

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, October 14, 1996

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. Council Liaison Reports
 - Planning Commission - Councilor Watson

5. PUBLIC HEARINGS

- a. Chemawa Activity Center Plan (continued from September 16, 1996)

6. ADMINISTRATIVE ACTION

- a. ORDINANCE - Amendments to Zoning Ordinance to Restrict Automotive Related Uses in River/Chemawa Road area
- b. RESOLUTION - Initiating a Comprehensive Plan Map Amendment/Zone Change/Conditional Use (Stadium Site)
- c. Baseball Stadium

7. CONSENT CALENDAR

- a. RESOLUTION - Initiate Third Avenue Street Lighting Local Improvement District
- b. RESOLUTION - Library Task Force
- c. RESOLUTION - Awarding of Bid for Construction of Water Reservoir

- d. Approval of September 3, 1996 Regular Session Minutes
- e. Approval of September 12, 1996 Special Session Minutes
- f. Approval of October 4, 1996 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.

- Mayor and Council Members
- City Manager and Department Heads

9. WRITTEN COMMUNICATIONS

To inform the Council of significant written communications and petitions.

- a. Letter of Resignation from Hearings Officer

10. EXECUTIVE SESSION

- a. Pursuant to ORS 192.660(1)(e) - Real Property Transactions

11. AGENDA INPUT

OCTOBER 21, 1996

6:30 P.M. Urban Renewal Agency Meeting

- Sign Grants
- River Road Redevelopment Board Appointment

7:00 P.M. City Council Meeting

- Sewer Reimbursement Agreement
- Comp Plan/Zone Change/Conditional Use - Stadium Site Public Hearing

OCTOBER 28, 1996

5:30 P.M. City Council Work Session

- Salem Sewer Master Plan

NOVEMBER 4, 1996

7:00 P.M. City Council Meeting

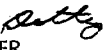
12. ADJOURN

Upon request, auxiliary aids and/or special services for those with disabilities will be provided. To request services, please contact us at 204-5700 or through Oregon Relay 1-800-735-2900 at least two working days (48 hours) in advance.

CITY COUNCIL MEETING: October 14, 1996

AGENDA ITEM NUMBER: 5a

TO: MAYOR AND CITY COUNCIL

THROUGH: DOTTY TRYK 
CITY MANAGER

FROM: JOHN N. MORGAN, AICP 
COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: CHEMAWA ACTIVITY CENTER PLAN -
CONTINUED PUBLIC HEARING

DISCUSSION:

This staff report presents a major change in direction for the approval process for the Chemawa Activity Center Plan.

Staff had intended to present to Council tonight its final analysis of testimony and the ordinances necessary to adopt the Plan and its component elements. However, the Oregon Department of Transportation has presented objections to the Plan that force a change in strategy.

Staff met with ODOT officials on February 20th to discuss the transportation strategy and to get ODOT's endorsement of the proposed requirements for development of traffic studies. The draft plan is based on traffic analysis being done when master plans are developed for each individual area. ODOT's position had been that a Traffic Impact Analysis to ODOT standards needs to be done before the Comprehensive Plan amendment is adopted. Staff reached an understanding with ODOT that it would be better to require the studies be done after the Comprehensive Plan amendment is adopted and before the individual master plans are prepared.

However, at the September 16th public hearing Richard McSwain of ODOT Region 2 submitted a letter (copy attached) indicating ODOT objects to the strategy. ODOT's position is that the Transportation Impact Analysis must be done prior to adoption of the Chemawa Activity Center Plan in accordance with the State Transportation Planning Rule (OAR 660-12-060). Staff discussed the situation several times with ODOT staff after the hearing and

submitted a letter emphasizing the City's position. On October 2nd Mr. McSwain submitted a new letter to staff (copy attached) stating that ODOT will agree to separate out the stadium site from the requirement to do a traffic impact analysis if such an analysis is done before the rest of the Chemawa Activity Center Plan is adopted.

ODOT's objections are serious enough that the Department will probably file an appeal if the City proceeds with adoption. Therefore, the Staff has developed a strategy to accommodate ODOT's objections while minimizing delays in approving the stadium site. This strategy has been discussed with ODOT staff who indicated concurrence. The strategy is:

- By motion, Council directs Staff to not include the stadium site in the Activity Center. (Note: The site is not in the Center now but is proposed for inclusion in the current Plan draft. Therefore it can be easily excluded.)
- Council continues the public hearing until December 16, 1996, at which time, hopefully, the hearing can be finished and the adoption process begun.
- Between now the first of December, Staff and ODOT work together to prepare the Traffic Impact Analysis of the entire Activity Center. It's results will be incorporated into appropriate proposed revisions to the Activity Center Draft. (ODOT has indicated their willingness to provide resources to assist with this work.)
- Council tonight adopts a resolution initiating a Comprehensive Plan/Zone Change/Conditional Use for the stadium site to designate it for public use. The matter is set for hearing before the Council on October 21.
- On October 21, Council approves the land use changes for the stadium site, subject to an event-traffic management plan being developed and approved by the City and ODOT prior to the issuance of a building permit.

This strategy will satisfy ODOT's objections, result in the traffic impact analysis being done now which simplifies later processes, and gets the stadium site appropriately zoned.

Both Community Development and Legal Staffs have prepared responses to testimony received at the August 16th public hearing. These are attached for the Council's consideration and use.

RECOMMENDATION:

It is recommended Council:

1. Reopen the public hearing, take testimony, and continue the hearing until December 16, 1996.
2. Direct Staff to work with ODOT to prepare a Traffic Impact Analysis of the entire Activity Center and incorporate its results into appropriate proposed revisions to the Activity Center Draft.
3. By motion, direct Staff to not include the stadium site in the Activity Center.
4. Adopt the resolution initiating a Comprehensive Plan/Zone Change/Conditional Use for the stadium site to designate it for public use and setting the matter for hearing before the Council on October 21, 1996.

September 16, 1996

Mr. John Morgan
Community Development Director
City of Keizer
P.O. Box 21000
Keizer, OR 97307

DEPARTMENT OF
TRANSPORTATION

REGION 2

FILE CODE:

SUBJECT: Chemawa Activity Center Plan

Dear Mr. Morgan:

Thank you for notifying and involving the Oregon Department of Transportation (ODOT) in the land use action identified above. The purpose of this letter is to inform you that ODOT has concerns about this land use action and its potential impacts to the area circulation system.

As you are aware, ODOT has been an active participant in the planning process for the Chemawa interchange area. We have expressed our concerns about future development of this area, and the city's proposed activity center both formally and informally on numerous occasions. It is obvious, given recent events, that the planning process for the interchange area is moving quickly toward conclusion. The purpose of this letter, therefore, is to provide the city with detailed comments on the proposed comprehensive plan amendment and zone change.

Transportation Planning Rule Compliance

ODOT has stated in the past that the city must comply with specific provisions of the Transportation Planning Rule (TPR - OAR 660-12) prior to the adoption of these proposed amendments. We have asked that the city prepare, or cause the preparation of, a transportation impact study to demonstrate that the amendment will not result in an adverse impact on the transportation system consistent with OAR 660-12-060. To date, such an analysis has not been completed. ODOT staff have reviewed and commented on transportation information prepared for the city (see ODOT correspondence dated February 15, 1996). Our conclusion at that time was that the information submitted was not sufficient to comply with the requirements of the TPR. To date, we have seen no additional detailed information.

The city has adopted an "Activity Center" overlay zone in the interchange area. That ordinance requires that master plans be prepared and approved by the city for each area or designated subarea in the planning area. Further, the ordinance requires that any use which generates more than 250 daily trips be accompanied by transportation impact analysis which includes a description of any necessary mitigation measures. We do not



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believe that this procedure meets the requirements of the TPR, and state for the record the following concerns:

- ODOT does not believe that individual subarea studies are appropriate in such situations because they have the general effect of not considering and/or understating the cumulative impacts of development of the entire area. It will, therefore, be difficult for the city to achieve the level of service standards discussed below.
- Processing of area and subarea master plans through a conditional use process may limit the ability of the city and/or ODOT to obtain necessary system improvements. Our experience has been that it is extremely difficult to require improvements beyond those required by code (such as off-site improvements) through a conditional use process.

The intent of the TPR is clear. The city must demonstrate that any proposed plan amendment will not have a significant adverse impact on area transportation facilities. The rule provides several options, including modifications to land use or traffic mitigation, to reduce the impacts of the plan amendments. It is our opinion that the city has not yet demonstrated compliance with the TPR.

Industrial Business Park Zoning Regulations

The city has proposed changes to the draft "Industrial Business Park" zoning district. These changes are generally directed toward limiting the development in the area and the placement of an athletic stadium and ancillary uses in the northwest quadrant of the interchange, north of Tepper Lane. The following comments are directed to, and the page numbers refer to, the proposed revisions dated September 16, 1996.

Page 5 - First Bullet

ODOT concurs that a master plan be prepared for the area north of Tepper Lane. Consistent with Section 46.03(b)(2) of the Activity Center Overlay zone, this master plan must be accompanied by a traffic impact study. ODOT requests that the study be submitted for our review and approval prior to the issuance of a building permit for any use authorized by the master plan given the potential for significant adverse impact to I-5 and the Chemawa Interchange.

Page 6 - Second Bullet

We agree that an event-traffic management plan be prepared for the area. However, we also recommend that such a plan be prepared regardless of the status of future circulation

improvements. Said plan should be prepared by the city including coordination with and approval by ODOT and the Oregon State Police.

Page 8 - Second Bullet

ODOT has been provided with a conceptual design for the proposed "interchange type structure" proposed to replace the intersection of Lockhaven and Radiant. In concept, we concur with the design. Because the proposed access points on Lockhaven for the interchange fall within an area of access control purchased by ODOT for the construction of the Chemawa Interchange, the city will be required to submit the final plans for the facility for review and approval and the issuance of appropriate permits prior to construction.

Page 9 - First Bullet

The level of service standards proposed are generally consistent with those contained in the 1991 Oregon Highway Plan for interstate facilities in metropolitan areas.

Page 9 - Second Bullet

ODOT strongly objects to the inclusion of this provision in any of the policy or regulatory documents for this area. It appears inconsistent with provisions mandating that certain levels of service be maintained on area roadways and results in the city abrogating its responsibility to ensure that projects do not adversely affect the transportation network. The practical effect of this language is to limit potential improvements to those already identified, without the benefit of detailed, project specific analyses. Should an area specific traffic impact analysis be completed which identifies improvements which are necessary to maintain level of service 'D', by the terms of this language, the city will not impose these improvements as conditions unless they were previously contained in this plan or the Regional Transportation System Plan. By including this language, the city is, in our view, making no commitment to maintaining any reasonable level of service on the transportation system. ODOT recommends, therefore, that this provision be deleted.

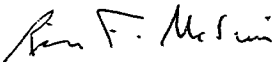
Summary

ODOT recognizes the importance of this project to the City of Keizer. We are willing, therefore, to work with you to allow the planning process to proceed in a timely fashion. We must be mindful, however, of our overriding obligation to assure the continued function of I-5 as the major surface transportation facility in the Willamette Valley. We look forward to continued coordination with the city as this project proceeds.

Mr. John Morgan
City of Keizer
9/16/96
Page 4

This letter should be included in the hearing record as ODOT testimony. ODOT should be considered a party to the hearing and be entitled to notices of future hearings, or hearing continuances or extensions. Please provide me with a copy of the city's decision, including findings and conditions.

Sincerely,



Richard F. McSwain
Region 2 Planning and Traffic Manager

RM:DLF

cc: Gary Johnson, Region 2
Erik Havig, Region 2
Rick Sjolander, District 3
Dave Bishop, Mid-Willamette Valley Area Manager
Eric Jacobson, DLCD
Lucinda Moyano/Kathy Lincoln, Department of Justice

September 30, 1996

Richard F. McSwain
Region 2 Planning and Traffic Manager
2960 State Street SE
Salem, OR 97310



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

Dear Rich:

I appreciate being able to meet with you and Dan Fricke Friday to discuss the details of your letter to the City Council concerning the Chemawa Activity Center Plan. I believe we reached an understanding on how to deal with ODOT's concerns, which we recognize are generally shared by the City. However, after further deliberation, I have changed my position on one point, as described below.

In our discussion we agreed that the policy on the City's responsibility to participate in transportation improvement projects was unclear, leading to your interpretation which was not consistent with the policy's intent. The City Attorney and I are working on a rewrite of the policy so that it is clear. We also will be making other minor adjustments you suggested.

Of greater concern is the first issue of your letter dealing with the need for a Traffic Impact Analysis now with the Plan's adoption. I stated that we believe it is inappropriate to do a TIA now, as we do not have the time and resources, and most especially, the data necessary to do such a study. In the draft Plan, we have written in regulations which require the development and approval of detailed master plans for the development area. These master plans must include a traffic analysis which shows the proposed specific land uses will not exceed a defined level of service standard. In addition, the Plan includes several proposed street improvements which must be in place concurrently with development so that these standards are not exceeded. Without knowing what the specific land uses will be, it is very difficult to create a TIA that has any credibility or worth.

Your issue revolved around the capability of the City to enforce these provisions. The current draft calls for the master plans to be adopted through a conditional use process. You expressed concern that a conditional use process does not have the "clout" to assure the traffic standards are met. We discussed the possibility of not changing the zone within each quadrant until such a change is approved with the master plan, as opposed to a conditional use process. I expressed concern that this would add delay and uncertainty to the approval process, which is contrary to the goal of creating a streamlined permitting process. We agreed to study the idea of considering zone changes through an administrative review process without a public hearing unless appealed, much as conditional uses are handled.

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Public Works
Community Development
Municipal Court
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Fax 503.393.9437
Police (business only)
Phone 503.390.3713
Fax 503.390.8295
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I have given this proposal a great deal of thought and have discussed it at length with the City Attorney. We have concluded that we are not in favor of moving to such a process. This letter will express why and suggest that you can be satisfied with the standards built into the conditional use process.

There are four distinct problems with the idea of administrative zone change approval:

- A major goal of this project, and of the entire ODOT/DLCD Transportation and Growth Management program, is to create streamlined processes leading to expedited land use approvals. A zone change, be it with a hearing or without, has a more involved process than a conditional use. It is contrary to the goal of expedited review.
- A significant factor in successful marketing of economic development oriented property is to provide serviced, appropriately zoned land so that the developer and end user have virtually no discretionary land uses processes to face. Keizer must compete with many other jurisdictions for these developments and our best position is to have land "ready to go."
- The land use debates have already been completed in this area. It is very important to recognize that a zone change examines the appropriateness of the use and that use's impacts, while a conditional use examines a use's impacts. We have already determined the appropriateness of the proposed uses in this area and find it a wasteful, redundant notion to require a developer to re-examine, re-justify, and re-argue those things that have been so thoroughly discussed over the last decade. We know what the appropriate uses are. We have the tools to carefully examine and manage their impacts. We should focus on those tools.
- There is no precedent for administrative zone change approval we have been able to identify. The very notion is contrary to the degree of public involvement we as a community have long associated with the zone change process. It is likely, due to the extreme degree of scrutiny this project has undergone, that each of the zone changes will be appealed leading to an uncertain approval process typically taking 90 to 120 days. This is not acceptable nor workable for the success of the project.

I hope you will be able to be satisfied with the conditional use process. Let me summarize its points for you.

A master plan for each area and subarea must be developed and approved through the conditional use process. This plan may be developed by the City, the property owners, or the developer.

The master plans must be shown to meet a large body of criteria and standards, which are part of the Chemawa Activity Center Plan, an element of the Keizer Comprehensive Plan. One of those standards which applies to the major development areas, is the Level of Service standard.

The Level of Service standard is an absolute. The Master Plan must include a traffic analysis element showing how the standard is to be met. If it cannot be met by street improvements up to and including those listed within the Plan (including the dual laning on the I-5 ramps) then other strategies must be employed. These may include traffic demand management strategies as well as limitations on the land uses themselves. The continued use of approved alternative strategies is enforceable by

September 30, 1996

the City over time. The Plan also states that the City is under no obligation to approve street improvements beyond those listed in the plan, thereby forcing the use of one of the alternative strategies, if necessary.

Clearly, the Plan states that the LOS standard is to be met, and if it cannot, the conditional use is to be denied.

The conditional use process used in Keizer's two Activity Centers (McNary and Chemawa) is a different breed than that commonly used in zoning administration. This conditional use process is based on very specific design standards that can be judged on clear, objective, black and white analysis. I strongly believe the process is more than strong enough to assure the traffic impact concerns of ODOT and the City of Keizer can be successfully addressed.

In summary, I am not prepared to recommend to the Council that the conditional use process be dropped in favor of a zone change process. I hope that you will understand and concur with this position. Please call me if you have any comments or questions.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line extending to the right.

John N. Morgan, AICP
Community Development Director

cc: City Council
Dotty Tryk, City Manager
Shannon Johnson, City Attorney
Gary Johnson, Region 2 Manager, ODOT
Dan Fricke, Regional Planner, ODOT
Mark Radabaugh, DLCD

October 2, 1996

Mr. John Morgan
Community Development Director
City of Keizer
P.O. Box 21000
Keizer, OR 97307

DEPARTMENT OF
TRANSPORTATION

REGION 2

SUBJECT: Chemawa Activity Center Plan

FILE CODE:

Dear Mr. Morgan:

Thank you for your letter of September 30 explaining the city's position regarding the subject project and summarizing the results of our September 27 meeting. ODOT remains concerned that the city is proceeding with a comprehensive plan amendment that may adversely affect area transportation facilities without fully evaluating its impacts as required by the Transportation Planning Rule..

We understand the importance of this project to the City of Keizer and that timing is critical in order to proceed with the baseball stadium. We do not believe, however, that it is appropriate to continue this process in a manner contrary to adopted administrative rules. In order for this immediate project to move ahead in a manner generally consistent with the discussions in our meeting, ODOT is willing to agree to the following:

- ODOT can agree to the adoption of the comprehensive plan amendment and necessary zoning only for the subarea of the activity center in which the baseball stadium is located. We believe the ball park will not have the peak hour traffic impacts that other already allowed uses in the area may have. We also expect that the impacts it does have can be dealt with adequately by the traffic study you will require prior to master plan approval, as well as the event traffic management plan discussed below, and the traffic impact study for the entire Activity Center.
- The comprehensive plan amendment and zone change for the remainder of the activity center will be deferred to such time as the provisions of OAR 660-12-060 are complied with.
- The city will complete a traffic study for the baseball stadium which includes all necessary mitigation measures to maintain appropriate levels of service on Chemawa Road, Lockhaven Drive, and I-5 prior to or concurrent with approval of the master plan for the subarea. All identified mitigation measures will be adopted as conditions of approval on the master plan. This is consistent with the understanding we reached at our September 27 meeting.



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*Mr. John Morgan
City of Keizer
10/2/96
Page 2*

- The city will develop an event traffic management plan for all activities at the stadium as soon as possible. This plan shall be reviewed by ODOT and the Oregon State Police and approved prior to the first event at the stadium.

ODOT is well aware of the importance of the baseball stadium to the City of Keizer. We are, therefore, willing to make these compromises in order for the project to proceed on schedule. We cannot, however, accept approval of the entire Chemawa Activity Center plan without compliance with the TPR. The intent of the TPR is to assure that land use decisions are made with an understanding and recognition of the transportation impacts of these decisions.

This letter should be included in the hearing record as ODOT testimony. ODOT should be considered a party to the hearing and be entitled to notices of future hearings, or hearing continuances or extensions. Please provide me with a copy of the city's decision, including findings and conclusions.

Sincerely,



Richard F. McSwain
Region 2 Planning and Traffic Manager

RM:

- c: Gary Johnson, Region 2
Erik Havig, Region 2
Rick Sjolander, District 3
Dave Bishop, Mid-Willamette Valley Area Manager
Eric Jacobson, DLCD
Lucinda Moyano/Kathy Lincoln, Department of Justice

CHEMAWA ACTIVITY CENTER PLAN - STAFF RESPONSE TO SEPTEMBER 16, 1996 TESTIMONY

Issue	Testifier	Summary	Response	Recommendation
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Tepper Lane	Planning Commission	Close Tepper before and after Stadium events	Concur	Adopt the Planning Commission's proposed language from their September 18 letter.
Tepper Lane	Gubser Neighborhood	Close Tepper before and after Stadium events	Concur	See above
Area C Housing Density	Mark Grenz for A.C. Avery	Change the design standard for housing in Area C which currently reads "designed for homeownership" to "designed for both ownership and non ownership" for an area 150 feet deep along the southern end of Area C. Mr. Avery does not believe housing designed for homeownership can be successful located adjacent to the Little League Field given the noise, light, and traffic impacts of the fields. Apartments will provide a good buffer use.	The Planning Commission spent a great deal of time discussing this very issue. The Commission recognizes there is a great opportunity to develop a mixed-use neighborhood in Area C and that it can be an area successfully providing alternative housing styles not now common in the market, but that are very desirable in a location such as this which is in immediate proximity to future major employers and multi-modal transportation corridors. But, the Commission was concerned about the area becoming a zone full of conventional apartment developments with attendant traffic and other problems. Plus, the opportunity to develop the alternative housing style would be lost. Therefore, the Commission's recommendation of housing at 6 to 10 dwelling units per acre designed for homeownership was crafted as a means to meet all needs while minimizing impacts. Staff believes this housing can be located adjacent to the Little League fields as is evidenced by other single family homes in the area. However, Mr. Avery's proposal may lead to more design flexibility in the 150 foot areas that may be more responsive to realities of the housing market. As long as the density standards are met, which will not allow any single area to exceed 10 dwelling units per acre, the requirement for homeownership design may not be critical adjacent to the Little League fields.	Change the policy to read: <i>...designed for homeownership, except in the area 150 feet north of the Little League Fields in which the housing can be designed for either the ownership or rental markets."</i>
Development Pattern	Wayne & Karen Trucke	No development should occur at interchange, as recommended	Mr. And Mrs. Trucke misunderstood George Crandal's recommendation which was to	No change

Issue	Testifier	by consultant	minimize the amount of commercial development, not to not develop the interchange area. The Chemawa Activity Center has been planned for urbanization since the first Salem Area Comprehensive Plan was adopted over 20 years ago. It presents a significant opportunity to the community to provide local jobs and to greatly increase the City's assessed valuation.	
Transportation Planning Rule Compliance	Richard McSwain, ODOT	A Transportation Impact Analysis must be prepared prior to the adoption of the Activity Center Plan in accordance with the Transportation Planning Rule.	See 9/16 letter from ODOT; 9/30 letter from John Morgan to ODOT; and 10/2 letter from ODOT. Staff believes ODOT will appeal the adoption of the Chemawa Activity Center Plan unless an ODOT standard Traffic Impact Analysis is prepared first. Staff recommends this work be done rather than fighting ODOT's position. However, ODOT is willing to not apply the TIA standards to the stadium site if the site can be separated from the balance of the Activity Center and if an event traffic management plan is prepared and approved by ODOT.	A multi-part strategy to respond to ODOT's concerns is proposed: - By motion, Council directs Staff to not include the stadium site in the Activity Center. (Note: The site is not in the Center now but is proposed for inclusion in the current Plan draft. Therefore it can be easily excluded.) - Council continues the public hearing until December 16, 1996, at which time, hopefully, the hearing can be finished and the adoption process begun. - Between now the first of December, Staff and ODOT work together to prepare the Traffic Impact Analysis of the entire Activity Center. It's results will be incorporated into appropriate proposed revisions to the Activity Center Draft. - Council on October 7 adopts a resolution initiating a Comprehensive Plan/Zone Change/Conditional Use for the stadium site to designate it for public use. The matter is set for hearing before the Council on October 21.

				On October 21, Council approves the land use changes for the stadium site, subject to an event-traffic management plan being developed and approved by the City and ODOT prior to the issuance of a building permit.	See recommendation above.
ODOT role in Master Plan for stadium site	Richard McSwain, ODOT	ODOT should review and approve the traffic study prepared for the land north of Tepper Lane.	Staff concurs with the intent of ODOT's comment, with two caveats. First, the ODOT consideration and approval should only apply to traffic issues having direct impacts on the interchange, not on internal or community circulation issues. Second, while comprehensive Traffic Impact Analysis are required for each of the other four areas, the distance of the land north of I-5 and the fact that the traffic to be generated from a stadium is generally off-peak leads staff to believe a comprehensive study is not needed. Rather, an event-traffic plan is sufficient to address traffic concerns.		
Event Traffic	Richard McSwain, ODOT	The event traffic plan should continue to be in force over time, even after the full Radiant improvements are made. The Plan should be reviewed and approved by ODOT and the Oregon State Police.	Staff concurs that a plan should be in place over time, as long as it is updated to meet changing conditions. ODOT and OSP concurrence is appropriate relative to the impacts on the interchange.	See recommendation above.	
Street Improvement Responsibilities	Richard McSwain, ODOT	ODOT objects to the proposed wording on Page 9 - Second Bullet as it says the City is making no commitment to maintain a reasonable level of service.	Staff met with the ODOT staff to discuss this concern. See the attached letter from John Morgan to Richard McSwain for a summary of the discussion. It was agreed that a rewording of the policy to clarify its intent would be appropriate.	Revise the Second Bullet on Page 9 to read: <i>Strategies to be used to meet the LOS standard include, but are not limited to:</i> - Limiting high-traffic generating uses; - utilizing flex hour schedules to avoid peak hour periods; - utilizing alternative modes of transportation; and - increasing street capacity.	

