

M I N U T E S

KEIZER CITY COUNCIL

Monday, October 15, 1990

Robert L. Simon Council Chambers
Keizer City Hall

CALL TO ORDER Mayor Orcutt called the regular session to order at 7:31 p.m. Roll call was taken as follows:

Present: Andrew J. Orcutt, Mayor
Phil Bay, Councilor
Yvonne Fischer, Councilor
Mike Hart, Councilor
Bob Newton, Councilor
Bob Pritchard, Councilor
Joe Van Meter, Councilor

Staff: Don Otterman, City Manager
Chuck Stull, Police Chief
John Morgan, Comm. Dev. Director
John Lien, City Attorney
Shannon Johnson, City Attorney
Skip Wendolowski, Planner
Sue Darby, City Recorder

PUBLIC
TESTIMONY

Conditional
Use Case
90-8, Brady

Ruby Brady, 800 Cade Street NE, stated that she has a land use application before the Council for consideration tonight. The Council will be considering adoption of an order to grant the conditional use with certain conditions, one of which is that the existing mobile home must be removed from the subject property within 30 days of approval of placement of the new mobile home. Ms. Brady said that her daughter and son-in-law have divorced, and that her daughter with her two children will be living with Ms. Brady. Because of the amount of storage needed for the two families, Ms. Brady requested that the Council allow her to keep the old mobile home on the property for storage purposes. She indicated that the old mobile will be rendered uninhabitable. In addition, she explained that the mobile forms a part of a fence where she keeps her dogs. Without the mobile, she will need to install additional fencing, which she cannot afford.

Ms. Brady indicated that she has been unable to find anyone who is interested in removing the old mobile home. There is a possibility of having the Fire Department use it for a practice burn, however, Ms. Brady expressed concern with

Keizer Fire
Department
Tax Base
Request

possible damage to surrounding trees and shrubs. Ms. Brady also noted that the mobile cannot be removed in the usual manner, but must be pulled out from the rear. She asked the Council's consideration in allowing the mobile to remain until she is able to find someone who will take it off the property.

Greg Frank, Chief of the Keizer Rural Fire Protection District, stated that the Fire District is requesting an updated tax base from the voters on November 6, 1990. This, he explained, will primarily provide ambulance service in the Keizer area. Chief Frank stated that Keizer residents now must rely on the Salem ambulance for transport. This requires extended time periods during which lives may be jeopardized or lost. For example, on June 13 the Salem ambulance did not arrive for 12 minutes; on August 14, it took 14 minutes; and on September 11, 12 minutes. These were all cardiac cases where it is necessary to obtain acute care within the first 8 minutes. In fact, he noted, 60% of the response times in Keizer are longer than 8 minutes.

In addition to ambulance service, the new tax base will allow the Fire District to replace 19 year old fire engines, as well as provide an additional firefighter. This firefighter will provide public education programs, fire inspections, help to reduce the overtime of existing firefighters and conduct hydrant inspections. Funds are also needed to pay for the 913% increase in 911 emergency response service costs which have increased from \$8,000 to more than \$80,000.

Chief Frank noted that when the existing tax base was established in 1980, the Fire District responded to 621 alarms. In 1989, the District responded to 1,135 alarms. This time represents the personal sacrifice of the men and women of this community who serve as volunteer firefighters.

In closing, Chief Frank indicated that this community should be proud of its fire department and of its accomplishments over the years.

COMMITTEE
REPORTS

There were no committee reports to come before the City Council.

REGIONAL
PERIODIC
REVIEW

Mr. Otterman indicated that he would prefer to discuss the regional periodic review negotiations in Executive Session this evening. Responding to a question from Councilor Hart, Mr. Otterman stated that he would prefer not to discuss the details until there have been further negotiations with the other jurisdictions, but that he would summarize the status of the issues following Executive Session if the Council so desires.

