



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: May 19, 2016
Jurisdiction: City of Dunes City
Local file no.: Ord. 228
DLCD file no.: 001-15

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 05/18/2016. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 63 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE
File No.: 001-15 {23975}
Received: 5/18/2016

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption.** (See OAR 660-018-0040). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use Form 4 for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use Form 5 for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use Form 6 with submittal of an adopted periodic review task.

Jurisdiction: City of Dunes City, Oregon

Local file no.: **Ord. 228**

Date of adoption: 5/12/2016

Date sent: 5/18/2016

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes Date (use the date of last revision if a revised Form 1 was submitted): 3/15/2016
 No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No
If yes, describe how the adoption differs from the proposal:

Local contact (name and title): Jamie Mills, City Administrator

Phone: 541-997-3338

E-mail: recorder@dunescityor.com

Street address: 82877 Spruce St.

City: Westlake

Zip: 97493-

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

- Change from _____ to _____ acres. A goal exception was required for this change.
- Change from _____ to _____ acres. A goal exception was required for this change.
- Change from _____ to _____ acres. A goal exception was required for this change.
- Change from _____ to _____ acres. A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

Title XV, Chapter 157, all Sections; Title XIV, Chapter 142, all Sections.

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation:	Acres added:	Acres removed:
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Location of affected property (T, R, Sec., TL and address):

List affected state or federal agencies, local governments and special districts: Lane County; Oregon Department of Environmental Quality.

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

Attached Ordinance No. 228 with Exhibit A. (Findings of Fact) and Exhibit B. (language of the change); and Staff Report.

**CITY OF DUNES CITY
LANE COUNTY, OREGON
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**

WHEREAS, on January 14, 2010, the City Council of Dunes City adopted Ordinance Number 203, which established Chapter 157 within the Dunes City Code of Ordinances entitled “Septic System Maintenance;” and

WHEREAS, Ordinance Number 203 established a mandatory five (5) year time period within which periodic septic evaluations are to be made and reported to Dunes City; and

WHEREAS, many residences in Dunes City are second homes, vacation homes, or are only inhabited by one or two persons, while others may be occupied by large families or multi-families; and

WHEREAS, the five (5) year mandatory time period may be unnecessary in some circumstances, while not frequent enough in others; and

WHEREAS, it would be in the best interests of Dunes City and its residents if the time period within which periodic septic system evaluations are to be made were to be set by an expert in the field of septic system evaluations; and

WHEREAS, proper system maintenance prevents the adverse impacts of failing systems that may result in improper discharge of sewage effluent-threatening surface water, groundwater, and public health, safety and welfare; and

WHEREAS, Dunes City desires to ensure that all onsite wastewater disposal systems or septic systems are operated in a safe, healthful and environmentally responsible manner; and

WHEREAS, on August 18, 2015, as per ORS 197.610, OAR Chapter 660, Division 18, and Section 155.4.1.7.B.2.d a notice of the proposed amendment of the Dunes City Code was sent to DLCD; and

WHEREAS, no exceptions to applicable statewide planning goals numbers 2, 5 and 6 are proposed; and

WHEREAS, in accordance with ORS 227.186 (Ballot Measure 56) notice of the proposed changes to the Dunes City Code of Ordinances was mailed to owners of real property in Dunes City on October 8, 2015, 21 days prior to the first evidentiary hearing, which was first publicly announced on September 12, 2015, 40 days prior to the Planning Commission hearing scheduled for October 22, 2015; and

WHEREAS, on September 24, 2015, the Planning Commission canceled the October 22, 2015 hearing and rescheduled the public hearing for October 29, 2015; and

WHEREAS, first notice of a public hearing before the Planning Commission was published in *The Siuslaw News* on September 12 and September 16, 2015, and again on October 10 and October 14, 2015 as required by Section 155.4.1.7.B.2.b of the Dunes City Development Code; and

WHEREAS, the Planning Commission held a public hearing on the proposed amendments to the Dunes City Code of Ordinances on October 29, 2015, and held a second public hearing on the proposed amendments to the Dunes City Code of Ordinances on November 19, 2015, and recommended to the City Council that the City Council take no action on the proposed amendment to the Dunes City Code of Ordinances; and

WHEREAS, notice of a public hearing before the City Council was published in *The Siuslaw News* on October 24 and October 28, 2015, as required by Section 155.4.1.7.B.2.b of the Dunes City Development Code; and

WHEREAS, notice of a public hearing before the City Council was published in *The Siuslaw News* on March 26 and March 30, 2016, as required by Section 155.4.1.B.2.b of the Dunes City Development Code; and

WHEREAS, the City Council held a public hearing on the proposed amendments to the Dunes City Code of Ordinances on April 14, 2016; and

WHEREAS, the Council has considered materials relevant to the proposed amendments, including staff reports, the findings made by the Planning Commission, and testimony and comments submitted at both public hearings, both orally and in writing;

NOW, THEREFORE, THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:

Section 1. Findings of Fact

The City Council hereby adopts the Findings of Fact attached to this Ordinance as **Exhibit A**.

Section 2. Repeal of Chapter 157, Title XV, of the Dunes City Code of Ordinances is amended to repeal Chapter 157 in its entirety, Ordinance Number 203 is also hereby repealed. The repeal of Ordinance Number 203 and Chapter 157 shall not affect any action occurring before the repeal takes effect.

Section 3. Amendment of Title XIV

Title XIV of the Dunes City Code of Ordinances, entitled “Water Quality Protection,” is amended to add a new Chapter 142, entitled “Subsurface Sanitation,” which shall read as provided in the attached **Exhibit B** to this Ordinance.

Section 4. Administrative Fees

The City Council shall, by resolution, establish and amend fees to cover all or a portion of the expense of implementing and administering this Ordinance.

Section 5. Severability

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is judicially declared to be invalid, unenforceable, and/or void by a court of competent jurisdiction, such decision shall not have the effect of invalidating or voiding the remainder of this Ordinance, and the part(s) of this Ordinance so held to be invalid, unenforceable, and/or void shall be deemed stricken, and the remainder of this Ordinance shall have the same force and effect as if such stricken part(s) had never been included.

Section 6. Effective Date

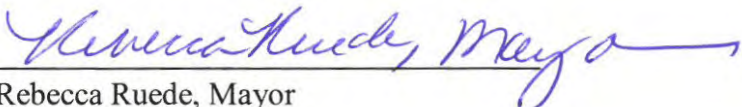
This Ordinance shall take effect immediately upon adoption.

The first reading of this Ordinance was conducted in a regular meeting of the City Council of Dunes City, Oregon, on the 14th day of April 2016.

The second reading of this Ordinance was conducted in a regular meeting and adopted by the City Council of Dunes City, Oregon on this 12th day of May 2016.

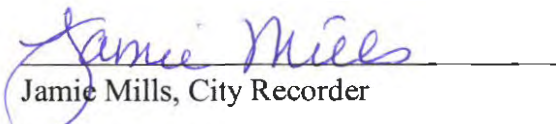
Ayes: 5 Nays: 0 Abstain: 0 Absent: 1 Vacant: 0

ADOPTED BY THE DUNES CITY COUNCIL THIS 12th DAY OF MAY, 2016



Rebecca Ruede, Mayor

ATTEST:



Jamie Mills, City Recorder

**EXHIBIT A
FINDINGS OF FACT IN SUPPORT OF ORDINANCE NO. 228**

CONSISTENCY WITH DUNES CITY CODE

Dunes City Code (DCC) Chapter 155 – Zoning and Development

**155.4 Applications and Review Procedures
155.4.1.7 Type IV Procedure (*Legislative*)**

B. Notice of Hearing.

- 1. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications submitted to the City.**

Finding: The proposal is consistent with this criterion because two hearings were conducted before a final decision was made. A public hearing was conducted before the Planning Commission and a public hearing was conducted before the City Council prior to making a final decision. This criterion is met.

