

CITY OF KEIZER MISSION STATEMENT
KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY PROVIDING CITY SERVICES
TO THE COMMUNITY IN A COORDINATED, EFFICIENT AND LEAST COST FASHION

A G E N D A

KEIZER CITY COUNCIL

Monday, November 6, 1995

7:00 p.m.

**Robert L. Simon Council Chambers
Keizer City Hall, Keizer, Oregon 97303**

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC TESTIMONY

This time is provided for citizens to address the Council on matters not scheduled for public hearing or listed on the agenda.

4. COMMITTEE REPORTS

- a. Claggett Creek Task Force Appointments

5. PUBLIC HEARINGS

- a. HHC, Inc. Liquor License Application
- b. ORDINANCE - Wheatland/River Road Street Vacation

6. ADMINISTRATIVE ACTION

- a. Miracle of Christmas Noise Variance Request

7. CONSENT CALENDAR

- a. 1995-96 City Council Goals Report
- b. Approval of October 12, 1995 Special Session Minutes

8. OTHER BUSINESS

This time is provided to allow the Mayor, Council, City Manager and Department Heads an opportunity to bring matters before the Council which are not on tonight's agenda.

- a) Mayor and Council Members
- b) City Manager and Department Heads

9. WRITTEN COMMUNICATIONS

To inform the Council of significant written communications and petitions.

10. AGENDA INPUT

NOVEMBER 13, 1995

5:30 p.m. City Council Work Session

- 911 System Report
- Finance Department Staffing

NOVEMBER 20, 1995

7:00 p.m. City Council Meeting

- Chemawa Activity Center Public Hearing
- Trail/Manzanita Property Public Hearing
- Revision to Flood Plain Overlay Ordinance Public Hearing
- Bolf Terrace Conditional Use Public Hearing

DECEMBER 4, 1995

7:00 p.m. City Council Meeting

II ADJOURN

Upon request, auxiliary aids and/or special services for those with disabilities will be provided. To request services, please contact us at 503-338-6100 or through Oregon Relay 1-800-735-2700 at least two working days in advance.

CITY COUNCIL MEETING: November 6, 1995

AGENDA ITEM NUMBER: 4a

TO: MAYOR KOHO AND CITY COUNCIL MEMBERS

FROM: DOTTY TRYK *Dotty*
CITY MANAGER

SUBJECT: CLAGGETT CREEK TASK FORCE

BACKGROUND:

At your last meeting, the Council approved a mission statement for the Claggett Creek Task Force with some minor modifications. These changes have been made on the attached revised statement.

Also attached is a list of the appointments.

FISCAL IMPACT:

None at this time.

RECOMMENDATION:

It is recommended that the Council ratify the attached appointments to the task force.

Claggett Creek Task Force

Mission: To review the current state of Claggett Creek and make recommendations to the Parks Committee and City Council regarding the future of the creek.

To work with property owners, groups such as the McNary High School Science Club and the Friends of Claggett Creek to develop steps toward restoration of the creek and adjacent habitat.

In all deliberations, to seek the opinion and advise of adjacent property owners and to be sensitive to their needs.

To seek ways to improve the creek's ecosystem for the public enjoyment in those areas which are in public ownership.

Membership:

Two from McNary High School Science Club--1 teacher, 1 student

Gary Nelson
Student

Three Affected Property Owners:

Holly Erickson
Rosalie Huber
Jay Compton

One appointment by each Councilor:

Mayor Koho	Bob Vian
Councilor Watson	Robin Marshburn
Councilor Newton	Bill Galligan
Councilor Keller	Annette Crosley
Councilor Beach	Toni Signer
Councilor Miller	Paul Massey
Councilor McGee	Jonathon Pope

CITY COUNCIL MEETING: November 6, 1995

AGENDA ITEM NUMBER: 5a

TO: MAYOR KOHO AND CITY COUNCIL MEMBERS

THROUGH: DOTTY TRYK *Dotty*
CITY MANAGER

FROM: TRACY L. DAVIS
CITY RECORDER

SUBJECT: HHC, INC LIQUOR LICENSE APPLICATION

BACKGROUND:

On September 29, 1995, HHC, Incorporated (Howard and Connie Hinsdale) submitted a liquor license application to conduct a mail order retail wine operation from their home located at 3875 Rivercrest Drive N., Keizer, Oregon. This license falls under the Oregon Liquor Control Commission package store liquor license guidelines as outlined in ORS 471.260.

The application was reviewed and approved by the Keizer Planning Department and the Keizer Police Department. Attached are the written responses from both departments. As required by Keizer Ordinance 95-318, a public hearing was scheduled and notice was published in the Keizertimes and mailed to all property owners within 200 feet of the proposed establishment. As of the writing of this staff report, there have not been any written objections filed to this application.

RECOMMENDATION:

It is recommended the public hearing be opened to allow testimony from the applicant or other interested individuals and upon completion the hearing shall be closed. It is further recommended the Council approve by motion the liquor license application for HHC Incorporated to operate a mail order retail wine operation from 3875 Rivercrest Drive N, Keizer, Oregon under the guidelines established by ORS 471.260 and the Ordinances of the City of Keizer.

APPLICATION

STATE OF OREGON
OREGON LIQUOR CONTROL COMMISSION

Return To:

GENERAL INFORMATION

A non-refundable processing fee is assessed when you submit this completed form to the Commission (except for Drugstore and Health Care Facility Licenses). The filing of this application does not commit the Commission to the granting of the license for which you are applying nor does it permit you to operate the business named below.

(THIS SPACE IS FOR OLCC OFFICE USE)

Application is being made for:

- ☐ DISPENSER, CLASS A
☐ DISPENSER, CLASS B
☐ DISPENSER, CLASS C
☒ PACKAGE STORE
☐ RESTAURANT
☐ RETAIL MALT BEVERAGE
☐ SEASONAL DISPENSER
☐ WHOLESALE MALT BEVERAGE & WINE
☐ WINERY
- ☐ Add Partner
☐ Additional Privilege
☐ Change Location
☐ Change Ownership
☐ Change of Privilege
☐ Greater Privilege
☐ Lesser Privilege
☒ New Outlet
☐ Other

SEP 23 1995
 REGULATORY FIELD SERVICES
 Oregon Liquor Control Commission

(THIS SPACE IS FOR CITY OR COUNTY USE)

NOTICE TO CITIES AND COUNTIES: Do not consider this application unless it has been stamped and signed at the left by an OLCC representative.

THE CITY COUNCIL, COUNTY COMMISSION, OR COUNTY

COURT OF

(Name of City or County)

RECOMMENDS THAT THIS LICENSE BE: GRANTED

DATE

DENIED

BY

(Signature)

TITLE

OTHER:

Rec'd 305
 Receipt 3018

CAUTION: If your operation of this business depends on your receiving a liquor license, OLCC cautions you not to purchase, remodel, or start construction until your license is granted.

1. Name of Corporation, Partnership, or Individual Applicants:

1) H.H.C. Inc.3) Connie Rae Hinedale

5)

2) Connie Hinedale

4)

6)

(EACH PERSON LISTED ABOVE MUST FILE AN INDIVIDUAL HISTORY AND A FINANCIAL STATEMENT)

2. Present Trade Name NANew Trade Name HHC Inc.Premises address 3875 Rivercrest Drive N. Keizer

(Number, Street, Rural Route)

(City)

Marion

(County)

Year filed 1993

with Corporation Commissioner

Business mailing address same as above

(P.O. Box, Number, Street, Rural Route)

(City)

Marion

(County)

Oregon

(State)

97303

(Zip)

Was premises previously licensed by OLCC? Yes No X

Year

(State)

(Zip)

If yes, to whom:

Will you have a manager: Yes No X Name

Type of license:

Will anyone else not signing this application share in the ownership or receive a percentage of profits or bonus from the business? Yes No X

(Manager must fill out individual history)

What is the local governing body where your premises is located? City of KeizerOLCC representative making investigation may contact: Howard Hinedale and/or Connie Hinedale

(Name of City or County)

3875 Rivercrest Drive N. Keizer, Oregon 97303

(Address)

(Name)

(503) 393-6935

(Tel. No. - home, business, message)

NOTION: The Administrator of the Oregon Liquor Control Commission must be notified if you are contacted by anybody offering to influence the Commission on your behalf.

Applicant(s) Signature
In case of corporation, duly
authorized officer therefor

1) H.H.C. Inc. by O.H. Hinedale President
 2) Connie Hinedale
 3) _____
 4) _____
 5) _____
 6) _____

DATE August 17, 1995

cant

TRADE NAME THC

CITY/COUNTY Keizer/Marion

You must fill in all the blanks. If the question does not apply write N/A in the space.

1. Name Hinsdale (Last) Oscar (First) Howard (Middle)
2. Other names used NA (Middle)
3. Home Address 3875 Rivercrest Drive North, Keizer (Number and Street) Oregon (City) 97303 (Zip)
4. SSN 540 - 44 - 9062 Place of Birth Portland, Oregon (City) Oregon (State) 4/18/46 (Date of Birth)
5. Sex M Height 6'2" Weight 186 Hair Color Brown Eye Color Blue Age 50
6. US Citizen: Yes X No NA Alien Reg. # NA Spouse Name Connie R. Hinsdale
7. Home phone (503) 390-6787 Business phone (503) 393-0235

CRIMINAL RECORD
OLCC makes a criminal offender records check through the Oregon State Police on all liquor license applicants.
ORS 181.555(3) provides that you can contact the Oregon State Police to challenge inaccurate criminal offender information. OLCC may require fingerprints.
8. Have you ever been convicted of any crime, violation, or infraction of any law? Include probation or bail forfeiture. (Include traffic violations for which a fine or bail forfeiture of more than \$50.00 was imposed.)
Yes X No NA traffic, several years ago

9. Do you have arrests or citations pending? Yes NA No X
10. If you have answered "Yes" to 8 or 9 list below:
OFFENSE DATE CITY & STATE RESULT
moving violation several years ago Oregon fine paid
ATTACH ADDITIONAL SHEET IF NECESSARY

DIVERSION/TREATMENT
11. Have you ever entered into a Diversion Agreement? Yes NA No X
Where and When?
12. Have you ever been treated or in a treatment program for alcohol or other drug use/abuse? Yes NA No X
Where and When?

EMPLOYMENT & RESIDENCE HISTORY
13. List current and former employers or occupations during the past ten years:
Dates by Month/Year Employer or Business Occupation City & State
From Jan/95 To Present self investments Keizer, Oregon
From Feb/93 To Dec/94 Henny-Hinsdale Inc. consultant Salem, Oregon
From Jan/73 To Jan/93 Henny-Hinsdale Wines Inc. owner Salem, Oregon
14. List other cities and states where you have lived in the past ten years other than those noted in Question 13 above.
From NA To NA City NA State NA
ATTACH ADDITIONAL SHEET IF NECESSARY

ACTIVITY IN LIQUOR INDUSTRY (INSIDE OR OUTSIDE OREGON)
15. Are you presently or have you been licensed or employed in the liquor business? Yes X No NA
16. Is your spouse or any family member(s) working in any area of the liquor industry? Yes NA No X If Yes, give: Salem, Oregon 1973 through 1993 not presently licensed
17. Have you ever received a warning, a notice of violation, suspension, fine, or revocation as a licensee or permittee? Yes NA No X Where & When?
18. Have you ever been refused a permit or license to sell, serve, or dispense beer, wine, or distilled spirits? Yes NA No X Where & When?
19. Is a manufacturer or wholesaler of alcoholic liquor financing or furnishing your business with money or property? Yes NA No X Where & When?
20. Do you have any right, title, claim, or other interest, financial or otherwise in, upon or to the premises, equipment, business or merchandise of any retailer, wholesaler, or manufacturer of alcoholic liquor? Yes NA No X Where & When? Portland, 4/95
Henny Hinsdale Acquisitions, Inc.
ACTION: OLCC MAY DENY YOUR APPLICATION IF YOU LEAVE OUT INFORMATION OR GIVE FALSE ANSWERS ON THIS FORM.

SIGNATURE: Oscar Howard Hinsdale TITLE (Manager, Owner, Corp. Officer) Owner DATE August 17, 1995

TRADE NAME THIC

CITY/COUNTY Keizer, Marion

You must fill in all the blanks. If the question does not apply write N/A in the space.

