



**CITY COUNCIL MEETING MINUTES ~ APPROVED  
JUNE 13, 2018 AT 6:00 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](http://www.DunesCity.com)

**1. CALL TO ORDER**

Mayor Robert Forsythe called the Wednesday, June 13, 2018, meeting of the Dunes City Council to order at 6:00 pm.

**2. ROLL CALL**

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

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

**Absent and Excused:** Councilor Duke Wells.

**Also Present:** Administrative Assistant Rapunzel Oberholtzer, CUP Applicant Sophia (Beth) Kerner, several Dunes City residents and guests, and *Siuslaw News* reporter Jared Anderson.

**3. PLEDGE OF ALLEGIANCE**

All who were present stood for the Pledge of Allegiance.

**4. APPROVAL OF THE AGENDA**

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

**5. APPROVAL OF THE CONSENT AGENDA**

**Councilor Orr made a motion to approve the Consent Agenda with amended Bills of the Session. Councilor Mallen seconded the motion. The motion passed by unanimous vote.**

**6. ANNOUNCEMENTS / CORRESPONDENCE**

City Administrator/Recorder Mills read from the list of announcements on the Agenda:

- A. A public hearing before the Planning Commission is scheduled for Thursday, June 28, 2018, for consideration of Ordinance No. 247, regarding requiring individuals desiring to conduct marijuana production operation or a recreational marijuana business to obtain a Conditional Use Permit. The Planning Commission meeting begins at 6:00 pm.
- B. A public hearing before the City Council is scheduled for Wednesday, July 11, 2018, for consideration of Ordinance No. 247, regarding requiring individuals desiring to conduct a marijuana production operation or a recreational marijuana business to obtain a Conditional Use permit. The Council meeting begins at 6:00 pm.
- C. On July 17, 2018, Dunes City is hosting a FEMA workshop on common problems, suggested solutions, and best management practices related to construction of residential structures on the Pacific Northwest Coast. This workshop lasts from 8:30 am to 4:00 pm.

## **7. OLD BUSINESS**

### **A. City Building Program**

City Administrator/Recorder Mills referred Councilors to a copy of a May 18 letter from the Building Codes Division in which the BCD rescinded the temporary rules adopted in April, 2018, related to building program delegation. She explained that BCD has initiated a new set of rules and given cities one year to become compliant.

### **B. Reavis v. Dunes City Update**

City Administrator/Recorder Mills referred Councilors to a copy of a Notice of Scheduled Court Appearance that notified the City of a September 5, 2018, trial date. Councilor Montgomery asked City Administrator/Recorder Mills to send copies of his proposal to the Councilors.

## **8. EXECUTIVE SESSION**

There was none.

## **9. CITIZEN INPUT ON ITEMS NOT LISTED ON THE AGENDA**

Mayor Forsythe recognized Mr. Bob Pine, representing the Central Oregon Coast Amateur Radio Club. Mr. Pine invited everyone to attend the Club's annual Field Day event that will be held Saturday, June 23, beginning at 11:00 am and run twenty-four hours until Sunday, June 24 at 11:00. He explained that the purpose of the event is to show that amateur radio can provide emergency communications in the event that all other forms of communication fail, such as after a major disaster. He went on to note that the event will be located in a lot on Highway 101 across from the fire station.

Mayor Forsythe recognized Mr. Aaron Bowen, a Dunes City resident. Mr. Bowen explained that he was looking for guidance from the City Council in order to resolve issues with a vicious dog in his neighborhood. He went on to explain that the owner of the dog that attacked another dog also owned about five other dogs that roamed throughout the neighborhood and acted threateningly toward residents. Mr. Bowen explained that he found that Dunes City's animal control ordinance was repealed in 2017 and both Lane County and the Sheriff's department told him that they had no authority to intervene because Dunes City had not requested them to do so. He went on to say that he was told to shoot the nuisance dog, but he did not want to. His question for the Council was how are citizens to proceed if there is no City ordinance and no assistance available from other agencies.