- 2. The Planning Secretary shall give notice of public hearings for the request in the following manner:**
 - a. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the Comprehensive Plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.175 and mailed to:**
 - 1. Each owner whose property would be rezoned in order to implement the ordinance;**
 - 2. Any affected governmental agency.**
 - 3. Recognized neighborhood groups or associations affected by the ordinance;**
 - 4. Any person who requests notice in writing;**
 - 5. For a rezone affecting a manufactured home or recreational vehicle park, all mailing addresses within the park.**

Finding: The proposal is consistent with this criterion because a public notice was mailed to all property owners in Dunes City, affected government agencies and neighborhood groups and anyone requesting a notice on October 8, 2015, at least 20 days and not more than 40 days before the first public hearing before the Planning Commission on October 29, 2015. This criterion is met.

- b. At least 14 days before the scheduled Planning Commission public hearing date, and 14 days before the City Council**

hearing date, notice shall be published in a newspaper of general circulation in the City.

Finding: Notices of the October 29, 2015 Planning Commission public hearing were published in the Siuslaw News on October 10 and 14, 2015. Notices of the April 14, 2016 City Council public hearing were published in the Siuslaw News on March 30 and April 2, 2016. This criterion is met.

c. The Planning Secretary shall:

- 1. For each mailing of notice provided in Subsection B.2. above, file an affidavit of mailing in the record; and**
- 2. For each published notice provided in Subsection B.2. above, file an affidavit of publication in the record;**

Finding: The proposal is consistent with this criterion because an affidavit of mailing and publication were filed into the record. This criterion is met.

d. The Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed Comprehensive Plan and development code amendments at least 45 days before the first public hearing at which public testimony or new evidence will be received.

Finding: The proposal is consistent with this criterion because a notice was sent to DLCD on August 18, 2015, at least 35 days prior to the first evidentiary hearing with the Planning Commission on October 29, 2015. This criterion is met.

CONSISTENCY WITH DUNES CITY COMPREHENSIVE PLAN

Citizen Involvement and Land Use Planning

Policy A1. Citizens involvement. Dunes City's citizens involvement program shall insure that the citizens of Dunes City have the opportunity to be involved in all phases of the planning process.

The proposal is consistent with this policy because citizens have been provided opportunities to be involved in all phases of the planning process. Public notice was mailed to all property owners and published in the Siuslaw News, notifying the public of the proposed code amendments and how to participate in the public hearing before the Planning Commission and City Council. The information contained in proposed Ordinance No. 228 was available to the public prior to the hearings. Citizens were provided an opportunity to provide testimony before and during each public hearing. Widespread public involvement was solicited and provided for through all phases of the planning process. This criterion has been met.

Land Use and Urbanization

Policy A12. Dunes City shall coordinate land use decisions where needed with Lane County, Douglas County, the Oregon Dunes National Recreation Area, Oregon State Parks, Oregon Department of Transportation, Oregon Department of Fish and Wildlife, The Oregon Department of Forestry, and other local, state and federal agencies.

Finding: The proposal is consistent with these policies because referrals were sent to affected local and state agencies in order to coordinate the proposed land use decision. Dunes City sent referrals to the Dunes City Building Official, Lane County Sanitation Department, Oregon Department of Environmental Quality and the Department of Land Conservation notifying them of the proposed amendments, public hearing dates and requesting their comments. A response from Lane County Sanitation and the Building Department LLC (the Dunes City Building Official) were received stating they had no comment on the proposals. This criterion is met.

Open Space, Scenic Areas, and Natural Resources

Policy B8. Dunes City shall strive to maintain the high water quality of Siltcoos and Woahink Lakes through monitoring recreation use, commercial and industrial use, and run-off of septic tank effluent. A Water Quality Control Committee will be formed to examine problems with water quality.

Finding: Dunes City has established a Water Quality Committee that has provided the Planning Commission and City Council with information and recommendations regarding water quality over the years.

The proposal is consistent with this policy because no clear correlation has been established between septic system effluent and the water quality of Siltcoos and Woahink Lakes. However, Ordinance No. 228 is intended to improve upon the existing state regulatory requirements for septic system maintenance for the benefit of all residents in Dunes City.

Finding: The EPA has adopted voluntary national guidelines for the management of onsite wastewater treatment systems.¹ Where sustained performance of treatment systems is critical to protect public health and water quality, individual owners of wastewater treatment systems must demonstrate that routine maintenance is performed in a timely manner and that the condition of the system be inspected periodically. Ordinance No. 228 is consistent with these guidelines in that it requires periodic inspection and pumping, when necessary, of individual wastewater treatment systems.

This criterion is met.

¹ U.S. Environmental Protection Agency, *Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems*, March 2003.

Air, Land and Water Quality

General Policies

Policy E1. The city shall strive to preserve the quality of the land, air, and water resources in the city.

Finding: Water quality in Siltcoos Lake has been declared to have been “impaired” due to weeds and algae by the EPA since the 1960’s and DEQ has placed it on their list of impaired water bodies in 2006. Water quality data has shown a decrease in phosphorus levels beginning in January of 2010, when the statewide ban on cleansing agents containing phosphate went into effect.

Finding: The proposal is consistent with this policy because it is consistent with the septic system requirements established by DEQ and administered by Lane County. These regulations ensure adequate sewage disposal systems are created, which preserve the quality of land and water resources in the city. Samples have been collected from Siltcoos and Woahink Lakes and while it is a scientific fact that septic system effluent may degrade water quality there has been no correlation established between water quality and erosion or septic system effluent in either Siltcoos or Woahink Lakes. To address the maintenance of septic systems, the proposal improves upon the existing state regulatory requirements by requiring periodic inspections and, if necessary, maintenance, for septic systems in an effort to preserve the quality of the water resources of the city. This criterion is met.

Policy E2. All development in the city shall comply with DEQ’s applicable air and water quality standards and noise control standards.

Finding: The proposal is consistent with this policy because it is consistent with the septic system requirements established by DEQ and administered by Lane County, which ensure adequate sewage disposal systems are created.

Finding: The proposal is consistent with this policy because the DEQ certified inspectors are aware of and trained to comply with DEQ requirements for septic installation, maintenance and inspection.

This criterion is met.

Policy E3. Waste discharges from future facilities shall not exceed the carrying capacity nor degrade the quality of the land, air, and water resources.

Finding: The proposal is consistent with this policy because it is consistent with the septic system requirements established by DEQ and administered by Lane County. These regulations ensure adequate sewage disposal systems are constructed that do not exceed the carrying capacity nor degrade the quality of the land and water resources in the city. Ordinance No. 228 operates to monitor these systems through inspection to ensure that

they are maintained to operate efficiently. While onsite sewage disposal systems have the potential to contaminate surface water and groundwater sources, samples collected from Siltcoos and Woahink Lakes have demonstrated no clear correlation between water quality and erosion or septic system effluent other than a decrease in phosphorus levels and an increase in clarity that coincides with the effective date of the statewide ban on cleaning agents that contain phosphates. To address the maintenance of septic systems, the proposal improves upon the existing state regulatory requirements for septic system maintenance for the benefit of all residents in Dunes City. This criterion is met.

Policy E4. Regulations involving land, air, and water resources of the city shall be based upon long-term capabilities of the available natural resources to both support economic activity and absorb the future, resulting man-made pollutants.

Finding: The proposal is consistent with this policy because it is consistent with the septic system regulations established by DEQ and administered by Lane County. These regulations require that adequate sewage disposal systems are constructed, which ensure the short-term capabilities of the available natural resources are preserved. While onsite sewage disposal systems have the potential to contaminate surface water and groundwater sources through failure, samples collected from Siltcoos and Woahink Lakes have demonstrated no current correlation between water quality and erosion or septic system effluent other than a decrease in phosphorus levels and an increase in clarity that coincides with the effective date of the statewide ban on cleaning agents that contain phosphates. The proposal improves upon the existing state regulatory requirements for septic system maintenance to address the long-term capabilities of the available natural resources (surface water quality) and to reduce future man-made pollutants due to inefficient onsite wastewater systems.

