



**CITY COUNCIL MEETING MINUTES ~ APPROVED
JULY 11, 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

1. CALL TO ORDER

Mayor Robert Forsythe called the Wednesday, July 11, 2018, meeting of the Dunes City Council to order at 6:03 pm.

2. ROLL CALL

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

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

Absent and Excused: None.

Also Present: Administrative Assistant Rapunzel Oberholtzer, several Dunes City residents 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

Council President Meyer made a motion to approve the Agenda. The motion was seconded by Councilor Orr. The motion passed by unanimous vote.

5. APPROVAL OF THE CONSENT AGENDA

Councilor Orr made a motion to approve the Consent Agenda. 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. 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. The workshop is from 8:30 am to 4:00 pm.
- B. The Citizens Advisory Committee meeting regarding the first three sections of Chapter 155 of the Dunes City Code is scheduled for July 23, 2018, at 5:00 pm. The CAC is nearing completion of their review of these sections.
- C. The next Planning Commission meeting is scheduled for Wednesday, July 25, at 5:00 pm.

7. NEW BUSINESS

- A. Volunteer of the Year – Presentation of Award

Mayor Forsythe presented the 2018 Volunteer of the Year Award to Stan and Ann Anderson, managers of Boy Scout Camp Baker, and thanked them for all they've done to support Dunes City.

- B. Schedule Council Work Session to Discuss Water Issues

Following discussion, it was agreed to schedule the Work Session for Thursday, July 19, beginning at 6:00 pm.

- C. Ordinance No. 247, amending Chapter 155 of the Dunes City Code requiring marijuana-related businesses to apply for a Conditional Use Permit and establishing conditions that must be met; providing for an effective date of November 7, 2018 – 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." He asked if any Councilor wished to have the Ordinance read in full. None did.

Councilor Montgomery 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 aloud the title of Ordinance No. 247, "An Ordinance amending Section 155.2.1.111 to add marijuana producers to the list of Conditional Uses that require a Conditional Use Permit in the R-1 Zone; adding a new Section 155.2.1.270 to add Special Standards that recreational marijuana producers and recreational marijuana production must meet in the R-1 Zone; adding new provisions to terminate any Conditional Use Permit granted under the terms of this Section 155.2.1 upon any change of use or ownership of the real property for which the Conditional Use Permit was granted; amending Section 155.2.2.111 to add recreational marijuana processors to the list of Conditional

Uses that require a Conditional Use Permit in the Community Commercial District; adding a new Section 155.2.2.220 to add Special Standards that must be met for recreational marijuana processors in the Community Commercial District, adding new provisions to terminate any Conditional Use Permit granted under the terms of this Section 155.2.2 upon any change of use or ownership of the real property for which the Conditional Use Permit was granted; correcting formatting errors and other matters related thereto.”

8. Public Hearing and Deliberation on Ordinance No. 247

- A. Ordinance No. 247, amending Chapter 155 of the Dunes City Code; requiring marijuana-related businesses to apply for a Conditional Use Permit and establishing conditions that must be met; providing for an effective date of November 7, 2018 – Second Reading and Deliberation

Mayor Forsythe read from a script prepared for the public hearing, “This evening we have a public hearing on Ordinance No. 247.”

“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.

“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 apply 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 Board of Appeals 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 member of the Council wished to declare a conflict of interest, bias or ex-parte contact. None did.

Mayor Forsythe opened the public hearing for the proposed Ordinance at 6:18 pm and asked for the Staff Report.

Administrative Assistant Rapunzel summarized the proposed Ordinance, “Ordinance No. 247 amends Title XV of the Dunes City Code by adding new language to Chapter 155, Sections 155.2.1 and 155.2.2 regarding recreational marijuana producers and processors. “Recreational Marijuana Producers” will be added to the uses in the R-1 district that re-

quire a Conditional Use Permit and “Recreational Marijuana Processors” will be added to the uses in the Community Commercial district that require a Conditional Use Permit. New Sections will be added to list standards (in addition to all other Conditional Use Permit requirements) with which recreational marijuana producers must comply in the R-1 district, and standards (in addition to all other Conditional Use Permit requirements) with which processors must comply in the Community Commercial district.”