1. Name Hinsdale Connie Das
(Last) (First) (Middle)
2. Other names used Stanger Cobb
(Middle) (Last)
3. Home Address 3875 Rivercrest Drive North, Keizer, Oregon 97303
(Number and Street) (City) (State) (Zip)
4. SSN 583 - 74 - 7877 Place of Birth Twin Falls, Idaho Date of Birth 4/9/48
(State) (Zip)
5. Sex F Height 5'8 1/2" Weight 155 Hair Color Red Eye Color Hazel Age 47
6. US Citizen: Yes X No Alien Reg. # NA Spouse Name Howard Hinsdale
7. Home phone (503) 390-8787 Business phone (503) 323-0935

OLCC makes a criminal offender records check through the Oregon State Police on all liquor license applicants. ORS 461.555(3) provides that you can contact the Oregon State Police or challenge inaccurate criminal offender information. OLCC may require fingerprints.
8. Have you ever been convicted of any crime, violation, or infraction of any law? Include probation or bail forfeiture. (Include traffic violations for which a fine or bail forfeiture of more than \$50.00 was imposed.)
Yes X No

9. Do you have arrests or citations pending? Yes No X
10. If you have answered "Yes" to 8 or 9 list below:

OFFENSE	DATE	CITY & STATE	RESULT
<u>THIC</u>	<u>10/92</u>	<u>Salem, Oregon</u>	<u>diversion</u>

(ATTACH ADDITIONAL SHEET IF NECESSARY)

11. Have you ever entered into a Diversion Agreement? Yes X No
Where and When? Salem, Oregon 10/92
12. Have you ever been treated or in a treatment program for alcohol or other drug use/abuse? Yes No X
Where and When?

EMPLOYMENT & RESIDENCE HISTORY

13. List current and former employers or occupations during the past ten years:
Dates by Month/Year
From 3/88 To present Employer or Business Coldwell Banker Occupation Realtor City & State Salem, Oregon
From 2/80 To 2/88 Self Employed hair stylist/owner Salem, Oregon
From To

14. List other cities and states where you have lived in the past ten years other than those noted in Question 13 above.
From NA To City State
From To

(ATTACH ADDITIONAL SHEET IF NECESSARY)

ACTIVITY IN LIQUOR INDUSTRY (INSIDE OR OUTSIDE OREGON)

15. Are you presently or have you been licensed or employed in the liquor business?
Yes No X Where & When?
16. Is your spouse or any family member(s) working in any area of the liquor industry?
Yes No X If Yes, give: (Name) (Name of Business) (City & State)
17. Have you ever received a warning, a notice of violation, suspension, fine, or revocation as a licensee or permittee? Yes No X Where & When?
18. Have you ever been refused a permit or license to sell, serve, or dispense beer, wine, or distilled spirits?
Yes No X Where & When?
19. Is a manufacturer or wholesaler of alcoholic liquor financing or furnishing your business with money or property? Yes No X Where & When?
20. Do you have any right, title, claim, or other interest, financial or otherwise in, upon or to the (premises) equipment, business or merchandise of any retailer, wholesaler, or manufacturer of alcoholic liquor?
(Do not include this business) Yes X No Where & When? Portland, 4/95
Henny-Hinsdale Acquisitions, Inc.
CAUTION: OLCC MAY DENY YOUR APPLICATION IF YOU LEAVE OUT INFORMATION OR GIVE FALSE ANSWERS ON THIS FORM.

SIGNATURE: Connie R Hinsdale - owner TITLE (Manager, Owner, Corp. Officer) owner DATE August 17, 1995

October 2, 1995

HHC, Inc.
3875 Rivercrest Drive N.
Keizer, Oregon 97303

Ms Tracy Davis
City Recorder
City of Keizer
930 Chemawa Road N.E.
Keizer Oregon 97307-1030

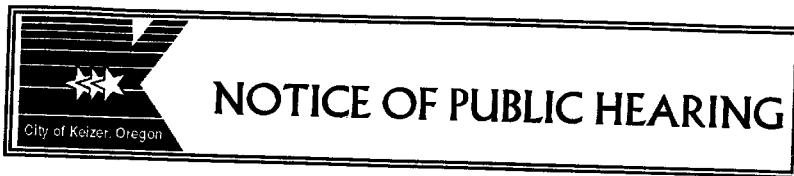
Ms. Davis:

As a further description of the nature of the proposed business from my home, this is to be an order by mail retail wine operation, with delivery to the customer; accordingly I do not anticipate customers coming to my house to pick up product and therefore do not forecast any additional traffic activity in our neighborhood as a result of this operation.

Thank you for your consideration.

Sincerely:


Howard Hinsdale



NEW LIQUOR LICENSE APPLICATION HHC, INCORPORATED

NOTICE is hereby given that the City Council of the City of Keizer will hold a public hearing to consider a liquor license application for HHC, Incorporated, located at 3875 Rivercrest Drive North, Keizer, Oregon. This license falls under the package store liquor license guidelines.

The hearing will be held on **Monday, November 6, 1995 at 7:00 p.m.** at the Robert L. Simon Council Chambers, Keizer City Hall, 930 Chemawa Road NE, Keizer, Oregon.

Anyone wishing to make comment on this matter may provide testimony at the hearing or submit written response to the City Recorder no later than 5:00 p.m. on November 6, 1995. Responses may be mailed to Tracy L. Davis, City Recorder, P.O. Box 21000, Keizer, Oregon 97307.

The location of the hearing is accessible to the disabled. Please contact the City Recorder at 390-3700, extension 108 at least 48 hours prior to the hearing if you will need any special accommodations to attend or participate in the hearing.

If you have any questions, please contact the City Recorder at 390-3700, extension 108

Dated this 13th day of October, 1995.

Tracy L. Davis
City Recorder

KEIZER POLICE DEPARTMENT
Memorandum

DATE: October 12, 1995
TO: Tracy Davis, City Recorder
FROM: Charles R. Stull, Chief of Police 
SUBJECT: HHC INCORPORATED LIQUOR LICENSE APPLICATION

We have completed a background investigation regarding Howard and Connie Hinsdale and find no significant events that would be in conflict with the City of Keizer's ordinance.

Therefore, I would recommend the approval of the liquor license application for HHC Incorporated.

crs:cp

LIQUOR LICENSE APPLICATION SUMMARY
for
H.H.C. INC.
(OSCAR AND CONNIE HINSDALE)

The Keizer Police Department has not had any significant incidents involving Mr. or Mrs. Hinsdale at their Rivercrest Dr. address. A scan of other local agencies reveals some insignificant incidents (as victims or complainants) beginning in the mid-eighties.

Mr. Hinsdale has no CCH. Mrs. Hinsdale was arrested for DUII in 1992 and successfully completed a diversion course.

A review of the Hinsdale's criminal history and other contact with law enforcement agencies does not reveal any significant events that would be in conflict with the City of Keizer Ordinance.

Det. J. J. T. / 10/11/95



Keizer Community Development Department

Date: October 26, 1995

To: Dotty Tryk, Keizer City Manager

From: Roger D. Evans, Keizer City Planner

RE: Home Occupation Information for 3875 Rivercrest Drive N.

Attached is a letter sent to Howard Hinsdale regarding a proposal to operate a home occupation out of his residence at 3875 Rivercrest Drive N., in Keizer. This property is located in the RS (SINGLE FAMILY RESIDENTIAL) Zone and Home Occupations are identified as an allowed use within this zone. Mr. Hinsdale proposes to sell wine through the mail through a mail order business located in his residence. This type of business complies with the criteria contained in Section 12.20 of the Keizer Zoning Ordinance. As long as the proposed Home Occupation continues to meet the standards contained in the Zoning Ordinance and complies with all other permit requirements it will be considered an allowed use.



City of Keizer Development Bulletin

HOME OCCUPATIONS. Where permitted as a special use, a home occupation shall meet the following use and development standards (Section 12.20, Keizer Zoning Ordinance):

- (a) The premises upon which the home occupation is conducted shall be the residence of the person conducting or working for the home occupation.
- (b) The home occupation shall be continuously conducted in such a manner as not to create any off premise nuisance, public or private, known at law or equity; including but not limited to noise, odors, vibration, fumes, smoke, fire hazard, or electronic, electrical, or electromagnetic interference.
- (c) No sign shall be displayed on the premises, except such signs as are permitted by or exempt from Sign regulations in Chapter 15 for the zone in which the home occupation is located.
- (d) In a residential zone, the home occupation shall be conducted entirely within the dwelling and any attached garage. In a UT or EFU zone, the home occupation shall be conducted entirely within the dwelling, any attached garage, or in an unattached accessory building.
- (e) The total floor area of buildings on the premises, including accessory buildings devoted to the home occupation, shall not exceed 500 square feet in a residential zone and 1,500 square feet in UT or EFU zones.
- (f) No structural alterations shall be made to the dwelling which would be inconsistent with future use of the building exclusively as a dwelling.
- (g) No alteration to or use of the premises shall be made, such as to reduce the number of required on-site parking spaces.
- (h) All visits by suppliers or customers shall occur between the hours of 8:00 a.m. and 8:00 p.m.
- (i) There shall be no outside storage or display of materials, equipment, or merchandise used in or produced in connection with the home occupation, except as provided in (j).
- (j) Repair of vehicles shall only be allowed as a home occupation in UT and EFU zones. Vehicles awaiting repair or pick up shall be screened by a sight-obscuring fence or be parked in a building. All repair shall be conducted within a building.



City of Keizer — Community Development

Phone: 390-3700 • Fax: 390-8295
930 Chemawa Rd. N.E. • P.O. Box 21000 • Keizer, Oregon 97307-1000

September 15, 1995

Howard Hinsdale
3875 Rivercrest Drive N
Keizer, OR 97303

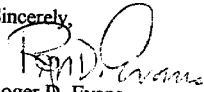
RE: Property located at 3875 Rivercrest Drive N.

Dear Mr. Hinsdale:

The property located at 3875 Rivercrest Drive N (Tax Map T7S; R3W; Sect. 10AA; Tax Lot # 5300) is currently designated as Low Density Residential in the Keizer Comprehensive Plan. The current zoning is RS (SINGLE FAMILY RESIDENTIAL). Home Occupations are an allowed use within the RS (SINGLE FAMILY RESIDENTIAL) zone subject to the conditions contained in Section 12.20 of the Keizer Zoning Ordinance. The proposed use of selling items through the mail is an allowable Home Occupation. Any enforcement or additional review of the proposed Home Occupation is based upon any complaints received by neighbors. If the use generates complaints and is violation of the Home Occupation standards, the property owner will be notified and the City of Keizer will take the appropriate action.

If you have any questions about the information in this letter, please feel free to call me at (503) 390-3700, Extension 145.

Sincerely,


Roger D. Evans
Keizer City Planner

“Pride, Spirit and Volunteerism”

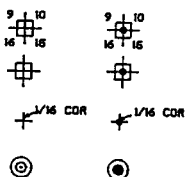
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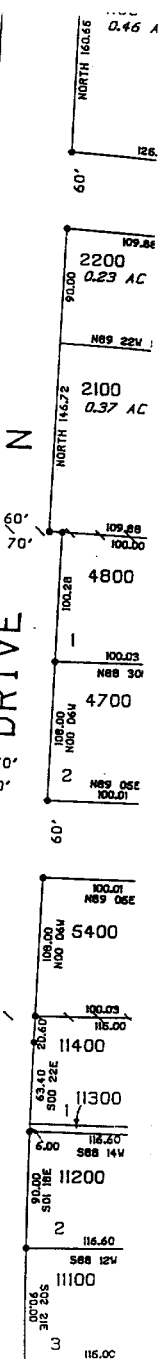
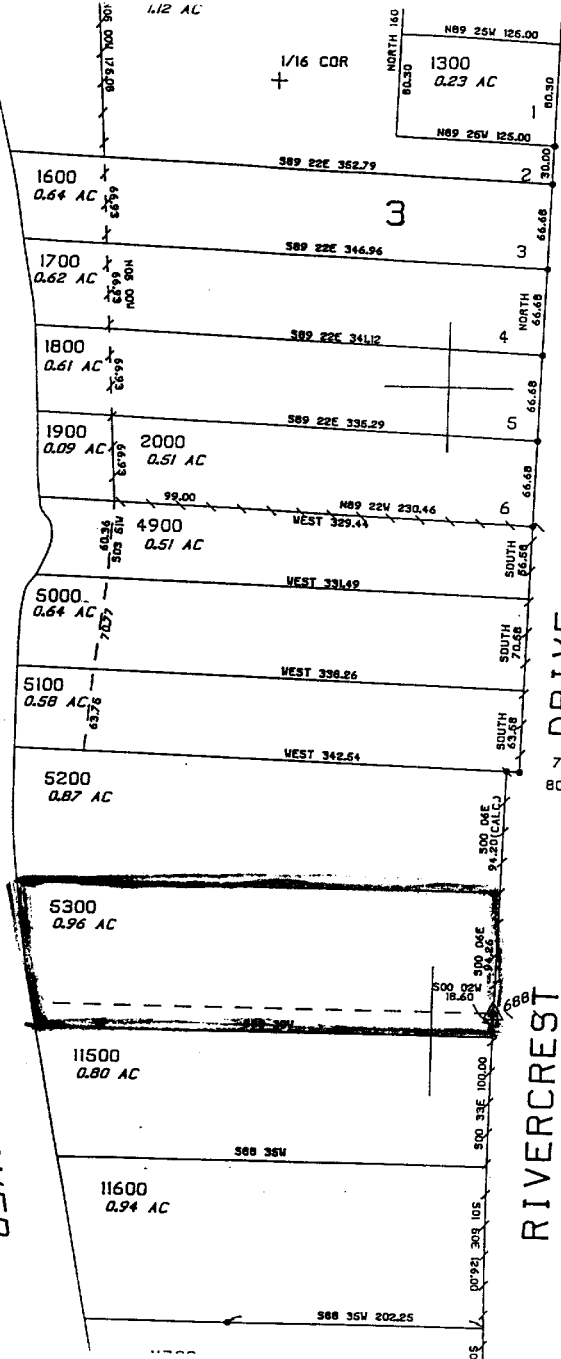