This criterion is met

Policy E5. The city shall cooperate with the Department of Environmental Quality to ensure compliance with disposal system requirements.

Finding: The proposal is consistent with this policy because Dunes City adheres to sewage disposal system requirements, as established by the Oregon Department of Environmental Quality (DEQ) and administered by Lane County. Installation of new septic systems and modifications to existing septic systems are reviewed, inspected and approved through the Lane County Sanitation Department. The Dunes City Building Official and building permit process coordinates with the Lane County Sanitation Department to ensure sewage disposal system requirements are reviewed and implemented according to state requirements.

Finding: To ensure coordination with appropriate agencies, referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, DEQ and to DLCD notifying them of the proposed amendments, public hearing dates and requesting comments. In response, the Lane County Sanitation Department and the Building

Department LLC responded stating they had no comments on the proposed amendments. This criterion is met.

Policy E6. The city shall adopt a program to improve maintenance of septic systems for the benefit of all residents.

Finding: Ordinance No. 203 placed the City's septic system maintenance procedures in Title XV of the Dunes City Code, which contains the City's land use regulations. Ordinance No. 228 more appropriately places the City's septic system maintenance procedures in Title XIV of the Dunes City Code, which addresses all water resources, including groundwater. Thus, if a septic system fails near a well, the City would need to ensure that groundwater as well as surface water are protected.

Under Title XV, the City would have to hold a public hearing before accepting a recommendation regarding pumping frequency from a qualified licensed licensed inspector. This requirement would be time consuming and costly and would not be for the benefit of the residents of Dunes City.

Finding: The Environmental Quality Commission has adopted administrative rules for onsite wastewater treatment systems. (OAR Chapter 340, Division 71). These rules provide for a site evaluation prior to the construction of a new onsite wastewater treatment system, standards regarding the placement and construction of these systems and mandatory repair of failing systems. These rules are implemented through a permit system and, in Lane County, the DEQ has delegated the issuance of these permits to Lane County. Neither the EQC rules nor Lane County regulations require mandatory inspection or pumping of onsite wastewater treatment systems. Records of system inspection and pumping are not kept by the DEQ or Lane County unless they involve a failing system that has been repaired or replaced.

The City Council of Dunes City interprets Policy E6 to require the adoption of a program that improves maintenance of septic systems beyond the regulatory floor set by state law. The proposal is consistent with this policy because it improves upon the existing state regulatory requirements by requiring mandatory inspection and a maintenance schedule of septic systems for the benefit of all residents in Dunes City. Dunes City found that the existing requirements for mandatory septic system pumping does not benefit all of the residents, as system pumping needs vary with individual systems, and therefore has initiated text amendments to the code to improve upon the existing program. To ensure that the proposals are consistent with the maintenance requirements established by the Oregon Department of Environmental Quality and administered by Lane County, referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, DEQ and to DLCDD notifying them of the proposed amendments. In response, the representative of the Lane County Sanitation Department commented that he liked "the idea of recognizing the various occupancy loads and frequency of use of the septic systems." The Building Department LLC responded stating they had no comments on the proposed amendments. This criterion is met.

Commercial Land Use

Commercial Policies

Policy I-10. Commercial properties shall have adequate sewage disposal systems and be in harmony with their natural surroundings.

Finding: The proposal is consistent with this policy because it is consistent with the septic system requirements established by DEQ and administered by Lane County, which ensure adequate sewage disposal systems for commercial properties. This criterion is met.

CONSISTENCY WITH OREGON REVISED STATUTES

ORS 197.610(1) Before a local government adopts a change, including additions and deletions, to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the proposed change to the Director of the Department of Land Conservation and Development. The Land Conservation and Development Commission shall specify, by rule, the deadline for submitting proposed changes, but in all cases the proposed change must be submitted at least 20 days before the local government holds the first evidentiary hearing on adoption of the proposed change. The commission may not require a local government to submit the proposed change more than 35 days before the first evidentiary hearing.

Finding: Notice of the adoption of Ordinance No. 228, which amends the Dunes City Code, was submitted to the Oregon Department of Land Conservation and Development on August 18, 2015, 72 days prior to the first evidentiary hearing before Planning Commission. This criterion is met.

ORS 227.186(4) At least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, a city shall cause a written individual notice of a land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

Finding: In accordance with ORS 227.186 (Ballot Measure 56), notice of the proposed changes to the Dunes City Code was mailed to owners of real property in Dunes City on September 28, 2015; more than 20 days but less than 40 days prior to the first evidentiary hearing on October 29, 2015. This criterion is met.

ORS 454.615 and 454.625 require the Environmental Quality Commission (EQC) to adopt rules regarding the operation and maintenance and the pumping out or cleaning of subsurface sewage disposal systems.

Finding: The EQC has adopted these rules in Chapter 340, Division 71 of the Oregon Administrative Rules and Ordinance No. 228 has incorporated mandatory procedures to implement these rules. This criterion is met.

CONSISTENCY WITH OREGON ADMINISTRATIVE RULES

The Land Conservation and Development Commission has not adopted an administrative rule to implement Statewide Planning Goal #6. However, OAR 660–015–0000 adopts Statewide Planning Goals and Guidelines #1 through #14.

Finding: Chapter 340, Division 71 of the Oregon Administrative Rules addresses EQC rules for septic tank systems. Proposed Section 142.030.B. requires existing onsite wastewater disposal systems to be inspected and evaluated by a qualified inspector. This is consistent with OAR 340-071-0155(1)(a), which lists the qualifications necessary to evaluate an existing onsite wastewater disposal system.

Finding: Proposed Section 142.060.A. of the Dunes City Code requires that inspections and evaluation standards shall meet those as required by ORS Chapter 454 and Oregon Administrative Rules. This is consistent with OAR 340-071-0155(1)(b), which lists what must be included in the evaluation of an existing onsite wastewater disposal system.

This criterion is met.

CONSISTENCY WITH STATEWIDE PLANNING GOALS

Statewide Planning Goal 2: Land Use Planning (OAR 660–015–0000(2))

Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances.

Finding: Referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, DEQ and to DLCD notifying them of the proposed amendments, public hearing dates and requesting comments.

Statewide Planning Goal 6: Air, Water and Land Resources Quality. (OAR 660–015–0000(6))

All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not (1) exceed the carrying capacity of such resources, considering long range needs; (2) degrade such resources; or (3) threaten the availability of such resources.

Finding: Statewide Planning Goal 6 requires the development of plans that have (1) methods and devices for implementing the goal; (2) that detail the implementation roles and responsibilities for carrying out this goal and; (3) that manage conservation and development activities in a manner that accurately reflects the community's desires for a quality environment and a healthy economy and is consistent with state environmental quality statutes, rules, standards and implementation plans.

Finding: Many of the residents of Dunes City take their water supplies directly from the surface waters of Woahink and Siltcoos Lakes. Dunes City does not have a sewage system and the residents rely upon subsurface sewage disposal systems for the treatment of their sewage. The U.S. Environmental Protection Agency (EPA) has noted that subsurface sewage disposal systems that are sited in densities that exceed the treatment capacity of regional soils and systems that are poorly designed, installed, operated or maintained can cause problems. The most serious documented problems involve contamination of surface waters and ground water with disease-causing pathogens and nitrates. Other problems include excessive nitrogen discharges to sensitive coastal waters and phosphorus pollution of inland surface waters, which increases algal growth and lowers dissolved oxygen levels. The EPA has estimated that 168,000 viral illnesses and 34,000 bacterial illnesses occur each year as a result of consumption of drinking water from systems that rely on improperly treated ground water.²

Finding: In regards to water quality, Dunes City's plan for implementing Goal 6 will rely upon Ordinance No. 228's septic tank management and inspection program. This ordinance requires an initial inspection of onsite wastewater disposal systems by qualified inspectors. Subsequent pumping is dependent upon the assessment of the inspector. The City will maintain inspection and pumping records and a map of the location of each system.