There was some discussion, after which City Administrator/Recorder Mills explained that Lane County had notified the City that the County would only enforce nuisance dog laws if Dunes City entered into an IGA with the County and paid an officer to do the work. Councilors asked City Administrator/Recorder Mills to find out the cost of the County's services and Mayor Forsythe offered to contact Sheriff Trapp to clarify the Sheriff Office's position.

## **10. NEW BUSINESS**

### **A. Volunteer of the Year Selection**

City Administrator/Recorder Mills read the nomination for Stan Anderson and Ann Gough in which it was noted that Stan and Ann were instrumental in recruiting nineteen boy scouts and team leaders to volunteer for this year's Oregon Dunes Triathlon—those volunteers helped the City meet the minimum number of volunteers needed for the event for the first time in the history of the event. She went on to explain that Stan and Ann volunteered in many other activities as well.

**Councilor Mallen made a motion to accept the nomination of Stan Anderson and Ann Gough for the Volunteer of the Year award. Councilor Orr seconded the motion. The motion passed by unanimous vote.**

### **B. Presentation of \$250 Award to Winner of Most Volunteers at the 2018 Oregon Dunes Triathlon**

Mayor Forsythe presented a \$250 check to Mr. Bob Pine, to the applause of the Council and the audience. COARC brought twenty radio club members to help at the event.

### **C. Small City Allotment Agreement for Award of ODOT Grant Work on Huckleberry Lane and Fir Street**

City Administrator/Recorder Mills referred Councilors to a copy of the 2018 Small City Allotment Agreement that was included with their meeting material, and explained that

the State required a signature on the Agreement in order to receive the \$50,000 grant money for repairs on Huckleberry Lane and Fir Street.

**Council President Meyer made a motion to authorize City Administrator/Recorder Mills to sign the Agreement. Councilor Mallen seconded the motion. The motion passed by unanimous vote.**

D. Proposal from HD Fowler Company for Drive by Meter Reading Hardware

City Administrator/Recorder Mills referred Councilors to a copy of an estimate from HD Fowler Company for the hardware and software required for 3G water meters and drive-by meter reading that was included with their meeting material. She explained that many of the water meters in Dunes City are located in places that are hard for residents to reach and make it difficult for them to report their monthly readings, as they are required to do under the Shared Domestic Water Agreement. She went on to explain that by replacing existing meters with the new 3G meters City Staff could drive by with a laptop in a vehicle and get the meter readings read via broadband directly into a program installed on the laptop. She also explained that the City's Water Right Permit from the State requires the City to report annually exactly how much water is being used—the City's requirement for monthly meter readings helps to ensure that the City is reporting annual water usage accurately.

There was some discussion about the estimate and the equipment, and whether or not the budget included funding for purchase of any meters and software and hardware. Mayor Forsythe noted that he would like more information about how many residents are reporting water usage and how many are not. Councilors generally agreed they needed more information in general. Mayor Forsythe asked City Administrator/Recorder Mills to find out what equipment Florence Public Works uses to read its water meters electronically.

Councilors generally agreed that the idea of reading meters electronically was a good idea but more information was needed.

E. Amendment to Master Agreement No. 644 Between Dunes City and the Department of Corrections for Work Crews from Shutter Creek Correctional Institution

City Administrator/Recorder Mills referred Councilors to a copy of an amendment to the Agreement between Dunes City and the Oregon Department of Corrections/Shutter Creek that was included with their meeting material. She explained that the City does not use work crews from Shutter Creek very often but it is convenient to have an agreement in place for when the need arises.

