

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
EXECUTIVE SESSION

Monday, August 15, 2011

5:45 p.m.

**Keizer Civic Center
Keizer, Oregon 97303**

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. DISCUSSION**
 - a. Pursuant to ORS 192.660(2)(e) – *To conduct deliberations with persons designated by the governing body to negotiate real property.***
 - b. Pursuant to ORS 192.660(2)(h) – *To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.***
 - c. Pursuant to ORS 192.660(2)(i) – *To review and evaluate the employment related performance of the chief executive officer of a public body, a public officer, employee or staff member who does not request an open hearing.***
- 4. ADJOURN**

The Oregon Public Meeting Law authorizes governing bodies to meet in executive session in certain limited situations. An executive session is defined as any meeting or part of a meeting of a governing body which is closed to certain persons for deliberations on certain matters as defined by ORS 192.660. These sessions are closed to the public. The media may attend the session, unless the Oregon State Statutes specifically prohibits media attendance. The governing body is not allowed to take any final action or make any final decisions during the executive sessions. Any final action or decision must be made after returning or at the next regularly scheduled meeting.

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

AGENDA

KEIZER CITY COUNCIL **REGULAR SESSION**

Monday, August 15, 2011

7:00 p.m.

Robert L. Simon Council Chambers
Keizer, Oregon

1. CALL TO ORDER

2. ROLL CALL

3. PLEDGE OF ALLEGIANCE

4. PUBLIC TESTIMONY

This time is provided for citizens to address the Council on any matters other than those on the agenda scheduled for public hearing.

5. PUBLIC HEARINGS

- a. **RESOLUTION** – Adopting Updates to the City of Keizer Addendum to the Marion County Multi-Jurisdictional Natural Hazard Mitigation Plan

6. ADMINISTRATIVE ACTION

- a. **ORDINANCE** – Amending Keizer Development Code Regarding Section 2.203 (Permitted Uses Generally); Amending Ordinance 98-389 (Chickens) (Second Reading)

- b. Keizer Fire District/Marion County Fire District No. 1 – Clearlake Area

- c. **RESOLUTION** – Charter Amendment Election – Public Safety Communications Fee

- d. **RESOLUTION** – Authorization for Supplemental Budget – Keizer Station LID Legal Services, Donation Funds, Community Center Funds

- e. **ORDINANCE** – Relating to the Amendment of the Gas Utility License Fee Ordinance; Declaring an Emergency (Amending Ordinance No. 94-285)

ORDINANCE – Relating to the Amendment of the Electric Utility License Fee Ordinance; Declaring an Emergency (Amending Ordinance No. 94-286)

7. CONSENT CALENDAR

- a. RESOLUTION – Regarding Evaluation of City Attorney and Declining to Grant Salary Increase
- b. RESOLUTION – Regarding Evaluation of City Manager and Declining to Grant Salary Increase
- c. RESOLUTION – Amending the City's Deferred Compensation Plans to Include Roth 457(b) Amendments
- d. RESOLUTION – Amending the Resolution Establishing the Keizer Channel 23 Advisory Committee; (Amending R 2008-1837, Repealing R2008-1905)
- e. RESOLUTION – Amending City Summer Concert Band Selection Task Force (Amending R2010-2081)

8. COMMITTEE REPORTS

9. OTHER BUSINESS

This time is provided to allow the Mayor, City Council members, or staff an opportunity to bring new or old matters before the Council that are not on tonight's agenda.

- a. New Business or Old Business Issues

10. WRITTEN COMMUNICATIONS

To inform the Council of significant written communications.