This criterion is met.

OTHER FINDINGS IN SUPPORT OF ORDINANCE NO. 228

Finding: The Department of Environmental Quality has determined that a properly functioning septic system treats sewage to minimize groundwater and surface water pollution and that a malfunctioning system is a health hazard to the community and will harm natural resources. (DEQ Website).

Finding: DEQ's website cites some important questions for determining whether a septic tank system is operating efficiently. These questions include:

- Was the onsite wastewater disposal system installed with a permit?
- Is the onsite wastewater disposal system properly sized depending upon its usage?
- How old is the onsite wastewater disposal system and has it been properly maintained?

² U.S. Environmental Protection Agency, *40 CFR Parts 141 and 142: National Primary Drinking Water Regulations; Ground Water Rule; Proposed Rules*, Federal Register, May 10, 2000.

- Have there been problems or complaints in the past regarding the onsite wastewater disposal system?
- Who is a qualified inspector.

Ordinance No. 228 creates a record-keeping system that answers these questions and provides for necessary inspection and evaluation of existing onsite wastewater disposal systems in Dunes City.

Finding: The pumping frequency adopted by proposed Section 142.110, the Oregon State University Extension Service Septic Tank Maintenance Table, is almost identical to that adopted by the Eugene Water and Electric Board (EWEB) and AAA Septic Tank Pumping, Installation, and Repair LLC.

EXHIBIT B

Title XIV: WATER QUALITY PROTECTION

Chapter 142

SUBSURFACE SANITATION

Table of Contents

§ 142: SUBSURFACE SANITATION

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§ 142.050	Fees
§ 142.060	Inspection and Evaluation Standards; Form Required
§ 142.070	Copy of Inspection, Evaluation and Approval Required; Inspectors' Responsibilities
§ 142.080	Periodic Inspection and Evaluation Required; Challenges
§ 142.090	Business License Required
§ 142.100	Ordinance Violations
§ 142.110	Oregon State University Extension Service Septic Tank Maintenance Table (April 2000)

§ 142.005 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When not specifically defined herein, the definitions located in OAR Chapter 340, Division 071 shall apply:

ABSORPTION FIELD. A system of absorption trenches, a seepage trench, or a system of seepage trenches.

ALTERNATIVE SYSTEM. Any onsite wastewater treatment system approved by the Oregon Environmental Quality Commission or the Oregon Department of Environmental Quality for use in lieu of the standard subsurface system.

ALTERNATIVE TREATMENT TECHNOLOGIES. Any alternative system that incorporates aerobic and other treatment technologies or units not specifically described elsewhere herein.

COMMERCIAL FACILITY. Any structure or building or portion thereof other than a single-family dwelling.

DRAINFIELD. The entire area for underground dispersion of the liquid portion of sewage including the area designated for future replacement system. The drainfield includes an absorption field.

EVALUATION. An evaluation, investigation, inspection, recommendation, or other process performed by a qualified inspector.

INSPECTION. A critical examination performed by a qualified inspector to ensure a wastewater disposal system meets the standards of the Oregon Revised Statutes and Oregon Administrative Rules.

LAKEFRONT PROPERTY. Any real property that is abutting a lake, river or stream, also known as waterfront or riparian property.

MAP. A scale drawing of the property that includes the entire septic system relative to the lot lines, outbuildings, dwellings, driveways, parking areas, and replacement drainfield areas. Such map shall also include the location of any riparian areas and shoreland zones, and the location of any wellheads and septic systems within 100 feet of the existing or proposed new septic system, including those wellheads and septic systems on adjoining properties.

NOTICE. A written notification from the City to the owner of a wastewater disposal or septic system within the city limits. A notice shall be considered given when deposited in the United States mail, certified mail, return receipt requested, addressed to the owner, or when personally served on the owner.

OWNER. A person who has ownership or control of a wastewater disposal system.

PERSON. An individual, corporation, association, partnership, trust, firm, or other private legal entity.

QUALIFIED / CERTIFIED INSPECTOR. A person who is licensed by the City pursuant to §142.090 and Chapter 120 of the Dunes City Code of Ordinances, is registered in accordance with ORS Chapter 700, and possesses a current NSF International Onsite Wastewater Inspector accreditation; or

A person who is a Lane County Sanitation Department inspector, is a State of Oregon Department of Environmental Quality Inspector, or is otherwise approved by the Oregon Department of Environmental Quality to perform wastewater or septic system inspections.

RAW WASTEWATER. Wastewater that has not been treated by physical, chemical, or biological means, or a combination thereof, to alter the quality of the wastewater to reduce the potential degradation of water quality or the environment and risk to public health.

SEPTIC SYSTEM. The system that may be composed of piping, septic tank, distribution boxes, filters, pumps and electrical connections, and other components, including the drainfield, necessary to treat sewage.

SEPTIC TANK. A watertight receptacle that receives sewage from a sanitary drainage system and is designed to separate solids from liquids, digest organic matter during a period of detention, and allow the liquids to discharge to a second treatment unit or to a soil absorption field.

SEWAGE/WASTEWATER. Water-carried human and animal wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with any groundwater infiltration, surface waters, or industrial waste that may be present.

TREATED WASTEWATER/PARTIALLY TREATED WASTEWATER. Wastewater, the quality of which has been altered by physical, chemical or biological means, or a combination thereof, to reduce potential degradation of water quality or, the environment, and risk to public health.

WASTEWATER DISPOSAL SYSTEM. A system for disposing of wastes, either by surface or underground methods and includes domestic sewerage systems, treatment works, and other systems.

§ 142.010 INTENT.

It is the intent of the Dunes City Septic System Maintenance Ordinance to ensure that all onsite wastewater disposal systems, also known as sewage disposal systems or septic systems located in the City, are operated in a safe, healthful and environmentally responsible manner.

§ 142.020 PROHIBITIONS.

It is unlawful for a person to:

A. Maintain, occupy, or use any building intended for habitation that disposes of wastewater in a manner that does not comply with the laws, rules, regulations, ordinances or orders of the State of Oregon, Lane County, and Dunes City.

B. Construct, maintain, or use any wastewater disposal system that results in raw or partially treated wastewater escaping the confines of the wastewater disposal system and seeping into the ground or flowing into any surface water.

C. Discharge raw or treated wastewater into any well or boring or any other excavation in the ground if the discharge is not in compliance with the laws, rules, regulations, ordinances and orders of the State of Oregon, Lane County and Dunes City.

D. Discharge into any septic system any hazardous or deleterious material that adversely affects the treatment or dispersal performance of the system or adversely affects groundwater quality.

§ 142.030 OWNERS' RESPONSIBILITIES

A. Initial Inspection and Mapping.

1. Owners of existing buildings served by onsite wastewater disposal systems are responsible to have those systems initially mapped, inspected and evaluated, at their expense, by a qualified inspector.

2. Copies of the initial map, inspection and evaluation must be filed with the Dunes City Recorder on or before September 9, 2016. Owners who file wastewater disposal system maps, inspections and evaluations in accordance with prior Ordinance No. 173, passed March 9, 2006, and prior Ordinance No. 203, adopted January 14, 2010, are considered to be in compliance with the requirements of this paragraph.

B. Periodic Inspections.

Owners of existing buildings served by onsite wastewater disposal systems, except those systems identified in paragraph (D) below, are responsible to have those systems periodically inspected and evaluated at their expense by a qualified inspector. 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. Within forty-five (45) calendar days after said periodic inspection and evaluation, the owner shall cause a copy of the inspection and evaluation report to be filed with the Dunes City Recorder, together with the appropriate fee. If the qualified inspector fails to provide said inspection and evaluation report to the property owner within thirty (30) calendar days following the date of inspection as provided in §142.060(A) herein, the owner shall notify the

Dunes City Recorder who shall investigate the reason for the delay by the inspector in providing the report to the property owner.