BALLOT
MEASURE NO. 5
IMPACT

Mr. Otterman reviewed with the Council the effect of Ballot Measure No. 5 on the City if the measure passes on November 6. He stated that the City tax rate for 1990-91 has been calculated by Marion County as \$2.33. This, he said, includes a 6% increase as allowed by law, as well as an estimated 10% increase in the assessed value of the City. In determining the possible impact on the City, Mr. Otterman said it was necessary to make several assumptions, including approval of a new City tax base next year and that the level of services now provided will continue. Illustrating the impact on the overhead projector, he indicated that in Fiscal Year 1991-92, the City tax rate is estimated to decrease to \$2.25 per thousand dollars of assessed value. Added to that are the tax rates for Marion County of \$4.17 and the Fire District of \$2.02, assuming the District's tax base request is successful. Also added to these amounts are other "property" charges, including lighting districts of \$0.3444, water minimum charges of \$1.39, systems development charges of \$0.2067, and urban renewal of \$0.1204. Under Ballot Measure No. 5, the total tax rate for these entities can equal no more than \$10. Therefore, for 1991-92, all of the districts will need to cut back at least 5%, from \$10.50 to \$10.

Responding to a question from Mayor Orcutt, Mr. Otterman stated that taxing districts may levy different amounts in different districts, i.e., since Salem's tax rate is much higher than Keizer's, it will be necessary for Marion County to take a larger reduction in Salem. This means that Salem residents could pay as much as 30% less for county services than Keizer residents will pay.

Councilor Hart asked how the measure would affect the self-supporting Water Department. Mr. Otterman responded that because minimum water charges would be included in the tax rate, the

additional 5% will need to be made up through increased water consumption charges.

Councilor Newton indicated that with Keizer taking an immediate 5% reduction, new services will not be possible. If the City were to obtain voter approval for increased police service, for example, it may be necessary to reduce in other areas, such as park maintenance, to make up the difference.

Mr. Otterman commented on the Keizer Tomorrow Committee and its look at the future of the city in terms of services and funding. He explained that should this measure pass, and should Keizer request and receive, for example, a new tax base of \$4, that would push the tax rate up to \$12.50. This would mean that all taxing districts must reduce their income to meet the \$10 maximum. That would also mean an immediately 20% reduction in the new tax base to the City.

Conversely, this would also be true if, for example, Marion County requests a new tax base. Keizer would need to proportionately reduce its taxing income depending on the amount received by the county.

Councilor Hart commented that he has heard that if the measure passes, as many as 6,000 State employees could lose their jobs. This, he believed, would have an additional impact on the City in terms of residents would be unable to pay their taxes. Mr. Otterman added that passage of Measure 5 would also mean that property owners would pay fewer property tax dollars and, therefore, would have less tax write offs.

Measure 5 mandates that the State will make up the difference for the first five years to fund schools. Mr. Otterman has heard figures of 60% to 70% of the current State budget would then go to the schools. This would also impact the City with respect to cutbacks in State shared revenues as well as other State offered social service programs.

Councilor Hart asked about California's Proposition 13. Mr. Otterman responded that when Proposition 13 passed in 1978 the State of California had a surplus of funds which was adequate to bail out all local, county and school agencies for two years. About the time those surplus funds diminished, there was a rapid

increase in property values. Now, 10 to 12 years after Proposition 13 passed, the effects are being seen on local governments and schools. Many governments and special districts are on the verge of bankruptcy. Mr. Otterman noted that the State of Oregon is not in the financial position that California was at the time Proposition 13 took effect. Mr. Otterman also noted that in 1978, the country was toward the end of the democratic administration, and CETA and other programs were available so that governments could shift wages to these programs.

Councilor Van Meter moved for adoption of a resolution opposing Ballot Measure #5 (Alternative 1). Councilor Bay seconded the motion.

Responding to a question from Councilor Pritchard, Councilor Van Meter indicated that he chose Alternative 1 because the exact impact on the City is not yet known. Alternative 1 indicates that services will be eliminated or reduced without regard to the importance of those services in this community, whereas Alternative 2 indicates that existing services will be decreased. Councilor Newton added that it is yet unknown whether the Fire District's tax base request will pass. If it does not, then there may be a reduced effect on the City.