11. AGENDA INPUT

September 6, 2011 (Tuesday)

7:00 p.m. – City Council Meeting

September 12, 2011

5:45 p.m. – City Council/Parks Advisory Board Work Session

- City of Keizer Annual Parks Tour

September 19, 2011

7:00 p.m. – City Council Meeting

12. ADJOURNMENT

COUNCIL MEETING: August 15, 2011

AGENDA ITEM NUMBER:_____

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

**THROUGH: CHRIS EPPLEY
CITY MANAGER**

**FROM: ROB KISSLER
EMERGENCY MANAGER**

**SUBJECT: Accepting the updates to the Marion County Natural
Hazard Mitigation Plan**

Summary

In December of 2009, the City Council approved the City of Keizer's addendum to the Marion County Natural Hazards Mitigation Plan (NHMP). The City's plan was approved by FEMA and therefore allows the City to be eligible for FEMA disaster mitigation related funding. A natural hazards mitigation plan (NHMP) identifies actions that strengthen a community's ability to withstand the damaging effects of natural hazards.

The Marion County Natural Hazards Mitigation Plan was amended in July 2011. For the County to get approval from FEMA, the City of Keizer must formally approve the amended Marion County NHMP plan through a public hearing and resolution. The Marion County NHMP is available for review at the following website:

<http://www.co.marion.or.us/PW/EmergencyManagement/NHMP.htm>

Overall, the City's NHMP continues to be up to date and applicable. Marion County's changes to the City of Keizer addendum are recommended by City Staff. See the changes in above link.

Recommendation

It is recommended the City Council open the public hearing, take testimony, and if there are no questions or concerns, close the hearing and adopt the attached resolution.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2011-_____

ADOPTING UPDATES TO THE CITY OF KEIZER ADDENDUM TO
THE MARION COUNTY MULTI-JURISDICTIONAL NATURAL
HAZARDS MITIGATION PLAN

WHEREAS, the City of Keizer recognizes the threat that natural hazards pose to
people, property and infrastructure within our community;

WHEREAS, undertaking hazard mitigation actions will reduce the potential for
harm to people, property and infrastructure from future hazard occurrences;

WHEREAS, an adopted Natural Hazards Mitigation Plan is required as a
condition of future funding for mitigation projects under multiple FEMA pre- and post-
disaster mitigation grant programs;

WHEREAS, the City of Keizer adopted the City of Keizer's representation in the
Marion County Natural Hazards Mitigation Plan, on December 7, 2009 by Resolution
R2009-1999;

WHEREAS, Marion County has subsequently completed an update to the Marion
County Multi-Jurisdictional Natural Hazards Mitigation Plan of which the City of Keizer
is party to;

1 WHEREAS, the City of Keizer has updated its addendum to the Marion County
2 Multi-Jurisdictional Natural Hazards Mitigation Plan to reflect new information
3 contained therein through the creation of a new appendix (Appendix E);

4 WHEREAS, the Oregon Office of Emergency Management and Federal
5 Emergency Management Agency, Region X officials have reviewed the Marion County,
6 Multi-Jurisdictional Natural Hazard Mitigation Plan and Appendix E of the City of
7 Keizer Addendum to the Marion County Natural Hazards Mitigation Plan (both dated,
8 January 2011) and pre-approved them (dated, April 21, 2011) contingent upon this
9 official adoption of the participating governments and entities;

10 NOW, THEREFORE,

11 BE IT RESOLVED by the City Council of the City of Keizer that Appendix E to
12 the City of Keizer Addendum to the Marion County Natural Hazards Mitigation Plan
13 2011 Amendments and Update, attached hereto and by this reference incorporated herein
14 is hereby adopted.

15 BE IT FURTHER RESOLVED that the City of Keizer Addendum to the Marion
16 County Multi-Jurisdictional Natural Hazards Mitigation Plan is hereby updated to reflect
17 the changes identified in the attached Appendix E.

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BE IT FURTHER RESOLVED that the City of Keizer will submit this Resolution to the Oregon Office of Emergency Management and Federal Emergency Management Agency, Region X officials to enable final approval of the City of Keizer Addendum to the Marion County Multi-Jurisdictional Natural Hazards Mitigation Plan.

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PASSED this _____ day of _____, 2011.

SIGNED this _____ day of _____, 2011.