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WILLAMETTE RIVER



(b) To sell malt beverages manufactured on or off the licensed premises at retail for consumption on or off the premises;

(c) To sell malt beverages in brewery-sealed packages at retail directly to the consumer for consumption off the premises;

(d) To sell on the licensed premises at retail malt beverages manufactured on or off the licensed premises in unpasteurized or pasteurized form directly to the consumer for consumption off the premises, delivery of which may be made in a securely covered container supplied by the consumer;

(e) To sell wine and cider containing not more than 21 percent alcohol by weight at retail for consumption on or off the premises; and

(f) To conduct the activities described in paragraphs (b) to (e) of this subsection at one location other than the premises where the manufacturing occurs.

(2) A brewery-public house licensee, or any person having an interest in the licensee, is not eligible for a brewery license authorized by ORS 471.220 or a wholesale malt beverage and wine license authorized by ORS 471.235.

(3) A brewery-public house licensee, or any person having an interest in the licensee, may also hold a winery license authorized by ORS 471.223.

(4) A brewery-public house licensee is eligible for a retail malt beverage license and for special one-day retail beer licenses.

(5)(a) Except as provided by paragraph (b) of this subsection, a brewery-public house licensee, or any person having an interest in the licensee, may also hold a dispenser's license issued under ORS chapter 472. If a person holds both a brewery-public house license and a dispenser's license, nothing in ORS 471.455, 471.460, 471.465 or 471.470 shall prevent the sale by the licensee of both distilled liquor, as defined in ORS 472.010, and malt beverages manufactured under the brewery-public house license.

(b) The commission may not issue a dispenser's license to a brewery-public house licensee under the provisions of this subsection if the brewery-public house licensee, or any person having an interest in the licensee or exercising control over the licensee, is a distillery, a brewery that brews more than 200,000 barrels of malt beverages annually or a winery that produces more than 200,000 gallons of wine annually.

(6) For purposes of ORS chapter 473, a brewery-public house licensee shall be considered to be a manufacturer. [1985 c.649 §4; 1987 c.608 §1; 1989 c.785 §10; 1991 c.545 §2; 1993 c.418 §1; 1993 c.663 §2]

Note: 471.253 was added to and made a part of ORS chapter 471 by legislative action but was not added to any series therein. See Preface to Oregon Revised Statutes for further explanation.

471.255 [Repealed by 1965 c.280 §5]

471.257 Health care facility license. A health care facility license may be issued to licensed hospitals, sanitariums, convalescent or rest homes, retirement homes and facilities for the care of the elderly and shall allow the sale and service by facility employees of malt beverages, as defined in ORS 473.010, and wine containing not more than 14 percent of alcohol by volume to patients, inmates, residents or bona fide visitors or guests for consumption on the licensed premises only. Such license shall not permit the sale or service to, or consumption by, the general public or staff or employees of the facility. Nothing in this section shall prohibit the administration of distilled spirits upon prescription by a physician to patients, inmates or residents of the facility. [1975 c.494 §2; 1987 c.608 §7]

Note: 471.257 was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapter 471 but not to any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

471.259 Bed and breakfast license. A bed and breakfast license may be issued to the owner or operator of a private residence that is not a boarding house but that accommodates transients for a limited duration and shall allow the sale or service by the licensee or any employee of malt beverages, as defined in ORS 473.010, and wine containing not more than 21 percent of alcohol by volume to guests for consumption on the licensed premises only. The license does not permit sale or service to or consumption by the general public or employees on the premises. [1985 c.649 §1; 1987 c.608 §8; 1989 c.171 §65]

Note: 471.259 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 471 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

471.260 Package store license; package store tasting license. (1) A package store license shall allow the retail sale of certain specified types of alcoholic liquor in sealed packages. Package store licensees shall not permit the consumption of alcoholic liquor upon their licensed premises unless such licensee holds another license that permits such consumption, or is the holder of a package store tasting license described in subsection (3) of this section.

(2) A package store license shall allow the sale of malt beverages, as defined in ORS 473.010, in brewery-sealed packages containing not more than one gallon and wine con-

taining not more than 21 percent of alcohol by volume.

(3) A package store tasting license shall allow all the privileges described in subsections (1) and (2) of this section. In addition, a package store tasting license shall allow on-premises consumption only for the purpose of sample tastings of the alcoholic beverages specified in subsection (2) of this section.

(4) Except as provided in subsection (5) of this section, no manufacturer or wholesaler may provide or pay for sample tastings of alcoholic beverages for the public on the package store licensee's premises.

(5) The holder of a brewery license issued under ORS 471.220, a winery license under ORS 471.223, a grower sales privilege license issued under ORS 471.227, a warehouse license issued under ORS 471.242 or a manufacturer certificate of approval issued under ORS 471.289 may provide or pay for sample tastings of wine or malt beverages for the public on a package store licensee's premises. [Amended by 1973 c.395 §3; 1974 s.s. c.4 §3; 1985 c.546 §1; 1987 c.608 §9; 1989 c.178 §1; 1993 c.663 §4]

471.262 Temporary license or authority for package store license applicant; revocation. (1) Upon receiving an application for a package store license as defined in ORS 471.260, the commission may grant a temporary license or letter of authority for a period not exceeding 90 days, if it finds:

(a) The applicant is located in an area presently zoned for commercial use and presents documentation of such zoning to the commission.

(b) The applicant pays the fee prescribed by the commission for a temporary license or letter.

(2) The commission summarily and without prior administrative proceedings may revoke a temporary license or letter of authority at any time during the 90 days if:

(a) The commission finds that any of the grounds for refusing a permanent license under ORS 471.295 exist; or

(b) The city or county in which the applicant is located provides evidence of reasonable grounds to the commission:

(A) That the temporary license or letter of authority should be revoked; or

(B) That a package store license should not be issued. [1979 c.172 §2]

471.264 When temporary event licensee exempt from temporary restaurant license requirement. An Oregon Liquor Control Commission licensee holding a malt beverage or wine license for a temporary event shall not be required to obtain a

temporary restaurant license or mobile unit license pursuant to ORS chapters 471 and 624 and ORS 474.105 and 474.115 if no food or beverage is served other than wine or malt beverage in single-service containers or nonperishable food items, or both, that are exempted from licensure by the Health Division. [1981 c.200 §1]

Note: 471.264 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 471 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

471.265 Retail malt beverage license.

(1) A retail malt beverage license shall allow anyone operating a place of business where refreshments are served, to sell malt beverages, as defined in ORS 473.010, hard cider containing not more than 10 percent of alcohol by volume and wine containing not more than 14 percent by volume.

(2) A retail malt beverage license shall permit the licensee to sell malt beverages for consumption on the licensed premises, malt beverages in brewery-sealed packages for consumption off the licensed premises, not more than two gallons of malt beverages in a securely covered container or containers supplied by the purchaser for consumption off the licensed premises, hard cider for consumption on the licensed premises, hard cider in sealed containers for consumption off the licensed premises, wine for consumption on the licensed premises and wine in winery-sealed packages for consumption off the licensed premises.

(3) Such licensees shall not sell any malt beverages containing more than 14 percent of alcohol by volume, nor wine containing more than 14 percent by volume. In the absence of municipal ordinance or local regulation to the contrary, such licensees shall be permitted to allow dancing and to have and permit singing and other proper forms of entertainment upon the licensed premises. [Amended by 1967 c.580 §1; 1967 c.614 §1.2; 1971 c.324 §1; 1973 c.103 §1; 1973 c.395 §4; 1985 c.546 §2; 1987 c.558 §2; 1987 c.608 §2]

471.270 Druggist license and sales on prescription. (1) A druggist's license may be

issued to any person operating a pharmacy, and who is, or who employs, a qualified pharmacist registered under the laws of this state. A druggist's license shall allow the sale of all alcoholic liquors listed in the U. S. P. and N. F., in containers of not more than one quart capacity, upon prescriptions only, and with the limit of one quart on each prescription. No such licensee shall permit the drinking of such alcoholic liquors on the premises of any drug store, except that such drug store may hold a retail malt beverage license. Such licensee may purchase alcoholic liquor in excess of 14 percent of alcohol

COUNCIL MEETING: November 6, 1995

AGENDA ITEM NUMBER: 5b

TO: MAYOR AND CITY COUNCIL

THROUGH: DOROTHY TRYK, CITY MANAGER *D. Tryk*

FROM: WILLIAM I. PETERSON, CITY ENGINEER
WALLY MULL, PUBLIC WORKS DIRECTOR

SUBJECT: VACATION OF PUBLIC RIGHT OF WAY
PORTION OF OLD WHEATLAND ROAD/RIVER ROAD
INTERSECTION

ISSUE:

At the City Council meeting of October 2, 1995, the Keizer City Council initiated the vacating of public right of way for a portion of old Wheatland Road/River Road Intersection. The vacation was requested by the adjacent property owners. The vacation process requires a notice of public hearing be posted on the property and published in the Keizertimes for two consecutive weeks. These notices were posted and published accordingly.

BACKGROUND:

Several years ago the City of Keizer improved the intersection of River Road, Wheatland Road, Trail Avenue and Manzanita Street to provide for a safer intersection. Prior to making the roadway improvements, it was necessary to construct a sanitary sewer trunk line from the west side of the intersection to a point far enough north to eliminate future dig-ups of the intersection. The sanitary sewer trunk crossed a portion of property owned by Hillman Properties Northwest (McNary Golf Course). Agreements were made with Hillman Properties that would allow the granting of sanitary sewer easement across their property in exchange for the City of Keizer vacating any unneeded right of way after the construction of the intersection improvements.

The current owners are anticipating some development of the adjacent property in the near future and are requesting that the City vacate the unneeded right of way at this time. It is anticipated that easements for existing utilities will be recorded along with the proposed right of way vacation.

FISCAL IMPACT:

Some benefits accrue to the City since no maintenance of the undeveloped right of way will be required in the future. The City will also receive the benefit of adding the property to the tax rolls.

RECOMMENDATION:

The staff recommends that the City Council open the public hearing, receive testimony, close the hearing and adopt an ordinance vacating a portion of public right of way of Old Wheatland Road/River Road Intersection to the adjoining properties.

1
2 BILL NO. _____

3 A BILL
4 FOR

ORDINANCE NO.
95- _____

5 AN ORDINANCE TO VACATE A PORTION OF PUBLIC RIGHT OF WAY
6 PORTION OF OLD WHEATLAND ROAD/RIVER ROAD INTERSECTION
7 IN THE CITY OF KEIZER, STATE OF OREGON
8
9

10 The City of Keizer ordains as follows:

11 Section 1 - Public Hearing. The City Council held a public hearing on the
12 above matter on the 6th day of November, 1995. At that time, the vacation question
13 and any objections or remonstrances were heard. The time for filing objections or
14 remonstrances has fully expired.