				Specific responsibility for providing transportation improvements will be determined by the financial program referred to in the financial Strategy section of this Design Plan. Should Master Plans be submitted prior to the adoption of a financial program, then appropriate reimbursement agreements should be provided that provide reimbursement to developers for those portions of the projects which rightly benefit the public as a whole as opposed to those using or benefiting from the specific development. In no even shall property owners be required to dedicate land, construct improvements, or pay for construction in a manner that is inconsistent with applicable law. Further, in no event shall be the Council be obligated to approve a change in the local transportation plan to allow a street improvement not included in such plan and proposed by a development interest as the means to achieve the LOS standard.
Procedure	Dorothy Cofield	Concerns were expressed about the procedure.	City Attorney Johnson addresses this issue in his memorandum	No change
IBP Zone	Dorothy Cofield	Corporate, Regional Headquarters were deleted as an allowed use.	The specific use is deleted, but it was replaced by the inclusion of language allowing all uses allowed in the CO (Commercial Office) zone. Staff made this revision to simplify the zone text and to be more inclusive of all office uses.	No change
IBP Zone	Dorothy Cofield	Service Stations were deleted from the IPB zone.	Staff removed the reference to service stations as their inclusion is contrary to the intent of the zone and circumvents the Council's direction to limit the major retail area to 11 acres. The CMI area will accommodate service stations.	No change
IBP Zone	Dorothy Cofield	There is a building cap of 10,000 square feet which does not respond to the realities of them marketplace.	Ms. Cofield misreads the IBP text. The 10,000 square foot cap refers to any single use, not building. Buildings may be up to 25,000 square feet, but the flexible space uses are	No change

			limited to 10,000 square feet each. This action is purposeful by the Planning Commission. The IBP is not intended to support large retail stores as are more appropriately located in the CM zone. The flexible space uses which are subject to the 10,000 square foot cap are retail stores intended to serve the surrounding industrial and office uses and employees, not a larger market. The cap keeps the stores at the appropriate scale. For example, most convenience stores which may fall into this category are generally less than 10,000 square feet in size.		
Commercial Zoning	Dorothy Cofield	The Plan draft does not provide adequate commercial land.	City Attorney Johnson's memorandum addresses this issue. However, Community Development Staff makes these comments: By creating and applying the MU zone, the City has substantially increased its commercial land availability. Approximately 50 acres of MU zoning is now in place at Inland Shores and Country Glen that were not included in the earlier inventories. Plus, this planning process will add approximately 50 additional acres of MU zoning in areas B and C, plus seven acres of CM zoning in area D, none of which was anticipated in the existing Comprehensive Plan. The existing Comprehensive Plan map shows a distinct area of commercial and a distinct area of industrial in the Chemawa Activity Center. No commercial activity is allowed in the existing industrial zones. With the proposed IBP zoning, a significant amount of commercial retail and commercial office development can occur in the industrial area, thereby adding to the commercial land inventory.	No change	

			Staff cannot accept the contention that 11 acres of vacant, serviced commercially zoned property at an Interstate 5 interchange which is a major entryway to the Salem/Keizer Urban Area and which directly serves approximately 125 acres of IBP zoned land has no market potential. The reasons for protecting the River Road and Cherry Avenue corridors from competition is not based on protecting the existing merchants, it is based on protecting the economic viability of these corridors so that much broader social, cultural, aesthetic, and economic goals are attained, and so that millions of dollars of public investment are not wasted. A major goal of this process is to end up with a relatively simple, expedited land use process. By allowing the final CM zone boundary to be set with the adoption of the master plan for the area, the developers have the most design flexibility and do not have to face a daunting and expensive Zone Change process. Leaving the line flexible is in the development interest's favor.	
CM Zoning	Dorothy Cofield	The CM zone should be specifically mapped.	No change	
Street Improvement Responsibilities	Dorothy Cofield	The Plan violates the Dolan "Rough Proportionality" Test. The plan does not specifically cite which improvements apply to this planning process.	Adopt revised language cited above in "Street Improvement Responsibilities" section discussing testimony from Richard McSwain.	Include in the Plan a list of the planned public facility improvements (copy attached) along with a map showing the locations of the improvements.
Level of Service Standards	Dorothy Cofield	The City may not restrict building permits based on traffic gen-	No change	

		eration.	offers the these additional comments. Building permits are not restricted. Building permits will be issued in accordance with an adopted master plan for the area. That plan must be based on the traffic impact analysis showing how the plan meets the LOS standards. Several strategies can be included in the Master Plan as the means to meet the LOS standard, including limiting the amount of high traffic generating uses. The resultant plan will be enforced as a quantitative standard just as setbacks and height restrictions are regulated.	
Master Plans	Dorothy Coffield	Master Plans are a development agreement which can not be applied to owners not party to the agreement.	See City Attorney Johnson's memorandum. Community Development Staff offers these additional comments. The Planning Commission had two choices in developing the specific design standards and traffic circulation patterns to be used in each of the Areas: Have the City develop those standards; or let the private sector develop those standards. The Commission wisely chose the latter as it is the most responsive to the marketplace. The master plan is not a development agreement. Rather, it is a refinement of the zoning process and carries the same power as other design standards within the zoning ordinance.	No change
Elements of the Plan	Rod Stubbs	The plan does not include inventories of existing land use types, building types, and vacant land types. It also does not include a traffic analysis.	The Chemawa Activity Center Plan is a refinement of the Keizer Comprehensive Plan, not a total revisit of that plan. As demonstrated above, the proposed revisions coupled with the development and application of the MU zone provide substantial commercial land within the City.	No change

			In addition, the "River Road Multi-Modal Opportunity Analysis" prepared by the Mid-Willamette Valley Council of Governments in 1995 shows that there is a substantial amount of un-utilized or underutilized commercial land in the River Road corridor. Detailed traffic analyses were prepared by Kittelson and Associates, Inc., and ATEP, Inc., both professional traffic engineering firms. These studies showed that the proposed land uses can generally be accommodated with the street improvements identified, and with a recognition that some type of "transportation demand management" program may be necessary to handle the highest traffic generating uses. The recommendations of these studies are incorporated into the Plan draft, and are reflected in the adopted Regional Transportation System Plan.	
Commercial Zoning	Rod Stubbs	The plan anticipates inadequate commercial land in terms of acreage and zoning restrictions.	As has been discussed above, and in prior staff and Planning Commission reports and actions, it is not in the Community's best interest nor is there any obligation to allow development at the interchange which will damage the overall character of the City, which is being so actively defined and built with the River Road Redevelopment program. Mr. Stubbs states that the Chemawa site will not be able to compete with other Salem area industrial and commercial sites to the extent that the necessary market share is captured so the site is fully developed. What Mr. Stubbs does not take into account is the distinct locational advantage of the Chemawa site which has immediate access to Interstate 5, unlike any of the competing sites in Salem, and is substantially more convenient to the Portland metro area and the	No change

CHEMAWA ACTIVITY CENTER PLAN - STAFF RESPONSE TO SEPTEMBER 16, 1996 TESTIMONY

Issue

Testifier

Summary

Response

Recommendation

			Portland International Airport. Given the fact that the residential market in Keizer has been virtually taken over by Portland developers and builders in the last 2 years, the influence of the Portland industrial and commercial marketplaces must be considered as major factors in assuring the Chemawa area's success due to its locational advantage.
--	--	--	--

In addition to the above changes, staff recommends the following changes based on continued evaluation of the details of the draft Chemawa Activity Center Plan.

CM Zone	Staff		The CM zone is not adopted yet. The Planning Commission is scheduled to hold a hearing on the new zone text in November with it coming before the Council in December for adoption. The CM zone is intended to replace the current CR zone with a blanket rezoning of all CR property to CM. Since this Plan will be adopted prior to the CM zone's adoption, the land to be zoned CM must be zoned CR in the interim, and then be changed automatically when the CM zone is adopted and mapped. The 1993 Plan is to be repealed with the adoption of this Plan. However, that document includes analysis and findings which helped form the foundation of this plan. They should be included by reference in a appendix of this Plan. With the many proposed revisions to the draft Plan, there is a possibility that they may not all be able to be put together and published as one document and totally fit together. Staff specifically asks the Council's approval of Staff making editing changes and correcting scrivener errors to assure the final document fits together and reads well without changing any substantive element.	Add a bullet point on page 8 that reads: <i>As of the date of adoption of this Plan, the CM zone has not been adopted as an element of the Keizer Zoning Ordinance. Therefore, the property will be zoned CR (Commercial Retail) in the interim and shall be changed to CM as other CR properties are changed with the adoption of the CM zone. All references to the CM zone in this plan shall incorporate the use of the CR zone in the interim.</i> Repeal the 1993 Chemawa Activity Center Plan but incorporate that Plan text, by reference, in the appendix of this Plan. Staff be given the authority to edit the document and its changes as the final plan is published to correct editing and scrivener errors without changing any substantive element. The final plan in draft form will be reviewed by the City Attorney to assure it meets the Council's intent in its adoption.
1993 Chemawa Activity Center Plan	Staff			
Editing and Scrivener Changes	Staff			
Executive	Staff		On Page 3 of the draft plan is found a matrix	Revise the matrix to accurately reflect final

October 7, 1996

CHEMAWA ACTIVITY CENTER PLAN - STAFF RESPONSE TO SEPTEMBER 16, 1996 TESTIMONY

Issue

Testifier

Summary

Response

Recommendation

Summary			summarizing the specific actions being taken in the Plan's adoption. That matrix needs to be revised to reflect the final Council decisions.	Council action.

PROJECT IMPROVEMENTS and COST

PROJECT ELEMENT	ESTIMATED COSTS
Street Construction	
Radiant Drive Realignment and Improvements	\$ 1,150,000.00
Radiant/Lockhaven Interchange	\$ 1,500,000.00
Tepper Lane Improvements	\$ 450,000.00
Lockhaven Drive 5-lane improvement through	\$ 360,000.00
McLeod w/revisions to Chemawa & Ridge intersections	
Interstate 5 off ramp improvements including signals	\$ 225,000.00
Ridge Drive Realignment	\$ 315,000.00
TOTAL STREETS	\$ 4,000,000.00
Storm Drainage	
Area A Trunk	\$ 849,420.00
Area B Trunk	\$ 483,890.00
TOTAL STORM DRAINAGE	\$ 1,333,310.00
Sanitary Sewer	
Trunk Line through Area A	\$ 1,392,710.00
TOTAL SEWER	\$ 1,392,710.00
Water System	
Distribution System - Area A	\$ 526,460.00
TOTAL WATER	\$ 526,460.00
Stadium Development	
Land Acquisition & Parking Lot Development	\$ 2,995,000.00
TOTAL STADIUM DEVELOPMENT	\$ 2,995,000.00
TOTAL INFRASTRUCTURE COSTS	\$ 10,247,480.00

**KEIZER CITY ATTORNEY
M E M O R A N D U M**

TO: MAYOR KOHO AND CITY COUNCIL

THROUGH: DOTTY TRYK *dottry*
CITY MANAGER

FROM: E. SHANNON JOHNSON
CITY ATTORNEY

SUBJECT: RESPONSE TO COFIELD LETTER DATED SEPTEMBER 16, 1996
(CHEMAWA ACTIVITY CENTER PLAN)

DATE: OCTOBER 2, 1996

This memorandum responds to issues raised by Dorothy S. Cofield, representing the NW Chemawa Property Owners Association. The following items follow Ms. Cofield's numbering system set forth in her September 16, 1996 letter to the Council.

I. Procedure.

Ms. Cofield notes that recommended changes were sent by her office on August 16, 1996. She is accurate when she states that there was no formal response to these recommended changes, though I did indicate to her by phone shortly before the September 3 council meeting that such letter was being added to the packet. I added that there was little in such letter that could be added to the plan as it appeared that the suggested changes did not meet with general intent of Council's direction to staff.

Though it would be preferable to have the IBP ordinance changes highlighted as suggested in Ms. Cofield's letter, limited time and resources prevented that from being done. Staff will attempt in the future to highlight such changes.

II. IBP Zone Ordinance.

The changes made to the IBP ordinance were either directed by the City Council, or recommended by the Planning Commission. Staff notes that the basic IBP zone text was based on Salem's IBC zone which has worked successfully in the Hawthorne area as well as Fairview.

A. Specific Revisions.

1. The deletion of corporate, regional headquarters is a drafting correction. Corporate, regional headquarters are still allowed in the CO zone. All CO uses are allowed in the IBP, therefore corporate and regional headquarters are allowed uses.

2. The deletion of service stations was recommended by the Planning Commission. Whether service stations should be an allowed use in the IBP zone is a policy question for the City Council.

3. To the extent Ms. Cofield's concern in this item is regarding the single building cap of 10,000 square feet, there may be a misinterpretation. The cap of 10,000 feet applies to the use, not the building.

4. The addition of stadiums and ice rinks as an allowable flexible use in the IBP zone would appear appropriate as complementary uses to light industrial. Though not supported by specific traffic study, the Community Development Director's report is based on his knowledge of traffic patterns. There has been no countervailing evidence with regard to the traffic impacts of such uses. Indeed, the preliminary information from Oregon Department of Transportation indicates that they agree that transportation impacts from the stadium would be at off-peak hours.

III. The Chemawa Activity Plan - Part II.

A. Lack of Adequate Buildable Commercial Inventory.

Ms. Cofield's letter confuses inventory projections with policy decisions with regard to relatively small acreage amounts. The 11 acres of commercial land is misleading because of the hotel uses, complementary retail, outright allowed office uses, and the provision for highway oriented commercial uses in Area D. The Comprehensive Plan (Page 50) provides that the land use designations and zoning designations in the Activity Center are generalized and will be refined during the development of design plans. Area A in particular was always considered, both at the adoption of the Comprehensive Plan, as well as now with the adoption of the proposed design plan, to include a mix of light industrial, commercial uses and an employment area service center. The exact mix of those uses was left to be decided via this procedure. There are no provisions in the Keizer Comprehensive Plan that prevent the Council from adjusting these uses as has been done.

There is a reference in the letter to the fact that a 11-acre commercial zone essentially adds no commercial inventory because it is too small to attract significant retail investment. It would appear unlikely that the commercial development in Area A will not develop as it is the last undeveloped urban interchange along I-5.

The letter criticizes the City's rationale that Cherry Avenue and River Road commercial areas must be protected. Policies within the Comprehensive Plan show that such areas need to be encouraged. There are no constitutional restraints in this regard.

With regard to whether the 11-acre commercial site should be specifically laid out on the plan map, staff concedes that it is unusual to leave the specific location undecided at this time. However, there is no way to tell what a developer would like to do with that property. As long as a specific acreage is specified, it is appropriate in this instance to allow the developer at the time of the submittal of the master plan to indicate their desire. It is much simpler to proceed in that manner than to arbitrarily mark off 11 acres and then have a developer go through the much more lengthy and difficult Comprehensive Plan amendment procedure if the shape did not work for a particular proposal.

B. Transportation Revisions Violate the Dolan "Rough Proportionality" Test.

To the degree the proposed language regarding transportation improvements could be interpreted as violating constitutional protections set forth in the *Dolan v. City of Tigard* case, that interpretation is incorrect. This language has been revised. However, the design plan has made clear that the uses need to be carefully evaluated at the time of the master plan submittal. This careful analysis is designed to prevent uses that overall cause traffic congestion to the degree that Lockhaven Drive is required to be widened to five lanes beyond McLeod Lane. A combination of other strategies also need to be developed.

A developer will be able to develop the project without paying for transportation impacts not created by the proposal. However, the developer will have to make a proposal which is appropriate with regard to the traffic generation such proposal would cause, along with strategies to address such traffic generation.

III. Legality of Restricting Development Due to Traffic Service Levels.

Contrary to Ms. Cofield's letter, the draft language in the design plan does not create a "de facto moratorium" in the Activity Center. The uses allowed under the proposed plan can be constructed, however, if the proposed uses overall cause traffic generation beyond a level that can be mitigated reasonably, then adjustments will need to be made. While it is true that the level of service standard may prevent developers from putting together a proposal exactly the way they would like, all the land can be developed with a mixture of high-generation/low-generation traffic impacts, along with appropriate strategies for meeting the transportation demands. This does not constitute a moratorium.

IV. Master Plan Provisions Violate ORS 94.504.

The concern from the property owners in this regard is that master plans for entire areas or subareas must be developed even if such areas are owned by several people. The master plan would be binding on a subsequent builder or developer. The letter indicates that such a procedure would allow the City and the one party developing the master plan to regulate private property that is not owned by the proposing developer or the City, all in violation of ORS 94.504.

ORS 94.504 discusses development agreements between cities or counties and "any person having an interest in real property". (As an aside, there is some implication that ORS 94.504 is meant to apply for situations where the subject property is outside a city limit or urban growth boundary and the agreement calls for eventual annexation. This obviously is not the situation here.) The interpretation that the City's master plan is effect a development agreement is one that I do not agree with.

Mayor Koho and City Council

Page 4

October 2, 1996

The process of a master plan that includes property of a party other than the applicant is unusual. However, the hope is that a developer will come forth to make a detailed proposal for the entire property in the area or subarea subject to the master plan. Such developer would have options or agreements with the property owners or possibly even purchase the property in advance on speculation. Of course there is no requirement that a developer submit the master plan and it is possible that the City working closely in conjunction with all property owners will assist in producing a master plan.

I hope that this memorandum helps clear up some of the issues raised by Ms. Cofield's letter. Should you have any questions in this regard, please do not hesitate to contact me. Thank you.

ESJ/tmh

CITY COUNCIL MEETING: October 14, 1996

AGENDA ITEM NUMBER: 6a

TO: MAYOR KOHO AND COUNCIL MEMBERS

THROUGH: DOTTY TRYK, *Dotty*
CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

SUBJECT: *ORDINANCE RESTRICTING AUTOMOBILE-RELATED USES IN THE RIVER ROAD AND CHEMAWA ROAD AREA*

DATE: October 2, 1996

At the last Council meeting, the Council directed our office to prepare an Ordinance readopting the restrictions on automobile-related uses in the River Road and Chemawa Road area. Such Ordinance is attached.

Please let me know if you have any questions in this regard. Thank you.

ESJ/tmh
attachment

1 BILL NO. ____

A BILL

ORDINANCE NO.

96-____

2
3 FOR

4 AN ORDINANCE

5 AMENDING THE KEIZER ZONING ORDINANCE TO
6 RESTRICT AUTOMOBILE-RELATED USES IN THE RIVER
7 ROAD AND CHEMAWA ROAD AREA; AND DECLARING AN
8 EMERGENCY (AMENDING ORDINANCE NO. 87-078)

9 WHEREAS, the Keizer Planning Commission recommended to the Keizer City
10 Council an amendment to the Keizer Zoning Ordinance (Ordinance No. 87-078) to
11 limit land uses in a certain area in the general vicinity of the intersection of River
12 Road and Chemawa Road and the City Council adopted an Ordinance to that effect
13 on August 21, 1995 (Ordinance No. 95-333); and

14 WHEREAS, such Ordinance contained a sunset date of February 1, 1996; and

15 WHEREAS, such sunset date was extended to July 1, 1996 by Ordinance No.
16 96-344; and

17 WHEREAS, the Keizer Planning Commission and Keizer City Council has
18 considered the matter and decided that such restrictions are still appropriate pending
19 completion of the new Keizer Development Ordinance; and

20 WHEREAS, the City Council has held a hearing on this matter and considered
21 the testimony given and the recommendation of the Keizer Planning Commission;
22 and

23 WHEREAS, Keizer City Council has determined that restricting the uses
24 allowed in the River Road/Chemawa Road area is appropriate and necessary to
25 preserve the options for continued urban renewal in such area; and

26 WHEREAS, the Keizer City Council has determined that such amendment
27 meets the criteria set forth in state law, the Keizer Comprehensive Plan, and the

1 Keizer Zoning Ordinance; NOW, THEREFORE,

2 The City of Keizer ordains as follows:

3 Section 1. FINDINGS. The City of Keizer adopts the Findings set forth
4 in Exhibit "A" attached hereto and by this reference incorporated herein.

5 Section 2. AMENDMENT TO THE KEIZER ORDINANCE. The Keizer
6 Ordinance (Ordinance No. 87-078) is hereby amended by the adoption of the
7 changes to Keizer Zoning Ordinance Chapter 28 (Commercial Retail) as set forth in
8 Exhibit "B" attached hereto, and by this reference incorporated herein.

9 Section 3. SEVERABILITY. If any section, subsection, sentence, clause,
10 phrase, or portion of this ordinance is for any reason held invalid, unconstitutional,
11 or is denied acknowledgment by any court or board of competent jurisdiction,
12 including, but not limited to the Land Conservation and Development Commission
13 and the Department of Land Conservation and Development, then such portion shall
14 be deemed a separate, distinct, and independent provision and such holdings shall
15 not affect the validity of the remaining portions hereof.

16 Section 4. EMERGENCY. This Ordinance being necessary for the immediate
17 preservation of the public health, safety, and welfare, an emergency is declared to
18 exist and this Ordinance shall take effect immediately upon its passage.

19 Section 5. SUNSET CLAUSE. This Ordinance is repealed on July 1, 1997.

20 PASSED this ____ day of _____, 1996.

21 SIGNED this ____ day of _____, 1996.

22
23

Mayor

24
25
26

City Recorder

3245COK2.012

EXHIBIT "A"

Findings Regarding the Adoption of Amendments to the Keizer Zoning Ordinance Chapter 28 - Commercial Retail

[See criteria set forth at Keizer Zoning Ordinance (KZO) 4.15]

The City of Keizer finds that:

1. These amendments to the Commercial Retail zone comply with statewide land use goals and related administrative rules as follows [KZO 4.15(a)]:

GOAL 1: CITIZEN INVOLVEMENT

A Public Hearings was conducted on this matter with the review and adoption proceedings consistent with local land use regulations. The hearing was preceded by numerous public meetings dealing with design and land use issues in the vicinity of River and Chemawa Roads that have resulted in draft planning documents calling for a pedestrian-oriented rather than an automobile oriented environment; and one that minimizes the amount of land dedicated to automobile use. The Planning Commission initiated this amendment and recommended its approval to the Council. The River Road Redevelopment Board endorsed the amendment and also recommended its approval to the Council.

GOAL 2: LAND USE PLANNING

The ordinance amends the Keizer Zoning Ordinance. The adoption proceeding was conducted in a manner consistent with the requirements of the Keizer Comprehensive Plan, Keizer Zoning Ordinance, and applicable state law.

GOAL 3: AGRICULTURE LAND

These amendments do not affect agricultural operations.

GOAL 4: FOREST LANDS

These amendments do not affect forest lands.

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES

These amendments do not affect historic areas or natural resources. They will enhance the capability to create future open spaces and scenic areas in a pedestrian oriented commercial environment.

GOAL 6: AIR, WATER, AND LAND RESOURCES QUALITY

These amendments will not affect air, water, and land resources quality.

GOAL 7: AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS

These amendments will not affect any areas subject to natural disasters and hazards.

GOAL 8: RECREATIONAL NEEDS

These amendments do not impact recreational needs.

GOAL 9: ECONOMIC DEVELOPMENT

These amendments are the direct result of the City's strategy, embodied in the River Road Urban Renewal Plan, the River Road Design Plan, and the draft River and Chemawa Center Specific Plan, to create a thriving economic center based on eliminating the negative design elements characteristic of strip commercial areas. The uniqueness of a shopping area based on attracting pedestrian traffic and not catering to automobile oriented uses is anticipated to encourage economic development.

GOAL 10: HOUSING

These amendments do not affect housing.

GOAL 11: PUBLIC FACILITIES AND SERVICES

These amendments do not affect public facilities and services.

GOAL 12: TRANSPORTATION

These amendments directly implement the intent of Goal 12 as defined in the State Transportation Planning Rule, which call for ordinances, standards, and public programs to reduce reliance on automobile use and encourage pedestrian and other forms of alternative transportation. Eliminating new automotive related uses from this immediate area, and the associated driveways and parking, will help encourage and create a shopping environment where a person can park once and conveniently patronize several businesses.

GOAL 13: ENERGY CONSERVATION

These amendments will help energy conservation by encouraging the development of commercial projects where a person can park once and conveniently patronize several businesses thereby saving gasoline.

GOAL 14: URBANIZATION

These amendments will not adversely affect urbanization efforts.

GOAL 15: WILLAMETTE GREENWAY

These amendments will not affect the Willamette Greenway.

GOALS 16, 17, 18, AND 19: ESTUARINE RESOURCES, COASTAL SHORELANDS, BEACHES AND DUNES, AND OCEAN RESOURCES

These goals do not apply as Keizer is not in an ocean shoreland area.

2. These amendments conform with the Keizer Comprehensive Plan goals, policies, and intent. Specifically, they are intended to promote economic development which is consistent with one of the Goals of the Keizer Comprehensive Plan. [KZO 5.14(b)]

3. Public need is best satisfied by these amendments by prohibiting the types of uses from the River and Chemawa area which are counter-productive to the creation of a centralized focal point which will provide a commercial, employment, and social center for the citizens of the City that is planned to be better than if traditional strip commercial development patterns area allowed to continue. [KZO 4.15(c)]

4. These amendments will not adversely affect the health, safety and welfare of the community. [KZO 4.15(d)]

5. (The criteria in Keizer Zoning Ordinance 4.15(e) regarding adequate public facilities, services and transportation is not applicable to this Ordinance.)

Findings with regard to this Ordinance are based on all written and oral testimony received at the City council hearing on this matter. This evidence is incorporated by this reference as if fully set forth herein.

Proposed revision to: Keizer Zoning Ordinance Chapter 28 - Commercial Retail

October 1996

28.01 USES. The following uses, when developed under the applicable development standards in this Zoning Ordinance, are permitted in the CR zone:

- (1) One dwelling unit in conjunction with the commercial uses(s) of the lot.
- (2) Offices for any use listed in SIC Division C - Construction.
- (3) Post offices (43).
- (4) Building materials, hardware, retail nurseries, and garden supply (52) except mobile home dealers (527).
- (5) General merchandise stores (53).
- (6) Food stores (54).
- (7) Auto and home supply stores (553).
- (8) Gasoline service stations (554) (SU 12.52) except as provided in Section 28.03, below.
- (9) Eating and drinking places (58) except as provided in Section 28.03, below.
- (10) Miscellaneous retail (59) except fuel and ice dealers (598) provided all display is within a building.
- (11) Used Merchandise Store (SU 12.48) provided all display is within a building.
- (12) Vehicle sales and secondary repair except as provided in Section 28.03, below.
- (13) Finance, insurance, and real estate (60, 61, 63, 64, 65, 66 and 67).
- (14) Hotels, motels, and tourist courts (701).
- (15) Religious organizations (SU 12.60).
- (16) Veterinary services (074) (SU 12.42 in urban areas).
- (17) Membership organizations (86).
- (18) Public utility structures and buildings except as provided in Section 28.03, below.
- (19) Recreational vehicle parks (7033) (SU 12.40) except as provided in Section 28.03, below.
- (20) Uses prescribed in Chapter 21.
- (21) Unlimited number of guest rooms including rooming and boarding houses (702), organization hotels and lodging homes on membership basis (704).
- (22) Signs (SU Chapter 15).
- (23) Bed and breakfast establishments (SU 12.26).
- (24) Miscellaneous amusement and recreation services (799) except golf courses (7992) and amusement parks (7996).
- (25) Landscape counseling and planning (0781).

Exhibit B

- (26) News dealers and newsstands (5994).
- (27) Commercial printing (275).
- (28) Communications (48).
- (29) Apparel and accessory stores (56).
- (30) Furniture, home furnishings, and equipment stores (57).
- (31) Electrical and lighting shops and office machines and equipment stores.
- (32) Personal services (72) except carpet and upholstery cleaning (7217) and industrial launderers (7218).
- (33) Business services (73) except disinfecting and exterminating services (7342) and research and development laboratories (7391).
- (34) Automobile parking (752) except as provided in Section 28.03, below.
- (35) Watch, clock, and jewelry repair (763).
- (36) Motion picture distribution and allied services (782).
- (37) Motion picture theaters (783) except drive-ins (7838).
- (38) Dance halls, studios, and schools (791).
- (39) Theatrical producers (except motion pictures), bands, orchestras, and entertainers (792).
- (40) Bowling alleys and billiard and pool establishments (793).
- (41) Health services (80) except hospitals (806).
- (42) Ambulance service.
- (43) Legal services (81).
- (44) Educational services (82).
- (45) Social services (83).
- (46) Museums, art galleries, botanical and zoological gardens (84).
- (47) Miscellaneous services (89).
- (48) Executive offices (911).
- (49) Executive and legislative combined (913).
- (50) Finance, taxation, and monetary policy (93).
- (51) Administration of human resources programs (94).
- (52) Administration of environmental quality and housing programs (95).
- (53) Administration of economic programs (96).
- (54) National security and international affairs (97).
- (55) Automotive Dealers (55) but excluding gasoline service stations (554) except as provided in Section 28.03, below.
- (56) Adult entertainment business (SU 12.50).
- (57) Billboards (non appurtenant signs) (SU Chapter 15).
- (58) Mixed-use buildings (SU 12.46).
- (59) Residential home care and adult residential home care.