C. Notification of System Failure.

Owners are responsible to install, operate and maintain their wastewater disposal systems in accordance with the laws of the State of Oregon and Oregon Administrative Rules. Owners shall notify the City in the event the inspector's report indicates a failure of the system or the owner observes a failure of a system at any time.

D. Alternative Systems.

Owners of alternative systems that utilize alternative treatment technology are responsible to have those systems inspected and evaluated at their expense in accordance with Oregon Revised Statutes and Oregon Administrative Rules. Such owners shall provide a copy of the Department of Environmental Quality annual inspection report to the City Recorder. No fee for submission of this report will be required.

E. Commercial Facilities.

1. Owners of existing commercial facilities served by onsite wastewater disposal systems, except those systems identified in paragraph (D) above, are responsible to have those systems periodically inspected and evaluated at their expense by a qualified inspector. 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. Within forty-five (45) calendar days after said periodic inspection and evaluation, the owner shall cause a copy of the inspection and evaluation report to be filed with the Dunes City Recorder, together with the appropriate fee. If the qualified inspector fails to provide said inspection and evaluation report to the property owner within thirty (30) calendar days following the date of inspection as provided in §142.060(A) herein, the owner shall notify the Dunes City Recorder who shall investigate the reason for the delay by the inspector in providing the report to the property owner.

2. Owners of commercial facilities are responsible to have sanitation inspections at their expense in accordance with Oregon Revised Statutes and Oregon Administrative Rules. Such owners shall provide a copy of the annual sanitation inspection report to the City Recorder. No fee for submission of this report will be required.

§ 142.040 DUNES CITY'S RESPONSIBILITIES

A. The City shall establish records of individual wastewater disposal systems and the City shall maintain such records in accordance with Oregon records retention laws, rules and regulations.

B. The City shall maintain a register of qualified inspectors who have acknowledged receipt of and agree to abide by this Ordinance. The City will remove an inspector's name from the register for failure to comply with the provisions of this Ordinance including, but not limited to:

1. Failure to provide inspection results to an owner within thirty (30) calendar days; or
2. Providing inspection results that are deemed by the City to be incomplete or unacceptable.

C. The City shall send periodic reminder notices, together with information describing recommended septic tank maintenance, to wastewater disposal system owners not later than thirty (30) calendar days prior to the expiration of the time interval identified by the qualified inspector on the prior inspection and evaluation report. Upon receipt of the qualified inspector's inspection and evaluation report, the City shall send the wastewater disposal system owners an acknowledgement of the qualified inspector's inspection and evaluation report.

D. Semi-annually, the City shall prepare and present a septic system maintenance compliance report to the City Council.

§142.050 FEES.

At the time of filing of any reports, maps, evaluations, inspections, or other data required under the terms of this Section, Dunes City shall charge and collect an administration fee to cover the costs of administration and implementation of this Ordinance. Said fee shall be established by resolution adopted by the Dunes City Council and may be amended from time to time.

§142.060 INSPECTION AND EVALUATION STANDARDS; FORM REQUIRED.

A. Inspections and evaluation standards shall meet those as required by Oregon Revised Statutes Chapter 454 and the Oregon Administrative Rules. If a periodic inspection indicates a fully functioning system, pumping of the septic tank is not required unless the qualified inspector deems it necessary. The qualified inspector shall use the inspection and evaluation form required by the Department of Environmental Quality to prepare a report of the system's current condition including the reason or reasons supporting a decision to require pumping of the septic tank, and shall include a recommendation as to when the system should be evaluated again in the future. The completed inspection and evaluation form shall be delivered to the owner within thirty (30) calendar days from the date of inspection and evaluation.

B. When determining the time frame to establish the date for the next periodic evaluation, qualified inspectors shall utilize the most current Oregon State University Extension Service Septic Tank Maintenance Table in Section 142.110, or such other document or documents as may be adopted by the City Council by resolution from time to time, as a guideline.

§ 142.070 COPY OF INSPECTION, EVALUATION AND APPROVAL REQUIRED; INSPECTORS' RESPONSIBILITIES.

Any owner of property upon which a new, replacement, or existing septic system is required to be inspected, approved, or evaluated pursuant to Oregon Revised Statutes Chapter 454, or any provision of the Oregon Administrative Rules, shall file a copy of the document evidencing said inspection, approval, or evaluation, as well as a map of the property as defined in §142.060(A), with the Dunes City Recorder within forty-five (45) calendar days of the date of issuance thereof.

§ 142.080 PERIODIC INSPECTION AND EVALUATION REQUIRED; CHALLENGES.

A. Owners of buildings served by onsite wastewater disposal systems shall have their system inspected and evaluated as provided in this Ordinance at such intervals as identified by the qualified system inspector.

B. If an owner of a wastewater disposal system disagrees with the time interval identified by the inspector, that owner shall, at the owner's sole expense, obtain a second qualified inspector's opinion as to the recommended time interval and submit the written second opinion from the second qualified inspector along with the evaluation report. For purposes of enforcement and implementation of this Ordinance, Dunes City shall accept the recommendation that provides for the greatest time interval between inspections that is recommended by either qualified inspector.

§ 142.090 BUSINESS LICENSE REQUIRED.

Any Person, other than a governmental agency, that performs wastewater disposal or septic system evaluations and pumping within the corporate limits of the City shall obtain a business license from the City pursuant to the provisions of Chapter 120 of the Dunes City Code of Ordinances. The annual business license fee shall be established by resolution of the City Council. Prior to the issuance of said wastewater disposal or septic system evaluation, inspection and pumping license, Dunes City shall deliver to the applicant a complete copy of this Chapter 142 and a copies of documents adopted by the City Council for inspectors to utilize to determine the dates of periodic evaluations, and the applicant shall acknowledge receipt and review of said Chapter and other document(s), in writing.

§ 142.100 ORDINANCE VIOLATIONS.

For violations of this Ordinance, the City may take the following actions: issuance of a notice of violation; issuance of a cease and desist order; abatement; execution of a stipulation agreement; and/or commencement of other civil proceedings as provided in Chapter 36 of the Dunes City Code of Ordinances. Upon receipt of a written complaint alleging a violation of the

provisions of §142.020 herein, the City Recorder shall immediately investigate the complaint. If an investigation determines that a system has failed, or is being used in violation of the Dunes City Code or Department of Environmental Quality's standards for onsite wastewater treatment systems (OAR Chapter 340, Division 071), a notice shall be sent to the property owner. Failed systems or systems being used in violation must be repaired or decommissioned after obtaining all appropriate permits within ninety (90) calendar days of the notification date. At the discretion of the City Recorder, extensions may be granted based on individual circumstances. If the violation is not repaired within the required time period the City Recorder shall immediately notify the Lane County Sanitarian and, if the violation is committed by a business entity, will notify both the Lane County Sanitarian and the Oregon State Attorney General's Environmental Crimes program.

§ 142.110 OREGON STATE UNIVERSITY EXTENSION SERVICE SEPTIC TANK MAINTENANCE TABLE (April 2000)

OREGON STATE UNIVERSITY/EXTENSION SERVICE SEPTIC TANK MAINTENANCE TABLE (April 2000 EC 1343)

Table 1.—*Estimated septic tank pumping frequencies in years (for year-round residence).*

Tank Size (Gallons)	Household Size (Number of People)									
	1	2	3	4	5	6	7	8	9	10
500	5.8	2.6	1.5	1.0	0.7	0.4	0.3	0.2	0.1	—
750	9.1	4.2	2.6	1.8	1.3	1.0	0.7	0.6	0.4	0.3
1,000	12.4	5.9	3.7	2.6	2.0	1.5	1.2	1.0	0.8	0.7
1,250	15.6	7.5	4.8	3.4	2.6	2.0	1.7	1.4	1.2	1.0
1,500	18.9	9.1	5.9	4.2	3.3	2.6	2.1	1.8	1.5	1.3
1,750	22.1	10.7	6.9	5.0	3.9	3.1	2.6	2.2	1.9	1.6
2,000	25.4	12.4	8.0	5.9	4.5	3.7	3.1	2.6	2.2	2.0
2,250	28.6	14.0	9.1	6.7	5.2	4.2	3.5	3.0	2.6	2.3
2,500	31.9	15.6	10.2	7.5	5.9	4.8	4.0	4.0	3.0	2.6

Note: More frequent pumping is needed if garbage disposal is used.