Mayor

City Recorder

Appendix E: City of Keizer

Addendum to the Marion County Natural Hazards Mitigation Plan 2011 Amendments and Update

The Oregon Partnership for Disaster Resilience prepared this Appendix to the City of Keizer Addendum to the Marion County Natural Hazard Mitigation Plan (Keizer Addendum) as part of the 2010-11 update to the Marion County Natural Hazard Mitigation Plan. Upon local adoption, the appendix will become part of the Keizer Addendum and will ensure that the City of Keizer maintains FEMA Pre-Disaster Mitigation Program eligibility as well as compliance with the Marion County NHMP.

This appendix is organized according to the sections outlined in the Keizer Addendum. A description of each section is presented below with proposed changes and updates following each.

Section 1: Planning Process

The planning process section of the Keizer Addendum describes the activities used by the steering committee and community to develop the plan. Updates to the Planning Process section are as follows:

On Page 5, following Paragraph 1 of the "Adoption" subsection, insert the following language:

On _____, 2011, Marion County adopted an update to the Marion County Natural Hazard Mitigation Plan. The City of Keizer subsequently adopted Appendix E of the City of Keizer Addendum to the Marion County Natural Hazard Mitigation Plan by resolution on _____, 2011. With said adoption, all changes outlined in Appendix E are incorporated into the City of Keizer Addendum to the Marion County Natural Hazard Mitigation Plan by reference.

Section 2: Community Profile

The community profile section of the Keizer Addendum describes a variety of community characteristics specific to the City of Keizer. Given the limited amount of time that has elapsed since the community profile was developed, no changes are required or proposed.

Section 3: Risk Assessment

The risk assessment section of the Keizer Addendum describes the types, causes, characteristics and relative risk posed by natural hazards on the City of Keizer. Based on new information compiled during the Marion County NHMP update process, updates to the Keizer Addendum include the following:

On Page 22, first paragraph following “Vulnerability scores...”, delete sentences one and two and replace with the following paragraph:

Because Marion County’s Natural Hazards Mitigation Plan (NHMP) does not provide probability and vulnerability estimates, all references to Marion County’s probability and vulnerability rankings are referencing Marion County’s 2006 Hazard Analysis document (see Appendix A). When Marion County’s NHMP is updated in 2012, the county’s steering committee will incorporate probability and vulnerability ratings in the NHMP.

The referenced Marion County probability and vulnerability scores in each hazard annex are taken from the 2011 Natural Hazard Mitigation Plan. The Marion County steering committee reviewed scores during the plan update process (NHMP 2010-11) and modified if the steering committee believed they did not accurately reflect Marion County’s current probability and vulnerability.

On Pages 22 and 23, delete Paragraphs 3 and 4 of the “Drought” subsection, and replace with the following paragraphs:

According to Marion County’s Natural Hazards Mitigation Plan, two major droughts have occurred in the past 33 years. The period between 1976 and 1977 was the single driest year of the century. Similarly, February 2005 was the driest February on record since 1977. Keizer estimates a low probability that droughts will occur in the future. (Note: Marion County does not estimate probability or vulnerability ratings for drought related events. As such, Keizer is unable to say whether its vulnerability and probability estimates are greater than the county’s.)

Because the city of Keizer has adequate water supplies, emergency agreements, and effective water curtailment plans, the city estimates a low vulnerability to drought events. Due to expected changes and unpredictability in climate patterns, the city acknowledges uncertainty in this estimate, and will re-evaluate conditions when this plan is updated.

The Marion County NHMP adequately describes the causes and characteristics of drought for the region, as well as the location and extent of potential drought hazards. While Marion County estimates high probability and vulnerability to drought events, Keizer estimates both the probability and vulnerability to drought as low. The explanation and findings that follow

support the variation between the city and county assessments of drought risk.

Because the city of Keizer has adequate water supplies, emergency agreements, and effective water curtailment plans, the city estimates a low vulnerability to drought events. Due to expected changes and unpredictability in climate patterns, the city acknowledges uncertainty in this estimate, and will re-evaluate conditions in future updates.