28.02 CONDITIONAL USES. The following uses may be permitted subject to obtaining a conditional use permit:

- (1) Water supply (494).
- (2) Carpet and upholstery cleaning (7217).

Exhibit B

- (3) Automotive rental and leasing, without drivers (751) except as provided in Section 28.03, below.
- (4) Automotive repair shops (753) except as provided in Section 28.03, below.
- (5) Automotive services, except repair (754) except as provided in Section 28.03, below.
- (6) Electrical repair shops (762).
- (7) Reupholstery and furniture repair (764).
- (8) Professional sports clubs and promoters (7941).
- (9) Utilities - secondary truck parking and material storage yard except as provided in Section 28.03, below.
- (10) Manufacture of jewelry, silverware, and plated ware (391).
- (11) Manufacture of costume jewelry, novelties, buttons, etc. (396).
- (12) Local and suburban passenger transportation (411).
- (13) Intercity and rural highway passenger transportation within 2,000 feet from the center point of an I-5 interchange and having direct access onto a major arterial (413).

28.03 PROHIBITED USES. The following uses are prohibited from the any property fronting on River Road or Chemawa Road in the following area: the west side of River Road between 5119 River Road on the north and Janet Avenue extended on the south; the east side of River Road between Claggett Street on the north and James Avenue on the south; and either side of Chemawa Road between Elizabeth Street on the west and Bailey Road on the east. This prohibition does not apply to any business facility, legally established as of the date of the adoption of this Ordinance, which as of that date has drive-through window facilities.

- (1) Gasoline service stations (554) (SU 12.52)
- (2) Drive-Through windows or car service associated with eating and drinking places (58)
- (3) Vehicle sales and secondary repair
- (4) Public utility structures and buildings
- (5) Recreational vehicle parks (7033) (SU 12.40)
- (6) Automobile parking not associated with an allowed use (752)
- (7) Automotive Dealers (55)
- (8) Automotive rental and leasing, without drivers (751)
- (9) Automotive repair shops (753)
- (10) Automotive services, except repair (754)
- (11) Utilities - secondary truck parking and material storage yard.

COUNCIL MEETING: October 14, 1996

AGENDA ITEM NUMBER: 6b

TO: MAYOR KOHO AND CITY COUNCIL MEMBERS

THROUGH: DOTTY TRYK 
CITY MANAGER

FROM: JOHN N. MORGAN
COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: RESOLUTION INITIATING A COMPREHENSIVE PLAN MAP AMENDMENT/
ZONE CHANGE/CONDITIONAL USE (STADIUM SITE)

ISSUE:

As discussed in the staff report on the Chemawa Activity Center, staff recommends the Council adopt the Resolution initiating a Comprehensive Plan/Zone Change/Conditional Use for the stadium site to designate if for public use and setting the matter for hearing before the Council on October 21, 1996.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R96-_____

INITIATING A
COMPREHENSIVE PLAN MAP AMENDMENT,
ZONE CHANGE, AND CONDITIONAL USE
(STADIUM SITE)

WHEREAS, The City Council is working to develop a stadium on property located on Radiant Drive immediately south of the Urban Growth Boundary (Tax Lots 6 3W 25 3800, 3900, 4000, and 4100);

WHEREAS, on order to accommodate the stadium, the property needs to be appropriately designated; and

WHEREAS, the Council finds the proposed change is in the public interest and will be of general public benefit and the Council can initiate such changes when these findings are made; NOW THEREFORE

BE IT RESOLVED that the Council initiates a change to "Civic" on the Comprehensive Plan Land Use Map, a zone change to P (Public), and a conditional use permit to allow a commercial sports facility for the above listed lots; and

BE IT FURTHER RESOLVED that the Council directs the proposed changes to the Planning Commission for development of a recommendation; and

BE IT FURTHER RESOLVED that the Council sets a public hearing on this matter before the Council on October 21, 1996.

PASSED this 7th day of October, 1996

SIGNED this 7th day of October, 1996

Mayor

City Recorder

COUNCIL MEETING: October 14, 1996

AGENDA ITEM NUMBER: 7a

TO: MAYOR KOHO AND CITY COUNCIL

THROUGH: DOTTY TRYK *Dotty*
CITY MANAGER

FROM: TRACY L. DAVIS *TL*
CITY RECORDER

SUBJECT: INITIATING THIRD AVENUE STREET
LIGHTING LOCAL IMPROVEMENT DISTRICT

ISSUE:

Shall the City Council initiate the Third Avenue Street Lighting Local Improvement District?

DISCUSSION:

A petition was filed on October 1, 1996 by the residents of this area to form a local improvement district for street lights in Third Avenue area in Keizer. The petition contained the required signatures of the property owner as outlined by City of Keizer Ordinance 94-278.

RECOMMENDATION:

It is recommended that the City Council approve the Resolution initiating Third Avenue Street Lighting Local Improvement District and direct the City Engineer to prepare a survey of the area.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R96-_____

**DECLARING THE CITY'S INTENT TO INITIATE A STREET LIGHTING
LOCAL IMPROVEMENT DISTRICT (THIRD AVENUE) AND
DIRECTING THE CITY ENGINEER TO MAKE A SURVEY AND FILE A
WRITTEN REPORT WITH THE CITY RECORDER**

WHEREAS, the City Council of the City of Keizer has received a petition from
the residents to initiate a street lighting district in the Third Avenue area in the City of
Keizer, Oregon; and

WHEREAS, pursuant to City of Keizer Ordinance 94-278, the necessary
signatures of land owner comprising two-thirds of the property to be included within
Third Avenue Street Lighting District have requested the formation of the district; NOW,
THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that:

1. The City Council declares its intent to initiate the Third Avenue Street
Lighting Local Improvement District;
2. The map attached hereto, marked Exhibit "A", and by this reference
incorporated herein sets forth the proposed boundaries of the district;
3. The City Engineer is hereby directed to make a survey of the District;
4. The City Engineer shall file a written report with the City Recorder to be
considered by the City Council on November 4, 1996.

PASSED this ____ day of _____, 1996.

SIGNED this ____ day of _____, 1996.

Mayor

City Recorder



CITY COUNCIL MEETING: October 14, 1996

AGENDA ITEM NUMBER: 7b

TO: MAYOR KOHO AND CITY COUNCIL MEMBERS

**FROM: DOTTY TRYK
CITY MANAGER**

SUBJECT: LIBRARY TASK FORCE

BACKGROUND:

Effective this July CCRLS and the City of Keizer began the provision of bookmobile service at Keizer City Hall for a two year period. The bookmobile is on site one afternoon a week alternating between Fridays and Saturdays. In addition, Keizer residents wishing only to use the bookmobile are not charged for a bookmobile card. With this card they access to the full regional library collection on a reservation basis.

In exchange for this service, the council was requested to establish a task force to recommend the appropriate level of library services for the City of Keizer into the future. The city accepted this program by resolution R96-914.

The task force is to be made up of not more than 7 persons, one appointed by each Councilor. However, Councilor Newton has identified a high school student who has an interest in this subject. I have added his name to the membership list and have attached an amended resolution to include a student if available.

Attached is the list of appointments to the task force and a mission statement which will serve as the work plan.

FISCAL IMPACT:

None at this time.

RECOMMENDATION:

It is recommended that the resolution be adopted and the task force be appointed by motion.

Library Services Task Force

Mission: To review the success of the bookmobile service provided to Keizer; analyze options for the provision of library services in Keizer and make recommendations to the City Council regarding the future of library services.

Membership:

Members appointed by councilors.

Council

Mayor Koho
Jerry Watson
Bob Newton
Jim Keller
Carl Beach
Al Miller
Jerry McGee
Student appointment

Appointments

Jerry Watson
Stan Compton
Judy Peterson
Maggie Palucci
Roy Tribe
Rosalie Herber-Moore
Pat Sawyer
Brandon Robinson

Term: Until a recommendation is made to the Council. Not more than 2 years.

1 CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

2 Resolution R96-_____

3 ENDORSING BOOKMOBILE SERVES FOR THE CITY OF KEIZER
4 AND RELATED MATTERS
5 (REPEALING RESOLUTION R96-914)
6

7 WHEREAS, residents of the City of Keizer are tax paying members of the Chemeketa
8 Cooperative Regional Library System (CCRLS), and;

9 WHEREAS, the governing body of CCRLS has offered to provide bookmobile service to
10 the City of Keizer on a weekly basis beginning July 5, 1996, and;

11 WHEREAS, this offer includes a bookmobile-only library card at no cost to Keizer
12 residents.

13 NOW, THEREFORE, BE IT RESOLVED that the Council enthusiastically endorse the
14 program as proposed by CCRLS; and

15 BE IT FURTHER RESOLVED that in consideration for, and as part of the agreement with
16 CCRLS, the Council authorizes the City Manager to make available to the residents of Keizer one
17 or more computer terminals and hookup lines for access to the CCRLS regional library system at
18 times to be set by the City Manager outside of the hours that the bookmobile is present; and

19 BE IT FURTHER RESOLVED that the Council authorizes the appointment of a library task
20 force of not more than seven (7) persons, with one member to be appointed by each Councilor
21 within thirty (30) days of the adoption of this Resolution, one student member, if one is
22 available, and one member of the Council being appointed to serve as liaison; and

1 BE IT FURTHER RESOLVED that the Task Force shall bring recommendations to the
2 Council when and as appropriate.

3 BE IT FURTHER RESOLVED that Resolution R96-914 is hereby repealed in its entirety and
4 replaced by this Resolution.

5
6 PASSED this ____ day of _____, 1996.

7 SIGNED this ____ day of _____, 1996.

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9 _____
10 Mayor

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12 _____
13 City Recorder
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CITY COUNCIL MEETING: October 14, 1996

AGENDA ITEM NUMBER: 7c

TO: MAYOR KOHO AND CITY COUNCIL MEMBERS

FROM: WALLY G MULL
PUBLIC WORKS DIRECTOR

THROUGH: DOTTY TRYK
CITY MANAGER

SUBJECT: BID AWARD (CONSTRUCTION OF WIESSNER STORAGE
RESERVOIR 1.5MG)

BACKGROUND:

In October 1994 a committee consisting of two council members, residents of the city and professional water works officials reviewed the 1988 Water Master Plan. The focus of the committee was to look at the water rate structure and capital improvement projects.

At that time it was determined that the water rate structure was adequate for now and that the city should begin budgeting for the placement of a 1.5 million gallon water reservoir to be located adjacent to the wiessner well.

With the current 96-97 budget in place funding for the construction of the reservoir is now available.

ISSUE:

Bids were opened at City Hall on 1 October 1996. Two bids were received at that time:

Harbor Pacific Construction	\$597,000.00
Bellevue, WA	
Northwest Permastore	\$492,053.09
Dallas, OR	

RECOMMENDATION:

Council adopt the resolution awarding the bid to Northwest Permastore, Dallas, OR, in the amount of \$492,053.09 and authorize the City Manager to sign the appropriate contracts.

1 CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

2 Resolution R96-_____

3 AWARDING OF BID FOR

4 CONSTRUCTION OF A WATER STORAGE RESERVOIR

5 FOR THE CITY OF KEIZER

6
7 WHEREAS, an invitation to bid was submitted for advertising for construction
8 of a water storage reservoir to be located adjacent to the Wiessner well;

9 WHEREAS, on October 1, 1996, two bids were opened. Low bidder on the
10 project was Northwest Permastore with a total bid of \$492,053.09; NOW

11 THEREFORE;

12 BE IT RESOLVED by the City Council of the City of Keizer to authorize the City
13 Manager to sign the necessary contracts awarding the bid to Northwest Permastore
14 for the construction of a water storage reservoir adjacent to the Wiessner well within
15 the City of Keizer at a total cost of \$492,053.09.

16
17 PASSED this _____ day of _____, 1996.

18 SIGNED this _____ day of _____, 1996.

19
20
21 _____
22 Mayor

23
24 _____
25 City Recorder
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MINUTES
KEIZER CITY COUNCIL
Tuesday, September 3, 1996
Keizer City Hall
Robert L. Simon Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Koho called the regular meeting to order at 7:08 p.m.
Roll call was taken as follows:

Present:

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

Staff:

Dotty Tryk, City Manager
John Morgan, Community Development Director
Charles R. Stull, Chief of Police
Kim Krause, Finance Officer
Bill Peterson, City Engineer
Wally Mull, Public Works Director
Shannon Johnson, City Attorney
Tracy L. Davis, City Recorder

**PUBLIC
TESTIMONY**

Addressing the Council were:

Larry Haddon, 1038 Ventura Street N, Keizer states he put a lot of thought into an article he wrote and doesn't want to offend anyone but Keizer citizens need to know what's going on. He talked to many residents and still hasn't found anyone excited about the baseball stadium.

He read the letter referring to the stadium requesting the citizens vote on the issue.

Mayor Koho added if it happens the property will remain on tax roll at an increased valuation creating much higher tax revenues for Keizer. A hearing is scheduled for Thursday, September 12 for general public comment. Only after further public input will council move forward.

Eric Leadley, 920 Cade Street, Keizer informed the Council he has found that Cade Street is not a dedicated street. The residents of the area want it left the way it is.

Mayor Koho asks John Morgan, Community Development Director if he received copies of the documentation. Mr. Morgan responds that he hasn't seen the deeds at this time. The City Engineer disagreed with the findings and believed the right-of-way does exist. The property divisions are very old and somewhat unclear. Mayor Koho added that if the City has the right to make improvements, it doesn't necessarily mean that we should or will.

Mr. Leadley explained that the Marion County Surveyor's office shows half the street at 60 feet and the other half is 20 feet. His deed says the street is a public access and only 10 feet is set aside for right of way.

Mayor Koho asks that he share his documentation with staff.

John Morgan reported there will be a public forum on September 18 at Salem Mennonite Church on Candlewood to gather input from Cherry Avenue residents. The plan will go to the Planning Commission prior to coming before the Council. Mr. Morgan estimates the first of the year before adoption of a final document.

Responding to an inquiry from Councilor McGee, Mr. Morgan notes that there was 100% participation two weeks ago in a neighborhood meeting and he expects the same for this one. Notice will be distributed to all property owner using an updated list from Marion County.

Councilor McGee says some of those citizens felt that there was a good turnout but it was due to citizen communication, not the city notifying them. John agrees they communicated effectively.

Mr. Leadley also informed the Council LaBrisa Restaurant is putting up an AT&T tower.

Mr. Morgan stated it is allowed by the zoning ordinance under the commercial zone. Towers and antennas are excluded from the 50' height limitation in the Commercial Retail zone. The City Planner had advised AT&T of the possibility of the Cade Avenue extension suggesting they wait, however there is nothing to stop this construction.

Councilor Keller assures Mr. Leadley that though the process may seem lengthy, it is a good process and it does work.

Mr. Leadley points out that the lady that wrote the article in the Keizer Times is a senior citizen and all the seniors want Plymouth Ave improved. He suggests they go there and leave them alone.

There was no further public testimony to come before the Council.

COMMITTEE REPORTS

Dotty Tryk, City Manager reported at the August 19th meeting, the appointments to the Planning Commission were tabled until tonight.

PLANNING COMMISSION APPOINTMENTS

Mayor Koho informed the Council he spoke with Manny Martinez and emphasized nobody would not be re-appointed to a committee simply because they disagreed. He suggested reappointing Mr. Martinez and also appoint Mr. Alan Youse to fill the other vacant position on the Planning Commission.

Mayor Koho Moved to reappoint Mr. Martinez and Allen Youse to the planning commission. Councilor Keller seconded the Motion.

The Motion passed as follows:

AYES: Beach, Keller, Koho, McGee, Miller, Newton and Watson (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

VOLUNTEER COORDINATING COMMITTEE APPOINTMENTS

Dotty Tryk, City Manager reported this committee is composed of appointments made by each Council member. There are two vacancies as of the end of August. The terms of Ruth Schrag Gilbert and Mike Gaynor expired on August 31, 1996. These individuals served in Councilors Newton and Kellers positions.

Councilor Keller nominated Kim Carter for a three year term and Councilor Newton nominated Leslie Hendrickson for a three year term on the Volunteer coordinating Committee.

Councilor McGee moved that the names of Leslie Hendrickson and Kim Carter be approved as appointments to the Volunteer coordinating Committee. Mayor Koho seconded the motion.

The Motion passed as follows:

AYES: Beach, Keller, Koho, McGee, Miller, Newton and Watson (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**COUNCIL LIAISON
REPORTS**

Councilor Beach announced he was not present at the last **River Road Redevelopment Board** meeting and was therefore unavailable to give a report at this time.

Councilor Keller reported the **Community Policing Committee** had a meeting on August 28. They are reviewing a prostitution ordinance, prostitution-free zone and a drug-free zone for the City. Jim Warner, chairman of the committee, is reviewing a speed deterrent program used by Salem. The citizens patrol is on hold until January when the program will start. Councilor Keller is concerned with the lack of reporting the positive things that happen in the community. He suggests a monthly report to the Council on the successes of the Police Department.

Councilor McGee supported providing a balanced report to the community.

Councilor Watson agrees with Councilor McGee adding that more information is always valuable and it should be shared with the public. Statistical data should be routinely collected and then citizens should be allowed to interpret the data.

Councilor Keller pointed out the crime statistics are already collected. He added this information could be shared with the audience viewing the Council meetings.

Mayor Koho suggests a report be prepared for a few months and council keep notes for goal-setting/team-building that he hopes will be available in November. At that point Council can establish which reports they want in the future.

Responding to an inquiry by Councilor McGee, City Manager Tryk indicated when the staff was increased and duties rotated, these reports were discontinued.

Councilor Newton states that goals were set with the city manager for community policing and other police activities. He states that they have already designated the information they want because they set the goals, now they just need the reports.

Mayor Koho mentioned candidates for Council should give some input on the types of information they wish to relay to the citizens.

PUBLIC HEARINGS

ORDER - HIDDEN CREEK SUBDIVISION AMENDMENT

Mayor Koho pointed out the Hidden Creek Planned Unit Development and the issue of cleaning Labish Ditch are very similar. Therefore, a decision on one is probably a decision on both. He adds that this council is very open-minded and interested in public input for a solution.

Mayor Koho opened the public hearing.

Shannon Johnson, City Attorney reviewed the applicable criteria and procedure for this hearing. He asks if there are any questions or if any councilor has a conflict of interest on this issue.

Councilor Watson reported he lives along Labish ditch although his property is not in the area near the Hidden Creek Planned Unit Development. He believes this does not prohibit him from participating in this hearing.

Shannon Johnson explained this amendment proposes to amend condition number eight of the Hidden Creek approval which has to do with a 30 foot buffer of the southeast side of the subdivision next to Labish Ditch. That buffer is not to be disturbed except under certain circumstances.

John Morgan, Community Development Director reports there are two hearings this evening; one is whether the ditch should be cleaned and if permission can be given to access the ditch within the thirty foot buffer zone. This is moot if council chooses not to proceed with the ditch cleaning because the land-use issue is then irrelevant. In 1993 the development was approved by Council and treatment of the ditch was controversial at that time. The condition of approval specifically says that restrictions placed on the property must be within the easterly 30 foot' of the property and no living trees, brush, or other vegetation shall be removed or cut except those that are dead or dying, poison oak/ivy, public safety purposes, blackberries controlled, other as certified by Fish and Wildlife or other state agency. Condition B says any trees or plants removed shall be replaced with vegetation appropriate for area wildlife determined by Oregon Department of Fish and Wildlife.

Mr. Morgan continues saying the focus tonight is to address the issues raised from the February, 1996 flood. The new 100-year flood plain map was released a few weeks ago and

with accumulation of debris in the ditch, this is a factor in additional potential flooding. To allow cleaning of the ditch, access must be obtained. The proposed change adds a 5th reason to remove debris or vegetation. Mr. Morgan pointed out the cleaning cannot be done without intrusion in the thirty foot buffer. Furthermore, he indicated the amendments require the replacement of any trees or vegetation removed.

Councilor Beach asks Mr. Morgan about vegetation removal and whether replacement also requires leaving access points without vegetation.

Councilor McGee states it sounds good except where access is needed today may not be the same site as in the future. He also challenges anyone to find where the backhoe went into the ditch during the flood in February. It's covered with vegetation/brush already.

Wally Mull, Public Works Director pointed out a backhoe was used in the ditch in February. However, if this is approved he will conduct an inventory to determine the necessary access points. FEMA established the February flood as a 50-year flood. Staff is awaiting a final report from FEMA on any major improvements necessary to lower the flood plain. One known improvement is to clean Labish Ditch. Our engineers believe that a cleaner ditch increases water velocity to manage smaller floods better thus reducing the size of the larger floods. The intent is to clean the ditch of debris and dangerous trees.

Mr. Mull indicated the developers have offered to pay for cleaning the ditch adjacent to their subdivisions. Furthermore, there is a section the City may be obligated to clean. Mr. Mull recommends Public Works coordinate the cleaning if approved and include state lands, fish and wildlife, a councilor and possibly someone from the Gubser Neighborhood Association. This committee would oversee the cleaning.

Councilor Watson requests clarification of what the developer will maintain. He understood the developer was willing to pay the full costs of cleaning up to River Road. Mr. Mull noted this was not the understanding.

Responding to additional questions by Councilor Watson, Mr. Mull stated it may not be necessary to get down in the bottom of the ditch for all of the cleaning since it is very steep at some points. Problem areas can be accessed with a trackhoe which can operate from along the edge. Furthermore, Mr. Mull pointed out they will not be removing grass or vegetation from the creek itself, only debris which restrict the flow of water.

Shannon Johnson, City Attorney explained the his understanding of the definition a ditch and a ditch bank. He indicated the flood mitigation plan should show this in detail.

Councilor McGee is intrigued by the concept. His concern is more about the level of distrust from the community toward staff and council. A committee may help this. He believes a committee may be effective in this process.

Councilor Newton hoped minimal equipment would be used in this clean up process.

Presenting testimony to the Council were:

Ken Sherman, Jr., 687 Court St., Salem (PO Box 2247, Salem 97308 reported he is representing three separate clients on this issue. The first is West Labish Drainage and Water Control Improvement District which was formed in 1980 to keep this ditch clean. The members are 30-40 farmers in the Lake Labish area. He also represents the two developers which developed the subdivisions along Labish Ditch. Reimann and Associations with (Hidden Creek subdivision and Larry Epping of the Country Glenn subdivision) Each of his three clients strongly support this proposal. Mr. Sherman pointed out the ditch was created and exists to provide drainage. regardless of how clean the upper portion of the ditch is, it doesn't work if the lower portion is full of debris.

Mr. Sherman indicates his research shows the farmers have a prescriptive easement or that they have the right to go in and keep it clean. However, it makes more sense to work with the City to provide maintenance for that portion of the ditch. Mr. Sherman hopes this can be a cooperative effort by all parties involved. Mr. Sherman notes they are a bit troubled by the language in the new proposed; sub (b) which states any material removed must be replaced with vegetation appropriate to the area, however he is encouraged by Mr. Morgan's comments on reasonable flexibility. Mr. Sherman also stated the ditch must be kept clean in order to work properly. If a committee is assembled the farmers should be considered on this committee. However, if this does not work, the farmers have a right to exercise their prescriptive rights.

Mr. Sherman requested his testimony be made part of the record of this hearing and the hearing on the cleaning of Labish Ditch.

Mayor Koho voiced his concern with the comments made by Mr. Sherman regarding the farmers right to move in and take care of any problems with the ditch.

Mr. Sherman remarked the farmers had very significant problems and damage due to the water being plugged downstream. However, since so many property owners are impacted, it's entirely appropriate that the City be part of the solution. Mr. Sherman indicated it is only necessary to remove the debris to facilitate drainage. A ditch is designed to convey moving water and aesthetics are nice, but of secondary importance.

Councilor Beach added he visited the ditch today and was surprised to find the access during the flood was already covered with new vegetation. He indicated the professional engineers should make the final decision on the level of removal.

Responding to an inquiry by Councilor Watson, Mr. Sherman noted his prior memo states the property owners abutting Labish Ditch should be responsible to keep their portion of the ditch clean, however at this time he is focusing on the City's role in this problem. Furthermore, the prescriptive easement of the farmers is wide enough to accomplish the purpose of cleaning out the ditch. The prescriptive easement is for maintenance purposes only. Mr. Sherman also replied Mr. Epping and Mr. Reimann would be willing to work with the City to create a permanent easement near their developments for cleaning purposes. He noted the developers are willing to contribute to the costs of the cleaning now but there is no future commitment.

Mayor Koho voiced his concern that the farmers upstream could have a right to come in and do what they want but the City can't do what it feels necessary. He hoped a cooperative agreement could be reached on this matter.

In closing, Mr. Sherman stated the maintenance of the Parkersville dam is the East Labish District not the West Labish Ditch District.

Dan Kaplan, 6607 14th Ave. NE, Keizer reported he has lived at his residence for 16 years and is one of those who distrusts the City. He believes a balance must be reached. He wants to know where the farmers were all the other years and why did it suddenly become an issue. He added that his deed marks the property line at the center of the ditch, not just to the banks. regarding conditions set in 1993, he states no vegetation was

ever replaced after that. His son fishes in the creek every year and cutthroat trout are becoming very scarce.

Mr. Kaplan read a letter from Sam Friesen (also a 14th Avenue resident). He's in 6th grade and really enjoys the creek. Mr. Kaplan stated these are the issues that must be considered prior to making any decisions.

Dave Guile, 6717 14th Ave. NE, Keizer noted he would like his comments considered for both issues. He remembers talking to neighbors about the importance of forming the City of Keizer to avoid big city politics. Everyone wants to participate in decisions and when council asked for input regarding the flooding, he requested the Gubser Association be involved before any proposal was developed. He checked and reported there has been no contact as of August 21. However, the developers indicate they have had numerous contacts with the city so he is concerned about their relationship with council.

Mr. Guile presented four proposals developed for the Council to consider:

- First, they believe the flooding should be prevented if possible. Parkersville Dam work should proceed as fast as possible and the culvert under the back path behind Swingwood Court should be examined, it may be too small.
- The amount of water going into and out of the ditch should help eliminate flooding. Therefore, they do not support the use of machinery to clean out the ditch. It is not easy to replace a 30-year old tree and the current language allows removal of dead/dying trees right now if that's part of the problem.
- They believe that some ditch cleaning is needed. He has cleaned it by hand twice and the neighbors are also willing to help do this. Except if there are huge trees with roots in which case equipment may be needed.
- Since this is about public safety the whole Council must approve the plan.

Mr. Guile requests a seat at the table in this decision. He asks members of the Gubser Association to stand as he is speaking for them. (Several members of the audience stand in support)

Councilor McGee says that some areas of the ditch would be very difficult to do by hand but that he has no doubt that these neighbors could do it. He would like to see the committee assembled and operational to develop the plan with full consensus. He feels that equipment will be needed in some places.

Councilor Miller agrees with Councilor McGee adding that if Mr. Guile is looking at a limited area and is there another group for another limited, it must be coordinated.

Responding to a concern voiced by Councilor Miller, Mr. Mull indicated an inventory of the debris to be removed could be completed within the next few weeks.