**CITY COUNCIL STAFF REPORT
LEGISLATIVE TEXT AMENDMENTS
SEPTIC SYSTEM MAINTENANCE REQUIREMENTS
ORDINANCE NUMBER 228**

City Council
Public Hearing Date: April 14, 2016 ~ 7:00 pm

Applicant: Initiated by Dunes City

Proposal: Legislative Text Amendment to the Dunes City Code to Amend the City's Septic System Requirements

Staff: Gary Darnielle and Jacob Callister, LCOG

I. INTRODUCTION

Proposal

Ordinance 228 amends Title XV of the Dunes City Code by replacing Chapter 157 "Septic System Maintenance" with Chapter 142 "Subsurface Sanitation" and repeals Ordinance 203. Ordinances 228 and 203 primarily differ in the following ways:

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 700¹, and possess a current NSF International Onsite Wastewater Inspector accreditation.

¹ ORS 700.052-.053 require that a waste water specialist must have a bachelor's degree with a substantial amount of soil science credits and be registered as an environmental health specialist or waste water specialist by a national association that is recognized by the Oregon Environmental Health Registration Board or is registered by the regulatory body of another state.

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.

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. The Ordinance required an initial inspection, mapping and pumping of each septic system in Dunes City and well as periodic inspections every five years (more frequently if there was evidence to suggest a system failure).

On November 10, 2011, the Dunes City Council adopted Ordinance No. 211A, which repealed Ordinance 203 and replaced it with an educational program for septic system maintenance that was to be implemented within one year. In adopting Ordinance 211A, a majority of the Council was concerned that the regulatory program of Ordinance 203 unfairly burdened some residents and that there was little empirical evidence that water pollution in Woahink and Silcoos Lakes was caused by failing septic tank systems.

Ordinance 211A was appealed to Oregon Land Use Board of Appeals by the Oregon Coast Alliance, the Woahink Lake Association and Suzy Navetta. At the heart of this appeal was Dunes City Comprehensive Plan Policy (DCCP) 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 DCCP 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 changes in the Code move the regulatory needle back closer to Ordinance 203 in that it requires a mandatory initial inspection/evaluation of each septic tank system in Dunes City. It differs from Ordinance 203 in that follow-up inspections/evaluations are determined by a qualified septic tank inspector who evaluates each system on its own merits, using an Oregon State University Extension

Service Maintenance Table as a guideline, instead of requiring new inspections every five years regardless of the size of a system and its loading.

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.

Current Status

Currently, new septic systems are inspected by the Lane County sanitarian. Contractors who install new systems in Dunes City are required to obtain a Land Use Compatibility Statement (LUCS) from the City. Staff has focused on getting initial compliance from all property owners. At the time that Ms. Mills began filling in for the past City Recorder there were 83 property owners waiting for a notice from the City for a re-inspection. Today there are less than 75.

Since the adoption of Ordinance 203, 45 property owners have replaced all or a portion of their system and there have been 20 new systems installed. Septic inspections and pumping from between \$600 and \$800 and whole system replacement can cost between \$8,000 and \$10,000.

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 can 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 the property owners based upon their proximity to the lakes. There are 161 lake-front, older systems that are due for a second inspection and letters to these individuals are scheduled for mailing during the week of March 21.

II. ADOPTION PROCEDURES AND APPROVAL CRITERIA

Adoption Procedures

In compliance with Code requirements, notice was mailed directly to all property owners within Dunes City regarding the first hearing before the Planning Commission and published in the Siuslaw News prior to the Planning Commission and City Council public hearings. The notices stated the nature of the proposal, how to participate and the date, time and location of the public hearings as required by state law and the city code. The specifics of the notice dates are contained in Exhibit A to Ordinance 228.

Notice of the proposed code amendment was sent to the Department of Land Conservation and Development (DLCD) not less than 35 days prior to the first evidentiary hearing, as required by State law. Referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, the Oregon Department of Environmental Quality and the DLCD Regional Representative notifying them of the proposed amendments, public hearing dates and requesting comments.

Approval Criteria

The proposed amendment is a legislative amendment to the Dunes City Code and the following criteria apply to this matter.

- Dunes City Code of Ordinances, Title 15 *Land Usage*, Chapter 155 *Zoning and Development*, Section 155.4 *Applications and Review Procedures*, Subsection 155.4.1.7 *Type IV Procedure (Legislative)*
- Dunes City Comprehensive Plan Elements: *Citizen Involvement, Land Use, and Air, Land and Water Quality*
- Oregon Revised Statutes (ORS) 197.610 *Local government notice of proposed amendment or new regulation; exceptions; report to commission.*
- ORS 227.186 *Notice to property owners of hearing on certain zone change; form of notice; exceptions; reimbursement of cost.*
- Statewide Planning Goals

Exhibit A contains detailed findings addressing each of the applicable criteria in the above-listed documents. Based upon the 2011 LUBA remand, however, 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.*”

When reviewing Ordinance No. 211A in light of Policy E6, LUBA was faced with two arguments. One argument, made by the opponents, was that Policy E6 required that any new septic tank maintenance ordinance must improve upon the standards of existing regulations. Ordinance No. 211A was not consistent with this interpretation as it replaced Ordinance 203 with an education program and there was no evidence in the record that an education program would improve the maintenance of septic systems. The City’s argument was that Policy E6 should be interpreted to mean that the City merely had to adopt a maintenance program that improved upon the state standards. LUBA opined that since the City Council had not formally adopted this latter interpretation the City could not rely upon this interpretation and remanded the appeal back to the City to allow the Council to better address this issue.

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.

If the City Council decides not to adopt Ordinance 228 then they need do nothing further other than to direct staff to notify DLCD that the ordinance was not adopted and is no longer being considered by the City.

III. PLANNING COMMISSION RECOMMENDATION

The Planning Commission recommends the City Council not adopt Ordinance Number 228.

IV. CONCLUSION & RECOMMENDATION

Staff does not have a recommendation to pass to the City Council but does believe that the City can adopt findings of fact supporting Ordinance 228 that will survive legal scrutiny. As noted in the Background section above, Ordinances No. 210A and 211A were remanded by LUBA on the basis that the City Council had not adopted a formal interpretation of DCCP Policy E6. If the Council wishes to adopt Ordinance No. 228, then it must formally interpret DCCP Policy E6 to mean that this policy only requires the City to adopt a program to improve septic system maintenance beyond the regulatory floor set by the state. Both Ordinance 203 and 228 would be consistent with this policy interpretation. If the City chooses not to adopt Ordinance 228 at this time they merely need 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.

If the City Council wishes to adopt Ordinance No. 228, staff would recommend the following changes to the Exhibit B (Title XIV, Chapter 142) of the draft ordinance:

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 U.S. 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 an 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.”

8. 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.

V. EXHIBITS

- A. Ordinance Number 228, “An Ordinance Amending Title 14 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 Number 203.”
- B. Exhibit A to Ordinance 228, Findings of Fact
- C. Exhibit B to Ordinance 228, Chapter 142 of Title XIV of the Dunes City Code.
- D. Comments to proposed changes to Ordinance 203 from citizens (received in September, 2014)
- E. Citizen comments received prior to the October 2015 Planning Commission meeting. (Comments include an email from George Ehlers, Lane County Environmental Health Specialist)
- F. Citizen comments received by the Planning Commission at its October 29, 2015 meeting.
- G. Citizen comments received by the Planning Commission at its November 19, 2015 meeting.