Rapunzel provided a history of marijuana-related discussions in Dunes City, noting that in early 2017 three OLCC LUCSs were submitted to the City and approved, which resulted in many comments from citizens questioning the approvals and prompting lengthy discussion at City Council and Planning Commission meetings about City Code and processes. She explained that the citizen comments prompted the Planning Commission to discuss changing City Code and, in the meantime, the Council adopted Ordinance No. 245 which prohibited any future marijuana business applications and referred the question of whether or not Dunes City should ban all new marijuana businesses to the voters on the November general election ballot.

Rapunzel went on to explain that the Planning Commission and the CAC crafted the language in Ordinance No. 247 with the intent that, should the ballot question fail, the City would have some control over new marijuana businesses attempting to locate in Dunes City. She noted that the biggest concerns expressed by citizens were that citizens knew nothing about the applications, had no notice of their approvals and had no input into whether or not the applications should have been approved. Ordinance No. 247 attempts to address all of those citizen concerns by using the Conditional Use Permit process that requires neighbors be notified of CUP applications, notice of Planning Commission and City Council public hearings be published and citizens be allowed to comment during the hearings.

Mayor Forsythe asked Councilors if they had questions for Staff. Councilor Wells noted that the proposed Ordinance provides a process for the City if the ban fails. There was some discussion about the proposed requirements for marijuana producers and processors in addition to those already set out in Chapter 155 conditional use requirements. City Administrator/Recorder Mills explained that the proposed requirements are for the Conditional Use Permit application, which would be reviewed by the Planning Commission to determine whether or not the application materials were adequate.

There was a discussion about the definition of “marijuana” in the proposed ordinance and whether or not the term should include stalks, fiber, oil or cake, etc. as written on pages 2 and 4. There was also some discussion about the process of applying for a Conditional Use Permit and the notices and hearings that were required before a CUP could be obtained. There was some discussion about amending language on pages 2 and 4 to strike “not” from the second sentence (“It does not include the stalks of the plant...”).

Mayor Forsythe announced that the Council would hear testimony from those who wished to testify in favor of or opposed to the proposed ordinance. No one signed in to offer

testimony and no written comments were submitted. Mayor Forsythe closed the public hearing at 6:37 pm.

Mayor Forsythe explained that the Council could a) approve the Ordinance, b) approve the Ordinance with amendments, or c) not accept the Ordinance based on findings of fact or other information identified by the Council but not included in the Staff Report/Findings of Fact.

Council President Meyer made a motion to accept the Staff Report and Findings of Fact. Councilor Montgomery seconded the motion. The motion passed with four votes in favor and one opposed.

Mayor Forsythe announced that he would entertain a motion to amend the language of Ordinance 247 as presented.

Councilor Mallen made a motion to amend Ordinance 247 on page two and four under the definition of marijuana, second sentence, strike the word “not.”

There was no second and the motion failed.

Council President Meyer made a motion to read Ordinance 247 by title only. The motion was seconded by Councilor Orr. The motion passed by unanimous vote.

Mayor Forsythe read aloud the title of Ordinance No. 247 for the second time, “An Ordinance amending Section 155.2.1.111 to add marijuana producers to the list of Conditional Uses that require a Conditional Use Permit in the R-1 Zone; adding a new Section 155.2.1.270 to add Special Standards that recreational marijuana producers and recreational marijuana production must meet in the R-1 Zone; adding new provisions to terminate any Conditional Use Permit granted under the terms of this Section 155.2.1 upon any change of use or ownership of the real property for which the Conditional Use Permit was granted; amending Section 155.2.2.111 to add recreational marijuana processors to the list of Conditional Uses that require a Conditional Use Permit in the Community Commercial District; adding a new Section 155.2.2.220 to add Special Standards that must be met for recreational marijuana processors in the Community Commercial District; adding new provisions to terminate any Conditional Use Permit granted under the terms of this Section 155.2.2 upon any change of use or ownership of the real property for which the Conditional Use Permit was granted; correcting formatting errors and other matters related thereto.”

Councilor Montgomery made a motion to amend Ordinance 247 by deleting the word “not” from the definition on page four and page two. Councilor Orr seconded the motion.

There was a discussion about the definition of “marijuana” in the producer and processor sections of the proposed ordinance. Planning Commission Chairman Bonnie Allen, who was present in the audience, explained that the Planning Commission had followed state-

recommended definitions and guidelines to keep the language as simple as possible but still give the City control over marijuana-related activities. She went on to note that if the Planning Commission had concerns or questions about a marijuana business CUP application, those concerns and questions would be addressed during the application hearing process. Councilor Mallen disagreed with keeping the word “not” noting that stems, seeds, etc. were, in fact, marijuana. Councilor Montgomery changed his mind about deleting “not” noting that the excluded parts were not parts of marijuana that contained THC.