The motion was passed by the following vote:

AYES: Orcutt, Bay, Fischer, Hart, Newton, Van Meter (6)
NAYS: Pritchard (1)

NOISE
ORDINANCE

Mr. Otterman indicated that this item is coming before the Council in response to concerns from residents regarding excessive noise and the inability of the Police Department to cite the offenders. He stated that his former city had a "general" noise ordinance which did not require decibel readings. A question regarding enforcement of this ordinance involves whether the ordinance will stand up in court if a citation is challenged. Because there were no such challenges in his former city, Mr. Otterman was unable to comment on its constitutionality. However, he noted that 99% of such cases will not go to court. Once a violator is contacted by the police, the violator is usually cooperative.

Mr. Otterman said that the city has no authority

to cite offenders for noise violations because there is no ordinance prohibiting such noise. The police department has used the State's disorderly conduct statute, however, this requires the testimony of three people against the offender. In addition, the district attorney's office is hesitant to prosecute such cases because of their work load.

Mr. Otterman noted that the adoption of a noise ordinance was reviewed by the City in 1986. It was determined at that time that these situations should be referred to the Neighbor-to-Neighbor Mediation Service. However, if the offender is not a willing party, then the mediation service is ineffective.

Councilor Newton asked why a hand held noise meter would be inadequate, as stated in the staff report. Mr. Otterman explained that these meters will also pick up wind which can alter the actual reading. For this reason, hand held meters have been found to be unreliable especially when the decibel level is close to the permitted sound levels.

Responding to a question from Councilor Newton, Chief Stull stated that the police department responds to all calls for service, including noise complaints. Because there is no specific ordinance on the city's books regarding noise violations, the police cannot cite the offenders. Chief Stull stated that the district attorney hesitates to prosecute the cases unless there is a high probability of winning.

Councilor Pritchard suggested the possibility of prohibiting certain activities during certain times. Mr. Otterman indicated that this would work with a general ordinance, however, it would be necessary to specify the type of equipment, for example, which would be prohibited. This, he believed, could become too cumbersome to draft and to enforce.

Chief Stull stated that what may be objectionable noise to one person may not necessarily be objectionable to another. Therefore, the more specific the ordinance the better for enforcement purposes.

Councilor Bay indicated he would prefer a general ordinance over a specific one. This would leave it up to the judgment of the enforcing officer on

a case by case basis. In addition, this would represent little expense to the City rather than investing in expensive noise level meters.

Responding to a question from Councilor Hart, Chief Stull reported that the department receives many calls related to loud parties, music and vehicles. These are low priority for an officer's response. Although the department will respond, it may be immediately or several hours later, depending on other activity at the time. From a police standpoint, Chief Stull indicated that he would appreciate any specific criteria which would give tangible evidence to hold up in court.

In response to a question from Councilor Newton, Chief Stull noted that most noise problems will stop, in 90% of the cases, once the offender is contacted by the police. It's the other 10% that need additional enforcement and, specifically, when that noise is mixed with alcohol related incidents.

Asked about the sanctions, Mr. Lien stated that the city would be stuck in the position of accumulating fines if defendants fail to pay. He believed it may be possible to pursue a lien through the court system if this occurs.

Steve Talbot, 6785 Pierce Court N., distributed to the Council sample noise ordinances in use by other jurisdictions. As he understands the Council's discussion, the two basic concerns focus on enforcement and the cost to the City. With respect to enforcement, Mr. Talbot indicated that the property owner could file a complaint with the court and could, in fact, prosecute the case before the judge. This would put the city in a neutral position unless the city wishes to compromise. He stressed that the City of Keizer is free to go beyond the degree of protection of the State with respect to enforcement and conviction. He suggested that one complainant could produce a video or audio recording of the offense for evidence in court. The citizen, therefore, would bear the burden of proof in his case.

Mr. Talbot objected to an ordinance requiring specific decibel readings to determine offenses. He indicated there are subsonic bass tones which are low frequency but are nevertheless objectionable to many people. Mr. Talbot also

preferred not to designate certain times during which excessive noise would be prohibited. He urged the City Council to consider the model ordinances, asking that barking dogs also be considered as noise problems.

Marian Drake Rowell, 411 Cummings Lane N., complained about the Council having an ordinance to review when she was told by staff that there would not be an ordinance. In addition, she complained that the City Manager has failed to return her telephone calls.