KEY DIFFERENCES BETWEEN ORDINANCE NO. 203 AND ORDINANCE NO. 228

ORDINANCE NO. 203	ORDINANCE NO. 228
Amended City Code to create Chapter 157 under Title XV (15) (Land Usage) providing regulations for septic system maintenance	Amends City Code to create Chapter 142 under Title XIV (14) (Water Quality) providing regulations for septic system maintenance. Repeals Ordinance No. 203, removing it from Land Usage Code.
<p>Frequency of Inspections:</p> <ul style="list-style-type: none"> • Minimum of once every five years following initial inspection. • Prior to sale or transfer of ownership unless inspection, mapping and pumping have been conducted within five years of the date of sale or transfer. • When the quantity or characteristics of the wastewater discharge change because of an addition to the building or a change in the building's use. • Commercial buildings inspected on an annual basis or other time intervals specified by the City. 	<p>Frequency of Inspections:</p> <ul style="list-style-type: none"> • Time period for required inspection and evaluation shall be the interval identified by the qualified inspector in the prior inspection and evaluation report. • Inspectors shall use the most current Oregon State University Extension Service Septic Tank Maintenance Table or such other document(s) as may be adopted by the City Council by Resolution. <p>Except:</p> <ul style="list-style-type: none"> • Owners of alternative systems that utilize alternative treatment technology are responsible to have those systems inspected in accordance with Oregon Revised Statutes and Oregon Administrative Rules. • Commercial facilities shall be inspected and evaluated at the interval identified by the qualified inspector in the prior inspection and evaluation report. • Owners of commercial facilities are responsible to have sanitation inspections in accordance with Oregon Revised Statutes and Oregon Administrative Rules.
<p>Compliance/Violation/Enforcement: Penalty of \$250 per calendar day</p>	<p>Compliance/Violation/Enforcement: Defers to Chapter 36 (Code Enforcement) of Dunes City Code of Ordinances</p>

Inspection Form Required: Inspector shall use the City's "Septic Maintenance Record and Inspection Report" to prepare a report of the system's current condition including the reason(s) the inspector may have used to require pumping.	Inspection Form Required: Inspector shall use the inspection and evaluation form required by the Department of Environmental Quality and shall include a recommendation as to when the system should be evaluated again in the future.



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May 18, 2016

To Interested Parties and those
Who submitted testimony and evidence

Re: Ordinance No. 228 – Regarding Subsurface Sanitation
Adopted by the Dunes City Council on May 12, 2016

Dear Interested Parties:

Please be advised that the Dunes City Council adopted Ordinance No. 228, as amended, at their regular City Council meeting held on Thursday, May 12, 2016.

A Notice of Adopted Change (DLCD Form 2) of this land use decision has been completed and submitted to the Division of Land Conservation and Development on this date. That Notice included a copy of the signed decision, the findings and the text of the change, as well as a copy of the staff report, which includes a brief summary of the decision, and a summary explaining the substantive differences between the current Code language and the new Code language. Copies of these materials are available for review at City Hall during regular office hours, that is, between 10:00 a.m. and 4:00 p.m., Monday through Thursday. The documents have also been posted on Dunes City's website: www.dunescity.com.

The requirements for appealing the land use decision are as set forth in the attached copies of Oregon Revised Statutes 197.830 to 197.845.

Sincerely,


(Mrs.) Jamie Mills
City Administrator and Recorder

Mayor
Rebecca Ruede

Council President
Maurice Sanders

City Council
Sheldon Meyer
Ken Platt
Ed Scarberry
Duke Wells
Tom Mallen

City Administrator
Jamie Mills

Administrative Assistants
Renee Green
Linda Stevens

Planning Secretary
Rapunzel Oberholtzer

Road Secretary
Laurale Lorentzen

197.830 Review procedures; standing; fees; deadlines; rules; issues subject to review; attorney fees and costs; publication of orders; mediation; tracking of reviews. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620, a person may petition the board for review of a land use decision or limited land use decision if the person:

- (a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and
- (b) Appeared before the local government, special district or state agency orally or in writing.

(3) If a local government makes a land use decision without providing a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

- (a) Within 21 days of actual notice where notice is required; or
- (b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

(a) A person who was not provided notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

(c) A person who receives notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the notice of the decision did not reasonably describe the nature of the decision.

(d) Except as provided in paragraph (c) of this subsection, a person who receives notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

(5) If a local government makes a limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

- (a) Within 21 days of actual notice where notice is required; or
- (b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(6) The appeal periods described in subsections (3), (4) and (5) of this section:

(a) May not exceed three years after the date of the decision, except as provided in paragraph (b) of this subsection.

(b) May not exceed 10 years after the date of the decision if notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided.

(7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person described in paragraph (b) of this subsection may intervene in and be made a party to the review proceeding by filing a motion to intervene and by paying a filing fee of \$100.

(b) Persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

- (A) The applicant who initiated the action before the local government, special district or state agency; or

(B) Persons who appeared before the local government, special district or state agency, orally or in writing.

(c) Failure to comply with the deadline or to pay the filing fee set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene.

(8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due and shall be accompanied by a filing fee of \$100.

(9) A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a statement identifying when, how and to whom notice was provided under ORS 197.615 does not render the notice defective. Copies of the notice of intent to appeal shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$200 and a deposit for costs to be established by the board. If a petition for review is not filed with the board as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded to the local government, special district or state agency as cost of preparation of the record.

(10)(a) Within 21 days after service of the notice of intent to appeal, the local government, special district or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record; however, the board shall issue an order on a motion objecting to the record within 60 days of receiving the motion.

(b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days after a motion to intervene is filed. The notice required by this paragraph shall be accompanied by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.

(11) A petition for review of the land use decision or limited land use decision and supporting brief shall be filed with the board as required by the board under subsection (13) of this section.

(12) The petition shall include a copy of the decision sought to be reviewed and shall state:

(a) The facts that establish that the petitioner has standing.

(b) The date of the decision.

(c) The issues the petitioner seeks to have reviewed.

(13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the respondent's brief, the local government or state agency may withdraw its decision for purposes of reconsideration. If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the petitioner is dissatisfied with the local government or agency action after withdrawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon the revised order. An amended notice of intent shall not be required if the local government or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

(14) The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the county where the application was filed for a writ of mandamus to compel the board to issue a final order.

(15)(a) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government, special district

or state agency whose decision is under review. The board shall apply the deposit required by subsection (9) of this section to any costs charged against the petitioner.

(b) The board shall also award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-founded in law or on factually supported information.

(16) Orders issued under this section may be enforced in appropriate judicial proceedings.

(17)(a) The board shall provide for the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board.

(b) Any moneys collected or received from sales by the board shall be paid into the Board Publications Account established by ORS 197.832.

(18) Except for any sums collected for publication of board opinions, all fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund.

(19) The board shall track and report on its website:

(a) The number of reviews commenced, as described in subsection (1) of this section, the number of reviews commenced for which a petition is filed under subsection (2) of this section and, in relation to each of those numbers, the rate at which the reviews result in a decision of the board to uphold, reverse or remand the land use decision or limited land use decision. The board shall track and report reviews under this paragraph in categories established by the board.

(b) A list of petitioners, the number of reviews commenced and the rate at which the petitioner's reviews have resulted in decisions of the board to uphold, reverse or remand the land use decision or limited land use decision.

(c) A list of respondents, the number of reviews involving each respondent and the rate at which reviews involving the respondent have resulted in decisions of the board to uphold, reverse or remand the land use decision or limited land use decision. Additionally, when a respondent is the local government that made the land use decision or limited land use decision, the board shall track whether the local government appears before the board.