**Councilor Montgomery made a motion to go forward with the Agreement. Councilor Mallen seconded the motion. The motion passed by unanimous vote.**

F. Resolution Series 2018, No. 9 (06/13/2018) Regarding City Services Rendered

**Council President Meyer made a motion to approve the Resolution as presented. The motion was seconded by Councilor Montgomery. The motion passed with five votes in favor and none opposed. There was one absent Councilor; there were no abstentions and no vacancies on the Council.**

G. Ordinance No. 248, Amending Chapter 120 of the Dunes City Code to Require Business Licenses of All Businesses Doing Business Within the City Limits – First Reading

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.”

Mayor Forsythe asked if any Councilors desired to have the ordinance read in full. None did.

**Councilor Orr made a motion to read the ordinance by title only. Council President Meyer seconded the motion. The motion passed by unanimous vote.**

Mayor Forsythe read the ordinance title, “An Ordinance amending Chapter 120 of the Dunes City Code of Ordinances entitled ‘Business Licenses’ to apply to all businesses doing business within the City Limits.”

City Administrator/Recorder Mills explained that Section 120.75 restricted enforcement of the requirement for a business license to licensed contractors. She went on to explain that the Council had asked to change Code to include all businesses doing business in Dunes City, not just contractors, and this Ordinance was the result of that request.

There was some discussion about whether or not the proposed language applied to anyone doing business in Dunes City, even a high school student mowing lawns, or whether it applied only to people who have business licenses. Mayor Forsythe explained that the intent was to apply the requirement for a Dunes City business license only to people with a business license.

**Councilor Montgomery made a motion to table further discussion until further investigation can be done. Council President Meyer seconded the motion. The motion passed by unanimous vote.**

Mayor Forsythe suggested that Councilors read the full content of Chapter 120 as it currently exists and revisit the proposed Ordinance during the July meeting.

H. Ordinance No. 249, Amending Chapter 141 of the Dunes City Code Regarding Erosion Control by Adding Provisions that Apply to All Residential Construction Within the City Limits – First Reading

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.”

Mayor Forsythe asked if any Councilors desired to have the ordinance read in full. None did.

**Council President Meyer made a motion to read the ordinance by title only. The motion was seconded by Councilor Orr. The motion passed by unanimous vote.**

Mayor Forsythe read the ordinance title, “An Ordinance amending Chapter 141 of the Dunes City Code of Ordinances entitled ‘Erosion and Sediment Control’ by adding provisions that will apply to all residential construction within the City limits.”

Councilor Mallen said that, in his opinion, the present Code is sufficient and the new provisions are overreaching. He went on to point out that existing Code requires an engineer to inspect property prior to any land disturbance and the new Code only requires an inspection by City Staff or the City’s Public Works Supervisor, none of whom are engineers qualified to perform evaluations. Councilor Mallen said the proposed language was duplicitous because all residential properties would be covered, adding City Staff to qualified site inspectors would add another layer of personnel involved at an added expense the City cannot afford and, again, City Staff and the Public Works Supervisor are not qualified to determine requirements for drainage on slopes. Councilor Snow agreed.

City Administrator/Recorder Mills pointed out that NOAA regulations now has regulations that prohibit drainage from residences running into city streets, and has announced that it will fine cities that do not comply with the regulations. She went on to explain that the intent of the proposed Ordinance was to give Dunes City a way to regulate drainage from rooftops and other impervious surfaces so that it doesn’t flow into streets and, ultimately, into the lakes.

Council President Meyer pointed out that the Ordinance is not retroactive, it gives the City the ability to enforce improper drainage systems going forward. Councilor Snow felt that the requirement for an on-site preconstruction meeting was duplicative because that is already done when building plans are submitted. Councilor Mallen reiterated that the language is overreaching and duplicitous.

City Administrator/Recorder Mills explained that frequently the City is not notified when residents start excavation projects, and the City has been sued by residents who claim that the City has been responsible for flooding or other drainage damages to their property.

Councilor Orr said that he would support language that gave the City oversight of drainage development in the future.

There was some discussion about the City's building permit process and whether or not the City currently has oversight of excavation. It was generally agreed that some of the language in the proposed Ordinance could be massaged so that it wasn't so overreaching, and brought back to the Council in the July meeting.