Councilor Miller confirms that Mr. Guile and his group would be ready by that time. He is concerned about the October 28 date because it's very close to bad weather and if it doesn't happen there's not much time.

Responding to an inquiry by Councilor Beach, Mr. Guile responds that it is time to work together to prevent future flooding. Also, much of the vegetation provides habitat to local wildlife and hopes most of it to remain. He doesn't feel anyone will do any more damage than necessary.

Mr. Guile agreed the proposed wording should be changed to require the City to do as much as possible by hand and choose the least intrusive methods.

Wayne Dixon, 1290 Hidden Creek Dr, Keizer stated he is new to the area and doesn't have all the previous background, however after the February flood there has to be a consideration for drainage versus aesthetics.

Ronnie Dixon, 1290 Hidden Creek Dr, Keizer reported there is no control over the fire and water and it could be a shorter time than fifty years before another flood. With the upcoming rainy season quickly approaching, the sooner this area is cleaned the better. She noted it is essential the residents and the City work together on this important issue.

Ruth Jacobs, 1349 Hidden Creek Dr., Keizer recently moved into the Hidden Creek subdivision. She says it sounds like headway is being made as a cooperative effort to clean the ditch.

Al Allen, 1380 Lazy Creek Dr, Keizer is concerned that this will be studied too long. It's been a year now since the flood and he dumped all his sandbags. He urged the Council to move forward on this proposal.

CL and Jan Johnson, 1371 Stonehedge Court, Keizer both concur with Dave Guile.

Beth Daniell, 6772 Amy Lane NE, Keizer thanked the Council for coming to the Gubser Neighborhood Association meeting and talking to people along the ditch about the situation. At that time it was mentioned that they may clean the ditch, possibly working on a grant to supplement the dam, and finally adding culverts. There were plans to have maps available to show results of the three proposals.

Dotty Tryk, City Manager responded the engineering firm is working on them and it will be about 4-5 weeks before they are complete. City Manager Tryk indicated there will be several meetings over the course of the fall and winter to discuss these maps.

Ms. Daniell is pleased to hear about the plan to move ahead with a committee and the full inventory.

Frank Dake, 1267 Manzanita Way, Keizer abuts the footbridge next door to Councilor Watson. He was at the Gubser meeting and believes he is the oldest resident at the creek anywhere, he's been there over 30 years. The developer told him that his property did not flood in 1964. Mr. Dake hasn't heard from anyone about the 1969 flood and he was flooded at that time. However, he was flooded this past February in the 50-year flood.

Mr. Dake believes the bottleneck is not at River Road, but at the culvert in his back yard. The upstream side was 1.5' higher than the downstream side. The water flowed over the bike path (footbridge). This flood was much worse with greater force. He first moved there when it was Brooks Fire District and every time it was needed they did clean the ditch. They used a backhoe and cleaned it out completely. He has also been in the ditch to clean it out. He adds that by cleaning out the ditch it allows the minor flows to flow faster so that when the next flood comes the creek will flow freely and will not back up.

Responding to an inquiry by Councilor McGee, Mr. Dake believes Marion County installed the culvert. It was mapped incorrectly and cuts through part of his yard. He added the culvert is definitely too small. Mr. Dake believes the culvert should be increased in size.

Councilor Watson noted he has lived there eleven years and no one has ever cleaned the ditch out. He believes the last time the ditch was cleaned was in the 1960's.

Responding to a question from Councilor Watson, Mr. Dake indicated he would hate to lose the Ash tree because its roots are holding his bank. He has probably lost 8-10 feet due to erosion all along the length of the creek. Losing the tree would probably cost him about another 10 feet of property.

Councilor Watson pointed out some form of stability may need to be installed to maintain the bank in this area.

Susan Olson, 6814 Arborwood Court, Keizer made the decision to evacuate on her own in the February flood and feels the ditch cleanup needs to happen. She doesn't feel the city wants people down there taking pictures in preparation for litigation. She feels a neutral party needs to mediate the committee so owners aren't deciding which ones they like because of aesthetics. Ms. Olson pointed out that nobody invited the people in the Hidden Creek or County Glen subdivisions to participate along with the Gubser people. She feels they should all be included in the process.

Mayor Koho agrees that those on both sides must be involved.

George Sarsfield, 1174 Springwood Court, Keizer stated he feels Keizer is doing a good job formulating this plan. He suggests the City encourage as many homeowners as possible to move out of the flood plain. He has a fence down close to the ditch and kids which play in the back yard but is willing to move the fence and grapes and anything else to help the flood situation.

Ches Tretheway, 460 McNary Height Dr, Keizer has lived at his residence for approximately one year. He listened carefully to the testimony of Mr. Sherman who made a veiled threat that the farmers upstream have a common law prescriptive right to clean the ditch. He explains that a prescriptive right exists only by virtue of the use. The same history that Mr. Sherman gave, (the farmers upstream pretty much ignored the ditch for many years) shows that by abandoning that use they also abandon that prescriptive right.

Mr. Tretheway noted if nothing is done on the other side of River Road, it will create a serious problem. If the channel is cleared upstream but nothing is done about the area where Labish Ditch drives right into Claggett Creek and increases that flow then either a huge volume of water will be squeezed into a small area creating an even greater risk of flooding. He asks any plan include the people on the other side of River Road. He also suggests this committee include the people along Claggett Creek.

Councilor Miller stated he appreciated the comments. However, he remembers information from the engineers was that there was no problem below River Road at Claggett Creek regarding flows. It was mainly a backup of the Willamette River. There was no blockage that caused a problem. The main focus now is the River Road culvert on up, contributing to flooding like there were from River Road up.

Mr. Tretheway said he hasn't seen that study. He knows the sediment level in the creek since the last flood has raised considerably. He lives at the point where the house just west of him is the last house on McNary Heights Road and there's a bend around there with all kinds of debris. He never got the sense during the flood that there was any backup from the Willamette River. Most of the damage was done on the second day of the flood which was the result of Labish Ditch.

Councilor McGee mentioned the significant blockages on the other side of River Road learned during the meeting at Gubser Elementary School. He assures Mr. Tretheway that it is a section that will be looked at seriously.

Councilor Watson feels one of the dilemmas is that there are many factors and many potential impacts. He asks if they should be looking at the development around the ditch and how that affects existing property. He adds that if the flow is slowed that that also is a potential solution. Mr. Tretheway agrees and emphasizes that any solution simply include the other side of River Road.

Mike Zielaskowski, 1505 Rockledge, Keizer moved into Keizer two years ago. He says his first winter (1995) he observed flooding in what he perceived to be a wetland area behind his house with one to two feet of standing water among weeds and waterfowl. When it dried out he studied where the water came from and saw stakes for further development. Mr. Zielaskowski indicated he teaches biology and physical science and has an interest in river hydrology. He has kayaked creeks the size of Labish Ditch and was also a logger who specialized in cleaning creeks by hand and with equipment. He adds that if something looks like a wetland and has plant life like a wetland and wildlife like a wetland, it's probably a wetland.

Mr. Zielaskowski feels the ditch does need to be cleaned but with minimal impact so it doesn't cause a bigger problem. He has seen in the past one and one-half years bulldozers enter the 30' buffer zone right next to the ditch, work and leave a flattened area, and back out leaving nothing but dirt and mud.

The west bank is lower than the east bank and the equipment contributed to that. Mr. Zielaskowski noted it can be cleaned by hand and with equipment without impacting the banks. He also feels the culverts need to be enlarged. The community must consider the big picture that the water was slowed because much of the soft ground that used to absorb water was eliminated. There used to be acres of soft, spongy soil to slow the flow down and now it's houses and streets. Mr. Zielaskowski pointed out we must preserve as much of the remaining spongy ground as possible. He says there was a lack of consideration of aesthetics by the developers and the Council that caused the problem because they disregarded the fact that by developing this land they destroy land that could hold/absorb some of this water. He further stated the more land and vegetation that is left the more it will help with future floods.

Responding to an inquiry by Councilor Watson, John Morgan, Community Development Director looked to the developer for confirmation that about half of the creek lots were platted and the southern half are mostly unplatted. The majority are potentially available.

Ann Timble, 6826 Jakewood Court NE, Keizer understands everyone's conflict and how the Gubser area wants to clean the ditch. She really had a tragedy and learned that their lives are the most important issue. It isn't worth endangering someone's safety and she is concerned about citizens safety working in the ditch.

Jerry Martin, 1186 Horizon Ridge Court NE, Keizer has some experience in organizing manpower intensive volunteer efforts. He adds that it's nearly fall and to properly organize this it won't happen before these rains come this year. He says there's a tendency to be very conservative or do nothing. On the west side it would be appropriate to remove the blackberries and he encourages Council to approve with flexibility the plan to clean the ditch. Public Works should organize it now with well-equipped volunteers and the right resources. He says the effectiveness of the Parkersville Dam must also be considered. He feels the immediate plan should be a short-term solution and there's not enough time to safely organize, through volunteers, the work.

Frank Dake commented the other side of River Road should be included and considered because of the height above sea level compared to the Willamette River and the outfall of the combined creeks.

Mayor Koho closed the public hearings

Councilor Keller voiced his support for Dave Guile's comments, however he would like to see the neighbors involved in deciding where the ditch actually needs to be cleaned out but is concerned about the volunteer labor efforts.

Councilor Watson supports the idea of cleaning the ditch but would like changes in the language. He suggests that at the end of the 1st sentence of paragraph 5 that a clause be added that says: 'plan approved by the city manager that provides for cleaning the ditch and the immediate adjacent ditch bank by the least intrusive means possible with cleaning to be done by hand and without heavy equipment to the fullest extent possible'. Further, a sentence at the end that says 'it is not the intention of this provision to authorize any cleaning or removal of trees or vegetation outside of the ditch and the immediate ditch bank'. He clarifies that if you can't walk on it you're in the ditch bank and if you can you're outside of it. He further suggests similar language Regarding the second issue scheduled this evening on the agenda.

Councilor Newton would like a brief report on the west side of River Road or the initiative with Parkersville Dam.

Dotty Tryk, City Manager states that they have received the initial flood plain map from FEMA indicating much of this property was inundated. She says the engineers believe some things could have been done that would have mitigated the problem. One issue considered was the Parkersville Dam. In a meeting with Marion County and other public agencies it was decided to put together a mitigation grant request to fund improvements of the dam.

City Manager Tryk also noted considering the flow and flood plain as it developed it appeared as though River Road itself created a dam so she asked FEMA engineers to do a model showing how the flood plain would be reduced if the culvert were enlarged and what the optimum size of the culvert would be. That work has been contracted for and were informed it would be ready in the next 4-5 weeks. This should give a good indication of the kind of impact a fair-size culvert would have and an idea of the cost. These are both capital items and affect the flood plain map which FEMA will review.

Furthermore, the City Engineer agrees cleaning the ditch will reduce the smaller floods and will allow the water velocity to go through to somewhat mitigate the bigger floods. A new flood plain map will go through an entire public process.

Councilor Newton pointed out he visited the McNary Heights area and the water came through fast, but there was no backup from the river at that time. He says the water flows at the River Road is about as great as we will experience, unless it goes over the road. He confirmed that if the water can be moved through there quicker it will tend to keep the level down.

Mayor Koho clarified there will be two separate decisions on Labish Ditch; one that will only affect the area near Hidden Creek subdivision and the other applies to the entire length from end to end.

Councilor McGee moved a bill for an Ordinance in the matter of the amendment of the condition number eight of the approval for Hidden Creek properties' Partitioning, Zone Change, Planned Unit Development approval and variance case no. KPZC/PUD/V 92-4 amending Ordinance No. 93-251 and declaring an emergency as recommended by staff with the following language addition in Exhibit D-8a-5... flood mitigation plan developed by the City Manager and approved by the City Council. The motion was seconded by Councilor Beach.

Councilor Miller supports the motion though he is concerned about involving the people in the area allowing them input and an opportunity to remove debris. He believes time is short and therefore the process should be expedited. Councilor Miller suggested directing staff to work with these citizens and do the inventory.

Wally Mull, Public Works Director indicated he believes the work can be started within two to three weeks including the involvement of citizens.

Councilor Beach also supports the motion but thinks it should move ahead without delay. It must be done as soon as possible and doesn't feel volunteer effort will have an affect on the Ordinance.

Mayor Koho is concerned the proposal might unduly delay the work. He adds if the city manager completes a plan about the middle of September, it will be October before the council can approve it. Mayor Koho believes the input of folks during the drafting of the plan is more important than the volunteer work. He suggested allowing the city manager to approve the plan.

Councilor McGee questioned if there may be a possibility of some disagreement among the committee members. He stated he is proposing a plan, not just to clean, but a long-term plan that may include broad representation of the community.

He suggested starting off with walking the bank and agree on what goes and what doesn't. A lot has been said about the 100 year flood. All here realize there is not another 44 years to wait. He says there is a 2% chance of the same thing happening next year. He supports Councilor Miller saying that if the volunteers can't do it then the City must and we include that into the plan.

After a discussion of the community involvement in this plan, City Manager Tryk noted that if the Council didn't feel that the community involvement was sufficient they wouldn't approve the plan.

Councilor Watson thinks Councilor McGee is correct to the extent that this is a long-term provision and it seems that there will be a long-term full flood mitigation plan that considers Parkersville Dam, culverts, and cleaning the ditch. He recommends to add language 'developed by the city manager in consultation with affected members of the community or through a public process and approved by the council'. He further proposes the additional clause be added as a sentence following that or doing it by the least intrusive means possible and concluding with a sentence re-emphasizing that they don't go outside the bank to do work.

Councilor Newton agrees with Councilor McGee's motion and likes the idea of council approving the final plan. He also wants to see it done this year.

Councilor Keller also supports Councilor McGee's motion. He is worried they are getting too hung up on 'least intrusive'. They will do what it takes to get it done. Neighbor input is an important element but he wants to get it started and let Wally do his job.

Councilor McGee does not accept Councilor Watson's proposal as a friendly amendment to his motion.

Mayor Koho affirms that now we are talking about the flood mitigation plan being a large document living for a long time and before we can do anything in this area, that has to be in place.

Councilor McGee stated he is not looking for the total flood mitigation plan to be completed that soon, he is only looking for the process to begin. He wants an immediate work-plan for cleaning the ditch.

Mayor Koho confirms that as long as they understand conceptually he is supportive. He did like Councilor Watson's

suggested language 'developed by the city manager in consultation with affected interest groups'.

Mayor Koho will withdraw his issue on that in the narrow sense of this amendment but in the larger sense of the community flood mitigation plan he wants that language in.

The Motion passed as follows:

AYES: Beach, Keller, Koho, McGee, Miller, Newton and Watson (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

RESOLUTION -
AUTHORIZING THE
CITY MANAGER TO
CONTRACT TO
CLEAN LABISH DITCH

Mayor Koho opens the public hearing.

Mayor Koho announced all testimony from the previous hearing will be entered into the record.

There was no further testimony to come before the Council.

Mayor Koho closed the public hearing.

Councilor Keller moved a Resolution authorizing the city manager to enter into a contract to clean Labish Ditch. The Motion was seconded by Councilor Miller.

Mayor Koho adds that this was all in context of the discussion they had this evening.

Councilor Watson reiterated he lives along the ditch however he doesn't believe there's a conflict of interest and therefore he expects to deliberate and vote on this matter.

Councilor McGee suggests changing the language to state the city manager to 'cause' the cleaning of the ditch rather than specifically say contracting. This implies that contracting is the only way she can get it done.

Mayor Koho believed the City Manager understood the direction of the discussions on this issue.

Councilor Watson says the proposed resolution is brief therefore allows considerable discretion. He feels the same wording in the scope of the activity and believes it is appropriate where there is no broad existing land use decision governing the total development. Also, the City has not

established ownership rights or easements so they should be very restrictive in what the city intends to do.

Councilor Watson moves to amend that they authorize the city manager to enter into a contract to clean Labish Ditch by cutting or removing trees or vegetation in accordance with a flood mitigation plan, developed by the city manager, and approved by the council that provides for cleaning the ditch and bank by the least intrusive means possible with cleaning done by hand and without heavy equipment to the fullest extent possible and such a plan shall allow only the minimum necessary removal of trees and vegetation to allow equipment to get to the bank of the ditch to carry out ditch cleaning and the removal of trees with exposed roots that may contribute to the flooding. It's not the intention of this provision to authorize any cleaning or removal outside of the immediate ditch and bank and further requiring that the city obtain permission or get an easement as necessary if it does have to come out on private property. Mayor Koho seconded the amendment.

Councilor Miller feels it's too wordy. The other side of what Councilor Watson suggests is that if people want to clean the ditch, they will. Further, if the City of Keizer wants to clean the ditch, it doesn't need an easement or a prescriptive right, it can call it a nuisance and use the nuisance abatement procedure and charge the cost to the property owner. However, the discussion tonight has been cooperative, not confrontation. He emphasizes that the City does have nuisance abatement procedures if needed. He feels the wording simply clouds the issue and that it should just move forward and do it.

Councilor Keller also won't support the amendment and agrees with Councilor Miller feeling it's just time to get it done.

Councilor Beach thinks it's time to make a decision noting that they could add that 'authorize city manager to enter into a contract to clean Labish Ditch in the least intrusive manner'.

Councilor Watson states that he didn't intend to be confrontation but did intend to be clear. He is concerned that numerous legal issues are not resolved involving what the city's rights are and land-use issues. He says he can accept a limitation that says in the least intrusive manner possible as a compromise.

Councilor Miller does not think it's clear to say 'least intrusive method' suggesting they say 'in accordance with the resolution that was passed...in accordance with the same standards as outlined in the least intrusive method

The Motion to amend failed as follows:

AYES: Watson (1)

NAYS: Beach, Keller, Koho, McGee, Miller and Newton (6)

ABSTENTIONS: None (0)

ABSENT: None (0)

The main Motion passed as follows:

AYES: Beach, Keller, Koho, McGee, Miller, Newton and Watson (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

AUTOMOTIVE RELATED USES

Mayor Koho opened the public hearing.

John Morgan, Community Development reported the prohibition on automotive related uses sunsets on July 1, 1996. The Planning Commission discussed and recommend it be reestablished and carried until February 1, 1997. The River Road Redevelopment Board, by consensus concurred unanimously but recommended it be July 1, 1997. Mr. Morgan noted the legal notice was published accordingly, however mailed notice was not completed. He recommended the hearing be opened, testimony given and hold it over to the September 16th meeting. Notice will be mailed for this date.

Mayor Koho recesses the hearing to September 16, 1996.

O'NEIL ROAD (EDGEMOORE ESTATES) STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

Mayor Koho opened the public hearing.

Dotty Tryk, City Manager reported the developer has requested street lighting district be formed for the Edgemoore Estates area. She adds the engineers report has been received and approved and notice has been mailed for this hearing.

There was no testimony to come before the Council.

Mayor Koho closed the public hearing.

Councilor Keller moved the Resolution forming the O'Neill Road (Edgemoore Estates) local improvement district.
The Motion was seconded by Councilor Miller.

The Motion passed as follows:

AYES: Beach, Keller, Koho, McGee, Miller, Newton and Watson (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

Councilor Keller moved a bill for an Ordinance spreading assessments to O'Neill Road (Edgemoore Estates) Street lighting local improvement district. The Motion was seconded by Councilor Miller.

The Motion passed as follows:

AYES: Beach, Keller, Koho, McGee, Miller, Newton and Watson (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**ADMINISTRATIVE
ACTION**

**RESOLUTION -
PLACING TAX BASE
REQUEST ON THE
NOVEMBER 5, 1996
BALLOT**

Dotty Tryk, City Manager reported at the last meeting the Council voted to place an updated tax base on the November 5th ballot. The language of that ballot needs to be submitted to the Marion County Clerk by September 5. The Council subcommittee and staff developed the language that would be put into the ballot and the voters pamphlet.

Councilor Keller moved a Resolution providing for placing a tax base on the November 5, 1996 ballot. The Motion was seconded by Councilor Beach.

The Motion passed as follows:

AYES: Beach, Keller, Koho, McGee, Miller, Newton and Watson (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

**MOTION TO
APPROVE A GRANT
APPLICATION FOR
COMMUNITY
POLICING**

Charles Stull, Chief of Police introduced Jodi Sherwood, Community Policing Coordinator who presented the grant proposal.

Jodi Sherwood, Community Policing coordinator explained several grant applications for different grants are received,

however this grant does not require matching funds. The purpose of the grant is to offer opportunities for police departments to work together with community groups to creatively tackle community problems in new ways. She explained requirements of the grant are that they focus on one crime or disorder problem, collect information regarding achievements and successes as well as obstacles. At least 5% of the award amount be used to evaluate the impact of the problem-solving effort as well as involvement with the community groups. The Keizer Police Department selected larceny as the topic to cover in the district one area which had generated 47% of the larceny related calls in the first 6 months of the year. She continued to explain that they work with the neighborhood watch groups increasing participation with existing groups and create new groups. Further they are enhancing their volunteer groups in the district one area.

Ms. Sherwood indicated part of the grant requires hiring a temporary, full-time community policing crime analysis assistant for the one-year that the grant covers. Part of the funds also cover a community-oriented policing conference. Supplies and equipment bought from the grant can be kept after the period. Supplies include a computer and printer, computer mapping and analyzing software, display stand, coursebook, and other miscellaneous supplies. Also, the consultants/contracts budget includes a survey before and after the project. It is hoped that survey will be city-wide. It is expected to be a very competitive grant and our request is \$58,000. This information has been reviewed by the main community policing group and they unanimously approved requesting this grant.

Councilor McGee pointed out the things that are mentioned are all things our current community policing effort are doing now. He asked if the temporary crime analyst is an assistant to the Community Policing Coordinator.

Ms. Sherwood explained that in the background it shows a full-time community policing crime analyst assistant on the staff report. Also, several program examples are very similar to ours.

Councilor McGee is not satisfied with the answer feeling it is actually an assistant community policing person. He is concerned with the evaluation that the requirements call for 5% of the grant. He adds that only 4 of the 20+ questions on page 10-11 can be answered by a survey adding that the survey is grossly overpriced.

Ms. Sherwood stated she did not have the time or opportunity to find out how much an analysis would be. She researched it over two years ago and it was \$1,700 for a mailout survey but hasn't looked into the cost of other types of surveys today. She adds that if we do not spend all of the money we do not need to return the balance.

Councilor McGee says that it is very competitive so perhaps we can do it for less. He suggests that the survey isn't very useful or effective.

Mayor Koho states that page 19 clearly states it is a community policing assistant, crime analyst (budget detail worksheet).

Councilor Watson shared some of Councilor McGee's concerns. He says he remembers when the policy was adopted requiring grant proposals go to council that they wanted to monitor expenses resulting from getting the grant. The other was to keep a handle on costs in preparing a grant application. He feels considerable time was spent preparing this application and talking with the community groups..

Mayor Koho clarifies that the policy is not violated with the possible exception of hiring a person.

Ms. Sherwood noted this is the first application she's seen that does not require a city match, therefore, she worked on it quickly. She suggested maybe some of the anticipated outcomes of the project may help identify what the federal government is looking for.

Charles Stull, Chief of Police explained the grant is designed to address a specific issue in district one which is to research and analyze larceny and develop an action plan for correction. This area generates a large amount of calls for service. This grant was applied for based on the cost the City nothing to apply, nothing to receive it, nothing to implement it for one year. He believes it will generate a tremendous amount of valuable information to the community and the Council to make future decisions regarding policing. If approved as is it will still be brought back to Council prior to receiving or agreeing to the money.

Councilor Keller added the police probably have volumes of information that isn't available to them so it's hard for council to make sense of it. He feels they don't have enough information to make an informed decision but thinks that could be forthcoming.

Councilor Newton likes the application and thinks this collected information would be very helpful.

Mayor Koho moved approval of submission of the grant application. The Motion was seconded by Councilor Miller.

Councilor Beach asks about the timing of the request and if it has been submitted already.

Ms. Sherwood responded it was previously mailed in due to time constraints. City Manager Tryk indicated she authorized the submission due to the filing deadline.

Councilor Beach says it's after the fact so there's no point in much more discussion.

Councilor McGee appreciates and praises Ms. Sherwood's initiative and his comments were intended to improve the grant adding that the survey has so much work to do it doesn't merit keeping in. He also noted the indirect costs must be monitored and established. He indicated that if there are no indirect costs it shows it wasn't considered and may be dismissed for that reason.

Councilor Watson agrees the City must put in the best application possible and if it comes back approved then the survey can be done in other ways.

The Motion passed as follows:

AYES: Beach, Keller, Koho, McGee, Miller, Newton and Watson (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

CONSENT CALENDAR

The consent calendar consisted of the following:

- a. RESOLUTION - Certification of Delinquent Sewer Accounts
- b. RESOLUTION - Certification of 1995-96 Street Lighting Districts
- c. Approval of August 19, 1996 Regular Session Minutes

Councilor Keller moved for approval of the items on the consent calendar. Mayor Koho seconded the Motion.

The Motion passed as follows:

AYES: Beach, Keller, Koho, McGee, Miller, Newton and Watson (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

OTHER BUSINESS

*Councilor Beach is disturbed by the poor landscaping around the city sign at the south end and feels it's an eyesore.

Mayor Koho believes the maintenance is the responsibility of the City of Salem.

Dotty Tryk, City Manager disagrees adding that the gas company agreed to maintain the property permanently and Salem agreed to repair damage if someone ran into it and if it was excessive Keizer will negotiate and consider contributing.

Mayor Koho thinks one of the local garden (or similar) clubs may be interested in accepting it as a project, he's sure the gas company won't mind the help.

*Councilor McGee mentioned the noise variance asking if it needs to be brought forward as an agenda item. Councilor McGee explained he is getting some pressure, so he would like it handled.

*Councilor McGee also expressed his appreciation to Public Works Director, Wally Mull for his commitment to get the Lockhaven project done by opening of school. However, he then got phone calls that a boy was almost hit by a car because he swung out around construction equipment that is still there. He requested construction be ceased during the busy school traffic times.

Wally Mull, Public Works Director responds that it is possible and that's what they did this morning until after school started. They have been asked to be extremely careful when the kids are coming and keep their equipment off the road.

*Charles Stull, Chief of Police states that school opens tomorrow and they thanked Mr. Mull for doing a fantastic job on the Lockhaven improvements. He added there are 1,200 kids starting school tomorrow and mostly delivered by their parents so there will be some congestion, but there is adequate staff to address the issue.

*Also Chief Stull noted today marks the twenty-year anniversary of the Keizer Police Department building and hopes another coat of paint will be forthcoming.

WRITTEN COMMUNICATION

Mayor Koho noted the receipt of a letter from the Gubser Neighborhood Association regarding the proposed ball park. He discussed this matter with President Jim Lander and will also be speaking at their September 19, 1996 meeting.

There was no further written communication to come before the Council.

AGENDA INPUT

Mayor Koho noted the printed items under agenda input are incorrect. The Council will meet in executive session on September 9, 1996 at 5:30 p.m. to discuss potential land acquisition and then a public meeting will be held on Thursday, September 12, 1996 at 7:00 p.m. to gather input on the proposed ball park.

In addition, Mayor Koho noted he will be out of town for the September 16, 1996 City Council meeting and therefore Council President McGee will be presiding.

ADJOURNMENT

The meeting was adjourned at 11:31 p.m.