Ms. Rowell suggested that an ad hoc noise advisory committee be formed to research viable ordinances from other jurisdictions and countries. She stated that the country, in general, is getting noisier all the time and that the City of Keizer can set an example in continuing its present position of being a very quiet community. Ms. Rowell believed that the City of Salem is one of the biggest noise makers with its power equipment. She asked that the City of Keizer not purchase the same power equipment that the City of Salem has purchased.

Ms. Rowell recommended that rather than being the first one to start up a lawn mower, that you wait until a neighbor starts his mower. She suggested that a property owner should just sit and watch the grass grow instead of creating noise to cut the grass down.

In addition to landscaping equipment, Ms. Rowell expressed concern with noise produced by loud boats on the Willamette River, low flying aircraft, and vehicles. She agreed with Mr. Talbot that noise can be excessive any time of the day or night. If the Council adopts specific noise prohibition times, she would prefer to see 8 p.m. to 8 a.m.

Michael Huber, 4958 Seagale Way N., indicated that while he has no objection to the neighbor who mows his lawn, he is concerned about loud music.

Howard Schlag, 894 Bever Drive NE, indicated that there is a man made race track behind his house. Various cars, 3-wheelers and motorcycles use this track for racing which prevents him from using his back porch because of the noise.

Ruby Brady, 800 Cade Street, agreed with Mr. Schlag, adding that the race track creates much dust.

Mayor Orcutt indicated that he feels a general ordinance, as recommended in former City Manager Payne's September 15, 1986 staff report (Option 2) would suffice at this point in time. Councilor Newton agreed, adding that quite a bit of staff and attorney time was put into this issue several years ago. If the general ordinance is found ineffective, then the Council can always look at the issue again. Councilor Bay also agreed, adding that criteria by which to convict the offender should be established. A general ordinance, he indicated, would also be better in terms of economics.

Councilor Van Meter asked about Mr. Talbot's suggestion for citizens to prosecute the offenders. Mr. Lien responded that there is an equivalent procedure for traffic offenses where a complainant files a complaint. Having the complainant prosecute the case would relieve the city from malicious prosecution charges.

Councilor Hart disagreed with this concept, stating that it would be the City's responsibility to prosecute the violation. Councilor Pritchard agreed.

Mr. Otterman noted that problems could arise if, for example, two ladies who live alone and recently complained to him about a neighbor, were to prosecute the offender in court. Because of the fear of reprisal, many cases may go unprosecuted.

Mr. Talbot stated that if a citizen files a complaint, the defendant could still hire an attorney in which case the city attorney would need to prosecute the citation.

ORDINANCE -
CONDITIONAL
USE CASE
90-8, BRADY

Councilor Bay stated that the City has done everything possible to be fair and reasonable in this case, however, he does not feel it is reasonable to allow the old mobile home to remain on the subject property for an extended period of time. He suggested that the Council may wish to extend the removal from 30 days to 60 days. Councilor Bay said that the Fire Department could burn the mobile in a training drill without damaging any nearby trees or shrubs.

Councilor Pritchard believed it would be reasonable to allow the mobile to remain as a storage building since auxiliary buildings are generally permitted. Mr. Johnson questioned whether the mobile home would qualify as an accessory building. There are certain conditions which must apply, including a limitation of 25% of the required rear yard area. It must also meet certain setback requirements. Mr. Morgan added that the mobile may not qualify as a "customary" accessory structure.

Councilor Hart stated that the Council has bent the rules to accommodate Ms. Brady. He recommended a limited number of days, i.e., 90 days, within which the old mobile must be removed. Mr. Johnson did not believe there would be a legal problem with this approach.

Ms. Brady noted that there are several other mobiles being used for storage in the area. She questioned why she would not be permitted the same use as the neighbors.

Mayor Orcutt moved for approval of an order in the matter of the application of Ruby Brady for a conditional use permit to change a non-conforming use by replacing an existing mobile home on a 0.20 acre parcel in a RM (Medium Density Residential) zone on property located at 800 Cade Street N.E., Keizer, Oregon (Case No. KCUP 90-8). Councilor Bay seconded the motion.

Councilor Bay questioned whether the motion included a 90 day period within which to remove the old mobile home. Mayor Orcutt indicated it did not.