Councilor Mallen requested a vote. Councilor Montgomery seconded. **Councilor Mallen rephrased his request as a motion to vote on Ordinance No. 249 as worded. Councilor Montgomery seconded the motion. In a roll call vote, Councilors all voted against Ordinance 249 as written.**

## 11. PUBLIC HEARINGS

### A. Type III Procedure Hearing on An Application for A Conditional Use Permit for hobby beekeeping in the R-1 Zone

Mayor Forsythe read from a script prepared for the public hearing, "This evening we have a public hearing on a request for a Conditional Use Permit to raise honey bees in Dunes City's residential district, as applied for by Sophia (Beth) Kerner."

"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 3 Quasi-Judicial Procedure.

"Staff will identify the applicable substantive criteria which have also been listed in the staff report. These are the criteria the City Council must use in making its decision. All testimony and evidence must be directed toward these criteria or other criteria which you believe applies to the decision. Failure to raise an issue accompanied by statements or evidence sufficient to afford the City and parties involved an opportunity to respond to the issue would preclude an appeal to the Oregon Land Use Appeals Board based on that issue.

"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's bias, prejudice, conflict of interest, or other facts from which the party has concluded that the Councilor will not make a decision in an impartial manner."

Mayor Forsythe asked if any Councilor wished to declare a conflict of interest, bias or ex-parte contact. None did.

Mayor Forsythe asked if any member of the public wished to challenge a Councilor's impartiality. No one did and Mayor Forsythe opened the public hearing at 7:12 pm.

Mayor Forsythe asked if any Councilors had questions for Staff about the Staff Report that was included with their meeting material. None did and Mayor Forsythe announced that he would be taking testimony from all of those who wished to testify. He went on to say, "Each speaker will be allowed three minutes, limited to a total of 30-40 minutes, for public input. Individuals making public comment are asked to refrain from duplicating comments made by a prior speaker. Any person desiring to address the Council by oral communication must address the entire Council as a body and not any particular member. Councilors may enter into discussions with the person testifying, but no one else in the audience is allowed to speak at that time. Questions, however, may be posed to staff and staff may respond. All questions posed are posed through the presiding officer."

Mayor Forsythe recognized Mr. Robert Smelker, a neighbor of the CUP applicant. Mr. Smelker explained that he and his wife had been opposed to the beekeeping operation but, after reading the Planning Commission Staff Report, they would like to ask the Council for a greater setback from their common property line, twenty feet from property line. He also said that he would like the property line surveyed by a licensed surveyor, paid for by the applicant, and staked to define it.

Mayor Forsythe recognized Mrs. Kerner, the CUP applicant. Mrs. Kerner explained that she had already had the property line surveyed by Wobbe Associates and the surveyor will return to add more stakes. She went on to explain that she is planning to install a privacy fence along the common property line. Mrs. Kerner noted that she did not have a problem locating her beehives twenty feet from the common property line, her guesstimate puts her proposed location at more than twenty feet but she will double check the distance.

Councilors asked if Mr. Smelker was satisfied with Mrs. Kerner's information. He was.

Mayor Forsythe asked Mrs. Kerner if she wished to keep the record open. She did not, and Mayor Forsythe closed the public hearing at 7:31 pm.

There was some discussion about the seven conditions of approval recommended by the Planning Commission and it was agreed to add another condition requiring that the hives be located twenty feet from the property line.

**Councilor Mallen made a motion to approve the permit as approved by the Planning Commission but with the setback being twenty feet from the newly surveyed property line pursuant to the agreement of the parties. Councilor Montgomery seconded the motion.**

Planning Commission Chairman Bonnie Allen spoke to the setback issue, noting that the Planning Commission, during its consideration of the application, it carefully considered the setback requirements and agreed that a twenty-five foot setback is adequate. There was some further discussion during which Mrs. Kerner noted that, if she had to move the beehives back to twenty-five feet, she might have to remove a tree on her property. Following further discussion everyone agreed that a minimum setback of twenty feet would be acceptable.