Tracy L. Davis
City recorder

APPROVED:

Dennis Koho-Mayor

COUNCIL MEMBERS:

Councilor #1 - Jerry Watson

Councilor #4 - Carl Beach

Councilor #2 - Bob Newton

Councilor #5 - Al Miller

Councilor #3 - Jim Keller

Councilor #6 - Jerry McGee

MINUTES
KEIZER CITY COUNCIL
SPECIAL SESSION
Thursday, September 12, 1996
Keizer Police Department Auditorium
Keizer, Oregon

CALL TO ORDER

Mayor Koho called the special session to order at 7:07 p.m.
Roll call was taken as follows:

Present:

Dennis Koho, Mayor
Carl Beach, Councilor (arrived at 8:10 p.m.)
Jim Keller, Councilor
Jerry McGee, Councilor
Al Miller, Councilor
Bob Newton, Councilor
Jerry Watson, Councilor

Staff:

Dotty Tryk, City Manager
John Morgan, Community Development Director
Wally Mull, Public Works Director
Kim Krause, Finance Officer
Shannon Johnson, City Attorney
Tracy L. Davis, City Recorder

DISCUSSION

**PROPOSED
PUBLIC/PRIVATE
PARTNERSHIP FOR
BASEBALL STADIUM**

Mayor Koho announced this special session was scheduled to gain input and reaction to the possibility of a public/private partnership to build a baseball stadium near the Chemawa interchange along Interstate 5.

Dotty Tryk, City Manager reported in late June the City was contacted by Lisa and Jerry Walker, owner of the Bellingham Giants, with the notion to enter a partnership to build a baseball stadium near the Chemawa interchange. This partnership would involve the City purchasing land, providing sewer and water to the facility and constructing the parking lot. In return, the owners of the team will lease the improved property in order to build a baseball stadium. Ms. Tryk displayed a drawing of the proposed stadium.

City Manager Tryk announced the Council has discussed this possibility and prepared several guiding principals which would assist in the decision to enter this venture. One principal was to gain public input, therefore this opportunity was scheduled.

Mayor Koho introduced Jerry and Lisa Walker, the owners of the Bellingham Giants.

Jerry Walker briefly described his family background including his purchase of the Bellingham Giants in 1989. He indicated a minor league baseball team is very community oriented. Many of the players will live with host families and become very involved with the families and activities in the community.

Lisa Walker added they have been very encouraged by the number of phone calls received supporting their relocation to Keizer. She hopes they can share their love for baseball with the Keizer community.

Presenting testimony to the Council were:

Jim Lander, 6592 Amy Lane NE, Keizer announced he was speaking on behalf of the Gubser Neighborhood Association and as a private citizen of Keizer. He indicated the Gubser Neighborhood would be the area most affected by the construction of the stadium which causes him and his neighbors great concern. He added these concerns have already been voiced to the Council in a formal letter. As a private citizen, he is disturbed by the costs that will be incurred to prepare a site for this facility. He questioned the anticipated costs, potential revenue return to the city and increased property taxes. Mr. Lander concluded by noting he lives on a very strict budget and expects the city do likewise. He noted each of the concerns of the Neighborhood Association have to be addressed or they will oppose this plan.

AP Marshall, 2250 Stonehedge Drive NE, Keizer advised the Council he lives on Stonehedge Drive with property abutting Tepper Lane. He does not support the construction of a stadium in the Keizer area. Mr. Marshall noted there have been several other minor league ball teams located in the Salem area in the past, however all have folded due to attendance problems. He believes the interest level in this area will not be financially supportive. In addition, Mr. Marshall indicated he is concerned with the potential noise from the stadium.

Karen Trucke, 6330 14th Avenue NE, Keizer indicated the residential development in this area of Keizer has already increased the noise and traffic problems. A specific plan to deal with the traffic has not been developed or any potential solutions devised. Therefore, she is opposed to the construction of the stadium. In addition, there has not been any evidence this venture will be economically beneficial to the City. In conclusion, Ms. Trucke indicated further development is a great concern to her.

Wayne Trucke, 6330 14th Avenue NE, Keizer pointed out the recent article in the newspapers indicate this is already a done deal. He believes this proposal is moving too fast without determining the economic value or detriment this stadium may cause. He suggested the baseball team use an alternate sight for one year until all the facts can be studied. He questioned the economic feasibility, potential costs to tax payers, what guarantees would be made to the Gubser neighborhood that their area would not become a thoroughfare for traffic, and the effects of the increased noise. Mr. Trucke urged the Council to answer each of these questions prior to making a final decision.

Robert Scheffel, 6682 Amy Lane NE, Keizer (provided testimony to the Council with the aid of deaf interpreter, Bob Togioka) indicated he supported the baseball venture. He added Keizer is a growing city and this investment will provide an asset to our community. Keizer is a baseball/softball city that has one of the strongest little league programs in the state. Mr. Scheffel relayed his baseball memories of his youth and believed the benefits of this stadium will outweigh the costs in the long run. During a recent visit to the potential site, Mr. Scheffel noted the area next to the freeway is a good location for noise or traffic since both are already present.

John Conner, 5416 Chetco Court NE, Keizer stated he fully supports the baseball stadium proposal because baseball has been a important part of his life. He believed with the importance of baseball in the Keizer community, the stadium will be beneficial to the citizens. Mr. Conner understands there are costs associated, however the potential benefits will override those in the long run. In addition, he believes the fans will come to the games in Keizer rather than enduring the drive and traffic of the Portland games. In closing, Mr. Conner indicated the area next to the freeway is an ideal site for this proposal. He urged the Council to move forward on this venture.

Greg Lamb, 2323 Latona Street NE, Keizer expressed his concern with the potential traffic problems, the hazards of a facility that serves alcohol and the noise associated with this proposal. As a board member of the Gubser Neighborhood Association, Mr. Lamb also voiced his frustration with the secrecy in bringing this issue to the citizens. He indicated this will result in a negative vote in the upcoming tax base election. Mr. Lamb hoped the attendance by the Mayor and City Manager at the upcoming Neighborhood Association meeting on September 19th would shed some light on the details of this proposal.

Rich Peterson, 980 Orchard Street N, Keizer informed the Council he fully supports the partnership with the owners of the Bellingham Giants. He believes this opportunity will only come once for Keizer and the Council should move ahead. Keizer and baseball go together and this endeavor will do nothing but support this strong interest of our community. Mr. Peterson pointed out some type of development will happen in that area and he believes a baseball stadium is better than a shopping center.

David Steinke, 4758 Riverwood Drive N, Keizer explained he has lived in Keizer for twenty years and supports the construction of a baseball stadium at the interchange. He pointed out Keizer is a baseball community and feels the city would benefit by this addition. Mr. Steinke realized there could be potential problems but puts his faith in the city officials to work these details out. He strongly urged the Council to go forward with this proposal.

Jim Warner, 7245 Wheatland Road N, Keizer expressed his opposition to an increase in taxes in order to support this proposal, however he believed this could be a successful business venture in the City. He noted his surprise in the Council's reaction to spending potential funds on this venture when it was so opposed to the past recommendation of the financial task force. His other concerns centered on the long term debt, the lack of commitment by the team to sign a long term lease and the potential added costs to the city for overtime by the police and public works departments. In conclusion, Mr. Warner urged the Council to provide answers to these concerns and convince him this was beneficial use of the taxpayers money.

John Dodge, 801 Cade Avenue NE, Keizer urged the Council to move forward with this proposal.

Jim Mickesh, 1726 Meadowlark Drive NE, Keizer stated he is opposed to this venture due to the possible increase in taxes and the potential traffic problems.

CA Jarvis, 2128 Flagstone Court NE, Keizer expressed his opposition to this proposal due to the potential noise and traffic congestion. He believed the citizens of this area voted for incorporation in 1982 to avoid becoming a large city like Salem which holds major activities like baseball games. Mr. Jarvis suggested an election be held on this issue to determine the feelings of the citizens. In closing, Mr. Jarvis suggested the Keizer Little League Park is an ideal location for playing baseball and another stadium does not need to be built.

Harlan Naegele, 2054 Rock Ledge Street NE, Keizer disclosed he has two major concerns on this issue; traffic and funding. He pointed out that Radiant Drive is a narrow two-lane road which will not accommodate the amount of traffic a baseball stadium will generate. In addition, urban renewal funds should not be used to take this valuable farm land away from the community. He foresees this as a misuse of funds. Mr. Naegele also voiced his opposition that a baseball stadium has never been discussed as an aspect of the Chemawa Activity Center plan and therefore no testimony has been allowed on the subject.

Manny Martinez, 1747 Meadowlark Drive NE, Keizer informed the Council he is opposed to this proposal based on the financial information he has gathered. He believes the stadium will not cover the financial debt to the City. Mr. Martinez also pointed out the Salem Mayor suggested the team locate in Keizer. Salem is not participating in any of the funding required to build the infrastructure for the stadium, but the team will bear the Salem name. Mr. Martinez noted if the Walker's do not have enough money to finance the full structure then they should not relocate their team.

Mike Witenberger, 4721 Jones Road SE, Salem spoke in support of the stadium proposal noting he is a long time supporter of baseball. He agreed there will be increased traffic and noise but believes those issues can be dealt with. Mr. Witenberger urged the Council to support this proposal for the well being of the community. He suggested putting Keizer first in the name of the team.

Ron Hittner, 5265 Willow Leaf Street NE, Keizer described his fond memories of baseball as a child. He supports the concept, however he has several concerns. These concerns include the affect on other city departments such as police and public works, the fast track this decision process is on and the lack of details being released to the public. Mr. Hittner disagreed that this venture will give Keizer an identity. He enjoys Keizer the way it is presently. In closing, Mr. Hittner noted the city has been fiscally conservative in the past and would hope the Council will make the best decision in this case.

Ruth Palmer, 3945 5th Avenue N, Keizer stated she is not against baseball only an increase in taxes. She is suspicious of the use of urban renewal funds to finance the infrastructure for the stadium. She is also concerned with the financial stability a baseball team to repay for the improvements to this property. She also encouraged the Council to carefully consider all the facts before rushing into this great deal.

Jim Kinkaid, 7185 Lakeside Drive NE, Keizer reported his family operates a farm north of Labish Stables where the proposed stadium will be constructed. He is concerned with the wastewater runoff and the effect it will have on Labish Ditch. In addition, he voiced his concern with the potential traffic congestion and the use of farm roads for the traffic to escape this congestion. Mr. Kinkaid suggested the Council discuss this last issue with the Marion County Commissioners.

Michael Baker, 4416 Great Plains NE, Salem remarked he is in support of the stadium proposal, however he does have several concerns, many which have been discussed during previous testimony. His major concern focuses on the livability of the residents in the area, however Mr. Baker indicated he has faith the Council will address these concerns. He reported he has visited several other minor league ball fields, including Bellingham, and believes this is great family entertainment at a reasonable price.

Greg Rands, 6813 Rock Ledge Court NE, Keizer expressed his full support for this proposal. He lives in the Gubser neighborhood and is concerned about the potential problems, however he believes this opportunity should not be passed up by the City. Mr. Rands indicated the owners of the baseball team would not be willing to make a substantial financial investment in the community if they did not have the confidence it would be a success.

Mr. Rands also pointed out if the investment is made to provide the infrastructure for the stadium, this will be a jump start on further development in that area. It is a good investment that will provide many returns to the City. Keizer is a growing community and the interchange area will develop. A baseball stadium will be a good use in that area. In conclusion, Mr. Rands believes the noise and traffic concerns can be worked out and urged the Council to go forward with this proposal.

Paul Orcutt, 6833 Rock Ledge Court NE, Keizer recounted his recent experience in attending a minor league baseball game in Bend. He believed it was a good family atmosphere providing wholesome entertainment at a reasonable cost. He also noted the players become very involved with the fans during the game which provides a memorable experience for the children. However, Mr. Orcutt believes that Salem should not be a part of the name of the team. He urged the Council to move forward on this proposal.

Brennon Jordan, 1015 Rafael Avenue N, Keizer fully supported the proposed baseball stadium because it will provide an opportunity for community spirit. The owners of the team are willing to make a major commitment to this area and believes the City should go forward to provide the necessary land and improvements. Mr. Jordan looks forward to enjoying this public community facility.

Paul Gorlinsky, 7164 Lawnridge Street NE, Keizer gave his full support to the City entering this proposal. His family has been involved with the Keizer little league program and thinks this would be a great asset to the City.

Bruce Rector, 1427 Meadowlark Drive NE, Keizer pledged his full support for the proposal.

Christine Robeless, 1161 Willow Lake Road N, Keizer mentioned her fond memories of growing up attending the Eugene Emeralds baseball games. She noted there are several questions that need answers including the zoning issues, the use of farmland, the future plans of the Chemawa Indian School and the traffic issues. Ms. Robeless urged the Council to inform the citizens on all of these issues.

Cathey Philbrick, 1180 Lockhaven Drive NE, Keizer explained she had been a Keizer resident for twenty years. She believed this is an important forum to gain public input on this issue. Ms. Philbrick noted she is opposed to building this stadium with public funds and is concerned with the City's priority in using taxpayers money. She believed there are other critical uses for these funds, especially for social or environmental issues. Ms. Philbrick urged the Council to conduct an election to determine the feelings of the entire community on this issue.

Kenneth Philbrick, 1180 Lockhaven Drive NE, Keizer believed Keizer is already saturated with baseball by Keizer little league and minor league baseball in nearby communities. He feels there would not be a market for another baseball stadium in this community. Mr. Philbrick reminded the Council of Salem's lack of success with baseball teams due to the small attendance. He believes some other type of youth activity center would be a better way to spend public funds.

Jim Taylor, 688 Menlo Drive North, Keizer reported he is a member of the board of directors for the Keizer Little League program and also serves as chair of the Keizer Parks Advisory Board, however his testimony is that of a private citizen and his love for baseball. He noted this would be a family oriented

business which would provide entertainment for the citizens of this community. The successfulness of the Keizer Little League program should give some indication of the popularity of baseball in this community.

Mr. Taylor pointed out the Keizer City Council has always been fiscally responsible and he believes this venture will be considered in the same manner. He urged the Council to move forward with this proposal.

Clint Holland, 6488 Crampton Drive NE, Keizer informed the Council he is the President of the Keizer Little League and was previously a partner in the ownership of the Salem minor league baseball team. He believes this would be a positive activity for the youth of this area and also other community events could be sponsored in the stadium. He suggested using the stadium for the Little League World Series which would provide additional revenue for other area businesses. He fully supported the public/private partnership with the Bellingham Giants.

Responding to an inquiry by Councilor Watson, Mr. Holland indicated the failure of the Salem team was due to many factors. However, it is not uncommon for a public/private partnership to develop in this fashion. He referred to the success of the Portland Rose Garden and the number of other events this complex is used for. This generates income for the entire community.

Rick Frey, 1252 Horizon Ridge Court NE, Keizer pointed out building a stadium at the interchange could provide a cornerstone for the future of this community. As an employee of McLaren, he is aware of the need for community activities involving youth. In addition to baseball, this facility could provide a setting for band competitions, high school football playoffs and other youth events. Mr. Frey understood this is a large investment but it will be a great return to the community.

Rick Roemer, 3105 Zee Lane NE, Keizer voiced his support for the stadium proposal. He believes this is an ideal location and will be environmentally safe for a development of this type. Mr. Roemer affirmed there will be traffic issues to deal with, however the Miracle of Christmas lighting event also draws large amounts of traffic and this has been successfully handled. He is concerned with the financial details but trusts the City Council to make the appropriate decisions. Mr. Roemer believes this will be a positive addition to the community and encouraged the Council to move forward with this great opportunity.

Dale Nason, 2200 Chemawa Road NE, Keizer noted as a neighboring resident to the Keizer Little League complex, he believes the noise and traffic concerns will be successfully worked out. He also concluded if the team left the area, this stadium would provide a very nice addition to the Keizer Little League complex. He supports the city participation in this project.

Donald Porter, 4820 River Road N, Keizer voiced his support for the development of this stadium project. He believes this will be a wonderful opportunity for the youth and citizens of this community. Mr. Porter pointed out a minor league baseball game will provide low cost family entertainment.

Dean Lohrman, 3506 Glen Creek Road NW, Salem described his recent experience while attending the Little League world series in Dickinson, North Dakota. He stated by having a facility of this type and holding this similar event in Keizer, it would provide an economic impact to the entire community. He strongly urged the Council to move forward with this project.

Norm Cobb, 4606 Rivercrest Drive, Keizer pointed out the testimony of the Gubser Neighborhood Association representative indicated their quality of life will decrease if this proposal is agreed to. He urged the Council to fully study this issue prior to making any decisions.

Emil Valish, 6625 Radiant Drive NE, Keizer informed the Council he lives on Radiant Drive near the proposed site. He noted development in his area will occur in some fashion and the noise and traffic concerns will always be an issue. He supported the baseball stadium proposal.

Mike Hart, 6955 9th Court N, Keizer stated he is in favor of the baseball stadium proposal. He believes development has not occurred at the interchange because of the lack of infrastructure, however if it is in place this area will become viable for development. As a former council member, he understands the frustrations but urged the City Council to move forward.

Allen Marshall, 2041 SW 58th Avenue, Portland indicated he is the real estate broker for one of the parcels of property targeted for this development. He is willing to work with the City in negotiating this transaction. Mr. Marshall favored a baseball stadium over an industrial building at the entrance to the City.

Ron Hoke, 2823 Ridgeway Drive SE, Turner informed the Council he represents one of the property owners of the potential site for the stadium. In a recent conversation with the owners, they were very supportive of the development of the baseball stadium at this location. Mr. Hoke also pointed out this property has easements for the BPA power lines which will make some types of development very difficult. However, a baseball stadium and parking lot would be perfect for the site. He believes this would provide a great focal point at the entrance to Keizer and also provide a great benefit to the entire community.

Steve Martin, Keizer indicated he has been a Keizer resident for only one day, however he is very supportive of this proposal. He noted he previously worked with the Eugene Emeralds which employs several youths and provides a good place for the young members of the community to congregate. Mr. Martin also noted there is less parking area in Eugene than proposed at this site and the traffic congestion is minimal.

Gordon Larson, 441 McNary Hts Drive N, Keizer voiced his concern with the potential costs to the tax payers to enter this partnership with the team. However, as a lover of baseball he fully supports this proposal.

Bill Wolf, 4055 Gary Street N, Keizer described this venture as a great investment and asset to the City. Baseball is the spirit of Keizer and the addition of a minor league team will be a success. Based upon the drawings and plans of the stadium, he indicated this facility will be top notch and draw the fans from around the metropolitan area to Keizer. Mr. Wolf noted the traffic issues can be resolved by blocking off Tepper Lane and the noise issues can be resolved in the acoustical design of the stadium. Mr. Wolf supported this venture using urban renewal funds as long as this does not harm the River Road or Cherry Avenue projects. He believes this development will provide a beautiful gateway to our city.

Joe Johnson, Monmouth pointed out he is a teacher at Grant Elementary and involved in a men's softball league. He fully supports the development of a stadium. Mr. Johnson indicated the facility would accommodate the world masters games of men's softball which draw participants from all over the world. It would be a great revenue source for the community. Mr. Johnson urged the Council to move forward on this proposal.

Responding to a question from the audience, Mayor Koho pointed out there is insufficient time to prepare a ballot for the community to vote on this issue.

Bill Medford, 1179 Ridgepoint NE, Keizer noted this is a tremendous opportunity for our community. He has fond baseball memories of attending games with his father in Eugene. Mr. Medford pointed out there will always be obstacles but each can be overcome in a positive way. Furthermore this opportunity will only bring further development to the community. He urged the Council to move forward.

Ray Peters, indicated this is a great opportunity but cautioned the Council to move slowly. He requested staff provide the financial facts to the community in order to make the right decision on this issue.

Bob Herberger, 2805 Chemawa Road NE, Keizer reported he owns land near the proposed site for the stadium. He fully supports the development of the stadium which will bring additional development to the Chemawa interchange area. Mr. Herberger pointed out the property owners in this area have been held hostage by the City since 1977 with zoning discussions for this area. He welcomed the development.

Bob Togioka, 45th Avenue, Salem recounted his experience living near the site where the previous Salem baseball team played their home games. He reported no negative factors, including traffic or noise issues that affected his livability. Mr. Togioka noted from his past experience in teaching at Gubser Elementary school, Keizer is a volunteer community dedicated to a little league program which is recognized around the state for its success. He believed with the love of baseball already obvious in a community, this proposal is a sure success.

Glen Sanford, explained the baseball stadium would be great for the community, however he is concerned with the lack of information available on potential costs to the tax payers, the traffic issues and the possible noise problems. He hoped all of these concerns would be addressed and reported to the citizens prior to any commitment being made.

Responding to several concerns and issues raised during the testimony, **Jerry Walker** indicated the player development contract with the San Francisco Giants has two years left until expiration. However, the Giants are very excited with the relocation prospect and drawings of the stadium, therefore he believes the contract will once again be negotiated and signed for another four-year term. Mr. Walker also noted that he and his wife are very committed to this project and are pledging all of their assets to make this proposal work. He agreed this stadium will make a beautiful gateway to Keizer.

Lisa Walker pointed out the issue of having Salem included in the name of the team is a marketing strategy.

Mr. Walker also noted the architect is working with an acoustical engineer to divert or reduce the noise effects on the neighborhood. Furthermore, he stated his number one goal is to sponsor sporting events in the stadium rather than concerts. These events could include soccer, football, baseball or softball.

After further inquiries from the audience, Mr. Walker reported this is a family oriented operation which may employ up to 50 seasonal employees. He indicated the baseball operation will attract young or retired individuals as employee prospects and most will make minimum wage or slightly higher. The Northwest Baseball league has been around since 1901 and includes teams in Medford, Eugene, Portland, Boise, and Yakima. Mr. Walker believes this will provide the community with a fun family environment at an inexpensive cost.

Mr. Walker pointed out when he first met with City officials in the beginning of July he asked that the name and details be kept confidential until the present baseball season was completed. This was important to keep the players focused as well as not alienating the fans in Bellingham.

In addition, Mr. Walker indicated there are plans to sell alcohol at the games, however there will not be any special beer nights or other functions that promote the use of alcohol. In Bellingham, the sale of alcohol at the facility has not prompted any negative reports. In regards to the traffic issues, Mr. Walker hopes there will be shuttle transportation for some of the fans attending the games. He is willing to work with the City to reduce any potential traffic impacts on the neighborhood.

Responding to questions from Councilor McGee, Mr. Walker stated it is important to include Salem in the team name so they can draw more corporate sponsors from the Salem area. He did not know if it would make a difference if Keizer's name was prior to Salem. However, he did indicate stadium name will not include the Salem.

Mayor Koho thanked those who gave oral testimony and also for all the citizens attending the meeting. He recognized there are several issues that need to be resolved and will continue with the public process to gather input.

OTHER BUSINESS There was no other business to come before the Council.

**WRITTEN
COMMUNICATION**

Mayor Koho announced two letters were received in regards to the proposed stadium; one in support and one in opposition.

There was no written communication to come before the Council.

ADJOURNMENT The meeting was adjourned at 10:59 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

Councilor #6 - Jerry McGee

Minutes approved:

MINUTES
KEIZER CITY COUNCIL
SPECIAL SESSION
Friday, October 4, 1996
Robert L. Simon Council Chambers
Keizer City Hall
Keizer, Oregon

CALL TO ORDER

Council President McGee called the special session to order at 5:10 p.m.. Roll call was taken as follows:

Present:

Dennis Koho, Mayor (via telephone)
Carl Beach, Councilor
Jim Keller, Councilor (via telephone)
Jerry McGee, Councilor
Al Miller, Councilor
Bob Newton, Councilor
Jerry Watson, Councilor (via telephone)

Staff:

Dotty Tryk, City Manager
John Lien, City Attorney
Shannon Johnson, City Attorney
Dianne Suek, Administrative Assistant
Tracy L. Davis, City Recorder

**ADMINISTRATIVE
ACTION**

**POSTPONEMENT OF
THE OCTOBER 7,
1996 CITY COUNCIL
MEETING**

Councilor Keller moved to postpone the first Monday City Council meeting from October 7, 1996 at 7:00 p.m. until Monday, October 14, 1996 at 7:00 p.m. Councilor Beach seconded the Motion.

Mayor Koho pointed out the reason for this postponement is to have a full Council in attendance to discuss the critical issues which were scheduled for October 7th. He indicated he and Councilor Watson would have been unable to attend the October 7th meeting.

The Motion passed as follows:

AYES: Beach, Keller, Koho, McGee, Miller, Newton and Watson (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

OTHER BUSINESS

****Dotty Tryk**, City Manager indicated staff and some of the residents along Labish Ditch on Thursday, October 3rd to review the map reflecting the areas in which debris should be removed. She pointed out the residents felt this was more than a volunteer crew could accomplish and therefore recommended proceeding with the contract to clean the ditch.

Councilor Newton moved to authorize the City Manager to contract for the cleaning of Labish Ditch. Councilor Miller seconded the Motion.

Councilor Watson confirmed the developer of the Hidden Creek and Country Glen subdivisions will pay for the costs of this cleaning. He suggested requiring the contractor cleaning the ditch to provide a bond covering any potential damage that may occur.

City Manager Tryk pointed out the developers will be covering the costs associated with removal of all of the debris indicated on the maps. She indicated there is not any identified debris near the Swingwood area. In addition this map covers the area along the ditch to River Road.

Councilor Watson requested staff review the removal of a tree near his property on Manzanita.

The Motion passed as follows:

AYES: Beach, Keller, Koho, McGee, Miller, Newton and Watson (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

****Councilor Watson** indicated there will a memo forthcoming regarding the recent meeting of the subcommittee on the baseball stadium.

There was no other business to come before the Council.

WRITTEN COMMUNICATION

There was no written communication to come before the Council.

ADJOURNMENT

The meeting was adjourned at 5:18 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

Councilor #6 - Jerry McGee

Minutes approved:

CITY COUNCIL MEETING: October 14, 1996

AGENDA ITEM NUMBER: 9a

TO: MAYOR AND CITY COUNCIL

THROUGH: DOTTY TRYK 
CITY MANAGER

FROM: JOHN N. MORGAN, AICP 
COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: HEARINGS OFFICER RESIGNATION

Janet S. McCoy has submitted her resignation as Keizer's Hearings Officer. The Hearings Officer position is a Council appointment. Therefore, a selection process must be initiated to identify candidates, screen them, and create a recommendation to the Council for appointment to the position. At the same time, a new Hearings Officer Pro Tem may be selected.

When Ms. McCoy was selected as Hearings Officer, the process included advertisement in local and state bar journals and newspapers. Applicants were screened by a committee consisting of the City Planner, City Attorney, Community Development Director, and Councilor Jerry Watson. Recommendations were made and accepted by the Council for the regular and pro tem positions.

Staff recommends using the same processes this time and looks to the Council for approval and for appointment of a Councilor to sit on the selection committee.

This process will probably take 60 to 90 days to complete. However, the current Hearings Officer Pro Tem will continue to serve during that period.

RECOMMENDATION:

It is recommended Council, by motion, approve the process proposed by Staff and appoint a Council member to the selection committee.