15 Section 2 - Notice of Street Vacation. The City Council determines that the
16 required legal notice has been published in the City official newspaper once each
17 week for two consecutive weeks prior to the date of the hearing; and the legal notice
18 was posted at or near each end of the proposed vacated street in at least two
19 conspicuous places in the proposed vacation area within five days of the first
20 publication notice. Further, the Council determines that the posting of notice was
21 completed and the first publication of notice appeared at least 14 days prior to the
22 hearing.

23 Section 3 - Consent of Real Property Owners. The City Council determines
24 that the proposed vacation will not substantially affect the market value of the
25 abutting property. Further, the City Council determines that the City has not
26 received written objections from owners of a majority of the area affected,
27 computed on the basis provided in ORS 271.080.

28 Section 4 - Public Interest Served. The Council determines that the public
29 interest is served and not prejudiced by the proposed vacation.

1 Section 5 - Land Use Considerations. The Council determines that the
2 proposed vacation would not constitute a significant impact on present or future
3 land uses.

4 Section 6 - Vacation. The Council ordains that:

5 Beginning at a point in the Westerly line of Wheatland Road, said point
6 being 10.21 feet North 81°26' East and 99.97 feet South 17°15' East and
7 214.89 feet South 15°10'20" East from the initial corner of Country Club
8 Estates as said addition is platted and recorded in Volume 21, Page 38, Book
9 of Town Plats for Marion County, Oregon; and running thence South
10 15°10'20" East, continuing along said Westerly line, 190.38 feet; thence
11 North 12°07'17" East 97.92 feet to a 17.21 foot radius curve to the left;
12 thence along the arc of a 17.21 foot radius curve to the left a distance of 15.47
13 feet (the chord of which bears North 13°37'30" West a distance of 14.95 feet);
14 thence Westerly along a 104.71 foot radius curve to the left a distance of
15 12.06 feet (the chord of which bears North 42°40'11" West a distance of
16 12.05 feet); thence along a 4,058.12 foot radius curve to the right a distance
17 of 48.41 feet (the chord of which bears North 45°37'36" West); thence along
18 a 155.56 foot radius curve to the right a distance of 39.18 feet (the chord of
19 which bears North 38°04'11" West 39.08 feet) to the point of beginning and
20 containing 0.103 acres of land subject to utility easement for public utilities
21 across the entire parcel described above.
22

23 be vacated.

24 Section 7 - Conditions of Vacation. Nothing contained herein shall cause or
25 require the removal or abandonment of any sewer, water line, conduit of any kind,
26 wires or poles which are now installed in said street and used or intended to be used
27 for any public service, and owned or used by any public or private utility, and the
28 right is hereby reserved to maintain and continue to repair, reconstruct, renew,
29 replace, rebuild or enlarge any and all such facilities.

30 PASSED this _____ day of November, 1995.
31

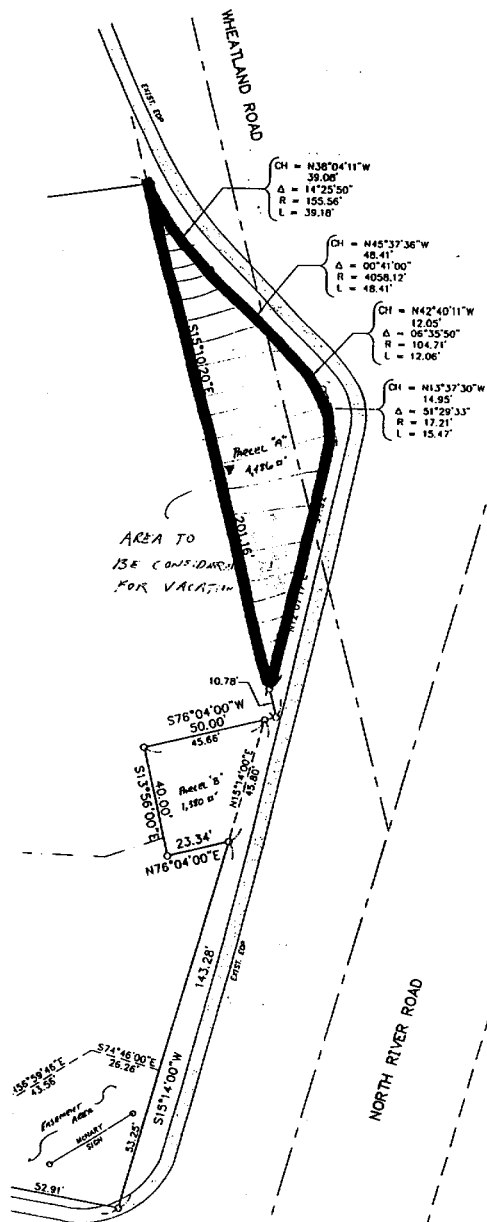
32 SIGNED this _____ day of November, 1995.
33
34

35 _____
36 Mayor
37

38 _____
39 City Recorder

SEC. 35 T. 6 S., R. 3
CITY OF KEIZEH
MARION COUNTY, OF

SEC. 35 T. 6 S., R. 3
CITY OF KEIZEH
MARION COUNTY, OF



CITY COUNCIL MEETING: November 6, 1995

AGENDA ITEM NUMBER: 6a

TO: MAYOR KOHO AND CITY COUNCIL MEMBERS

FROM: DOTTY TRYK *Dotty*
CITY MANAGER

SUBJECT: NOISE VARIANCE REQUEST
MIRACLE OF CHRISTMAS 1995

ISSUE:

Shall the City Council approve a Noise Ordinance Variance Request for the Miracle of Christmas activities during December, 1995?

BACKGROUND:

City Noise Ordinance 93-269 was passed by the City Council on November 1, 1993 which greatly expanded noise prohibitions within the City.

The Gubser Neighborhood Association has submitted a variance application for Council approval, as stipulated in Section 8 of the Ordinance, for a Class B Variance specifically pertaining to the upcoming Miracle of Christmas lighting display held annually within the boundaries of the Gubser Neighborhood Association.

1. A variance is being sought under Section 3 of City Ordinance 93-269.
2. A variance is necessary due to possible ordinance violations during this event.
3. The various sounds involved include routine traffic noise generated from large volume of vehicles that visit the area; persons or groups singing seasonal music; seasonal music emitted from residential displays; and any other sound generated from seasonal activities in the area.

The days and hours of the variance would be December 3, 1995 through December 27, 1995, 6:00 p.m. to 10:00 p.m. daily.

The Association further requested that a permanent variance be considered by the Council as this is an annual event. There is no process in our ordinance for a "permanent variance". The resolution to this would be to amend the ordinance, similar to the mowing of golf courses, providing a permanent exception.

RECOMMENDATION:

Under Section 11(B) of City Noise Ordinance 93-269, the Council shall grant or deny a Class B or Class C variance within 30 days of receipt of the application, and may, on its own motion, hold a public hearing on the application before deciding to grant or deny the variance.

As the noise generated by this annual event should be minimal, it is recommended the Council adopt a motion granting this variance immediately without holding a public hearing and, by motion, authorize the City Manager to sign the attached variance.

If the Council wishes to consider an amendment to the ordinance exempting the Miracle of Christmas, it is recommended that the Council, by motion, direct the staff to return with the appropriate language.

Keizer's Miracle of Christmas

Keizer, Oregon

To: Keizer City Council

The Gubser Neighborhood Association is asking for a variance to City Noise Ordinance #93-269 for the annual "Miracle of Christmas" Lighting display. The lighting will be from 6 to 10PM Sunday, December 3th through ~~Tuesday~~ ^{Wednesday}, December 27th.

A variance is being sought under section 3 of Ordinance #93-269.

A Variance is necessary due to possible ordinance violations during this event.

The various sound involved include routine traffic noise generated from vehicles that visit the area; persons or groups singing seasonal music; seasonal music emitted from residential display; and any other sound(s) generated from seasonal activities in the area.

We are requesting that this variance be given without a public hearing as it is an annual event. We would also ask that the council consider giving a permanent variance to the association as this is an annual event that always occurs in December.

Bud Staudenmier
Lighting Committee Chairperson

Bud Staudenmier



VARIANCE FROM THE KEIZER NOISE ORDINANCE (93-269)

Section 1. THE APPLICATION - The Gubser Neighborhood Association applied for a Class B Variance from the requirements of the Keizer Noise Ordinance to allow for the event known as the Miracle of Christmas. This event is for a period from December 3, 1995 to December 27, 1995, from 6:00 p.m. to 10:00 p.m. The noise produced by this event consists of noise generated from large volume of vehicles that visit the area; persons or persons or groups singing seasonal music; seasonal music emitted from residential displays; and the other sound generated from seasonal activities in the area. The location of the event is in the area of town known as the Gubser neighborhood.

Section 2. APPLICABLE PROCEDURE - As the event is of a duration longer than 72 ours, a Class B variance is applicable. The Council may grant a Class B variance.

Section 3. GRANT OF VARIANCE - Council action on November 6, 1995 granted a variance for the event at the location stated and for the duration stated.

City Manager

Date

AN ORDINANCE

PROHIBITING NOISE AND PROVIDING FOR
VARIANCE; REPEALING ORDINANCE 90-190

The City of Keizer ordains as follows:

Section 1. PURPOSE. It is hereby found and declared
that:

A) The making and creation of excessive, unnecessary or
unusually loud noises within the limits of the City of Keizer
is a condition which has existed for some time and the extent
in volume of such noises is increasing;

B) The making, creation, or maintenance of such
excessive, unnecessary, unnatural, or unusually loud noises
which are prolonged, unusual and unnatural in their time, place
and use affect and are a detriment to public health, comfort,
convenience, safety, welfare, and prosperity of the residents
of the City of Keizer, and

C) The necessity in the public interest for provisions
and prohibitions hereinafter contained in This Ordinance, is
declared as a matter of legislative determination and public
policy, and it is further declared that the provisions and
prohibitions hereinafter contained are in pursuance of and for
the purpose of securing and promoting the public health,
comfort, convenience, safety, welfare, and prosperity and the
peace and quiet of the City of Keizer and its inhabitants.

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Section 2. DEFINITIONS. As used in this Ordinance:

A) "A-scale (dBA)" means the sound levels in decibels measured using the A-weighted network as specified in American National Standard Specification for Sound Level Meters (ANSI S 1.4-1971).

B) "Commercial" means any use of an office, service establishment, hotel, motel, retail store, park, amusement or recreation facility, or other use of the same general type, and rights-of-way appurtenant thereto, whether publicly or privately owned.

C) "Decibel (dB)" means a unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure. The reference pressure is 20 micropascals (20 micronewtons per square meter).

D) "Domestic power equipment" means power tools or equipment used for home or building repair, maintenance, alteration or other home manual arts projects, including but not limited to powered hand tools, lawn mowers, garden equipment and snow removal equipment.

E) "Frequency" means the time of repetition of a periodic phenomenon, measured in Hertz (H_z).

F) "Impulse sound" means a single pressure peak or single burst (multiple pressure peaks) for a duration of less than one second as measured on a peak unweighted sound level meter.

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2 G) "Industrial" means any use of a warehouse, factory,
3 mine, wholesale trade establishment, or other use of the same
4 general type, and rights-of-way appurtenant thereto, whether
5 publicly or privately owned.

6 H) "Motor vehicle" means any land vehicle which is
7 designed to be self-propelled.

8 I) "Noise sensitive" means any use of a church, temple,
9 synagogue, day care center, hospital, rest home, retirement
10 home, group care home, school, dwelling unit (single family
11 dwelling, duplex, triplex, multifamily dwelling, or mobile
12 home), or other use of the same general type, and rights-of-
13 way appurtenant thereto, whether publicly or privately owned.

14 J) "Octave band" means an interval in Hertz between two
15 frequencies having a ratio of two to one. For purposes of This
16 Ordinance, octave band sound pressure levels may be measured at
17 any of the following center frequencies: 31.5, 63, 125, 250,
18 500, 1000, 2000, 4000 and 8000 Hz.

19 K) "Plainly audible" means unambiguously communicated to
20 the listener. Plainly audible sounds include, but are not
21 limited to understandable musical rhythms, understandable spoken
22 words, and vocal sounds other than speech which are
23 distinguishable as raised or normal.

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L) "Sound level" in dBA means the weighted sound pressure level, measured by the use of an A-weighted sound level meter set at a fast meter response.

M) "Sound level meter" means a sound level measuring device, either Type 1 or Type 2, as defined by American National Standard Specification for Sound Level Meters (ANSI S1.4-1971).