**The motion passed by unanimous vote.**

B. Resolution Series 2018, No. 6, Adoption of the Fiscal Year 2018-2019 Budget

Mayor Forsythe opened the agenda item for public comment at 7:40 pm and asked if anyone in the audience wished to comment on the Resolution. No one did and Mayor Forsythe closed the public comment period at 7:41 pm.

Councilor Mallen recused himself from discussion and voting due to the fact that he was not present at the last Budget Committee meeting.

**Council President Meyer made a motion to adopt Resolution Series 2018, No. 6 (06-13-2018). Councilor Snow seconded the motion. In a roll call vote, Councilors Orr, Snow, and Montgomery voted in favor of the motion. Council President Meyer voted in favor of the motion, and Councilor Mallen recused himself. Councilor Wells was absent from the vote and there were no vacancies on the Council.**

C. Resolution Series 2018, No. 7, Referring to the Voters of Dunes City A Measure for Adoption of An Amendment to Section 21 of the Dunes City Charter to Allow the City to Contract for Services of A Municipal Judge and Allow for Court to Be Held Outside the City Limits

Mayor Forsythe opened the agenda item for public comment at 7:45 pm. No one in the audience signed the Request for Recognition form to comment on the Resolution and Mayor Forsythe closed the public comment period at 7:45 pm.

**Councilor Orr made a motion to adopt Resolution Series 2018, No. 7 (06-13-2018). Council President Meyer seconded the motion.**

City Administrator/Recorder Mills explained that according to the current City Charter, the City is required to hire a municipal court judge, to have a separate courtroom area within the City limits, to have a separate file storage area for court documents, and to hire a bailiff when court is in process—none of those expenses are budgeted. She went on to explain that by changing the Charter, the City would be able to contract with another entity, probably Florence, to share a municipal judge and to hold court proceedings somewhere other than Dunes City. The intent, she pointed out, is that the Code Enforcement Officer could impose fines for Code violations and, through the court, have the ability to assess liens and collect the fines.

**The motion passed by unanimous vote.**

D. Resolution Series 2018, No. 8, Referring to the Voters of Dunes City A Measure to Assess An Ad Valorem Tax in the Amount of \$.005 per \$1,000 of Property Valuation

Mayor Forsythe opened the agenda item for public comment at 7:50 pm.

City Administrator/Recorder Mills explained that, currently, in order for a city to be eligible to collect shared revenue tax monies, a city must have levied a property tax, which Dunes City has never done, although it has been receiving the shared revenue. She went on to explain that there is a possibility that the city would no longer receive that revenue, which amounts to \$80,000 - \$100,000 annually. She pointed out that the proposed tax levy would be in effect for a period of five years and would cost a property owner with an assessed value of \$300,000 about \$1.50 per year—after five years, voters could re-evaluate the need for the local tax. Mayor Forsythe noted that this issue was discussed at length in Budget Committee meetings and the Budget Committee recommended that the Council address it.

Mayor Forsythe recognized Mr. Rory Hammond, a Dunes City resident who signed the Request for Recognition form to provide comment. Mr. Hammond pointed out that he was the Budget Committee member who recommended that the City levy a minimal tax so it could continue to receive the shared revenue. Mr. Hammond explained that he was not a fan of over-regulation, of over-taxation, or State control of local municipalities, but this tax is one that the City needs in order to continue to receive shared revenue from the State.