Janet S. McCoy
Hearings Officer
2190 High Street S.E.
Salem, Oregon 97302

September 26, 1996

Mayor Koho
City Council Members
City of Keizer
930 Chemawa Street N.E.
P.O. Box 12000
Keizer, Oregon 97307

RE: Hearings Officer Contract

Dear Mayor Koho and City Council Members:

Please accept my resignation from the contractual position of City of Keizer Hearings Officer effective as of the date of this letter. I regret that I will not be able to provide Hearings Officer services due to medical concerns. I have enjoyed working with the City of Keizer and hope to be able to do so again in the future.

Sincerely,


Janet S. McCoy

cc: John Morgan

FINAL ACTION SHEET

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, October 14, 1996

7:00 p.m.

Robert L. Simon Council Chambers

Keizer City Hall

Keizer, Oregon 97303

1. CALL TO ORDER

The meeting was called to order at 7:01 p.m.

2. ROLL CALL

All members of the Council were present - Councilor Watson arrived at 7:03 p.m.

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.

There was no public testimony to come before the Council.

4. COMMITTEE REPORTS

- a. Council Liaison Reports
 - Planning Commission - Councilor Watson
 - Community Policing - Councilor Keller

Councilor Watson announced he was not present at the October 9 Planning Commission meeting and therefore did not give a report.

Councilor Keller gave a brief report on the progress and actions of the Community Policing Committee.

5. PUBLIC HEARINGS

- a. Chemawa Activity Center Plan (continued from September 16, 1996)

Mayor Koho reopened the public hearing continued from September 16, 1996.

Presenting testimony were:

- Hugh Adams, 4090 River Road N, Keizer
- Ken Layton, 4177 River Road N, Keizer
- Barbara Knytyck, 4616 Rivercrest Drive N, Keizer
- Mike Hart 6955 9th Court N, Keizer
- Gary Johnson, Regional Manager-Oregon Department of Transportation
- Bill Wolf, 4055 Gary Street N, Keizer
- Verena Wessel, 476 Evans Avenue, Keizer
- Rod Stubbs, 3460 Dogwood Drive S, Keizer
- Linary Kingdon, 294 Tripple Tree Circle, Keizer
- Wayne and Karen Trucke, 6033 14th Avenue, Keizer
- Sydney Wise, 5405 Ridge Drive N, Keizer
- Allen Marshall, 2041 SW 58th Avenue, Portland
- Troy Costales, 7132 35th Avenue NE, Salem
- Josephine Ditchen, 7332 74th Avenue NE, Salem
- Emil Valich, 6625 Radiant Drive, Keizer
- Rich Rawlins, 7020 Lardon Road NE, Salem

Mayor Koho continued the public hearing until December 16, 1996.

6. ADMINISTRATIVE ACTION

- a. ORDINANCE - Amendments to Zoning Ordinance to Restrict Automotive Related Uses in River/Chemawa Road area

Councilor Watson moved a bill for an Ordinance Amending the Keizer Zoning Ordinance to Restrict Automobile-Related Uses in the River Road and Chemawa Road Area; and Declaring an Emergency (Amending Ordinance 87-078). Councilor Beach seconded the Motion.

The Motion passed 5-2 with Councilors Keller and Newton in opposition.

The Ordinance will be brought back for a second reading on October 21, 1996.

- b. RESOLUTION - Initiating a Comprehensive Plan Map Amendment/Zone Change/Conditional Use (Stadium Site)

Mayor Koho moved a Resolution Initiating a Comprehensive Plan Map Amendment, Zone Change, and Conditional Use (Stadium Site). Councilor Miller seconded the Motion.

The Motion passed unanimously by the Council.

- c. Baseball Stadium

Councilor Miller moved to repeal the previous Council action on setting a spending limit on this project of \$2.5 million. Mayor Koho seconded the Motion.

The Motion passed unanimously by the Council.

Councilor Miller moved to set the City of Keizer's spending cap for the construction and land acquisition, not to include the cost of borrowing, at \$2.995 net after consideration of all anticipated reimbursements. Mayor Koho seconded the Motion.

Councilor Watson suggested the motion include the normal loan or bonding costs and legal costs in conjunction with the project. He indicated these costs are outlined on the spread sheet previously prepared by the City Manager. Furthermore, he requested a clause be placed at the end that state the reimbursements do not include any funds or grants received from third parties.

The Council agreed by consensus with the suggested additions made by Councilor Watson.

The Motion passed 6-1 with Councilor McGee in opposition

Mayor Koho moved the City of Keizer enter into a preliminary agreement with the Walker's and their other partners that includes the lease, as amended during the tonight's discussion, which will remain unsigned at this point until the conditions outlined have been met (conditions include: the adoption of urban renewal plan amendment adding the area to the urban renewal district, preliminary arrangement of financing for purchase of the property by the City on terms acceptable to the City, successful acquisition of the properties on prices and terms acceptable to the city, finalization of any necessary land use approvals, the ball team securing preliminary loan commitment on terms acceptable to the team, and inclusion of all exhibits attached to the lease) and successful resolution of the parking lot management agreement with provisions dealing with the term, commercial and community uses, park and ride, and taxes if necessary. Councilor Miller seconded the Motion.

The Council agreed by consensus to include a joint review of the performance of the lease and how the terms are working after the first ten years at five year intervals. This review will not reopen or renegotiate the terms of the lease.

The Motion passed 6-1 with Councilor McGee in opposition:

7. CONSENT CALENDAR

- a. **RESOLUTION** - Initiate Third Avenue Street Lighting Local Improvement District
- b. **RESOLUTION** - Library Task Force
- c. **RESOLUTION** - Awarding of Bid for Construction of Water Reservoir
- d. Approval of September 3, 1996 Regular Session Minutes
- e. Approval of September 12, 1996 Special Session Minutes
- f. Approval of October 4, 1996 Special Session Minutes

Councilor Newton removed item 7b from the consent calendar.

Mayor Koho moved for approval of the remaining items on the consent calendar. Councilor Miller seconded the Motion.

The Motion passed unanimously by the Council.

Item "b"

Councilor Newton requested the resolution read "...library task force of not more than nine (9) persons.....

Councilor Newton moved a Resolution Endorsing Bookmobile Services for the City of Keizer and Related Matters (Repealing R96-914) as amended. Councilor Watson seconded the Motion

The Motion passed unanimously by the Council.

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.

- Mayor and Council Members
- City Manager and Department Heads

There was no other business to come before the Council.

9. WRITTEN COMMUNICATIONS

To inform the Council of significant written communications and petitions.

- a. Letter of Resignation from Hearings Officer

The Council directed staff to proceed with the recommended process for hiring a hearings officer for the City. Councilor Beach volunteered to participate in this process.

10. EXECUTIVE SESSION

- a. Pursuant to ORS 192.660(1)(e) - Real Property Transactions

An executive session was not held.

11. AGENDA INPUT

OCTOBER 21, 1996

6:30 P.M. Urban Renewal Agency Meeting

- Sign Grants
- River Road Redevelopment Board Appointment

7:00 P.M. City Council Meeting

- Sewer Reimbursement Agreement
- Comp Plan/Zone Change/Conditional Use - Stadium Site Public Hearing

OCTOBER 28, 1996

5:30 P.M. City Council Work Session

- Salem Sewer Master Plan

NOVEMBER 4, 1996

7:00 P.M. City Council Meeting

Mayor Koho noted the agenda input items.

12. ADJOURN

The meeting was adjourned at 3:27 a.m.



PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: TROY B COSTALOS

Address: 7132 35th AVE NE
Salem OR 97303

Subject or Agenda Item Number: Stadium Siting
& Impact

Your Comments:

Proponent _____ Opponent X General _____

Date 10-14-96

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Hugh E Adams

Address: 4090 River Rd N

Kenya, OR

Subject or Agenda Item Number: 6-C

Your Comments:

Proponent _____ Opponent ☒ General _____

Date 10-14-96

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Barbara Krystych

Address: 4616 Riverscrest Dr. N.
Kenner, La

Subject or Agenda Item Number: 6 C

Your Comments:

Proponent _____ Opponent _____ General _____

Date 10-14-98

PUBLIC TESTIMONY

IF YOU ARE INTERESTED IN ADDRESSING THE COUNCIL ON AN ISSUE NOT LISTED ON THE AGENDA OR AN ITEM ON THE AGENDA NOT SCHEDULED FOR A PUBLIC HEARING, PLEASE FILL OUT THE INFORMATION BELOW AND GIVE TO THE CITY RECORDER OR STAFF GREETER PRIOR TO THE START OF THE MEETING. THE MAYOR WILL RECOGNIZE YOU AND ASK FOR YOUR TESTIMONY AT EITHER THE PUBLIC TESTIMONY SECTION OF THE MEETING OR THE APPROPRIATE AGENDA ITEM.

EACH PERSON'S COMMENTS WILL BE LIMITED TO FIVE MINUTES.

Name: Ken Layton

Address: 4177 River Rd. N

Subject or Agenda Item Number: 6 c

Your Comments:

Proponent _____ Opponent ☒ General _____

Date 10/14/96

KeizerTimes

DRAFT

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CITY OF KEIZER, an Oregon municipal corporation
AND
SALEM-KEIZER PROFESSIONAL BASEBALL

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GROUND LEASE

Date: _____, 1996

Lessor: CITY OF KEIZER, an Oregon
municipal corporation ("Lessor")

Lessee: SALEM-KEIZER PROFESSIONAL BASEBALL
("Lessee")

Lessor leases to Lessee, and Lessee leases from Lessor, the real property (the "Premises") described on Exhibit "A" attached hereto and by this reference incorporated in this Lease. The foregoing demise is subject, however, to the encumbrances described on Exhibit "B" attached hereto and by this reference incorporated in this Lease. *Add approx 6 acres*

The Premises are leased for a term (the "Term") of twenty nine (29) years subject to an option to extend for eight (8) years as set forth in Section 22, commencing on the date of this Lease. *OK*

Lessor and Lessee agree as follows:

Section 1. Project Conditions

1.1 Stadium Construction. Lessee intends to construct a stadium (the "Stadium") and related improvements on, under, and over the Premises. The Stadium and all the related improvements are referred to in this Lease as the "Project." The Project and any future alterations, additions, replacements, or modifications to the Project during the Term of this Lease are referred to in this Lease as the "Improvements." The preliminary plans and specifications for the Project are attached as Exhibit "C" and incorporated in this Lease by this reference. This Lease shall be conditioned on Lessee and Lessor *mutually* determining that the Project is feasible after completing a due-diligence investigation of the condition of the Property and obtaining all necessary governmental approvals *(subject to Sections 1.3 and 9.1)*, consultants reports, financing commitments, final plans and specifications, design and construction contracts, and any other approvals, loan and lease commitments, or contracts reasonably determined to be necessary by the Lessor and the Lessee. *Add Independent*

1.2 Time Limit for Condition. The foregoing condition shall be for the benefit of both parties and must be satisfied or waived by both the parties on or before 5:00 p.m. on December 31, 1996, or this Lease shall terminate and be of no further force and effect. In such event neither party shall have any further liability under this Lease except for liability accrued before the date of termination.

1.3 Cooperation by Lessor. Subject to Section 9.1, Lessor shall cooperate with Lessee in all respects in connection with satisfying the condition. Lessor shall execute such applications and other instruments reasonably necessary to satisfying the condition, provided that Lessor shall not be required to pay any application fees or incur any other costs or liability in connection with satisfying the condition beyond Lessor's fees for any professional advice Lessor desires. Lessor may choose to, but is not obligated, participate in any appeal from a governmental decision and/or approvals, including, but not limited to any appeal to the Land Use Board of Appeals.

Section 2. Construction of the Project

2.1 Lessee to Construct Project. Lessee shall construct the Project in accordance with the final plans and specifications approved by Lessor, which approval shall not be unreasonably withheld or delayed. In the event of any dispute regarding the design of the Project, the matter shall be mediated and arbitrated in accordance with the provisions of Section 32 of this Lease. Excavation for the foundation of the Stadium shall commence no later than ninety (90) days after the satisfaction or waiver of the condition to this Lease stated in Section 1.1 above. Lessee shall, subject to acts of God, strikes, or any other reason beyond the reasonable control of Lessee, diligently prosecute the work to completion by no later than 240 days after it is commenced. The work shall be performed in accordance with all Legal Requirements and in a good and professional manner. For the purposes of this Lease, the term "Legal Requirements" includes all present and future laws, ordinances, orders, rules, regulations, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, foreseen or unforeseen, ordinary as well as extraordinary. Lessor shall have the right to inspect the work at reasonable intervals subject to the supervision of Lessee and in a manner that will minimize any interference with the work.

2.2 Lessor to Construct Certain Improvements. Lessor shall provide the following Improvements at its expense under the condition set forth below:

(a) The rerouting, widening and resurfacing of Radiant Drive for entry into the Premises around the eastern perimeter of the Premises and the reasonable improvement of Tepper Lane for access to the southern portion of the Premises. All of Radiant Drive from the northern portion of the Premises to Chemawa Road will be overlaid with new road surface. Lessor shall complete all construction required hereunder on Radiant Drive this time to allow the opening of the Stadium by June 1, 1997. On or before June 1, 2001, Radiant Drive shall be fully improved to full arterial standards from Chemawa Road to the northern portion of the Premises.

(b) The sewer line to connect the Premises to the sewer system of the City of Keizer. Such sewer line shall be no less than 500 feet away from the Premises. Lessee shall pay all costs of connecting such sewer line to the Premises. Temporarily, for up to the first five (5) years of this Lease, unless extended by mutual agreement between the parties, Lessor may have the option of installing and maintaining holding tank systems on the Premises instead of permanently connecting the sewer line for the Premises to the city, such permanent connection to be completed however within the first five (5) years of this Lease or by June 1, 2001, whichever occurs first;

(c) Construction, paving, striping, landscaping, lighting, fencing and otherwise finishing readily accessible parking lots for a minimum of ~~4,160~~ 500 cars, trucks or recreational vehicles as set forth on the plans attached as Exhibit "D". ~~Such construction shall be completed on or before June 1, 1997.~~ The ownership, control, maintenance and management of such parking lot shall be subject to a separate Parking Lot Management Agreement between the parties. The parking lot is not subject to any terms of this Lease and is not included in the legal description of the Premises;

(d) Construction of a water line to be located no less than 300 feet from the Premises. Lessee shall pay all costs of connecting such water line to the Premises.

Section 3. Rent

3.1 Minimum Rent. Until the condition stated in Section 1.1 is satisfied or waived by the parties, no Minimum Rent shall be payable with respect to the Premises. Lessee covenants and agrees to pay to Lessor, promptly when due, without notice or demand and without deduction or setoff of any amount whatsoever, One Dollar (\$1.00) per year as Minimum Rent for the Premises on January 2, 1997, and thereafter One Dollar (\$1.00) per year payable on January 2 of each year thereafter. All Rent shall be paid in advance.

3.2 Percentage Rent. Lessee shall pay to Lessor the following Percentage Rent:

(a) Five percent (5%) of gross ticket receipts for Lessee Events. As used herein, "Lessee Events" is defined as all Salem-Keizer Professional Baseball events, events which are produced and controlled by Lessee, or events which Lessee directly determines the ticket prices.

(b) Five percent (5%) of gross ticket receipts for all Repeated Sporting Events, however, Lessee shall retain one percent (1%) for an administration fee. As used herein, "Repeated Sporting Events" is defined as any sporting event which is not a Lessee

Event and in which the same team or participants play five (5) or more ~~times~~days in any one 365-day period.

(c) Five percent (5%) of any gross rental receipts received by Lessee for any other type of event other than those listed above and Community Events referred to in Section 4.3.

(d) As used herein "Gross Ticket Receipts" shall mean those funds received on all ticket sales by Lessee for Lessee Events, or by a third party for Repeated Sporting Events. As used herein "Gross Rental Receipts" shall be all those funds received by Lessee for use of part or all of the Premises whether calculated by a flat rate, a percentage of ticket revenues or otherwise.

(e) The total Percentage Rent shall be paid to Lessor on a quarterly basis, with such payment to be received by Lessor no later than the fifteenth (15th) day of the month following the close of the previous quarter.

3.3 Rent Payable to Lessor. All amounts payable under Sections 3.1 and 3.2 above, as well as all other amounts payable by Lessee to Lessor under the terms of this Lease, shall be paid at the office of Lessor set forth in Section 31.1, or at such other place within the continental limits of the United States as Lessor shall from time to time designate by notice to Lessee, in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment.

3.4 Accounting of Receipts. On or before the fifteenth (15th) day of the month following close of the calendar quarter during the Lease Term and any extensions or renewals of the Term, Lessee shall furnish to Lessor a statement of Lessee's Gross Ticket Receipts and Gross Rental Receipts for the preceding calendar month. Each statement shall be signed and certified by Lessee or its authorized representative to be correct. In the event Lessee fails to furnish Lessor with the statement within twenty (20) days of its due date, Lessor shall have the right to conduct an audit of Lessee's books and records with the cost, together with any charges resulting from the audit, to be the obligation of Lessee and payable on demand.

Lessee shall keep at the Premises full and accurate books of account, records, cash receipts, and other pertinent data showing its Gross Ticket Receipts and Gross Rental Receipts. Lessee shall install and maintain accurate receipt-printing cash registers and shall record on the cash registers every sale and other transaction made from the Premises; or, if Lessee does not have and does not wish to install receipt-printing cash registers, Lessee shall use serialized sales slips and shall record every sale and other transaction made from the Premises on such sales slips. Such receipts or sales slips shall be kept and maintained as provided in this section. Lessee shall also furnish to Lessor copies of

Lessee's sales and use tax returns at the time each is filed with the State of Oregon.

The books of account, records, cash receipts, sales slips, and other pertinent data shall be kept for a period of two (2) years from the end of each calendar year during the Lease Term. The receipt by Lessor of any statement, or any payment of the Percentage Rent for any period, shall not bind Lessor as to the correctness of the statement or the payment. Lessor shall be entitled, during the Term and for two (2) years after the end of the Term, to inspect and examine all Lessee's books of accounts, records, cash receipts, sales slips, and other pertinent data for the purpose of ascertaining and verifying Lessee's Gross Ticket Receipts and Gross Rental Receipts. Lessee shall cooperate fully with Lessor in making such inspection. Lessor shall also be entitled, no more frequently than once every calendar year during the Term and once after the end of the Term, to an independent audit of Lessee's books of accounts, records, cash receipts, sales slips, and other pertinent data to determine Gross Ticket Receipts and Gross Rental Receipts, such audit to be conducted by a certified public accountant designated by Lessor. If such an audit shows that there is a deficiency in the payment of any Percentage Rent, the deficiency shall become immediately due and payable. The cost of the audit shall be paid by Lessor unless the audit shows that Lessee has understated Gross Ticket Receipts and Gross Rental Receipts by more than ~~three~~ percent (3%), in which case Lessee shall pay all costs of the audit; or in the event that Lessee has failed to keep proper books of account, receipts, and records sufficient to enable the auditor to determine the Percentage Rent with reasonable accuracy, the auditor shall nonetheless determine the Percentage Rent with as much accuracy as circumstances permit at Lessee's sole expense. In the event such audit determines that Lessee has understated the Gross Ticket Receipts and Gross Rental Receipts by ~~ten~~ percent (10%) or more, Lessor may terminate this Lease in addition to the foregoing remedies if it is determined by mediation and arbitration that Lessee knowingly understated the Gross Ticket Receipts and Gross Rental Receipts.

Lessor shall not be entitled to conduct more than one (1) audit with respect to any Lease Year. Lessor shall keep confidential all information gained in connection with any audit or inspection of Lessee's records and all information provided in any Percentage Rent report, including sales and use tax returns, and shall not disclose it to third parties; provided, however, that Lessor may disclose such information to the extent reasonably necessary in connection with financing arrangements or the assignment of Lessor's interest in the premises as long as Lessor takes reasonable steps to ensure that the applicable lender or assignee keeps such information confidential.

3.5 Rent is Net Return. It is intended that the Rent provided for in this Section shall be an absolutely net return to

Lessor throughout the Term, free of any expense, charge, or other deduction whatsoever, including all claims, demands, or setoffs of any nature whatsoever.

3.6 **Payment of Additional Amounts.** Lessee shall also pay without notice, except as may be provided in this Lease, and without abatement, deduction, or setoff, as additional rent, all sums, impositions, costs, and other payments which Lessee in any of the provisions of this Lease assumes or agrees to pay, and in the event of any nonpayment, Lessor shall have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law in the case of nonpayment of the Minimum Rent.

Section 4. Use

4.1 **Use as Stadium.** Lessee shall use and occupy the premises continuously during the Term for the operation of a first-class Stadium. The use shall be the standard uses usually seen for multi-purpose stadiums, but with the primary and predominant use being sporting events, whether professional, semi-professional, amateur, youth or other, subject to the provisions and restrictions set forth herein. The Premises may not be used for any other purpose, or be the subject of a change in concept without the written consent of Lessor. Lessee shall maintain and operate the business during the entire Term with due diligence and in a first-class manner to produce the maximum Percentage Rent to Lessor. Lessor shall have the right to approve any signs or displays Lessee may desire to erect on or about the Premises that are specifically designed to be visible from the exterior of the Stadium, in order to ensure that Lessor may control the quality and character of the presentation displayed by Lessee. Lessor shall approve the proposed sign or display unless Lessor, in a timely manner, gives Lessee notice that such sign or display is inappropriate and specifically details Lessor's reasons for such disapproval. Such reasons may include, but are not limited to:

- (a) The proposed sign or display would be in violation of the Keizer Sign Ordinance or other applicable law or regulations;
- (b) The proposed sign or display contains references to tobacco or alcohol products or their usage;
- (c) The proposed sign or display is not consistent with reasonable community values.

Lessor hereby approves the main "marquee" sign, the design of which is attached as Exhibit "D" and by this reference incorporated herein. Such approval is contingent on the sign complying with all applicable local, state and federal regulations, including the Keizer sign ordinance. Lessee acknowledges that construction of such sign shall be subject to amendment of the current sign

ordinance, and by entering into this Lease, Lessor is not bound to amend such ordinance. Any modification of such sign or display shall require Lessor's approval as set forth above, but in no event shall the reference on such sign, "Welcome to Keizer" be changed in size to the degree that it is smaller than the largest other lettering on such sign.

The "marque" sign referenced above will include an electronic reader board. Lessee agrees to allow reasonable use of such reader board for announcement of civic and community events, whether or not such events are defined as Community Events as set forth in Section 4.3.

Lessee acknowledges that any violation of the foregoing provisions of this section by Lessee constitutes a material breach of this Lease.

If any dispute arises regarding the enforcement or interpretation of Sections 4.1, 4.2, 4.3, or 4.4, such matter shall be mediated and arbitrated in accordance with the provisions of Section 32 of this Lease.

4.2 The Team. Lessee specifically agrees to use the Stadium as the home field for a Northwest League baseball team. The majority of the team's home games shall be played at the Stadium. Lessee agrees to continue the team's play at the Stadium for no less than ten (10) years. Lessee agrees and understands that this provision is a material term of the Lease.

The name of the team shall be the "Salem-Keizer" followed by a nickname that Lessee shall choose at its discretion. Any and all references to the team shall include Salem-Keizer, and the team in its any advertising or publicity whatsoever shall not shorten or abbreviate the name or omit specific reference to Keizer or the City of Keizer. The Lessee may shorten the name to use "S-K". If there is any reference to Salem, the reference shall at all times also include Keizer. No change in the name "Salem-Keizer" may be made without consent of Lessor. As used herein "advertising or publicity" shall mean any and all formal and informal publicity or advertising whatsoever, including, but not limited to, programs, media guides, souvenirs, concession items, and the like. Lessee understands and agrees that this requirement is a material term of the Lease.

4.3 Community Events. The parties intend that the facility shall be made available for reasonable public and semi-public uses. To this end, and without restricting the general intent as specified above, Lessee agrees as follows:

(a) "Community Events" as used herein shall mean the following:

(i) Events, including, but not limited to sporting events, directly associated with a public school located within the City of Keizer, however, not including "playoff" or championship sporting events.

(ii) Youth sporting events primarily for Keizer citizens organizations, including but not limited to Little League, Pop Warner, Keizer Soccer, American Softball Association and Babe Ruth events. *American Legion*

(iii) Events sponsored by the City of Keizer or recognized Keizer neighborhood associations in which no admission is charged, other than a nominal fee to reimburse such sponsoring entity for costs to be paid to Lessee as set forth below.

(b) If requested, Lessee shall allow up to ²⁴ Community Events over no more than 30 days, subject to the limitations as set forth herein. Included within the number of Community Events set forth above shall be no more than six (6) ~~non-sporting~~ ^{other} events over no more than twelve (12) days. Such non-sporting events shall be of the type and nature and sponsored by an entity which does not compete with Lessee's ability to produce the same event or rent the Stadium to such entity for a profit in order to produce the maximum Percentage Rent to Lessor. *approved by the city*

(c) Lessee shall make available to Lessor on or before the ~~first fifteenth~~ day of February each year, the schedule of confirmed Stadium events beginning April first of the same year and continuing for twelve months thereafter. Such schedule shall be termed the "Schedule Period". Within thirty (30) days of receipt of such schedule, City shall submit a list of requested Community Events for the Schedule Period, necessarily avoiding the confirmed events set forth by Lessee. *City may provide a list of requested dates in advance of the time set forth and such dates shall be*

(d) Lessee and Lessor understand and agree that available dates for Community Events during the Northwest League baseball regular season will be limited. This includes the period of time from two (2) weeks before start of the regular season until conclusion including any post-season play. Subject to subsection (e) below, Lessee agrees to make available for Community Events those dates when the Salem-Keizer Professional Baseball team will be traveling. *reserved for LHS use except to the extent if any it would conflict w/ other dates as per athletic team that reg plays at the facility*

(e) Within fourteen (14) days after receipt of such list, Lessee shall grant and confirm such requested events unless for good cause shown such requested events will unduly interfere with the reasonable operation of the Stadium or playing field.

(f) No later than thirty (30) days prior to the scheduled Community Event, the sponsoring entity shall deposit the estimated Costs (as defined below), provide reasonable proof of liability and property damage insurance in no less than \$1,000,000.00 single

occurrence coverage, protecting Lessee and Lessor, and execute hold harmless and indemnity agreements in favor of Lessee and Lessor in a form reasonably acceptable to both parties. As used herein "Costs" shall mean the reasonable and actual out-of-pocket costs Lessee will have to expend for returning the playing field to a playable state, reasonable apportionment of utility costs, including, if appropriate, costs for the operation of the field lights and fifty percent (50%) of the janitorial costs, if the Stadium concessions are open during such event. If such concessions are not open, then the Costs shall include one hundred percent (100%) of the janitorial costs. Within thirty (30) days following the Community Event, Lessee shall provide an itemized statement indicating the actual Costs. Payment of any refund, or collection of any remaining amounts due shall be the responsibility of Lessee only, and Lessor shall have no responsibility in this regard, unless Lessor is the sponsoring entity.

(g) As appropriate for the particular event, the sponsoring entity may use all public areas of the Stadium, concourses, seating areas, restrooms, playing field, etc. However, Community Events shall not use private areas of the Stadium, including, but not limited to, team offices, press box, sky boxes, novelty and ticket booths, concession stands, clubhouses, batting tunnels, team equipment rooms, etc. Lessee's concessions will handle all concessions for Community Events. There shall not be any allowance for food or beverages to be brought into the Stadium.