N) "Sound pressure level" in dB is 20 times the logarithm to the base 10 of the ratio of the root-mean square of the pressure of a given sound to the reference pressure. The reference pressure is 20 micropascals (20 micronewtons per square meter).

Section 3. NOISE DISTURBANCE PROHIBITED. A) Generally. In addition to the specific prohibitions in subsection B) of this section and Section 4, it shall be unlawful for any person to knowingly create, assist in creating, permit, continue, or permit the continuance of any noise disturbance. A noise disturbance is any sound, including sound produced by animals, which annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of others, within the limits of the City.

B) Specific prohibitions. Unless exempted by Section 5, the following acts are declared to be noise disturbances within the meaning of § 3 A) provided, however, that this enumeration shall not be deemed to be exclusive:

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1) Dynamic braking devices. Using any dynamic braking device on any motor vehicle, except to avoid imminent danger to persons or property. A dynamic braking device is one used primarily on trucks and busses to convert a motor from an internal combustion engine to an air compressor for the purpose of vehicle braking without the use of wheel brakes.

2) Idling engines on motor vehicles. Operating for more than 15 consecutive minutes any idling engine in such a manner as to be plainly audible within any dwelling unit between 10:00 p.m. and 7:00 a.m.

3) Motor vehicle repair and testing. Repairing or testing any motor vehicle in such a manner as to be plainly audible within any dwelling unit between 10:00 p.m. and 7:00 a.m.

4) Lawn mowing equipment. Operating lawn mowing equipment with a combustion engine between 10:00 p.m. and 7:00 a.m.

Section 4. MAXIMUM PERMISSIBLE SOUND LEVELS. A) Except as specifically provided elsewhere in This Ordinance, no person shall cause or permit sound to be received on property used as specified herein if the sound exceeds the limits set forth in subsections B) and C). For purposes of this section, "day" hours are between 7:00 a.m. and 10:00 p.m., and "night" hours are between 10:00 p.m. and 7:00 a.m.

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B) Table of Maximum Permissible Sound Levels (in dBA).

Type of Source by Use	Type of Receiver by Use					
	Noise Sensitive		Commercial		Industrial	
	Day	Night	Day	Night	Day	Night
Noise Sensitive	55	45	60	55	65	60
Commercial	55	50	70	65	70	65
Industrial	55	50	70	65	Not Applicable.	

1) No sound received on a property shall exceed the established maximum permissible sound levels in the Table of Maximum Permissible Sound Levels by 10 dBA.

2) No sound received on a property shall exceed the established maximum permissible sound levels in the Table of Maximum Permissible Sound Levels by 5 dBA for a cumulative total of greater than one minute, but less than five minutes in any ten minute period.

3) No sound received on a property shall exceed the established maximum permissible sound levels in the Table of Maximum Permissible Sound Levels for a cumulative total of five minutes or more in any ten minute period.

C) Exceptions to the Table of Maximum Permissible Sound Levels.

1) Impulse sound. Notwithstanding any other sound levels in this section, no person shall operate or permit the operation of a noise source which emits an impulse sound which has a peak sound pressure level in excess of 100 dB in the day or 80 dB in the night.

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2) Sound producing, amplifying, or reproducing equipment.

During night hours, no person shall cause or permit sound produced by a musical instrument, radio, television, phonograph, loudspeaker, or other similar equipment to be plainly audible within any dwelling unit other than the source. This standard replaces the table in subsection B) of this section for night sounds only; day sounds shall be governed by that table.

3) Domestic power equipment. The day sound levels in the table in subsection B) of this section do not apply to sounds produced by domestic power equipment.

During night hours, no person shall operate domestic power equipment in such a manner as to be plainly audible within any dwelling unit other than the source.

4) Commercial construction. The day sound levels in the table in subsection B) of this section do not apply to sounds produced in commercial construction activity.

5) Off-highway vehicles. No person shall operate any self-propelling motor vehicle designed for or capable of travel on or over natural terrain, including but not limited to motorcycles, minibikes, motor scooters, dune buggies, and jeeps, off a public right-of-way in such a manner that the sound level generated thereby exceeds 60 dBA in the day or 55 dBA in the night as measured at or within the boundary of a noise sensitive receiver property.

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6) Auxiliary equipment on motor vehicles. No person shall cause, allow, permit, or fail to control the operation of any auxiliary equipment on a motor vehicle for more than 30 minutes when the sound level generated thereby exceeds 55 dBA in the day or 50 dBA in the night as measured at or within the boundary of noise sensitive property. Auxiliary equipment means a mechanical device which is built in or attached to a motor vehicle, including, but not limited to, refrigeration units, compressors, compactors, chippers, power lifts, mixers, pumps, and blowers.

D) Measurement of sound levels under this section shall be made at one of the following points, whichever is farther from the sound source:

1) 25 feet from that point on a receiver building nearest the sound source, or

2) That point on the receiver property line nearest the sound source.

Section 5. EXEMPTIONS. The following sounds are exempted from the provisions of this Ordinance:

A) Sounds made by work necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from imminent exposure to danger.

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2 B) Sounds made by warning devices to protect persons or
3 property from imminent exposure to danger, provided however that
4 burglar or fire alarms shall not operate continuously for more
5 than 15 minutes. Sounds made by the Keizer Fire District and
6 Marion County Fire District sirens during use and testing.

7 C) Sounds made by an emergency vehicle, as defined in
8 ORS 801.260, when responding to or from an emergency or when in
9 pursuit of an actual or suspected violator of the law.

10 D) Sounds made by current employment of land and
11 buildings on a farm for the purpose of obtaining a profit in
12 money by raising, harvesting, and selling crops or by the
13 feeding, breeding, management, and sale of livestock, poultry,
14 fur-bearing animals or honeybees, or the produce thereof, or
15 for dairying and the sale of dairy products or any other
16 agricultural or horticultural operations or any combination
17 thereof including the preparation and storage of the products
18 raised for man's use and animal use and disposal by marketing
19 or otherwise by a farmer on such farm.

20 E) Sounds made by activities by or on direction of the
21 City of Keizer in maintenance, construction, or repair of public
22 improvements in public rights-of-way or easements.

23 F) Sounds produced pursuant to a specific variance
24 granted by the Oregon Environmental Quality Commission, or under
25 Section 7 of this Ordinance.

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2 G) Sounds produced by the audience, participants and
3 sound amplifying equipment at athletic events on public property
4 and sponsored or sanctioned or otherwise approved by the City
5 or the Salem-Keizer School District 24J.

6 H) Sounds made by motor vehicle exhaust systems that
7 comply with the provisions of ORS 815.250, but this exemption
8 does not apply to violation of Section 3(B)(2) of this
9 Ordinance.

10 Section 6. ENFORCEMENT RESPONSIBILITY AND AUTHORITY.

11 This Ordinance shall be jointly enforced by the police
12 department and the City Manager's designee. Enforcement of this
13 Ordinance may include seizure of the sound producing instrument.

14 Section 7. VARIANCES. A) Generally. Any person who
15 owns, controls, or operates any sound source which does not
16 comply with a provision of this Ordinance may apply for:

17 1) A Class A Variance for an event or activity which does
18 not exceed 72 hours in duration; or

19 2) A Class B Variance for an event or activity or series
20 of related events, or activities which are 72 hours or more in
21 duration.

22 B) The City Manager or the City Manager's designee may
23 file application for a Class C variance for a community event
24 or activity of any duration which does not comply with a
25 provision of this Ordinance.

26 Section 8. VARIANCE APPLICATION. A) An applicant for
27 a variance shall submit in writing:

1) A reference to the provision from which the variance is sought;

2) The reason or reasons why the variance is necessary;

3) The physical characteristics of the involved sound;

4) The times when the involved sound will be emitted and the anticipated duration of the sound;

5) Where the sound will not be generated by a mobile source which moves beyond the boundaries of one block, a site plan sketch which shows the area of sound generation and designates whether the uses in the area within 400 feet of the source of the involved sound are commercial, industrial, or noise sensitive as defined in Section 2, or a combination thereof;

6) Any other supporting information which the City Manager or Council may reasonably require to allow consideration of the conditions set forth in Section 10.

B) The applicant for a Class A Variance shall submit the application to the City Manager's designee. The applicant for a Class B or Class C Variance shall submit the application to the City Recorder, who shall place the matter on the agenda for the forthcoming Council meeting.

Section 9. PUBLIC NOTIFICATION FOR CLASS B OR C VARIANCE.

The applicant for a Class B Variance or the City for a Class C Variance shall post notice along the nearest public road at the boundaries of the property containing the sound source so that the notice is visible from the public road, and publish notice

in a newspaper of general circulation in the city. Notice shall be posted on the property at least seven (7) days before the public hearing, and notice shall be published at least four (4) days before the public hearing. Notice under this section shall state the date the Council will consider the application, the nature and substance of the variance to be considered, and that recipients of the notification may file written comments on the application with the City Recorder before the Council meeting at which the application will be considered.

Section 10. VARIANCE REVIEW. The City Manager or the City Manager's designee or Council may grant a variance, after considering the written application for variance and any written comments submitted by persons specified in Section 9, when it appears that the following conditions exist:

1) There are unnecessary or unreasonable hardships or practical difficulties which can be most effectively relieved by granting the variance; and

2) That granting the application will not be unreasonably detrimental to the public welfare.

Section 11. VARIANCE DECISION. A) The City Manager or the City Manager's designee shall grant or deny a Class A Variance within 3 days of receipt of a complete variance application, excluding Saturdays, Sundays, and holidays.

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B) The Council shall grant or deny a Class B or Class C Variance within 30 days of receipt of the application, and may, on its own motion, hold a public hearing on the application before deciding to grant or deny the variance.

C) The City Manager or Council may impose such limitations, conditions, and safeguards as deemed appropriate, so that the spirit of This Ordinance will be observed, and the public safety and welfare secured. A violation of any such condition or limitation shall constitute a violation of this Ordinance.

D) A decision to grant or deny a variance shall be in writing and shall state the reasons for such decision. The Council or City Manager shall notify the applicant of the decision and shall make it available to any person who has submitted written comments on the application.

Section 12. REVIEW. The decision of the Council to grant or deny a variance is final. The City Manager shall file his or her written decision with the City Recorder, who shall place the matter on the agenda for the forthcoming Council meeting. The decision of the City Manager is final on the date of that Council meeting unless the Council, on its own motion, decides to reverse or modify the decision of the City Manager or to schedule a public hearing on the application. If a public hearing is held, the Council shall grant or deny the variance within 30 days after the hearing, and may impose conditions on the granting of the variances as set forth in Section 11.

Section 13. VIOLATIONS. Violation of any provision of this Ordinance is an infraction.

Section 14. REPEAL. Ordinance 90-190, Prohibiting Noise, enacted November 5, 1990, is repealed.

Section 15. EMERGENCY. This Ordinance being necessary for the immediate preservation of the public health, safety, and welfare, an emergency is declared to exist and this Ordinance shall take effect immediately upon its passage.

PASSED ON FIRST READING
PASSED this 1st day of November, 1993.

SIGNED this 4th day of November, 1993.

Mayor

City Recorder

824.114

14 - ORDINANCE NO. 93- 269

LIEN, HOBSON & JOHNSON

Attorneys at Law
4855 River Rd. N.
Keizer, Oregon 97303
(503) 390-1635

CITY COUNCIL MEETING: November 6, 1995

AGENDA ITEM NUMBER: 7a

TO: MAYOR KOHO AND CITY COUNCIL MEMBERS
FROM: DOTTY TRYK *Dotty*
CITY MANAGER
SUBJECT: SEPTEMBER PROGRESS REPORT ON COUNCIL 1995-97 GOALS

BACKGROUND:

In May, 1995, the Council adopted a staff workplan designed to track progress on the adopted goals for 1995 through 1997. This is the second progress report on the workplan. The activities cover the period from May through September 1995.

COUNCIL GOALS:

This report chronicles the progress made by staff on the Council's 1995-97 Goals.

RECOMMENDATION:

It is recommended that the report be approved by motion.

CITY OF KEIZER
1995-1997 COUNCIL GOALS
REPORT ON WORKPLAN
THROUGH SEPTEMBER 1995

- **Develop a long Term Financial Strategy by 1996 Including Approval of a New Tax Base**

A community task force will be appointed by the Council to review the City's long term financial projections in May 1995

Progress: A task force was appointed. They have been meeting since mid-August to develop a recommendation.