The motion failed by a vote of four to one.

Council President Meyer made a motion to accept the wording of Ordinance 247 as written. Councilor Orr seconded the motion. In a roll call vote, Council President Meyer and Councilors Snow, Montgomery, Wells, and Orr voted in favor. Councilor Mallen voted against the motion.

Mayor Forsythe declared Ordinance No. 247 adopted, noting that its effective date would depend on the outcome of the November general election votes.

9. OLD BUSINESS

- A. Resolution No. 7A, correcting scrivener errors in Resolution No. 7 adopted June 13, 2018

City Administrator/Recorder Mills reminded Councilors that they adopted Resolution No. 7 to amend the City Charter of Dunes City at last month’s meeting, and explained that Resolution No. 7A corrected the wording of the Ballot Title to fit within the State’s maximum number of words allowed.

Councilor Orr made a motion to accept the amended wording. Councilor Mallen seconded the motion. The motion passed by unanimous vote.

- B. Resolution No. 8A, correcting scrivener errors in Resolution No. 8 adopted June 13, 2018

City Administrator/Recorder Mills reminded Councilor that they adopted Resolution No. 8 to ask voters to approve a \$.005 per thousand dollars of property value at last month’s meeting. She explained that the State rejected the Summary Statement she submitted and Resolution No. 8A corrects the Summary Statement to meet State requirements.

Councilor Orr made a motion to accept the change in wording. Council President Meyer seconded the motion. The motion passed by unanimous vote.

- C. Ordinance No. 248 amending Chapter 120 of the Dunes City Code of Ordinances entitled “Business Licenses” to apply to all businesses doing business within the City Limits with exceptions – Second Reading

Following some discussion, Councilors proceeded with the public hearing.

10. PUBLIC HEARING AND DELIBERATION ON ORDINANCE NO. 248

- A. Ordinance No. 248 amending Chapter 120 of the Dunes City Code of Ordinances entitled “Business Licenses” to apply to all businesses doing business within the City Limits with exceptions

Mayor Forsythe opened the public hearing on Ordinance No. 248 at 7:04 pm. He went on to announce that, “These proceedings will be recorded,” and read from a prepared script.

“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 apply 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 Board of Appeals based on that issue.”

For the benefit of the citizens, Mayor Forsythe read the Ordinance title into the record, “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,” and asked if there was anyone in the audience who wished to comment on the Ordinance.

Mayor Forsythe recognized Ms. Bonnie Allen. Ms. Allen asked how the citizens would know about the new requirement and how would citizens know that a vendor has a Dunes City business license. Mayor Forsythe pointed out that Dunes City residents would be instrumental in making sure that anyone they hired had a City license. City Administrator/Recorder Mills noted that the City could send a letter to all residents and publish an article in the newsletter.

Mayor Forsythe recognized Mr. Rory Hammond, who expressed some concern about which businesses would be required to be licensed by the City, would the requirement apply to insurance agents, delivery drivers, etc. There was some discussion about the City’s requirements for vendors to prove they are licensed by the State and have insurance. City Administrator/Recorder Mills suggested that Councilors could table further discussion to give her time to look into whether delivery services, for example, would be excluded.

Council President Meyer made a motion to table further discussion until Staff could do more research. Councilor Wells seconded the motion. The motion passed by unanimous vote.

Mayor Forsythe closed the public hearing at 7:16 pm.

11. OLD BUSINESS

- A. Ordinance No. 249 amending Chapter 141 of the Dunes City Code of Ordinances regarding Erosion Control by adding provisions that apply to all residential construction within the City Limits – Second Reading

Mayor Forsythe opened the public hearing at 7:16 pm and, for the benefit of residents, read the Ordinance title into the record, “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.”

Mayor Forsythe asked if anyone in the audience wished to comment on the Ordinance. No one did and Mayor Forsythe closed the public hearing at 7:17 pm.