(h) If the Community Event includes a concert or other type of musical entertainment, such Community Event shall not be counted against the maximum concerts allowed under Section 4.4(a) 4.5(a).

4.4 Tepper Lane to be Closed. Lessee understands and agrees that Tepper Lane at some point west of the Stadium will be closed during events to prevent infiltration of vehicles through the residential neighborhood to the west. Lessee shall assist in notifying participants and users of the Stadium as to this fact and the proper alternate routes. Lessee also understands and agrees that Tepper Lane may, at some point, be closed permanently.

4.4.5 Prohibited and Restricted Uses. In keeping with the intent that the Stadium be used primarily and predominantly for sporting events, the following restrictions and prohibited uses apply:

(a) **Concerts.** There shall be a maximum of five (5) concerts in any single 365 day period. As used herein, "Concerts" shall include an event where a primary purpose is amplified musical entertainment. The term "Concert" shall not include ancillary music such as marching bands or other "halftime entertainment" or music events in conjunction with sporting events for which no additional or separate admission is charged. The term "Concert"

shall also not include any performances of ~~highpublic~~ school bands or choirs.

(b) **Alcoholic Beverages.** Subject to all applicable laws and regulations, Lessee may serve beer or wine in appropriate places within the Stadium. Any alcoholic beverages other than beer and wine shall be served in the sky boxes only.

(c) **Commercial Events.** Lessee understands and agrees that the primary and predominant use of the Stadium shall be for sporting events, and shall, consistent with provisions of Section 4.1, (including the provision to produce maximum rent for Lessor) reasonably limit any events which are not sporting events or Community Events.

4-54.6 Hazardous Substances. Lessee shall not use or occupy, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied (1) for any unlawful or illegal business, use, or purpose, (2) in any such manner to constitute a nuisance of any kind, or (3) for any purpose or in any way in violation of the certificate of occupancy, or of any Legal Requirements, including but not limited to Legal Requirements respecting Hazardous Substances, or (4) for any business, use, or purpose deemed disreputable. The term "Hazardous Substance" means any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection Legal Requirements, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by the United States Environmental Protection Agency (40 CFR pt 302). Lessee acknowledges that the term "Legal Requirements" includes, but is not limited to, all environmental protection laws such as the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC §§9601-9675), the Water Pollution Prevention and Control Act (33 USC §§1251-1376), and the Air Pollution Prevention and Control Act (42 USC §§7401-7671q). Any dispute between Lessor and Lessee arising under the provisions of clause (4) of the preceding sentence shall be submitted to mediation and arbitration as provided in Section 32 below.

4-64.7 Compliance with Regulation. Lessee shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions, and nonconforming uses), privileges, franchises, and concessions that now apply to the Premises or that have been granted to or contracted for by Lessor or Lessee in connection with any existing or presently contemplated use of the Premises or the Improvements.

4-74.8 Adverse Possession. Lessee shall not suffer or permit the Premises or the Improvements or any portion to be used by the public, as such, without restriction or in such manner as

might reasonably tend to impair Lessor's title to the Premises or Improvements or any portion, or in such manner as might reasonably make possible a claim or claims of adverse usage, adverse possession, or prescription by the public, as such, or of implied dedication, of the Premises or Improvements or any portion. Lessee acknowledges that Lessor does not consent, expressly or by implication, to the unrestricted use or possession of the whole or any portion of the Premises or Improvements by the public, as such except as specifically set forth in this Lease.

4-84-9 Dedication of Right-of-Way. Lessor and Lessee agree that if and when any governmental or any other public authority requires the execution and delivery of any instrument to evidence or consummate the dedication of any street adjoining the Premises and/or if and when any governmental or any other public authority or any public utility company requires the execution and delivery of any rights of way, easements, and grants in, over, and along any such streets or in, over, under, or through the Premises (except any that may run under the Improvements) for the purpose of providing water, gas, steam, electricity, telephone, storm and sanitary sewer, or any other necessary or desirable service or facility for the benefit of the Premises or the Improvements, then both parties, without cost to either party, will execute, acknowledge, and deliver any such instrument or document as may be required.

Section 5. Liens

5.1 No Creation of Liens. Lessee shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the reversion or other estate of Lessor or on any interest of Lessor in the Premises.

5.2 No Suffering of Liens. Lessee shall not suffer or permit any liens to attach to the interest of Lessee in all or any part the Premises by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee or anyone occupying or holding an interest in all or any part of the Improvements on the Premises through or under Lessee. If any such lien shall at any time be filed against the Premises, Lessee shall cause the same to be discharged of record within thirty (30) days after the date of filing the same, by either payment, deposit, or bond.

5.3 Lessee not Agent for Lessor. Nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Lessor, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Lessee any right,

power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Lessor's interest in the Premises or against Lessor's interest, if any, in the Improvements. Lessee is not intended to be an agent of Lessor for the construction of Improvements on the Premises. Lessor shall have the right to post and keep posted at all reasonable times on the Premises and on the Improvements any notices that Lessor shall be required to post for the protection of Lessor and of the Premises and of the Improvements from any such lien. The foregoing shall not be construed to diminish or vitiate any rights of Lessee in this Lease to construct, alter, or add to the Improvements.

Section 6. Taxes and Other Charges

6.1 Payment of Taxes. Except as set forth in Section 6.2, Lessee shall pay and discharge, or cause to be paid and discharged, before any fine, penalty, interest, or cost may be added for nonpayment, all real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales charges, assessments (including, but not limited to, assessments for public improvements or benefits), and all other governmental impositions and charges of every kind and nature whatsoever, whether or not now customary or within the contemplation of the parties and regardless of whether the same shall be extraordinary or ordinary, general, or special, unforeseen or foreseen, or similar or dissimilar to any of the foregoing which, at any time during the Term, shall be or become due and payable and which:

(a) Shall be levied, assessed, or imposed against the Premises or the Improvements or any interest of Lessor or Lessee under this Lease; or

(b) Shall be or become liens against the Premises or the Improvements or any interest of Lessor or Lessee under this Lease; or

(c) Shall be levied, assessed, or imposed on or against Lessor by reason of any actual or asserted engagement by Lessor or Lessee, directly or indirectly, in any business, occupation, or other activity in connection with the Premises or the Improvements; or

(d) Shall be levied, assessed, or imposed on or in connection with the ownership, leasing, operation, management, maintenance, repair, rebuilding, use, or occupancy of the Premises or the Improvements;

under or by virtue of any present or future Legal Requirement, it being the intention of the parties that, insofar as the same may lawfully be done, Lessor shall be free from all such expenses and

all such real estate taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, assessments, and all other governmental impositions and charges of every kind and nature whatsoever (all of such taxes, water charges, sewer charges, assessments, and other governmental impositions and charges that Lessee is obligated to pay being collectively called "Tax" or "Taxes").

6.2 **Lessor's Payment of Taxes.** For the tax years 1996-97 through and including tax year 2005-06, Lessee shall pay only that portion of the real estate taxes on the Premises that represents the 1996-97 real estate taxes for the Premises as estimated by taking the average of the real estate taxes on a per square foot basis for the Premises and all the surrounding properties purchased ~~downed~~ by Lessor and applying such per foot estimate to the total square feet representing the Premises. Lessor shall pay the remaining real estate taxes on the Premises for the tax years 1996-97 through and including tax year 2005-06. *After this year, etc*

6.3 **Lessee not Required to Pay Certain Taxes.** Nothing contained in this Lease requires Lessee to pay any franchise, estate, inheritance, succession, capital levy, or transfer tax of Lessor, or any income, excess profits, or revenue tax, or any other tax, assessment, charge, or levy on the Rent payable by Lessee under this Lease; provided, however, that if at any time during the Term the methods of taxation prevailing at the commencement of the Term are altered so that in lieu of any Tax under this Section there is levied, assessed, or imposed (1) a tax, assessment, levy, imposition, or charge, wholly or partially as a capital license fee measured by the Rent payable by Lessee under this Lease, then all such taxes, assessments, levies, impositions, or charges or the part so measured or based, shall be deemed to be included within the term Tax for the purposes of this Lease, to the extent that such Tax would be payable if the Premises were the only property of Lessor subject to such Tax, and Lessee shall pay and discharge the same as provided in respect to the payment of Taxes.

6.4 **Installment Payments.** If by law any Tax is payable, or may at the option of the taxpayer be paid, in installments, Lessee may, whether or not interest shall accrue on the unpaid balance, pay the same, and any accrued interest on any unpaid balance, in installments as each installment becomes due and payable, but in any event before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest.

6.5 **Proration of Taxes.** Any Tax relating to a fiscal period of the taxing authority, a part of which is within the Term and a part of which is before or after the Term, whether or not such Tax shall be assessed, levied, imposed, or become a lien on the Premises or the Improvements, or shall become payable, during the Term, shall be apportioned and adjusted between Lessor and Lessee

so that Lessee shall pay only the portions that correspond with the portion of such fiscal periods included within the Term. With respect to any Tax for public improvements or benefits that by law is payable, or at the option of the taxpayer may be paid, in installments, Lessor shall pay the installments that become due and payable after the Term expires, and Lessee shall pay all such installments which become due and payable at any time during the Term.

6.6 Tax Receipts. Lessee covenants to furnish to Lessor, within thirty (30) days after the last date when any Tax must be paid by Lessee as provided in this Section, official receipts, if such receipts are then available to Lessee, of the appropriate taxing authority, or other proof satisfactory to Lessor, evidencing payment.

6.7 Contest of Taxes. Lessee shall have the right at Lessee's expense to contest or review the amount or validity of any Tax or to seek a reduction in the assessed valuation on which any Tax is based, by appropriate legal proceedings. Lessee may defer payment of such contested Tax on condition, however, that if such contested Tax is not paid beforehand and if such legal proceedings shall not operate to prevent the enforcement of the collection of the Tax so contested and shall not prevent the sale of the Premises or the Improvements to satisfy the same, then before instituting any such proceedings Lessee shall furnish to Lessor and to any Permitted Leasehold Mortgagee (as defined below), if so required by the terms of its mortgage, a surety company bond, cash deposit, or other security reasonably satisfactory to Lessor and any such Permitted Leasehold Mortgagee, as security for the payment of such Tax, in an amount sufficient to pay such Tax, together with all interest and penalties in connection with such Tax and all charges that might be assessed against the Premises or the Improvements in the legal proceedings. Upon termination of such legal proceedings or at any time when Lessor or any such Permitted Leasehold Mortgagee shall determine the security to be insufficient for the purpose, Lessee shall forthwith, on demand, deliver to Lessor or such Permitted Leasehold Mortgagee additional security as is sufficient and necessary for the purpose, and on failure of Lessee so to do, the security originally deposited shall be applied to the payment, removal, and discharge of the Tax and the interest and penalties in connection with the Tax and the charges and costs accruing in such legal proceedings and the balance, if any, shall be paid to Lessee provided that there is then no uncured default under this Lease. In the event that such security shall be insufficient for this purpose, Lessee shall forthwith pay over to Lessor or to any such Permitted Leasehold Mortgagee an amount sufficient, together with the security originally deposited, to pay the same. Lessee shall not be entitled to interest on any money deposited pursuant to this Section.

6.8 Lessor not Liable. Any contest as to the validity or amount of any Tax, or assessed valuation on which such Tax was computed or based, whether before or after payment, may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request, it being understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Lessee, and Lessee covenants to indemnify and save Lessor harmless from any such costs or expenses. Lessee shall be entitled to any refund of any such Tax and penalties or interest that have been paid by Lessee or by Lessor and reimbursed to Lessor by Lessee.

6.9 Forwarding Tax Receipts. The parties shall use reasonable efforts to see that all communications from the governmental authorities respecting Taxes are sent directly by such authorities to Lessor. Lessor shall forward any and all communications to Lessee within 48 hours of Lessor's receipt. The certificate, advice, receipt, or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Tax or nonpayment of such Tax shall be prima facie evidence that such Tax is due and unpaid or has been paid at the time of the making or issuance of such certificate, advice, receipt, or bill.

Section 7. Insurance

7.1 General Insurance Provision. Lessee, at Lessee's sole cost and expense, shall maintain, for the mutual benefit of Lessee, Lessor, and any Permitted Leasehold Mortgagee, property insurance covering loss or damage by fire, and other risks as may be embraced within all-risk insurance (including without limitation, earth movement or earthquake coverage) insuring the full replacement cost (excluding foundation and excavation cost) of the Improvements. If all-risk insurance becomes unavailable, then Lessee shall insure the Improvements with such coverage as is customary from time to time for comparable first-class buildings in the Salem-Keizer metropolitan area. The amount of such insurance policy shall be increased from time to time as the full replacement cost of the Improvements increases. Any dispute regarding insurance matters shall be mediated and arbitrated by the parties.

In the event of any casualty damage to the Improvements, Lessor may make proof of loss if Lessee fails to do so within fifteen (15) days of the casualty and after ten (10) days' written notice from Lessor of its intent to do so. If the insurance proceeds (the "Proceeds") of any insurance on the Improvements equal more than ten percent (10%) of the replacement cost of the Improvements, then all Proceeds shall be paid to the First Leasehold Mortgagee, if any, and if none then to a bank trust department (the "Trustee") as trustee for the parties and any Permitted Leasehold Mortgagees. The Trustee shall be selected by

Lessee and approved by Lessor, which approval shall not be unreasonably withheld or delayed. If the Proceeds are less than such amount, then the Proceeds shall be delivered to Lessee. Unless the casualty occurs within five years of the Expiration Date of this Lease, Lessee shall promptly repair or replace the damaged and destroyed Improvements in substantially the form on the date of the casualty or in a manner reasonably satisfactory to Lessor. The Trustee shall pay or reimburse Lessee from the Proceeds for the cost of repair, restoration, or replacement on satisfactory proof of expenditure by Lessee, satisfactory evidence of sufficient progress on the work, and satisfactory evidence of sufficient funds available to complete restoration. The Trustee shall not be liable to the parties except in the event of gross negligence or fraud. The Trustee shall be entitled to deduct a customary and reasonable charge for its services. Any proceeds not used for the repair, restoration, or replacement of the Improvements shall be distributed on the same basis as any condemnation proceeds pursuant to the provisions of Section 16 below. If the damage occurs within five (5) years of the Expiration Date of this Lease, including the extended term, then Lessor shall have the option of Terminating this Lease and retaining all the Proceeds in excess of the amount required to pay the remaining balance, if any, on any Permitted Leasehold Mortgages. Any dispute regarding the distribution of Proceeds shall be mediated and arbitrated.

7.2 Liability Insurance. Lessee, at its expense, shall maintain at all times during the Term of this Lease comprehensive general liability insurance in respect of the Premises and the conduct or operation of its business, with Lessor as additional insured, with \$10,000,000.00 minimum combined single-limit coverage, or its equivalent. Such policies shall contain such endorsements as are reasonably requested by Lessor and the exclusions shall be limited to those approved by Lessor, such approval not to be unreasonably withheld. Lessee shall deliver to Lessor and any additional named insured such fully paid-for policies or certificates of insurance, in a form satisfactory to Lessor, issued by the insurance company or its authorized agent, at least ten (10) days before the Commencement Date. Lessee shall procure and pay for renewals of such insurance from time to time before the expiration, and Lessee shall deliver to Lessor and any additional named insured such renewal policy or certificate at least thirty (30) days before the expiration of any existing policy. All insurance policies shall contain provisions whereby (1) losses shall be payable despite the negligence of any person having an insurable interest in the Improvements; (2) the Proceeds will be paid in accordance with the terms of this Lease; and (3) the policies cannot be cancelled or modified unless Lessor and any additional named insured are given at least twenty (20) days' prior written notice of such cancellation or modification.

7.3 Primary Policies. All insurance policies shall be written as primary policies and shall not be contributing with or

be in excess of the coverage that either Lessor or Lessee may carry. All such insurance policies shall be issued in the name of Lessee, with Lessor and any Permitted Leasehold Mortgagee being included in the insurance policy definition of who is an additional insured, shall contain a standard mortgagee's clause in form satisfactory to the Permitted Leasehold Mortgagees, and shall be primary to any insurance available to Lessor.

7.4 No Cancellation Without Notice. All policies of insurance shall be issued by good, responsible companies, reasonably acceptable to Lessor and any Permitted Leasehold Mortgagee and that are qualified to do business in the State of Oregon. Executed copies of such policies of insurance shall be delivered to any Permitted Leasehold Mortgagee and certificates shall be delivered to Lessor within thirty (30) days after the Stadium is completed and thereafter within thirty (30) days before the expiration of the term of each such policy. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. All policies of insurance must contain a provision that the company writing the policy will give Lessor and any Permitted Leasehold Mortgagee thirty (30) days' written notice in advance of any cancellation, substantial change of coverage, or the effective date of any reduction in amount of insurance.

7.5 Blanket Policies. The obligations of Lessee to carry the insurance provided for may be brought within the coverage of a so-called blanket policy or policies of insurance; provided, however:

(a) That the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy of insurance;

(b) That the requirements set forth are otherwise satisfied; and

(c) That, as to all insurance, Lessor and any Permitted Leasehold Mortgagee shall be named as additional insured.

7.6 Increase of Insurance. Lessor may from time to time, but not more frequently than once every three years, require that the amount of public liability insurance to be maintained by Lessee under Section 7.2 be increased so that the amount adequately protects Lessor's interest based on amounts of coverage required of comparable tenants in comparable buildings.

Section 8. Lessor's Right to Perform Lessee's Covenants

8.1 Payment or Performance by Lessor. Subject to the rights of the Permitted Leasehold Mortgagees contained in Section 18 below, if Lessee at any time fails to pay any Tax in accordance with the provisions of this Lease or fails to make any other

payment or perform any other act on its part to be made or performed, then Lessor, after ten (10) days' notice to Lessee (or without notice in case of an emergency) and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving Lessor's right to take such action as may be permissible under this Lease as a result of such default, may (but shall be under no obligation to):

(a) Pay any Tax payable by Lessee pursuant to the provisions of this Lease; or

(b) Make any other payment or perform any other act on Lessee's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take all such action, as may be necessary.

8.2 Payment Considered Additional Rent. All sums so paid by Lessor and all costs and expenses incurred by Lessor, including reasonable attorney fees, in connection with the performance of any such act, together with, if Lessee does not pay the same within the thirty-day (30-day) period after notice from Lessor, interest from the date of such payment or incurrence by Lessor of such cost and expense until paid, at the annual rate of nine percent (9%), shall constitute Additional Rent payable by Lessee under this Lease and shall be paid by Lessee to Lessor on demand.

Section 9. Compliance with Legal Requirements

9.1 Lessor Held Harmless as Municipal Government. Lessee agrees and understands that Lessor's responsibility and obligations under this Lease do not and can not bind Lessor as to its duties as municipal government which are necessarily separate and apart from its obligations hereunder. To that end, with regard to any actions that may affect Lessee's operation of the Premises in any manner whatsoever, Lessee agrees to hold Lessor harmless from any acts Lessor may take to enforce in good faith any lawful ordinances or regulations, or any other acts Lessor may take with regard to the adoption of appropriate and necessary laws and ordinances, or any other acts Lessor may take in its role as municipal government.

9.2 Legal Requirement. Throughout the Term, Lessee shall promptly comply with all Legal Requirements that may apply to the Premises or to the use or manner of uses of the Premises or the Improvements or the owners or users of the Improvements, whether or not the Legal Requirements affect the interior or exterior of the Improvements, necessitate structural changes or improvements, or interfere with the use and enjoyment of the Premises or the Improvements, and whether or not compliance with the Legal Requirements is required by reason of any condition, event, or circumstance existing before or after the Term commences. Lessee shall pay all costs of compliance with Legal Requirements, but

Lessee shall have the right to cease occupation or use of, or to demolish or remove, all or any part of the Premises or the Improvements in lieu of compliance with any Legal Requirement that may require expenditures on behalf of Lessee for continued use or occupation of the Premises.

9.3 Contest by Lessee. Lessee shall have the right, after prior written notice to Lessor, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Lessee or Lessor or both, without cost or expense to Lessor, the validity or application of any Legal Requirement subject to the following:

(a) If, by the terms of any Legal Requirement, compliance may legally be delayed pending the prosecution of any such proceeding without the incurrence of any lien, charge, or liability of any kind against all or any part of the Premises or the Improvements and without subjecting Lessee or Lessor to any liability, civil or criminal, for failure to comply, Lessee may delay compliance until the final determination of such proceeding; or

(b) If any lien, charge, or civil liability would be incurred by reason of any such delay, Lessee nevertheless may contest the matter and delay compliance, provided that such delay would not subject Lessor to criminal liability or fine, and Lessee

(i) Furnishes to Lessor security, reasonably satisfactory to Lessor, against any loss or injury by reason of such contest or delay, and

(ii) Prosecutes the contest with due diligence.

9.4 Execution of Documents. Lessor shall execute and deliver any appropriate papers that may be necessary or proper to permit Lessee to contest the validity or application of any Legal Requirement, provided all the requirements of this Section have been satisfied by Lessee and Lessor will incur no cost.

Section 10. Repairs and Maintenance

10.1 Maintenance of Improvements. Lessee shall promptly maintain, repair, and replace the Premises and the Improvements as necessary to keep them in good order, condition, and repair throughout the entire Term. Lessee's obligations shall extend to both structural and nonstructural items and to all maintenance, repair, and replacement work, including but not limited to unforeseen and extraordinary items.

10.2 Utilities. Except as set forth in Section 2.2, Lessor shall not be required to furnish to Lessee any facilities or services of any kind whatsoever during the Term, such as, but not limited to, water, steam heat, gas, hot water, electricity, light,

and power. Lessor shall in no event be required to make any alterations, rebuildings, replacements, changes, additions, improvements, or repairs during the Term.

10.3 Assignment of Claims. Lessor assigns to Lessee, without recourse, such rights, if any, as Lessor may have against any parties causing damage to the Improvements on the Premises to sue for and recover amounts expended by Lessee as a result of such damage.

Section 11. Alterations, Additions, and New Improvements

The term "Modifications" means any demolition, improvement, alteration, change, or addition, of, in, or to all or any part of the Premises or the Improvements. The term "Minor Modifications" shall mean any Modifications costing less than \$100,000.00, and the term "Major Modifications" shall mean any and all Modifications other than Minor Modifications. Multiple Modifications occurring within a period of 365 days shall be deemed a single Modification for the purposes of applying the provisions contained in this Section. At any time during the Term and at Lessee's own cost and expense, Lessee may make or permit to be made any Minor Modifications, provided there is no existing and unremedied default on the part of Lessee, of which Lessee has received notice of default, under any of the terms, covenants, and conditions of this Lease. Major Modifications shall require the prior consent of the Lessor, and such consent shall not be unreasonably withheld. Reasons for withholding of such consent shall include, but shall not be limited to, any Major Modification which, overall, decreases the value of the Improvements. All salvage material in connection with any Modification that Lessee is permitted to make shall belong to Lessee.

Section 12. Title to Improvements

Title to Improvements shall be and remain in Lessee until the expiration of the Term, unless this Lease is terminated sooner as provided. Upon such expiration or sooner termination, title to the Improvements shall automatically pass to, vest in, and belong to Lessor without further action on the part of either party and without cost or charge to Lessor. During the Term, Lessee shall be entitled for all taxation purposes to claim cost recovery deductions and the like on the Improvements.

Section 13. No Waste

Lessee shall not do or suffer any waste or damage, disfigurement, or injury to the Premises or the Improvements. Demolition of all or any part of the Improvements done in accordance with the requirements of Section 11 above shall not be considered prohibited by the terms of this Section.

Section 14. Inspection and Access

14.1 Inspection of Premises. After the notice period set forth in Section 19.1(b) has expired, or, in the case of an actual emergency, Lessee shall permit Lessor, any Permitted Leasehold Mortgagee, or the authorized representative of any of them to enter the Premises and the Improvements at all reasonable times during usual business hours for the purposes of inspecting the same and making any repairs or performing any work that Lessee has neglected or refused to make in accordance with the terms, covenants, and conditions of this Lease. Nothing in this Lease shall imply any duty or obligation on the part of Lessor to do any such work or to make any Improvements of any kind whatsoever to the Premises (including, but not limited to, repairs and other restoration work made necessary due to any fire, other casualty, or partial condemnation, irrespective of the sufficiency or availability of any fire or other insurance proceeds, or any award in condemnation, which may be payable). The performance of any work by Lessor shall not constitute a waiver of Lessee's default in failing to perform the same.

14.2 Storage of Equipment. During the progress of any work on the Premises or the Improvements performed by Lessor pursuant to the provisions in this Section, Lessor may keep and store on the Premises all necessary materials, tools, supplies, and equipment. Lessor shall not be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of Lessee or any user by reason of making such repairs or performing any such work, or on account of bringing materials, tools, supplies, and equipment onto the Premises or into the Improvements during the course of the work and the obligations of Lessee under this Lease shall not be affected by the work.

14.3 Showing to Prospective Lessees. Lessor shall have the right to enter on the Premises and the Improvements at all reasonable times during usual business hours for the purpose of showing the same to prospective Lessees at any time within two years before the Term expires.

14.4 Notice to Lessee. Except in the event of emergency repairs, all entry to the Premises by Lessor shall require at least 24 hours' advance notice to Lessee. In the event of any emergency repairs, Lessor shall use reasonable efforts to give Lessee the earliest possible notice of the same.

Section 15. Lessor's Exculpation and Indemnity

15.1 Exclusive Control. Lessee is and shall be in exclusive control of the Premises and of the Improvements, and Lessor shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Improvements or any injury or damage to the

Premises or the Improvements or to any property, whether belonging to Lessee or to any other person, caused by any fire, breakage, leakage, defect, or bad condition in any part or portion of the Premises or of the Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of all or any of the Improvements or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the Improvements, including defects in construction of the Improvements, latent or otherwise.

15.2 Indemnification of Lessor. Lessee shall indemnify and hold Lessor harmless against and from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees, that may be imposed on or incurred by or asserted against Lessor by reason of any of the following occurrences during the Term:

(a) Any work or thing done in, on, or about all or any part of the Premises or the Improvements by Lessee or any party other than Lessor;

(b) Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements or any adjacent alley, sidewalk, curb, vault, passageway, or space;

(c) Any negligence on the part of Lessee or any of its agents, contractors, servants, employees, sublessees, licensees, or invitees;

(d) Any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements; or

(e) Any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Lease on its part to be performed or complied with.

15.3 Defense of Lessor. In case any action or proceeding is brought against Lessor by reason of any such claim, Lessee upon written notice from Lessor shall, at Lessee's expense, resist or defend such action or proceeding by counsel approved by Lessor in writing, which approval shall not be unreasonably withheld. ~~Lessee's obligations under this Section 15 are intended to apply even if arising in part as a result of Lessor's negligence, but in such event Lessee's obligations shall be no greater than the scope of the standard insurance industry form of contractual liability insurance coverage that Lessee is required to carry under this Lease.~~

Section 16. Condemnation

16.1 Termination by Condemnation. If all the Premises and the Improvements are taken or condemned, by right of eminent domain or by purchase in lieu of condemnation, or if such portion of the Premises or the Improvements shall be so taken or condemned that the portion remaining is not sufficient and suitable, in Lessee's sole judgment (subject, however, to any rights of any Permitted Leasehold Mortgagee), to permit the restoration of the Improvements following such taking or condemnation, then this Lease and the Term, at Lessee's option, shall cease and terminate as of the date on which the condemning authority takes possession (any taking or condemnation of the land described in this Section being called a "Total Taking"), and the Minimum Rent and Additional Rent shall be paid to the date of such total taking.