A strategic plan for the next 5 years will be developed and recommended to the Council by October 1995

Progress: The committee has been looking at appropriate levels of service over the next five years. Their recommendations will take the form of either a tax base or a multi-year levy along with recommendations for additional revenues.

The Budget Committee will meet, approve a Budget and recommend a levy in December

A new tax base, if appropriate, will be scheduled for a 1996 election

- **Acquire Land for a Park in Southeast Keizer According to the Parks Master Plan**

A Claggett Creek Corridor Study will be delivered to staff in May 1995 with any needed follow up work done in Summer 1995

Progress: A project was completed by two Willamette University students identifying wetland areas for Claggett Creek property in the southeast part of town.

Staff will work with the Neighborhood Association to identify appropriate properties by December 1995

Progress: Staff worked with SEKNA to identify available and appropriate properties in the neighborhood.

A mechanism for purchasing or otherwise acquiring land will be developed for selected properties by December 1995

Progress: A willing seller was identified and a price negotiated. 2.5 acres of property at Alder and Beebe was purchased for \$65,000.

Staff will work with the Neighborhood Association to develop a master plan for the park in the Spring of 1996

Progress: A survey was distributed throughout the neighborhood and delivered to the Parks Board as a first step in developing a master plan for the park.

- **Adopt and Implement Strategies for Developing the Chemawa Activity Center by December 1996, and Continue Redevelopment along the River/Cherry Corridor**

Chemawa Activity Center-

The Chemawa Activity Center Plan which is currently being developed will be adopted by September 1995

Progress: The draft plan was presented to Council June 19 for comment. The Planning Commission held a public hearing the plan on October 12. The hearing was continued until a special meeting on November 1 at which time it was closed and the Commission began its deliberation. The Commission hopes to finish its work on November 8. Council should receive the draft plan in December for hearing and adoption.

Staff will recommend a method for financing necessary infrastructure for Council review and action by December 1995

River/Cherry Corridor-

Zoning customized for River Road will be adopted by October 1995

Progress: The River Road Intermodal Study will be presented to the Council at a workshop September 11

RJR has been working over its last two meetings on the details of the River Road zoning proposals and will continue that work at its meeting November 29. The Planning Commission will begin its work in December. Specific proposals should be before the Council in January.

The Cherry Avenue Design Plan will be completed and adopted by October 1995

Progress: Work on this project stalled due to extensive attention to the River Road zoning issues. However, staff and the consulting team have brought the project back to the front burner. A draft plan is scheduled to be before R3B in January.

A strategy for Cherry Avenue including project priorities, timing and financing will be developed by December 1995

Financial planning and reserves will be built into the annual Urban Renewal Agency budgets in anticipation of construction of Cherry Avenue in 1998.

Progress: A reserve fund for the 1998 construction of the Cherry Avenue improvement was created starting with the FY '96 Urban Renewal Budget. Staff has held preliminary meetings with the SKATS staff to set the stage for an increase in the allotment of federal construction dollars from the current \$400,000 level if additional unanticipated funds are available.

- **Continue the City's Commitment to Community Policing**

The Community Policing Committee will develop goals to present to the Council by June 1995.

Progress: A two year work plan with a performance evaluation system was adopted by Council. The Community Policing District Committees are in the process of developing goals and objectives for 1995. These will be put to the community in a series of forums to be held in November and December.

In addition, a series of community oriented events have been sponsored by the Community Policing groups. These include a bike rodeo, safety fair and Spanish language driving class. Each of these events is tailored toward improving public safety and livability in Keizer.

There will be an ongoing active review of current and new ordinances to help facilitate Community Policing strategies

Progress: The Community Policing Committee reviewed and recommended to the Council adoption of a Curfew Ordinance and a Truancy Ordinance. Both of these are designed to protect community youth.

The Community Policing Committee will evaluate the current methods of law enforcement services by the Department and make recommendations to the Council for modifications to policies and procedures by the end of 1995

Progress: The results of the performance evaluation system will be used to identify needed modifications.

A traffic team will be in place by January 1996

Progress: The traffic team was initiated in October and will be fully staffed in January.

A Juvenile Justice Program, encompassing the School Resource Officers, a Juvenile Detective and a Narcotics and Gangs Investigator will be developed and operational by January 1996.

Progress: A narcotics detective has been assigned and is developing an enhanced Juvenile Justice Program.

- **Adopt a Transportation Plan Addressing Pedestrian, Bicycle, Traffic Circulation, and Safety Needs**

Staff will complete work on a Salem-Keizer Regional Transportation plan as required by State and Federal law by December 1995

Progress: The SKATS staff is nearing completion of the draft regional transportation plan.

Staff will seek grant funding for development of a Local Transportation Plan in Fall 1995

Progress: Approval to apply for a Transportation Growth Management (TGM) grant was given by the Council. Notice of Grant Awards will come in mid-November.

Staff will coordinate the creation of inventories of pedestrian and bicycle facilities in early 1996

Possible street extensions will be recommended as a part of the plan

A citizen oversight committee will be appointed to coordinate public input into the Local Transportation Plan

Formal adoption of the Local Plan will take place in December 1996

- **Complete Construction of a 1 to 1.5 Million Gallon Water Reservoir**

A financial reserve will be built for construction during fiscal year 1996

Progress: The fund currently has sufficient funding to begin design of the reservoir.

Reservoir design will begin in Fall 1995

Progress: Our contract engineer has begun the design of the project.

Construction will begin in Spring 1996 with completion in Summer 1996

CITY COUNCIL MEETING: November 6, 1995

AGENDA ITEM NUMBER: 9

WRITTEN COMMUNICATION

Attached is a letter received from William Wieber on Monday, October 30, 1995.

===

Oct.28/95

Dear Sir;

I am writing this letter in an attempt to request that the problem of Garden Ct./Greenwood area be put on the Council agenda. (Not the sewer but the land around it).

It has been about a year since I first appeared before the Council and very little has been done on this matter. I feel that by this time the staff could of come up with a damage report on the homes in this area. The council has done nothing about holding public meetings in order to find out what is going on in this area.

I tried to get this matter settled by getting F.E.M.A. in here. I checked this out with the state expert and with the regional office in Seattle as to various aspects of this program (both natural & Sewer flooding) both were eligible. This is a Federal Law and if we have a right to apply we should apply for the benefits (looking down the road this might help the city with the street problem here). The staff has chosen not to apply under this Federal Law.

I have shown the staff pictures of the flood waters flowing under the street. Television pictures also confirm this.

The citizens have taken legal action but, no matter how this turns out the City of Keizer is still going to be stuck with the area around this sewer pipe. Houses will be torn down in some instance because experts in this field have said so. They are not worth fixing.

As far as area support for your efforts, if a damage report would be presented to your citizens, and public tours were set up, I am sure that the people would agree that it is a city's responsibility to act. After all this has a long history in this country.

It is time that the Keizer City Council "Fish or cut bait". I wonder if the only way to get the City of Keizer to address this issue is to take legal action or to take civil disobedience type of action.

I attended a meeting about the odor problem and the treatment plant. Odor does not destroy homes like this. How come Garden Ct./Greenwood area does not get this type of meeting?

If you are waiting for the City of Salem to act, forget that. We have found that a damage like this one happened in West Salem. Despite this knowledge they still refuse to

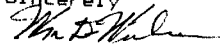
investigate their main sewer line.

Then there is the 42 inch high pressure water main near this damaged area. If this water main becomes involved you will see people and homes scattered all the way down to Albertsons from this area.

This is not all a local home owner problem. This is a import problem. The fact that all of Keizer is hooked up to this sewer line is why the City of Keizer should be involved in resolution of this problem.

There is just too much evidence showing on the surface, to say that all is well underground. The question is then at what point in time will Keizer take action? Avoidance is not a choice.

Sincerely



Wm D. Wieber

1404 Garden Ct.

KEIZER, Ct. 97303

November 2, 1995

Mr. William D. Wieber
1404 Garden Court
Keizer, Or. 97303



930 Chemawa Rd. N.E.
P.O. Box 21000
Keizer, Oregon 97307-1000

RE: Garden Court

Dear Mr. Wieber:

Regarding your letter of October 28, 1995 I have the following comments:

1. The City of Keizer Staff is definitely interested in the Garden Court problems. We began reviewing the existing data available last fall in order to fully understand the complaints by the residents.
2. Since most of the complaints have centered around underground water activity causing damage to existing homes we began a systematic approach to gathering data that would hopefully give us enough factual information to be able to formulate an opinion based on actual ground water measurements.
3. Ground water fluctuates with rainfall and we will need at least two winters of normal rainfall or greater to be able to formulate a position.
4. Flow in the City of Salem sanitary sewer line that runs under Garden Court also fluctuates somewhat with rainfall and our measurements will hopefully also allow us to make some determination of flow in the sewer line and its relationship to the surrounding ground water.
5. The City of Salem has recently made a detailed visual inspection of the Sewer Interceptor and we do not have their information yet.

It is not possible for us to make any meaningful conclusions at this time with the data we have currently collected. When we do have enough information to make a meaningful judgement call, we will make that information available to the City Council.

Yours truly,

William I. Peterson, P.E.
City Engineer

cc: Dotty Tryk
City Manager

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Administration
Public Works
Community Development
Municipal Court
Phone 503.390.3700
Fax 503.393.9437
Police (business only)
Phone 503.390.3713
Fax 503.390.8295
•

Incorporated 1982
Pride, Spirit, Volunteerism

**MINUTES
KEIZER CITY COUNCIL
WORK SESSION
SKAPAC JOINT ELECTED OFFICIALS MEETING
Thursday, October 12, 1995
Robert L. Simon Council Chambers
Keizer City Hall
Keizer, Oregon**

CALL TO ORDER

Mayor Koho called the work session to order at 5:45 p.m.
Roll call was taken as follows:

Present:

Dennis Koho, Mayor
Carl Beach, Councilor
Jim Keller, Councilor
Al Miller, Councilor
Bob Newton, Councilor
Jerry Watson, Councilor

Absent

Jerry McGee, Councilor

Salem City Council

Loren Collins
Ann Gavin Sample
George Puentes
David Glennie
Jacqueline Zimmer
Bill Burgess (arrived at 5:50 p.m.)

Polk County Commission

Ron Dodge

Marion County Commission

Mary Pearmine
Gary Heer

Staff

Dotty Tryk, City Manager
John Morgan, Community Development Director
Shannon Johnson, City Attorney
Tracy L. Davis, City Recorder

DISCUSSION

Willow Lake Treatment Plant Dual Interest Agreement

Mayor Koho briefly reviewed the progression of the SKAPAC negotiation process leading to tonight's joint elected officials meeting. Referring to map drawings, Mayor Koho's pointed out the disputed area proposed for removal from the SPA, and noted that it remained the only "stumbling block" to reaching final agreement.

Salem Councilor Loren Collins pointed out that the primary area of contention has been the area north of Lockhaven. However, the Salem City Council, in April, had also rejected its staff's recommendation to remove from the SPA the area south of Lockhaven. Councilor Collins recalled that subsequently when he met with Mayor Koho representing the Salem City Council he had indicated that if all other issues were resolved he would be prepared to return to Salem's Council and recommend approval of the original staff recommendation to remove the area south of Lockhaven from the SPA. Since all other issues were not resolved, there is still no agreement on the area south of Lockhaven. Councilor Collins noted that Salem's Council had not met to discuss the boundaries since he met with Mayor Koho.

Bill Healy, Community Development Director for the City of Salem, concurred with Mayor Koho and Councilor Collins' description of events leading to this meeting. He, however, wished to point out that the Keizer request originally involved revision to the dual-interest agreement between Marion County and the two cities, involving text changes as well as boundary changes. He noted that in staff to staff discussions, and discussions with both Councils, a point had been reached where there was substantial agreement with the text changes. He felt that even if the boundary issue was not amended, agreed to, or changed, the text had been significantly improved.

Mr. Healy felt that progress had been made by the successful efforts to "flush out" the text changes and narrow the policy issue before the decision makers to revolve around the policy of the boundary itself.

Mr. Healy noted that Salem's City Manager, its Public Works Director, and other staff were in the audience and available to answer questions.

Marion County Commissioner Mary Pearmine stated that she had discussed the meeting with both staff and the remaining commissioners. She had indicated to them her feeling that as far as Marion County was concerned the issue was one to be resolved between the two cities. But, that Marion County did reserve the right for there to be issues of concern, and of concurrent interest, citing as an example Marion County's concerns over some industrial properties within the City of Salem. Thus, Marion County could appreciate Salem's concern about wanting to be able to preserve that particular type of contract.