(d) A list of reviews, and a brief summary of the circumstances in each review, under which the board exercises its discretion to require a losing party to pay the attorney fees of the prevailing party. [1983 c.827 §31; 1985 c.119 §3; 1987 c.278 §1; 1987 c.729 §16; 1989 c.761 §12; 1991 c.817 §7; 1993 c.143 §1; 1993 c.310 §1; 1995 c.160 §1; 1995 c.595 §3; 1997 c.187 §1; 1997 c.452 §1; 1999 c.255 §2; 1999 c.348 §17; 1999 c.621 §3; 2003 c.791 §28; 2003 c.793 §6; 2009 c.885 §38; 2011 c.280 §9; 2011 c.483 §1; 2013 c.513 §1]

197.831 Appellate review of clear and objective approval standards, conditions and procedures for needed housing. In a proceeding before the Land Use Board of Appeals or an appellate court that involves an ordinance required to contain clear and objective approval standards, conditions and procedures for needed housing, the local government imposing the provisions of the ordinance shall demonstrate that the approval standards, conditions and procedures are capable of being imposed only in a clear and objective manner. [1999 c.357 §5; 2011 c.354 §7]

197.832 Board Publications Account. The Board Publications Account is established in the General Fund. All moneys in the account are appropriated continuously to the Land Use Board of Appeals to be used for paying expenses incurred by the board under ORS 197.830 (17). Disbursements of moneys from the account shall be approved by a member of the board. [1985 c.119 §5; 1989 c.761 §24; 1995 c.595 §17; 1997 c.436 §3; 1999 c.257 §4; 1999 c.621 §6]

197.835 Scope of review; rules. (1) The Land Use Board of Appeals shall review the land use decision or limited land use decision and prepare a final order affirming, reversing or remanding the land use decision or limited land use decision. The board shall adopt rules defining the circumstances in which it will reverse rather than remand a land use decision or limited land use decision that is not affirmed.

(2)(a) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record.

(b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities not shown in the record that, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of fact of the local government, special district or state agency for which there is substantial evidence in the whole record.

(3) Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable.

(4) A petitioner may raise new issues to the board if:

(a) The local government failed to list the applicable criteria for a decision under ORS 197.195 (3)(c) or 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, the board may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government; or

(b) The local government made a land use decision or limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final action.

(5) The board shall reverse or remand a land use decision not subject to an acknowledged comprehensive plan and land use regulations if the decision does not comply with the goals. The board shall reverse or remand a land use decision or limited land use decision subject to an acknowledged comprehensive plan or land use regulation if the decision does not comply with the goals and the Land Conservation and Development Commission has issued an order under ORS 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to apply the goals to the type of decision being challenged.

(6) The board shall reverse or remand an amendment to a comprehensive plan if the amendment is not in compliance with the goals.

(7) The board shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if:

(a) The regulation is not in compliance with the comprehensive plan; or

(b) The comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals.

(8) The board shall reverse or remand a decision involving the application of a plan or land use regulation provision if the decision is not in compliance with applicable provisions of the comprehensive plan or land use regulations.

(9) In addition to the review under subsections (1) to (8) of this section, the board shall reverse or remand the land use decision under review if the board finds:

(a) The local government or special district:

(A) Exceeded its jurisdiction;

(B) Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

(C) Made a decision not supported by substantial evidence in the whole record;

(D) Improperly construed the applicable law; or

(E) Made an unconstitutional decision; or

(b) The state agency made a decision that violated the goals.

(10)(a) The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:

(A) Based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances; or

(B) That the local government's action was for the purpose of avoiding the requirements of ORS 215.427 or 227.178.

(b) If the board does reverse the decision and orders the local government to grant approval of the application, the board shall award attorney fees to the applicant and against the local government.

(11)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent possible consistent with the time requirements of ORS 197.830 (14), the board shall decide all issues presented to it

when reversing or remanding a land use decision described in subsections (2) to (9) of this section or limited land use decision described in ORS 197.828 and 197.195.

(b) Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action.

(12) The board may reverse or remand a land use decision under review due to ex parte contacts or bias resulting from ex parte contacts with a member of the decision-making body, only if the member of the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever is applicable.

(13) Subsection (12) of this section does not apply to reverse or remand of a land use decision due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

(14) The board shall reverse or remand a land use decision or limited land use decision which violates a commission order issued under ORS 197.328.

(15) In cases in which a local government provides a quasi-judicial land use hearing on a limited land use decision, the requirements of subsections (12) and (13) of this section apply.

(16) The board may decide cases before it by means of memorandum decisions and shall prepare full opinions only in such cases as it deems proper. [1983 c.827 §§32,32a; 1985 c.811 §15; 1987 c.729 §2; 1989 c.648 §57; 1989 c.761 §13; 1991 c.817 §13; 1995 c.595 §§3a,5; 1995 c.812 §5; 1997 c.844 §3; 1999 c.621 §7]

197.840 Exceptions to deadline for final decision. (1) The following periods of delay shall be excluded from the 77-day period within which the board must make a final decision on a petition under ORS 197.830 (14):

(a) Any period of delay up to 120 days resulting from the board's deferring all or part of its consideration of a petition for review of a land use decision or limited land use decision that allegedly violates the goals if the decision has been:

(A) Submitted for acknowledgment under ORS 197.251; or

(B) Submitted to the Department of Land Conservation and Development as part of a periodic review work program task pursuant to ORS 197.628 to 197.651 and not yet acknowledged.

(b) Any period of delay resulting from a motion, including but not limited to, a motion disputing the constitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record.

(c) Any reasonable period of delay resulting from a request for a stay under ORS 197.845.

(d) Any reasonable period of delay resulting from a continuance granted by a member of the board on the member's own motion or at the request of one of the parties, if the member granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 77 days.

(2) No period of delay resulting from a continuance granted by the board under subsection (1)(d) of this section shall be excludable under this section unless the board sets forth in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in a decision within the 77 days. The factors the board shall consider in determining whether to grant a continuance under subsection (1)(d) of this section in any case are as follows:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the 77-day time limit.

(3) No continuance under subsection (1)(d) of this section shall be granted because of general congestion of the board calendar or lack of diligent preparation or attention to the case by any member of the board or any party.

(4) The board may defer all or part of its consideration of a land use decision or limited land use decision described in subsection (1)(a) of this section until the Land Conservation and Development Commission has disposed of the acknowledgment proceeding described in subsection (1)(a) of this section. If the board deferred all or part of its consideration of a decision under this subsection, the board may grant a stay of the comprehensive plan provision, land use regulation, limited land use decision or land use decision under ORS 197.845. [1983 c.827 §33; 1989 c.761 §25; 1991 c.612 §19; 1991 c.817 §27; 1995 c.595 §18; 1999 c.348 §18; 1999 c.621 §8]

197.845 Stay of decision being reviewed; criteria; undertaking; conditions; limitations. (1) Upon application of the petitioner, the board may grant a stay of a land use decision or limited land use decision under review if the petitioner demonstrates:

- (a) A colorable claim of error in the land use decision or limited land use decision under review; and
- (b) That the petitioner will suffer irreparable injury if the stay is not granted.

(2) If the board grants a stay of a quasi-judicial land use decision or limited land use decision approving a specific development of land, it shall require the petitioner requesting the stay to give an undertaking in the amount of \$5,000. The undertaking shall be in addition to the filing fee and deposit for costs required under ORS 197.830 (9). The board may impose other reasonable conditions such as requiring the petitioner to file all documents necessary to bring the matter to issue within specified reasonable periods of time.

(3) If the board affirms a quasi-judicial land use decision or limited land use decision for which a stay was granted under subsections (1) and (2) of this section, the board shall award reasonable attorney fees and actual damages resulting from the stay to the person who requested the land use decision or limited land use decision from the local government, special district or state agency, against the person requesting the stay in an amount not to exceed the amount of the undertaking.

(4) The board shall limit the effect of a stay of a legislative land use decision to the geographic area or to particular provisions of the legislative decision for which the petitioner has demonstrated a colorable claim of error and irreparable injury under subsection (1) of this section. The board may impose reasonable conditions on a stay of a legislative decision, such as the giving of a bond or other undertaking or a requirement that the petitioner file all documents necessary to bring the matter to issue within a specified reasonable time period. [1983 c.827 §34; 1989 c.761 §22; 1991 c.817 §28; 1999 c.621 §9]