16.2 Rights and Interests Upon Condemnation. If this Lease expires and terminates as a result of a Total Taking, the rights and interests of the parties shall be determined as follows:

(a) The total award or awards for the Total Taking shall be apportioned and paid in the following order of priority:

(i) Lessor shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award, which is defined and referred to as the "Land Award," and neither Lessee nor any Permitted Leasehold Mortgagee shall be entitled to receive any part of the Land Award. The term "Land Award" shall mean that portion of the award in condemnation or change of grade proceedings that represents the fair market value of the Premises, considered as vacant, unimproved but encumbered by this Lease, the consequential damage to any part of the Premises that may not be taken, the diminution of the assemblage or plottage value of the Premises not so taken and all other elements and factors of damage to the Premises; but in all events such damage or valuation shall take into consideration that the Premises is encumbered by this Lease;

(ii) Lessee shall have the right to and shall be entitled to receive directly from the condemning authority, subject, however, to the rights of the Permitted Leasehold Mortgagees, that portion of the award referred to as the "Leasehold Award." The term "Leasehold Award" shall mean that portion of the award in condemnation proceedings that represents the fair market value of Lessee's interest in the Improvements and the fair market value of Lessee's leasehold estate as so taken and, provided this Lease is not terminated as a result of such condemnation or taking, the consequential damages to any part of the Improvements.

(iii) It is the intent of the parties that the Land Award and Leasehold Award will equal the total amount of the awards respecting a total taking.

(b) If the court or such other lawful authority as may be authorized to fix and determine the awards fails to fix and determine, separately and apart, the Land Award and the Leasehold Award, such awards shall be determined and fixed by written agreement mutually entered into by and among Lessor, Lessee, and First Leasehold Mortgagee, if any, and if an agreement is not reached within twenty (20) days after the judgment or decree is entered in the proceedings, the controversy shall be resolved in the same court as the condemnation action is brought, in such proceedings as may be appropriate for adjudicating the controversy; and

(c) If the condemning authority refuses or otherwise fails to deduct from the Leasehold Award any Rent or other money due from Lessee to Lessor and to pay same directly to Lessor, then Lessee and the First Leasehold Mortgagee, if any, shall execute and deliver to Lessor a written and acknowledged assignment of such amount payable out of such Leasehold Award, and if, nevertheless, the full amount of the Leasehold Award is paid to Lessee or the First Leasehold Mortgagee, if any, the recipient shall hold in trust for Lessor and pay over to Lessor forthwith on the receipt of the award the amount or amounts so due.

16.3 Partial Condemnation. If, during the Term, there is a taking or condemnation of the Premises or the Improvements that is not a total taking and not a temporary taking of the kind described below, or in the event of the change in the grade of the streets or avenues on which the Premises abuts, this Lease and the Term shall not cease or terminate but shall remain in full force and effect with respect to the portion of the Premises and of the Improvements not taken or condemned (any taking or condemnation or change of grade of the kind described in this Section being referred to as a "Partial Taking"), and in such event:

(a) The total award or awards for the taking shall be apportioned and paid in the following order of priority:

(i) Lessor shall have the right to and shall be entitled to receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award that equals the Land Award, and neither Lessee nor any Permitted Leasehold Mortgagee shall be entitled to receive any part of the award; and

(ii) If at the time of such taking there is a First Leasehold Mortgage held by a Lending Institution, then such Lending Institution, or, if there is no such First Leasehold Mortgage, then Lessee, shall have the right to and shall be entitled to receive

directly from the condemning authority the balance of the award, to be applied by the recipient as it shall deem appropriate.

16.4 Temporary Condemnation. In the event of a taking of all or a part of the Premises or the Improvements for temporary use, this Lease shall continue without change, as between Lessor and Lessee, and Lessee shall be entitled to the entire award made for such use; provided that Lessee shall be entitled to file and prosecute any claim against the condemnor for damages and to recover the same, for any negligent use, waste, or injury to the Premises or the Improvements throughout the balance of the then-current Term. The amount of damages so recovered shall belong to Lessee.

16.5 Condemnation Litigation. In the event of any dispute between Lessee and Lessor with respect to any issue of fact arising out of a taking mentioned in this Section, such dispute shall be resolved by the same court in which the condemnation action is brought, in such proceedings as may be appropriate for the adjudicating the dispute.

Section 17. Assignment and Subletting

~~**17.1 No Assignments Within First Ten Years.** Lessee shall not sell, assign, or in any manner transfer this Lease or any interest in this Lease or the estate of Lessee under this Lease within the first ten (10) years of the Initial Term.~~

~~**17.2**~~ **17.1 Assignment With Consent.** ~~After the first ten (10) years,~~ the Premises may be assigned, mortgaged, or a right of use of any portion of the property may be conferred on any third person by other means, with the prior written consent of Lessor. This provision shall apply to all transfers by operation of law. If Lessee is a corporation or partnership, this provision shall apply to any transfer of a majority voting interest in stock or partnership interest of Lessee. No consent in one instance shall prevent the provision from applying to a subsequent instance. Lessor shall consent to a transaction covered by this provision when withholding such consent would be unreasonable in the circumstances. In determining whether to consent to assignment Lessor may consider the following factors: financial ability of assignee; business experience of assignee; proposed primary and secondary uses of the Premises by assignee, ~~and any other factors~~ reasonably determined by Lessor to be relevant. *that are consistent*

~~**17.3**~~ **17.2 Subletting.** At no time shall Lessee sublease all or any portion of the Premises. As used herein "Sublease" shall not include any use of the Premises by concessionaires if not contracted under a true Sublease by owners or users of the sky boxes, or by a third party in which such party is a standard and temporary user of the Stadium. ~~As used herein, "temporary user" which shall be interpreted to mean any entity or participant that~~ *w/ the terms of the lease*

uses the Premises less than sixty (60) ~~days event days~~ in any one 365-day period.

Section 18. Leasehold Mortgages

100% loan amount

Without Lessor's prior written consent and subject to the terms and restrictions of this Lease, only Lessee or its assignee(s) may obtain a mortgage or consolidated mortgage of its leasehold interest with an institutional lender (including national and state (i) banks (ii) trust companies (iii) savings bank (iv) industrial banks (v) savings and loan associations (vi) credit unions (vii) investment companies, (viii) insurance companies or (ix) a national union pension or trust fund) and to whom this Lease and Lessee's rights hereunder may be assigned as collateral. Any such lender which shall place a mortgage on the Lessee's interest under this Lease shall notify Lessor in writing of the existence thereof and of the address to which notices hereunder shall be directed shall become a "Permitted Leasehold Mortgagee" and its mortgage a "Permitted Leasehold Mortgage" for the purposes of this Lease. No Leasehold Mortgage, now or hereafter becoming a lien upon this Lease, shall (i) extend to or affect the reversionary interest or estate of Lessor in and to the Premises or (ii) attach to or affect the Premises from and after any expiration or termination (as specifically provided for herein) of this Lease.

No Leasehold Mortgage shall be valid or of any force or effect unless and until written notice containing the name and post office address of the holder of such Leasehold Mortgage, shall have been delivered to Lessor.

Lessor's consent in this regard shall not be unreasonably withheld. Reasons for withholding consent shall include, but shall not be limited to the form and nature of the Leasehold Mortgage, including but not limited to the amount of control the Leasehold Mortgagee asserts in the operation of Lessee; the total amount of debt incurred by Lessee with regard to Lessee's operation on the Premises, whether secured by a Leasehold Mortgage or not; and other relevant factors. Any dispute with regard to Lessor's consent in this regard shall be mediated and arbitrated in accordance with Section 32. Lessor, ~~withas appropriate as part of~~ the satisfaction of conditions set forth in Section 1.1, also will consent to the initial construction loan for construction of the Stadium.

Section 19. Default; Remedies

19.1 Definition of Breach. The occurrence of any one or more of the following events of default constitutes a breach of this Lease by Lessee:

(a) If Lessee defaults in the payment of Rent due and payable by Lessee, and such default continues for thirty (30) days after Lessor has given Lessee a notice specifying the same; or

*5%
penalty
=*

(b) If Lessee, whether by action or inaction, is in default of any of its obligations under this Lease (other than a default in the payment of Rent by Lessee) and such default continues and is not remedied within ninety (90) days after Lessor has given Lessee a notice specifying the same, or-

~~(c) 19.2 Two Notices Required. During any 12 month period, Lessee shall be entitled to only two notices pursuant to Section 19.1(b). If Lessee fails three (3) times within any twelve (12) month period to cure any default set forth in Section 19.2(b) within thirty (30) days.~~

(d)
Refer to other section of lease
19.3 Remedies of Lessor. Upon the occurrence of an event of default, Lessor may exercise any one or more of the remedies set forth in this Section or any other remedy available under applicable law or contained in this Lease:

(a) Lessor or Lessor's agents and employees may immediately or at any time thereafter reenter the Premises either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Premises, to the end that Lessor may have, hold, and enjoy the Premises.

(b) Lessor may relet the whole or any part of the Premises from time to time, either in the name of Lessor or otherwise, to such Lessees, for such terms ending before, on, or after the expiration date of the Lease Term, at such rentals and on such other conditions (including concessions and free rent) as Lessor may determine to be appropriate. To the extent allowed under Oregon law, Lessor shall have no obligation to relet all or any part of the Premises and shall not be liable for refusal to relet the Premises, or, in the event of such reletting, for refusal or failure to collect any rent due on such reletting; and any action of Lessor shall not operate to relieve Lessee of any liability under this Lease or otherwise affect such liability. Lessor at its option may make such physical changes to the Premises as Lessor, in its sole discretion, considers advisable and necessary in connection with any such reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability.

(c) Whether or not Lessor retakes possession or relets the Premises, Lessor has the right to recover its damages, including without limitation all lost rentals, all legal expenses, all costs incurred by Lessor in restoring the Premises or otherwise preparing the Premises for reletting, and all costs incurred by Lessor in reletting the Premises.

(d) To the extent permitted under Oregon law, Lessor may sue periodically for damages as they accrue without barring a later

action for further damages. Lessor may in one action recover accrued damages plus damages attributable to the remaining Lease Term equal to the difference between the Rent reserved in this Lease for the balance of the Lease Term after the time of award, and the fair rental value of the Premises for the same period, discounted at the time of award at a reasonable rate not to exceed ten percent (10%) per annum. If Lessor has relet the Premises for the period that otherwise would have constituted all or part of the unexpired portion of the Term, the amount of rent reserved on such reletting shall be deemed, prima facie, to be the fair and reasonable rental value for the part or the whole of the Premises so relet during the term of the reletting.

19-419.3 No Waiver. No failure by Lessor to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, shall be waived, altered, or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach.

19-519.4 Cumulative Remedies. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lessor or Lessee of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

19-619.5 Bankruptcy of Lessor. In the event of Lessor's bankruptcy and the rejection of this Lease by Lessor's bankruptcy trustee and in the event Lessee elects to retain its rights pursuant to §365(h)(1) of the Bankruptcy Code, the trustee and Lessee shall continue to be governed by the terms and conditions of this Lease and under applicable Oregon landlord-tenant law. In the event of any dispute regarding Lessee's offset of damages against the Rent, the matter shall be resolved by final and binding mediation and arbitration in the manner described in Section 32 below. In that event, Lessee shall not be in default under this Lease due to the disputed offset unless Lessee fails to pay any amount due Lessor within thirty (30) days after it is awarded in mediation and arbitration.

Section 20. No Abatement of Rent

Except as otherwise specifically provided in this Lease, no abatement, refund, diminution, or reduction of Rent or other compensation shall be claimed by or allowed to Lessee, or any person claiming under it, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from work on Improvements, by virtue or because of Legal Requirements, or the occurrence of any matters referred to in Sections 7 (casualty damage) and 16 (condemnation) of this Lease, or for any other reason, cause, or occurrence.

Section 21. Transfer of Interest by Lessor

Lessor may sell, exchange, assign, transfer, convey, mortgage, contribute, distribute, or otherwise dispose of all or any part of its interest (called "Lessor's Interest") in the Premises or this Lease (including but not limited to Lessor's reversion).

Section 22. Option to Extend Lease

22.1 Exercise of Option. The Term may be extended, at the option of Lessee, for an additional period of eight (8) years. Such option shall be exercised by Lessee giving written notice to Lessor not more than 24 months nor less than 12 months before the initial Term expires. Such extended Term shall be on the same terms, covenants, and conditions as provided in this Lease for the initial Term (except for an adjustment in the amount of Minimum Rent and/or Percentage Rent). Payment of all additional charges required to be made by Lessee as provided in this Lease for the initial Term shall continue to be made during the extended Term. In the event Lessee fails to exercise this option to extend the Term, Lessor shall notify any Permitted Leasehold Mortgagee entitled to notice under Section 31.2 of such failure and permit it a period of thirty (30) days after giving such notice to exercise such extension option on Lessee's behalf.

22.2 Adjustment of Rent to Market Value. The total annual rent for the extended term shall be greater of the following, calculated as follows: First, the following two figures shall be ascertained:

(a) The average total annual rent paid by Lessee for the five (5) years immediately prior to the last year of the Initial Term; or

(b) The fair market rent of the Premises disregarding the existence of this Lease and any Improvements on the Premises, including the Stadium constructed by Lessee. If the parties cannot agree on the fair market rent of Premises, then the matter shall be settled by mediation and arbitration pursuant to Section 32.

using the two figures noted above, the rent shall be determined in the following manner:

(c) If the figure calculated in Section 22.2(a) is larger than the figure calculated in Section 22.2(b), then the Rent for the Extended Term shall continue to be calculated and paid as set forth in Section 3.

(d) If the figure calculated in Section 22.2(a) is not greater than the figure calculated in Section 22.2(b), then the fair market rent as calculated in Section 22.2(b) shall be the total annual rent for the Extended Term. In such case, the total annual rent shall be divided into four (4) equal quarterly payments and paid on the same day as set forth in Section 3.

Section 23. Lessor's Right to Encumber

Lessor, during the Term, may encumber, mortgage, pledge, or otherwise hypothecate its fee simple interest in the Premises.

Section 24. Nonmerger

There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease or in any such leasehold estate, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in the Premises or any interest in such fee estate, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons (including all Permitted Leasehold Mortgagees) having an interest in this Lease, or in the leasehold estate created by this Lease, shall join in a written instrument effecting such merger and shall duly record the same.

Section 25. Quiet Enjoyment

Lessee, on paying the Rent and observing and keeping all covenants, agreements, and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term without hindrance or molestation by anyone claiming by, through, or under Lessor as such, subject, however, to the exceptions, reservations, and conditions of this Lease.

Section 26. Surrender

26.1 Surrender of the Premises. Except as otherwise provided, Lessee, on the last day of the Term, shall surrender and deliver up the Premises and all Improvements to the possession and use of Lessor without fraud or delay, free and clear of all lettings and occupancies other than subleases then terminable at the option of

Lessor or subleases to which Lessor shall have specifically consented, and free and clear of all liens and encumbrances other than those, if any, presently existing or created or suffered by Lessor, without any payment or allowance whatever by Lessor on account of any Improvements on the Premises.

26.2 Removal of Personal Property. When furnished by or at the expense of Lessee, furniture, non-affixed equipment or other personal property may be removed by Lessee at or before this Lease terminates, provided, however, that the removal will not injure the Premises or the Improvements or necessitate changes in or repairs to the same. Lessee shall pay or cause to be paid to Lessor the cost of repairing any damage arising from such removal and restoration of the Premises and/or the Improvements to their condition before such removal. All fixtures, including trade fixtures, shall remain with the Premises.

26.3 Personal Property Abandoned by Lessee. Any personal property of Lessee or any sublessee that shall remain on the Premises after the termination of this Lease and the removal of Lessee or such sublessee from the Premises may, at the option of Lessor, be deemed to have been abandoned by Lessee or such sublessee and may either be retained by Lessor as its property or be disposed of, without accountability, in such manner as Lessor may see fit, or if Lessor gives written notice to Lessee to such effect, such property shall be removed by Lessee at Lessee's sole cost and expense. If this Lease terminates early for any reason other than the default of Lessee then, anything to the contrary notwithstanding, Lessee or any sublessee shall have a reasonable time thereafter to remove its personal property.

*Not to exceed
30 days*

26.4 Loss or Damage to Lessee's Property. Lessor shall not be responsible for any loss or damage occurring to any property owned by Lessee or any sublessee.

26.5 Survivorship. The provisions of this Section shall survive any termination of this Lease.

Section 27. Invalidity of Particular Provisions

If any term or provision of this Lease or the application of the Lease to any person or circumstances is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 28. No Representations

Lessee acknowledges that it has examined the Premises and that no representations as to the condition of the Premises have been

made by Lessor or any agent or person acting for Lessor (except as expressly provided in this Lease). Before any construction commences on the Premises, Lessee shall conduct tests of the subsurface and soil conditions to ascertain the suitability of the Premises for the contemplated Project and shall furnish such fill and take such other steps as may be required before the commencement of construction. Lessor shall have no liability because of, or as a result of, the existence of any subsurface or soil condition, either on the Premises or on adjacent land, that might affect Lessee's construction.

Section 29. Estoppel Certificate

Either party, within ten (10) days after a request from time to time made by the other party and without charge, shall give a certification in writing to any person, firm, or corporation reasonably specified by the requesting party stating (1) that this Lease is then in full force and effect and unmodified, or if modified, stating the modifications; (2) that Lessee is not in default in the payment of Rent to Lessor, or if in default, stating such default; (3) that as far as the maker of the certificate knows, neither party is in default in the performance or observance of any other covenant or condition to be performed or observed under this Lease, or if either party is in default, stating such default; (4) that as far as the maker (if Lessor) of the certificate knows, no event has occurred that authorized, or with the lapse of time will authorize, Lessee to terminate this Lease, or if such event has occurred, stating such event; (5) that as far as the maker of the certificate knows, neither party has any offsets, counterclaims, or defenses, or, if so, stating them; (6) the dates to which Rent have been paid; and (7) any other matters that may be reasonably requested by the requesting party.

Section 30. Force Majeure

If the performance by either of the parties of their respective obligations under this Lease (excluding monetary obligations) is delayed or prevented in whole or in part by any Legal Requirement (and not attributable to an act or omission of the party), or by any acts of God, fire or other casualty, floods, storms, explosions, accidents, epidemics, war, civil disorders, strikes or other labor difficulties, shortage or failure of supply of materials, labor, fuel, power, equipment, supplies or transportation, or by any other cause not reasonably within the party's control, whether or not specifically mentioned, the party shall be excused, discharged, and released of performance to the extent such performance or obligation (excluding any monetary obligation) is so limited or prevented by such occurrence without liability of any kind.

Section 31. Notices

31.1 Method of Notice. Any notice required or permitted by the terms of this Lease shall be deemed given if delivered personally to an officer of the party to be notified or sent by United States registered or certified mail, postage prepaid, return-receipt requested, and addressed as follows:

If to Lessor:

City of Keizer
PO Box 21000
Keizer, OR 97307
Attn: City Manager

If to Lessee:

Salem-Keizer Professional Baseball

Attn: _____

or such other addresses as may be designated by either party by written notice to the other. Except as otherwise provided in this Lease, every notice, demand, request, or other communication shall be deemed to have been given or served on actual receipt.

31.2 Notice to Leasehold Mortgagee. A copy of each notice from Lessor to Lessee shall be contemporaneously delivered to each Permitted Leasehold Mortgagee which shall have previously delivered to Lessor, by registered or certified mail, return receipt requested, addressed as provided above in this Section, its name and the mailing address to which communications under this Section are to be delivered. Notice to Lessee shall not be effective until a duplicate notice is received by each Permitted Leasehold Mortgagee that is entitled to notice.

31.3 Notice from Leasehold Mortgagee. Lessee shall immediately send to Lessor, in the manner prescribed above for giving notice, copies of all notices given by it to any Permitted Leasehold Mortgagee or received by it from such Permitted Leasehold Mortgagee, and copies of all notices that it receives with respect to the Premises or Improvements from any government authorities, fire regulatory agencies, and similarly constituted bodies, and copies of its responses to such notices.

31.4 Notice Deemed Delivered. Notwithstanding anything in this Section to the contrary, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this Section shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of such person or party to accept delivery of the notice.

Section 32. Arbitration, Appraisal and Mediation

32.1 Parties Required to Mediate. Prior to requesting arbitration as provided below, both parties are required to fully take part in mediation efforts in good faith with regard to any dispute under this Lease which require arbitration. Such obligation shall not apply with regard to injunctive relief, or condemnation matters as set forth herein.

32.2 General. Except with respect to pending litigation, Lessor or Lessee may at any time request final and binding arbitration of any matter in dispute when arbitration is expressly provided for in this Lease or its Exhibits. The term "pending litigation" as used in the preceding sentence means litigation that has continued for more than sixty (60) days after the first legal process has been served on a party to this agreement by the other party without any request for arbitration by the party served. Any party who fails to submit to binding arbitration following a lawful demand by the other party shall bear all costs and expenses, including reasonable attorney fees (including those incurred in any trial, bankruptcy proceeding, appeal, or review) incurred by the other party in obtaining a stay of any pending judicial proceeding concerning a dispute which by the terms of this Lease has been properly submitted to mandatory arbitration, and/or compelling arbitration of any dispute. A party may request arbitration by giving notice to that effect to the other party, specifying in the notice the nature of the dispute. The dispute shall be determined by a single arbitrator for matters up to \$200,000, and by three arbitrators for any dispute in excess of that amount, in accordance with the rules then pertaining to the Marion County Circuit Court Arbitration Program, except to the extent provided otherwise under Oregon laws on arbitration and as otherwise provided herein. If such program is terminated, then the rules of the American Arbitration Association shall be used. All arbitrators shall be licensed attorneys having at least ten (10) years' experience. Each party shall submit its position to the arbitrator or arbitrators and the arbitrator or arbitrators shall only have jurisdiction to choose the entire position of one of the parties as the prevailing position. On the application of either party, the award in the arbitration may be enforced by the order of judgment of a court of competent jurisdiction.

32.3 Notice. If Lessor gives notice requesting arbitration, Lessee shall simultaneously serve a duplicate of the notice on each Leasehold Mortgagee whose name and address shall previously have been furnished to Lessor, and the Leasehold Mortgagee shall have the right to participate in the arbitration.

32.4 Cost. The fees and expenses of any arbitration shall be borne by the losing party. The prevailing party shall be entitled to recover the expenses of its attorneys and experts.

32.5 Governing Rules; Preservation of Remedies. The arbitrator or arbitrators shall resolve all disputes in accordance with the substantive law of the state of Oregon. The arbitrator or arbitrators shall have no authority or jurisdiction to award any damages or any other remedies beyond those that could have been awarded in a court of law had the parties litigated the claims instead of arbitrating them. The parties shall not assert any claim for punitive damages except to the extent such awards are specifically authorized by statute. The Federal Arbitration Act, Title 9 of the United States Code, applies to this Lease transaction and shall be controlling in any judicial proceedings and in the arbitration itself as to issues of arbitrability and procedure. No provision of, nor the exercise of any rights under, this arbitration Section of the Lease shall limit the right of Lessor to evict Lessee, to exercise self-help remedies, or to obtain provisional or ancillary remedies such as an injunction, receivership, attachment, or garnishment.

32.6 Miscellaneous Arbitration Provisions. The parties shall use their best efforts to complete any arbitration within sixty (60) days of the filing of the dispute unless the dispute is regarding the refusal to grant a consent or approval, in which case the time period shall be thirty (30) days. The arbitrator or arbitrators shall be empowered to impose sanctions for any party's failure to do so. These arbitration provisions shall survive any termination, amendment, or expiration of the lease unless the parties otherwise expressly agree in writing. Each party agrees to keep all disputes and arbitration proceedings strictly confidential, except for the disclosure of information required in the ordinary course of business of the parties or as required by applicable law or regulation. Any time limitation (such as the statute of limitations or laches) that would bar litigation of a claim shall also bar arbitration of the claim. If any provision of this arbitration program is declared invalid by any court, the remaining provisions shall not be affected thereby and shall remain fully enforceable. The parties understand that they have decided that on demand of either of them, their disputes as described herein will be resolved by arbitration rather than in a court, and once so decided cannot later be brought, filed, or pursued in court.

Section 33. Costs and Attorney Fees

If either party brings an action to recover any sum due or for any breach and obtains a judgment or decree in its favor, the court may award to such prevailing party its reasonable costs and reasonable attorney fees, specifically including reasonable attorney fees incurred in connection with any appeals (whether or not taxable as such by law).

Section 34. Entire Agreement

This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Lessee and Lessor that there are no verbal agreements, representations, warranties, or other understandings affecting this Lease.

Section 35. Applicable Law

This Lease shall be governed by, and construed in accordance with, the laws of the state of Oregon.

Section 36. Interest on Rent Arrearages

All arrearages in the payment of Rent that Lessee fails to pay within the thirty-day (30-day) period after notice from Lessor shall bear interest ~~from the date due until paid~~, at the rate defined in Section 8.2 above.

Section 37. Brokerage

Lessor and Lessee represent to each other that they have not employed any brokers in negotiating and consummating the transaction set forth in this Lease, but have negotiated directly with each other.

Section 38. Covenants to Bind and Benefit Parties

The covenants and agreements contained in this Lease shall bind and inure to the benefit of Lessor, its successors and assigns, and Lessee, its successors and assigns.

Section 39. Captions and Table of Contents

39.1 Captions. The captions of this Lease are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Lease or in any way affect this Lease.

39.2 Table of Contents. The table of contents preceding this Lease but under the same cover is for the purpose of convenience and reference only, and is not to be deemed or construed in any way as part of this Lease, nor as supplemental or amendatory.

Section 40. Definition of Lessor

The term Lessor as used in this Lease means only the owner for the time being of the Premises, so that in the event of a sale, transfer, conveyance, or other termination of Lessor's interest in the Premises, Lessor shall be and is entirely freed and relieved of all liability of Lessor thereafter accruing, and in such event

Lessor shall remit any funds held by Lessor, in which Lessee has an interest, to the successor owner of the Premises. Lessor shall remain liable for any such money not so remitted. It shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and such successor owner of the Premises, that such successor owner has assumed and agreed to carry out any and all agreements, covenants, and obligations of Lessor thereafter accruing.

Section 41. Recordation of Lease

Lessee may elect that a copy of this Lease or a memorandum, executed and acknowledged by both parties, be recorded in the public records of Marion County, Oregon. Lessee shall pay the recording costs.

Section 42. Statutory Warning

The following disclaimers are made pursuant to ORS 93.040:

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

Section 43. Consent

In the event this Lease is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.

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IN WITNESS WHEREOF, Lessee and Lessor have caused this Lease to be executed by their duly authorized officers.

LESSOR:

CITY OF KEIZER, an Oregon
municipal corporation

By: _____

LESSEE:

SALEM-KEIZER PROFESSIONAL
BASEBALL

By: _____

2077URB5.014