Commissioner Pearmine stated that both other Marion County Commissioners had understood her reasoning, but felt that she had forgotten a couple of things. For example, that Marion County does have jurisdictional interest because it is, in fact, the body for both the East Salem District and the Lake Labish District, who are rate payers within the system. Therefore, decisions that may cause liability upon those rate payers, or increase costs to those rate payers should be of interest to Marion County.--thus, Marion County should ask for more participation. Because of that the Commission instructed its staff to let Salem and Keizer's staffs know that Marion County did want to see if it could be a constructive compromise facilitator. Commissioner Pearmine noted that the Commission has been working on some different issues which may or may not be relevant later on tonight depending on what the two cities decide and how Marion County may agree to those decisions.

Commissioner Pearmine stated that she had been directed to be more proactive--less laissez-faire, waiting for the two cities to make a decision, and then deciding whether or not it was appropriate for Marion County to be participants. It was her feeling that it was important for her at this time to share the difference in how she saw her role since she last met with the other two entities.

Mayor Koho indicated appreciation for any additional participants who could help reach agreement.

Marion County Commissioner Gary Heer, in looking at the land in the SPA beyond the half-mile radius, felt that

obviously there must have been a reason why the radius wasn't used specifically to come up with a property line, but he wondered how the configuration came about.

Mayor Koho responded that Commissioner Heer was correct, that the SPA followed property lines. He indicated that he wasn't involved in the discussions at the time the SPA was established.

Councilor Bob Newton pointed out that the agreement predates the City of Keizer, almost. He noted that the SKAPAC process was instituted, not because of this issue, but for any other differences that the parties might have. It was intended as a tool for appropriate negotiations. As far as he could recall, it was property lines that dictated the boundaries that are outside the half-mile zone.

Commissioner Heer wondered what was the understanding of the property owners before the lines were drawn.

Mayor Koho had heard, possibly second and third hand, that the understanding amongst the property owners pretty clearly was that there was a half-mile radius. And then when a group of policy-makers got together, for whatever reasons, they chose to follow the property lines. Basically if the half-mile radius fell within the property, then the entire property was within the SPA. He did not know if the thinking was based on convenience, or some specific issue.

Mr. Blake, a major property owner adjacent to the area, commented that originally it was a half-mile circle. He indicated that a 1979 map shows a quarter-mile circle, and then the half-mile circle. The half-mile circle arched across one of his family's properties, and because it took about half of their orchard they were asked if they wished to be inside or outside. Because they wanted the EFU farm deferral, his dad said to go ahead and include the whole property. He explained that for a few years they operated on an arch basis, and then they quickly realized from the other land owners that they had an arch across their property and they got an EFU farm deferred inside the curved line, whereas outside it was not EFU, creating confusion. After a few years it came up that it would be a lot cleaner to follow the tax lot line.

Mr. Blake emphasized that when his family was approached and asked whether they wished to be inside or outside the line, there was no suggestion whatsoever that since the arch touched the property, all of the property would fall within the SPA. He noted that if that were the case, then all of the Chandler properties, since they are touched, would have been in, and also since the arch went across the McNary development, it would go all the way to the club house. He first heard, only about six months ago, terminology that "if the arch touches the property, all of the property is in." Summarizing, he stated that for a few years it was an arch, and then it went to the tax lot line.

Councilor Keller indicated his understanding that the City of Salem would like to see that properties stay within the boundary in order to limit the City of Salem's liability. Referring to the map, he pointed out properties that were built immediately up against the division line, but noted another area further north and seemingly no closer to the treatment plant where building was precluded. He could not understand why building was permitted in one area and not the other.

Councilor Keller also wondered if the City of Salem had received any threat or any filings from the residences on the south end.

Councilor Collins responded that after he met with Mayor Koho he went to Salem's legal department to see if there was anything that Keizer could give Salem that would satisfy Salem's legal department about releasing Salem from liability. The advice received was that there was not. It was Councilor Collins' understanding that the last study gave additional concern about removing any of the area.

Salem Councilor Bill Burgess was unsure whether Salem's liability might have increased as a result of the last study. The study had identified a problem with the plumes of influence that was not previously recognized, possibly making Salem liable for an area even greater than the half-mile radius. He noted that the half-mile radius was a first approximation, before this information was available.

Councilor Burgess asked Salem's city attorney, David DeMartino, if he felt Salem's liability was increased as a result of the study. It was Mr. DeMartino's recollection that it did give the City of Salem more exposure.

In response to the concern about liability, Councilor Watson noted that a City always operates with some degree of uncertainty, and some degree of liability. He wondered, given that conditions can be attached to deeds, and various other things can be done, why the degree of liability that might exist was so compelling that the two cities couldn't reach agreement, or at least had not been able to reach agreement until now.

Mayor Koho read from a letter to him from the City of Salem dated August 28, in which they relayed their legal department's opinion that an indemnification agreement between Keizer and Salem would be found unenforceable.

Councilor Watson felt that the paragraph quoted by Mayor Koho was speaking as to whether or not the two cities could reach an indemnification-type agreement, and that it did not respond to his question. He wondered why this particular liability was unacceptable, and yet in any number of transactions that the City of Salem would enter into, it would operate with some liability. Councilor Watson reiterated that many things might be done such as establishing conditions, providing notice to purchasers, etc. to reduce any potential liability.

Mr. DeMartino, informally responding to the liability question, pointed out that the legal department gave an opinion to the City Council; the Council weighed the issues, and also additional staff discussed the issues, and it was determined at that point in time that it was an unacceptable risk.

Commissioner Pearmine interjected that although the County is not responsible for this facility, they do have facilities relating to solid waste. She pointed out that the issue is that if you know that you are creating the potential of harm, you have to do everything you can do to mitigate the circumstances in order to create a case if you are challenged. She explained that at the County's solid waste facility in

Woodburn, whenever there is any sense of concern that there may be a potential of contamination, although no contamination has been shown, the County purchases the property. She noted that the County has created a buffer zone around that facility, minimizing the County's liability.

Councilor Watson reiterated that there is always some liability and suggested that there has to be some degree of balance in order for a city to operate. He acknowledged Mr. DeMartino's comment on what the City of Salem had concluded, but felt that this issue went beyond what they were looking at.

Salem Councilor Jacqueline Zimmer, in response to Councilor Watson's comments, suggested that for Salem to take on the potential liability the City would need to go to every single rate payer and say to them "we are setting ourselves up for a potential lawsuits in the future--would you mind paying for that lawsuit through increased rates should such lawsuits ever occur." She was sure the public would say "no."

In response to a question from Councilor Watson about circumstances in which Salem assumes risks, Councilor Zimmer felt that every time an issue that brings on an assumption of risk comes to the Salem Council, the Council backs off from it.

Councilor Collins noted that Commissioner Pearmine had earlier mentioned something about how under similar circumstances the County considers purchasing the property where there is potential risk. He had heard that there may have been tendered a suggestion by Marion County about a purchase arrangement. He indicated an interest in hearing about such a proposal.

Mayor Koho suggested that such a discussion be deferred until a little later.

Commissioner Pearmine explained that her earlier illustration was given as an example of a situation where it is known that a risk is being created. She pointed out that to be a responsible jurisdiction, everything possible must be done to minimize the risk. She noted that Salem and Keizer are

working with a contract, however, in Marion County's situation there was no contract and therefore they had to purchase the properties.

Councilor Collins felt that Salem was now in a similar situation, wherein the risk was known. He concurred that his Council faces numerous policy decisions where there may be a risk. However, in this situation the risk was known, creating a different judgment call.

Mayor Koho stated that he lives just a little over two miles from the plant. He noted that three or four years ago the odor from the plant was noticeable, and he received two to twenty complaint calls a week. However, since the study was done and action was taken he no longer could detect any odor and had received no phone calls.

Mayor Koho pointed out that even at the worst time when he was receiving the complaints, no one ever sued the City of Salem, and the chances of such an occurrence were not likely now with the improved conditions. He emphasized that in the unlikely event a suit were to occur, Keizer is willing to step up and say "we'll assume all the liability." In response to Salem's legal counsel's opinion that Salem might not prevail in a lawsuit against Keizer for failure to live up to the agreement, Mayor Koho emphasized that by making the agreement Keizer would be giving its word. He felt that speculation that the agreement might not be enforceable if action had to be taken represented a level of decision-making beyond what is necessary.

Salem Councilor Puentes pointed out that just as the odor situation had improved over the last two or three years, it could reverse at some future point. He pointed out that increasing capacity demands and other unknown circumstances could worsen the situation in the future. He felt that basing a decision on today's facts would be unwise in that the facts could change in the future.

Councilor Beach, having lived in the area for about 45 years, had never received complaints about the odor. Considering the history of the plant, he felt the liability issue had been blown out of perspective.

Councilor Collins, referring to Councilor Puentes observation that the odor problem could reverse, noted that at a water and sewer task force meeting earlier today efforts to clean up the Willamette River and the impact on the Willow Lake facility were discussed. The more effort spent to clean up the Willamette River results in harder and more intense work on the part of the Willow Lake facility, creating more potential for odor problems.

Councilor Miller called attention to a policy on page 5 of the Keizer Proposed Strategy, requiring that a disclosure statement be recorded against all properties within the Special Policy Area, and against all properties now or ever removed from the Special Policy Area, informing potential purchasers of property that there is a potential odor impact. He felt that the hold-harmless agreement would greatly limit the liability of both the City of Salem and the City of Keizer, and should alleviate a great deal of the City of Salem's concerns.

Councilor Watson agreed that the proposed recorded interest described by Councilor Miller would be beneficial. Additionally, he suggested adding as a condition that any property owner in the area outside the half-mile limit who wants his property to be free of the requirements post a bond indemnifying the city or both cities against liability, and have that as some additional security.

Councilor Bill Burgess was favorable to Councilor Watson's proposal, and indicated that Salem would take it back for Salem's legal staff to review. He pointed out that the legal staff had reviewed Keizer's Proposed Strategy policy referred to by Councilor Miller, and had felt that although it tended to give some protection, it was not enough. Councilor Burgess acknowledged that the "word" of Keizer's Council was unquestioned. He noted, however, that Council members change and a Council in the future might see the agreement as to costly a responsibility.

With regard to the decrease in the odor problem, Councilor Burgess pointed out that it was partly due to changes made since the study, but also partly due to weather and crop patterns. He felt that even without increasing capacity and river cleanup efforts, the odor problems were still within the

realm of possibility. He emphasized his reluctance to be put in a position of buying back peoples' homes.

Councilor Zimmer also liked Councilor Watson's suggestion for a property owner to post a bond. However, she pointed out that its not just the people who build housing who potentially will live in it. She wondered if it would be possible to keep every potential renter from filing some sort of suit, or to keep landlords from suing because of their inability to rent their property.

Councilor Newton pointed out that the two-year study on odor resulted in some major changes to the facility, to his understanding, dealing with the agriculture waste going into the system. He noted that there has been a marked improvement to the air quality in the City. He felt that the best solution was to address the source of the odor, and indicated that he would like to see that effort continue. He suggested that a method to store some of the waste water during the canning season, and let it enter the system without overloading the system might bring further improvement.

Councilor Zimmer noted that the facility is operating at capacity, and efforts are currently underway to implement some of the suggestions. She ask that Assistant Public Works Director Floyd Collins respond to issues about the facility.

Salem Assistant Public Works Director Collins explained that Salem has been working with cannery operators to require them to do additional pretreatment. He stated that it was staff's opinion that no matter what level of pretreatment is done at their specific sites, because of the magnitude of the discharge and the distance from their facilities to the plant, the potential for problems remains. Mr. Collins noted that Salem is now in the process of doing its master plan review for both the collection system and the treatment plant. One of the questions being asked is "Is there a better way to deal with it through the processing the waste, and perhaps not even bring it to the lake." He explained that if the answer is "yes," a big portion of the problem goes away. When the task force meets Keizer's representatives will be advised to take back to their Council a request to participate in discussions. He noted that if the plan comes about and a

facility is financed and constructed, Keizer will be called off-loading.

Commissioner Pearmine wondered what kind of process Keizer had gone through to make sure that its citizens are really willing to accept the financial burden of a lawsuit, protecting the rest of the payers in the treatment plant area.

Mayor Koho acknowledged that, of course, it had not been taken to a vote.