12. PUBLIC HEARING ON ORDINANCE NO. 249 AND DELIBERATION

- A. Ordinance No. 249 amending Chapter 141 of the Dunes City Code of Ordinances regarding Erosion Control by adding provisions that apply to all residential construction within the City Limits

There was some discussion about the origin of Ordinance No. 249, during which Councilor Snow reported that she found the Council’s Rules of Procedure, Item 6.6, read in part, “Requests for ordinances: any member of the City Council may request the Mayor to have prepared a proposed ordinance with such ordinance to be placed on the agenda of the next regular meeting...” She questioned whether the proposed ordinance should have been included in Councilors’ packets because it was not requested by the Council or the Mayor. Mayor Forsythe explained that he agreed with the language in the Rules, but did not recall whether or not, or when, the Council discussed the need for this Ordinance and asked Staff to draft it. City Administrator/Recorder Mills pointed out that she had been asking for this kind of ordinance for some time because the City has ongoing issues with drainage and runoff onto roadways; she thought that the Council likely discussed the need during goal setting meetings.

Councilor Mallen objected to revisiting Ordinance No. 249 because the Council voted against it in the July meeting, and explained that the Ordinance adds another layer of regulation on procedures the City already has in place. Councilor Orr recalled that the discussion in the July meeting was that the original language could be modified, and this version contained modifications. He volunteered to work with City Administrator/Recorder Mills on softer language. Council President Meyer recalled that in the July meeting, there was a discussion in which some of the Councilors agreed that there was a need for an ordinance like 249 to keep water that runs off properties from entering the lakes.

There was some further discussion after which Councilors generally agreed that they needed more time to consider the proposed language.

Councilor Montgomery made a motion to table further discussion until the August meeting. Councilor Wells seconded the motion. The motion passed by unanimous vote.

13. EXECUTIVE SESSION

- A. Held pursuant to ORS 192.660(2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed

Mayor Forsythe announced that the Council would go into Executive Session held pursuant to ORS 192.660(2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed, and adjourned the regular session at 7:13 pm.

Due to the nature of the subject matter to be discussed in the Executive Session, he asked Councilor Montgomery not to attend.

Mayor Forsythe reconvened the regular session at 7:50.

14. OLD BUSINESS

- A. Any action to be taken regarding items discussed in Executive Session (Reavis v. Dunes City)

Councilor Orr made a motion to accept the Settlement Agreement as written. The motion was seconded by Councilor Mallen.

Councilor Montgomery explained that he wished to keep the 4" pipe that is existing, but he would install a larger diameter as appropriate. Mayor Forsythe noted that the Agreement stipulates a 4" pipe and that is what the City is agreeing to.

The motion passed with five votes in favor. There was one abstention (Montgomery).

15. CITIZEN INPUT ON ITEMS NOT LISTED ON THE AGENDA

There was none.

16. REPORTS

- A. Mayor's Report: Mayor Forsythe did not have a report.
- B. Community Center Report: Councilor Wells reported that he would clean the dead moss off the roof of City Hall.
- C. Water Quality Report: Council President Meyer reported that the water quality is still good. He went on to report that Mark Chandler is leaving the Water Quality Committee so the Committee will be looking for another volunteer to help with testing.

- D. Public Works Maintenance Supervisor's Report: City Administrator/Recorder Mills reported that RFQs for work on Huckleberry Lane have been mailed and there will be a mandatory meeting of interested contractors to visit the site.
- 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: she sent a letter to Lane County Animal Control, who submitted an IGA for the Council to consider in the August meeting; she and the CwMH20 engineer visited the site where the water flow meter will be installed; she presented the Rebecca's Trail grant proposal to State Parks and Recreation on June 19 and has since been informed that the award had been given to larger cities; and, Dunes City is seeking donations to repair the old sign at the Westlake Post Office.

17. FOR THE GOOD OF THE ORDER

City Administrator/Recorder Mills announced that Administrative Assistant Linda Stevens submitted a letter of resignation that included monetary demands to be discussed in Executive Session. Councilors agreed to hold the Executive Session at 5:00 pm on July 19.

Councilor Snow asked that the City follow procedures for submitting ordinances. Councilor Orr thanked the Planning Commission for their work on Ordinance No. 247.

18. ADJOURNMENT

Council President Meyer made a motion to adjourn. Councilor Mallen seconded the motion. The motion passed by unanimous vote.

Mayor Forsythe adjourned the meeting at 8:02 pm.

APPROVED BY THE DUNES CITY COUNCIL ON THE 8th DAY OF AUGUST 2018

[Signed copy available at City Hall]

Robert Forsythe, Mayor

ATTEST:

[Signed copy available at City Hall]

Jamie Mills, City Administrator/Recorder