On Page 44, Paragraph 2 following the bulleted list, delete sentences one and two, and replace with the following paragraph:

~~Marion County estimates a high probability that flooding will occur in the future, and a moderate vulnerability to flood hazards. Both ratings are true for the city of Keizer as well.~~

Marion County estimates a high probability that flooding will occur in the future. During the 2010-11 update, Marion County amended the county flood vulnerability rating from moderate to high. Keizer concurs with the County flood probability assessment; the probability of flooding in Keizer is **high**. With an estimate of **moderate**, Keizer varies from the county in its assessment of flood vulnerability. The following explanation and findings support the variation between the city and county vulnerability assessments.

On Page 34, Paragraph 1 of the "Landslide" subsection, delete sentence two and replace with the following:

~~Currently, there is no comprehensive list of landslide events and/or dates for Marion County, and the same is true for the city of Keizer.~~

The Marion County NHMP lists a brief history of landslides in the county; there is no comprehensive list of landslide events for Keizer and there is limited evidence of past landslide activity.

On Page 45, Paragraph 3 of the "Landslide" subsection, delete sentence one and replace with the following:

~~Marion County does not estimate probability or vulnerability ratings for landslide hazards.~~

The Marion County NHMP estimates the probability and vulnerability to landslide as high and moderate respectively.

On Page 46, Paragraph 2 of the "Volcano" subsection, delete sentence four and replace with the following:

~~According to the Marion County Natural Hazards Mitigation Plan, Plan, the communities that would be most affected by a volcanic eruption in Marion County are Detroit and Idanha, should Mount Jefferson erupt.~~

According to the Marion County Natural Hazards Mitigation Plan the communities that would be most affected by a volcanic eruption in Marion County are Detroit and Idanha, should Mount Jefferson erupt.

On Page 52, Paragraph 1 of the "Windstorm" subsection, delete sentence two and replace with the following:

~~Marion County's plan also describes historical wind storm events up to 2005.~~

Marion County's plan also describes historical wind storm events through 2010.

KEIZER CITY COUNCIL MEETING: August 15, 2011

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

THROUGH: CHRIS EPPLEY
CITY MANAGER

FROM: TRACY L. DAVIS, MMC
CITY RECORDER

SUBJECT: ORDINANCE – AMENDING KEIZER DEVELOPMENT CODE REGARDING SECTION 2.203 (PERMITTED USES GENERALLY); AMENDING ORDINANCE 98-389 (SECOND READING)

ISSUE:

On August 1, 2011 an Ordinance Amending Keizer Development Code Regarding Section 2.203 (Permitted Uses Generally); Amending Ordinance 98-389 (Urban Chickens) was presented to the City Council for adoption. Discussion was held and the following motion was made.

Council President Clark moved a Bill for an Ordinance mending Keizer Development Code Regarding Section 2.203 (Permitted Uses Generally); Amending Ordinance 98-389. Councilor Smith seconded the Motion.

The Motion passed with the following votes:

AYES: Christopher, Clark, Smith and Egli (4)
NAYS: McKane, Caillier, and Taylor (3)
ABSTENTIONS: None (0)
ABSENT: None (0)

The Charter states “an ordinance of the Council shall, before being put upon its final passage, be read fully and distinctly in open council meeting on two different dates. The exception to this is an ordinance may be enacted at a single meeting of the Council by unanimous vote of all councilors present.

Since the vote was not unanimous on August 1st, the Ordinance is before the Council for a second reading.

RECOMMENDATION:

It is recommended the Council make a motion to adopt a Bill for an Ordinance amending Keizer Development Code Regarding Section 2.203 (Permitted Uses Generally); Amending Ordinance 98-389.

1 BILL NO. ____

A BILL

ORDINANCE NO.