Commission Pearmine then asked if a public hearing had been held on the matter, or if there was any assurance from the citizens.

Mayor Koho answered that no public hearing on the matter had taken place--a willingness to accept Keizer's offer had not yet been demonstrated, thus there was no basis for that kind of process. He reiterated his belief that since no one had ever brought about suit even when the odor problem was at its worst, with the improved conditions a lawsuit seemed very remote.

Mayor Koho perceived that the discussion was not leading to some sort of agreement, and suggested looking at other alternatives. He believed there was a presumption that if Keizer was free to zone the area as it saw fit, the result would be fairly intensive housing development throughout the area. He stated that it was not necessarily true. He suggested that some of the area might become some park land. Also, that the two cities could discuss some sort of density limitation. He stressed that it would never be possible to eliminate the liability of the operation of the plant for any of the neighboring residents. He emphasized the need to find a way to get the exposure to liability to an acceptable level to the City of Salem, whether with Keizer's indemnification, or by whatever other means that could be agreed upon.

Commissioner Pearmine requested that copies be made of a memorandum dated October 10, 1995, from the Willow lake SWAT Team to the Board of Commissioners, and distributed to all the participants.

Commissioner Pearmine gave an update on the concept discussed in the memorandum. She noted that Marion County doesn't like to suggest adding EFU land into urban growth boundaries. She felt, however, that this might be a case where Marion County would consider working with Keizer at perhaps attempting to find some other places around the area. Whether it had to be 195 acres, she was unsure because it would still include some land within the sphere of influence, or whether it had to be one big block, or maybe small blocks cutting off some edges of urban growth boundary, allowing some development of a fairly similar size package in other areas away from the plant. In response to Marion County doing something like this, maybe the cities combined could pay market value for some of the more volatile land and create perhaps an AI zone. She suggested a park, with perhaps some hiking and running areas, etc. that would create a buffer and allow some use by people around there, but would keep it in a state where its not going to be developed. She indicated that she could appreciate staff's thinking that AI allows for some tax income towards the community. She also understood the political sensitivity of putting a fertilizer plant next to McNary. She was not sure that AI might not have some pretty caustic uses, maybe not any better or worse than the treatment plant itself. She felt that it might be necessary to do some overlay relating to that too.

Commissioner Pearmine confirmed that everyone had received a copy of the subject memorandum. She pointed out that some other concepts were also discussed, however, that was the one considered by staff.

Mayor Koho indicated that he would be looking closely at anybody's idea and trying very hard not to reject any idea. He was not sure that the proposed concept would not create more issues for himself, personally, than it would solve. He acknowledged that other members of the Council might react differently. The whole idea of paving over farm land was not attractive to Mayor Koho.

Mayor Koho also indicated that he would not like to set a precedent with the idea that every time the City starts to get full it can just push over some farm land.

Mayor Koho was asked if the Keizer City Council had discussed the suggested concept. Mayor Koho answered that they had not, he had found out about it only a couple hours ago and hadn't had a chance to discuss it with anyone, and hadn't even known if it would come up at this meeting.

With respect to the development of parks within Keizer, Salem Councilor Ann Gavin Sample asked if the suggestion to use some of the land for park development would fit into Keizer's scheme, and if it had been considered for this area.

Mayor Koho noted that 40 to 50% of Keizer's park land is currently undeveloped. If the City owned a large "chunk" of the land, it would not necessarily, today, have any money to do anything with it--perhaps in five or ten years it might. Mayor Koho felt the City might currently be "under-parked," but suggested that there is always room to think of parks regionally--perhaps another discussion that the two Councils should have at some time.

Councilor Burgess asked what might be the chance of the property owners in that area being amiable to making the area all park, something like Minto-Brown Island where there is agriculture and park coexisting.

Mayor Koho suspected that some of the property-owners in the audience might have more flexibility on what they could do with their property than not. He also suspected that there were some real money-making opportunities that would no longer be available to the property owners. He indicated, however, that they could be approached with such a plan.

Commissioner Pearmine was asked if there was any idea of the "price tag" when talking about the two cities or some group joining together to buy some of the land. Also, when expanding the urban growth boundaries, was the suggestion that some of that land be bought.

Commissioner Pearmine answered "no" to the second part of the question. She noted that the a change to the urban growth boundary would just change the potential of the land owners with respect to their properties. Commissioner Pearmine was unaware of what the staff may have discussed, but felt there was no intention of taking farm land that people

were continuing and intending to continue to farm in the present method. But, perhaps when they were considering using some incompatible options, like land development or industrial development, at that time. She noted that some of the properties are good size chunks and could be individual parcels by themselves, whether or not the entire area becomes a park.

Mayor Koho commented that perhaps some combination of solutions would work.

Commissioner Puentes noted that from around the table a list of alternatives were coming forward. He noted that the City of Salem was not prepared to say yes or no on any one given issue. He felt that his Council would like to see a list of alternatives allowing them to go back and make a more informed type of decision. He was unsure if any suggestion might be a definite no or yes, and felt that being able to look at alternatives would give a clearer picture. He pointed out the need to know more about the property; how many total acres, what type of development is being looked at, what type of liability is being assumed by Salem, and more information relative to the possibility of park lands.

Mayor Koho sensed that there was no desire among the participants to tonight shut down the process. He suggested that maybe some of the stakeholders should be involved in the process, and they might be asked "by the way, what were your plans, or what are some of your alternatives." He felt that maybe there would be a series of alternatives that everyone could agree would fit, and others that pretty clearly might not. It was Mayor Koho's feeling that the City was not inclined to merely stack up the property with dense housing.

Commissioner Pearmine asked if anyone knew the amount of acreage outside the circle, inside the zone. She noted that material she had indicated a total of 195 acres for all of the area within the SPA.

Community Development Director Morgan answered that the area represented approximately 40 acres.

Councilor Watson was pleased that the discussion seemed to be focusing on being creative. He agreed that discussions would benefit from putting a lot of ideas on the table. In addition to solving the problem with the land that lies outside the half-mile circle, he noted that there are benefits even if part of the solution is to allow ordinary development to occur, with some liability. He felt there might be some offsetting gains either in terms of reduced liability somewhere else, in the creation park land or industrial land, or if not a reduction in liability directly, there might be enough gains to the broader community to justify doing it.

Councilor Watson noted that in casual conversations with some County Commissioners there had been some discussion about what to do with Spongs Landing. He wondered about creation of some type of a true regional park that links up part of the area with Spongs Landing, but leaves a decent tax base by allowing some lower-density industrial in part of it, a continuance of agriculture in part of it, and maybe, with some protections, some residential development. He felt it might be of benefit to everyone if the County, City of Salem and City of Keizer were to participate in such a plan.

Councilor Miller felt that his suggested language requiring property owners to hold harmless the two cities was "sluffed off" by Salem's Council, saying that they were sure their legal counsel looked at it, etc. He commented that if, in fact, Salem's legal counsel did review the language, he would like for them to say specifically what their objection to the language as a solution is, as far as liability goes. He strongly felt that it would satisfy the liability to have something that ran with the land so that any purchasers would agree that they indemnify and hold harmless the jurisdictions.

It was Mayor Koho's understanding that the feeling was that it was not that it didn't have an impact, but that it didn't eliminate liability. He asked if his understanding was correct, that the indemnification might be part of the solution, but not the total solution.

Councilor Collins surmised that the indemnification could be done, but he wondered why since the two cities were making progress in looking at other alternatives. He assured

Keizer's Council that as Salem met to discuss the alternatives talked about they would revisit the legal advice, as well. He indicated that he would like to hear from some of the other Salem Councilors about what process they would like to take from this juncture. With the many ideas and alternatives now on the table, he felt it was important for his Council to discuss them among themselves.

Mayor Koho suggested that a couple members from each council, together with some of the property owners, meet to try to find some consensus and some series of solutions.

Councilor Gavin Sample indicated that for her personally, the issue of liability presents the most concern. She noted that Salem is a little sensitive right now in that it is involved in a lawsuit for \$12 million. She emphasized that she didn't want to knowingly walk into any situation where the City would be expositing itself to that risk. She indicated that she would like to know what kind of development potential the area has, what the landowners have planned to do with it, and from that draw some "what if's," and how the landowners needs can be supported, but at the same time be able to utilize that land in a way that will not create a conflict in the future.

Councilor Keller indicated his appreciation for the Salem City Council's willingness to listen. For clarification, he asked if his understanding was correct that Salem is willing to look at several approaches to reduce and limit the liability, and hopefully, there is a recognition from Salem's point of view that there is probably nothing that can be done to completely eliminate liability, but that it can be reduced to an acceptable level.

There was no disagreement.

Councilor Newton asked if he understood the issue correctly, that the line drawn around the plume represented an arbitrary line, but a reasonable line. He wondered if there was anything from the County's standpoint that if Keizer resurveyed the properties and divided the area outside the half-mile circle off, that it could not go ahead and be developed; and then the issue with regard to park lands, etc represented the area within the half-mile circle.

Mayor Koho clarified that the area outside the half-mile circle identified as being within the SPA is the issue, and the reason for this discussion.

Councilor Zimmer indicated that she did not wish to "rain on" any future negotiations for potential development of the area, but anticipated that unless there was some dramatic change, Salem would have some more comment in that regard. She pointed out that although there seemed to be optimism in exploring alternatives, she wished to be realistic about the possible results.

Mayor Koho commented that if Salem's response is an emphatic "no," then the whole aspect of the discussions will change. He hoped that negotiations would not get to that point; that it would be possible to find a way to get to some form of agreement.

Councilor Zimmer agreed, but pointed out that the issue of alternatives had come up in the past and had been taken back to staff, with still no resolution.

Mayor Koho felt that maybe some of the discussion needed to be kept at the Council level. He pointed out that in his professional life he found it sometimes helpful to go to staff and tell them "this is what we want to do--tell us how its going to work--how we can find a way for it to work." He noted that otherwise, in his experience, staff will say "no" until they are told "we want to do something."

Councilor Zimmer commented that it was still the issue of liability that presented the greatest problem.

Mayor Koho again emphasized that there was no way a city could be free from all liability.

Commission Pearmine indicated that she was getting a sense that Salem thinks that everybody is comfortable with working issues around just where the treatment plant is, and not some of the issues like Marion County suggested that maybe some of the development could be considered someplace else to take up for that. She was unclear where everyone stood in this regard.

Neither Mayor Koho nor Councilor Collins had the same interpretation as Commissioner Pearmine. Councilor Collins felt that the proposal was very much one of the issues that would be taken back for discussion.

Councilor Gavin Sample pointed out that she would hate to see the agricultural land surrounding Keizer "gobbled up" for housing development.

Mayor Koho pointed out that some of the property is not flat land; some being the exact kind not appropriate for farms, and maybe also not appropriate for very dense housing. He reiterated his desire to bring into discussion some of the people who own or plan on developing the property to get a clearer picture and avoid speculation.

Mayor Koho was asked where Keizer stood in relation to its need for industrial land. He answered that there was not a lot of industrial need, and even less industrial land. He noted that there were some opportunities at the Chemawa Road interchange, and another piece of industrial land at the Parkway. He explained that Keizer is a residential community. He indicated a desire to develop some industrial, but there was no great demand.

Councilor Beach asked if in discussions the extent of the agreement as far as its expiration had ever been resolved.

Mayor Koho answered that the agreement does not have a time-certain expiration. He noted that it indicates being effective until the study is completed and implemented. Implementation is difficult to pin down.

Mayor Koho suggested that each Council go back to their respective bodies and give thought to the ideas and suggestions and possibly come up with some more. He suggested picking a couple representatives from each group to meet with each other and the property owners to discuss the realm of possibility, and the willingness of the property owners to participate.

Mayor Koho agreed to have staff put together an inventory of the owners of parcels within the area.

Councilor Collins indicated that the Salem Council would discuss the suggestion to appoint two members to participate in discussions with Keizer's representatives and the property owners.

It was agreed that the two cities would be in contact by the end of the month.

ADJOURNMENT

The meeting was adjourned at 6:50 p.m.

Tracy L. Davis, City Recorder

**APPROVED:
MAYOR:**

Dennis Koho

COUNCIL MEMBERS:

Councilor #1 - Jerry Watson

Councilor #4 - Carl Beach

Councilor #2 - Bob Newton

Councilor #5 - Al Miller

Councilor #3 - Jim Keller

(absent)
Councilor #6 - Jerry McGee

Minutes approved:
