is a personnel issue.

City Administrator/Recorder Mills noted copies of emails from Ms. Catherine Caudle suggesting fund raising ideas for Dunes City. Mayor Forsythe recommended that City Administrator/Recorder Mills find out how much Staff time would be involved in implementing the ideas and report back to the Council. He noted that the Council might want to appoint a committee to work on the ideas.

Council President Meyer and Councilor Orr thanked Mayor Forsythe for his willingness to take on the Mayor duties. Councilors generally agreed that Ordinance No. 245 needed to be voted on as soon as possible.

12. ADJOURNMENT

Councilor Mallen made a motion to adjourn. Councilor Montgomery seconded the motion. The motion passed by unanimous vote.

Mayor Forsythe adjourned the meeting at 3:23 pm.

APPROVED BY THE DUNES CITY COUNCIL ON THE 13th DAY OF SEPTEMBER 2017.

[Signed copy available at City Hall]

Robert Forsythe, Mayor

ATTEST:

[Signed copy available at City Hall]

Jamie Mills, City Administrator/Recorder