Mayor Forsythe recognized Mr. Jerry Schneider, a Dunes City resident, who spoke in favor of the tax. He asked when the tax would become effective and when the revenue would be available to the City. City Administrator/Recorder Mills explained that the assessment would become effective January 1, 2019, if the voters pass it, and the City would continue to receive its shared revenue allocations as it has in the past. In response to Mr. Schneider's question about how the revenue is used, City Administrator/Recorder Mills explained that the gasoline tax must be used by the City for road improvement and bike and hiking trails, liquor and cigarette taxes do not come with specific instructions about how they're used. Council President Meyer clarified that the \$80,000 - \$100,000 income from shared taxes is the City's primary source of revenue every year and the City may not continue to receive it without the new local tax.

Mayor Forsythe closed the public comment period at 8:10 pm.

**Councilor Montgomery made a motion to adopt Resolution Series 2018, No. 8. The motion was seconded by Council President Meyer. In a roll call vote, all Councilors present voted in favor of the motion. Councilor Wells was absent from the vote, there were no abstentions and no vacancies on the Council.**

- E. Ordinance No. 248, Amending Chapter 120 of the Dunes City Code to Require Business Licenses for All Businesses Doing Business Within the City Limits

Due to foregoing actions (10G – New Business) further action on Ordinance No. 248 was tabled.

- F. Ordinance No. 249, Amending Chapter 141 of the Dunes City Code Regarding Erosion Control By Adding Provisions that Apply to All Residential Construction Within the City Limits

Due to foregoing actions (10H – New Business) Ordinance No. 249 was sent back to Staff for revision.

## **12. REPORTS**

- A. Mayor's Report: Mayor Forsythe did not have a report.
- B. Community Center Report: Councilor Wells was absent so there was no report.
- C. Water Quality Report: Council President Meyer reported that the water quality is still testing very well.
- D. Public Works Maintenance Supervisor's Report: City Administrator/Recorder Mills reported that work continues on Huckleberry Lane and there is some brushing at other locations in the City.
- E. Emergency Services Report: City Administrator/Recorder Mills reported that her report was included in the Councilors' meeting packets.
- F. City Administrator/Recorder/Planning/Staff Report: City Administrator/Recorder Mills reported that: there were six building permits and three public works permits issued in May; the CAC met on May 23 to continue its review of 155.3; and, the City received numerous complaints about tree and brush cutting noise after 7:00 pm—residents should be aware that Dunes City Code does not allow loud noises (noise that can be heard from fifty yards away) before 7:00 am and after 7:00 pm.

## **13. FOR THE GOOD OF THE ORDER**

City Administrator/Recorder Mills announced that Dunes City will host the Oregon Mayors Association Conference attendees for dinner on July 26. She requested and was given permission by the Council to provide wine during the dinner at City Hall.

City Administrator/Recorder Mills reported that the undeveloped roadways still have not been appraised, but the appraiser who performed the appraisal on the property for the potential hiking and biking trail has a matrix he can use to determine roadway valuations—he is asking for \$5,000 to do the work. There was some discussion during which it was noted that appraisers from the Coos Bay area are not familiar with property valuation in Dunes City. Mayor Forsythe suggested that City Administrator/Recorder Mills schedule a special meeting to discuss the valuation and invite the public's participation.

City Administrator/Recorder Mills reminded Councilors that the LOC legislative policy survey should be completed and returned to her prior to August 3. She went on to refer the

Councilors to copies of letters from the US Department of Justice/Oregon re priorities in enforcement of federal laws involving marijuana in Oregon and from the OLCC regarding a pause in accepting marijuana license applications.

Mayor Forsythe reminded everyone that Darlings Resort and Marina will hold its annual fireworks display on Saturday, June 30, beginning at about 10:00 pm—everyone is invited and encouraged to attend.

#### **14. ADJOURNMENT**

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

Mayor Forsythe adjourned the meeting at 8:25 pm.

**APPROVED BY THE DUNES CITY COUNCIL ON THE 11<sup>th</sup> DAY OF JULY 2018**

[Signed copy available at City Hall]

Robert Forsythe, Mayor

ATTEST:

[Signed copy available at City Hall]

Jamie Mills, City Administrator/Recorder