Councilor Bay withdrew his second to the motion.

Councilor Van Meter seconded the motion.

Councilor Newton expressed concern that the applicant would return in 90 days and request an extension. Ms. Brady stated that she is trying to buy a little time. She paid \$6,000 for the mobile and just recently invested \$250 in electrical improvements. The only possibility in having it removed is if the Fire Department can burn it down. She stressed that she will conform to the Council's approval, whatever it may be.

Councilor Hart moved to amend the motion to allow a 90 day period within which the old mobile home

must be removed from the property, as opposed to the 30 day period provided in the proposed ordinance. Councilor Newton seconded the motion. The motion was passed by the following vote:

AYES: Bay, Fischer, Hart, Newton, Pritchard (5)
NAYS: Orcutt, Van Meter (2)

Following a brief recess, Mayor Orcutt noted that Councilor Bay was absent from the room.

ORDINANCE -
MANUFACTURED
HOME OVERLAY
ZONE

Councilor Van Meter moved for passage of an ordinance on second reading amending the Keizer Zoning Ordinance to adopt Chapter 41, Manufactured Home Overlay Zone; and declaring an emergency. Councilor Pritchard seconded the motion.

Councilor Bay returned to the meeting.

Responding to a question from Councilor Newton, Mr. Otterman stated that in addition to this ordinance, there will also need to be implementing ordinances along with a needs analysis. The Planning Commission will continue to work on a better method of implementing the ordinance. He noted that the Manufactured Housing Association has expressed concerns about the process.

Councilor Hart said that he opposed the ordinance because it requires that manufactured homes obtain a zone change approval when stick built homes do not.

The motion was passed by the following vote:

AYES: Orcutt, Bay, Fischer, Newton, Pritchard,
Van Meter (6)
NAYS: Hart (1)

LEAGUE OF
OREGON
CITIES
CONFERENCE

Following a brief discussion, the Council determine to appoint Councilor Van Meter as the voting delegate to the annual League of Oregon Cities Conference to be held in Portland on November 10-12, 1990. The Council also agreed to pay the registration for the successful Council candidates should they wish to attend the conference.

CONSENT
CALENDAR

The Consent Calendar consisted of the following items:

- October 1, 1990 Regular Session Minutes
- October 2, 1990 Special Session Minutes
- Resolution - Establishing fees for the cost of making records available

Councilor Bay moved for approval of the Consent Calendar. Councilor Fischer seconded the motion. The motion passed by the following vote:

AYES: Orcutt, Bay, Fischer, Hart, Pritchard (5)
 NAYS: None (0)
 ABSTAIN: Newton, Van Meter (2)

OTHER
 BUSINESS

Keizer
 Chamber
 Voting
 Representation

Mr. Otterman stated that he has suggested to the Chamber of Commerce that the City of Keizer have a voting representative on the Board of Directors. He explained that the School District has such a representative and he believes it would be appropriate for the City, especially since the City will be paying one of the higher membership fees. Mr. Otterman said that he has been attending the Board meetings, but as a non-voting member. Because of his day to day dealings with the Chamber, Mr. Otterman indicated it would be preferable for a City Council member to represent the City on this Board. Mayor Orcutt said he would talk with Ted Anagnos, president of the Chamber Board.

WRITTEN
 COMMUNICATIONS

There were no written communications to come before the Council.

AGENDA INPUT

Councilor Pritchard asked for an update on the McClure Street issue. Mr. Otterman explained that the Planning Commission will be discussing this second access, along with other issues, at its Wednesday evening meeting. He noted that the comprehensive plan now shows McClure Street as a collector.

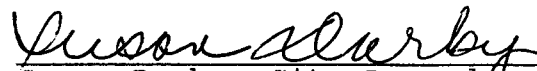
EXECUTIVE
 SESSION

The Council entered into Executive Session pursuant to the provisions of ORS 192.660(f) and 192.660(h).

ADJOURNMENT

Following the end of the Executive Session, the Council adjourned the regular session at approximately 10:25 p.m.

Respectfully submitted,


 Susan Darby, City Recorder

APPROVAL:


MAYOR