2011-_____

3 FOR

4
5 AN ORDINANCE

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7 AMENDING KEIZER DEVELOPMENT CODE REGARDING
8 SECTION 2.203 (PERMITTED USES GENERALLY);
9 AMENDING ORDINANCE 98-389

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11 WHEREAS, the Keizer Planning Commission has recommended to the Keizer
12 City Council amendments to the Keizer Development Code (Ordinance No. 98-389); and

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

15 WHEREAS, the Keizer City Council has determined that it is necessary and
16 appropriate to amend the Keizer Development Code as set forth herein; and

17 WHEREAS, the Keizer City Council has determined that such amendments meet
18 the criteria set forth in state law, the Keizer Comprehensive Plan, and the Keizer
19 Development Code;

20 NOW, THEREFORE,

21 The City of Keizer ordains as follows:

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

24 Section 2. AMENDMENT TO THE KEIZER DEVELOPMENT CODE. The
25 Keizer Development Code (Ordinance No. 98-389) is hereby amended by the adoption

1 of the changes to Section 2.203 (Permitted Uses Generally) as set forth in Exhibit "B"
2 attached hereto, and by this reference incorporated herein.

3 Section 3. SEVERABILITY. If any section, subsection, sentence, clause,
4 phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional, or
5 is denied acknowledgment by any court or board of competent jurisdiction, including,
6 but not limited to the Land Use Board of Appeals, the Land Conservation and
7 Development Commission and the Department of Land Conservation and Development,
8 then such portion shall be deemed a separate, distinct, and independent provision and
9 such holding shall not affect the validity of the remaining portions hereof.

10 Section 4. EFFECTIVE DATE. This Ordinance shall take effect thirty (30) days
11 after its passage.

12 PASSED this _____ day of _____, 2011
13 SIGNED this _____ day of _____, 2011
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17 _____
18 Mayor
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City Recorder

EXHIBIT “A”

Findings regarding the adoption of amendments to the Keizer Development Code (Section 2.203 (Permitted Uses Generally)).

The review criteria are listed in Section 3.111.04 of the Keizer Development Code.

The City of Keizer finds that:

1. General Findings.
 - a. The particulars of this case are found within planning file Text Amendment 2011-06. Public hearings were held before the Planning Commission on May 11, 2011 and also before the City Council on June 20, 2011. The Planning Commission reviewed the proposed revisions and in a 7-0 vote recommended that it be adopted. The City Council in a 3-2 vote directed staff to prepare findings and an ordinance to adopt the proposed text amendment.
2. Amendments to the Comprehensive Plan or Development Code shall be approved if the evidence can substantiate the following. Amendments to the map shall be reviewed for compliance with each of the following, while text amendments shall only be reviewed for compliance with Section 3.111.04 B, C, and D. Given that this is a text amendment Section 3.111.04 A is not applicable.

3. **Section 3.111.04.B - A demonstrated need exists for the product of the proposed amendment -**

Findings: The proposed revision to the zone code reflects a demonstrated need. The City Council has recognized that from time to time the Keizer Development Code should be updated to avoid having the code become so out of date that it would require a massive and costly comprehensive update. The proposed amendments will establish clear development standards for the keeping of chickens on residential single family lots within the city limits. Therefore, the proposed code revision complies with this review criterion.

4. **Section 3.111.04.C- The proposed amendment to the Keizer Development Code complies with statewide land use goals and related administrative rules**

FINDINGS: The proposed text amendment complies with the statewide land use planning goals as discussed below.

Goal 1 – Citizen Involvement: The adoption of this ordinance followed notice to interested parties, a public process of decision making involving public hearings, deliberation, and ordinance adoption. Public notice was provided in the Keizer Times. Public hearings were held before the planning commission and the city council. Public hearings were held before the Planning Commission on May 11, 2011 and also before the City Council on June 20, 2011. Citizens were afforded the opportunity to participate in the public process. Finally, the city council meetings are televised further providing an avenue for awareness of the issue. This process is consistent with the provision for providing an opportunity for citizens to be involved in all phases of this planning process as required by this goal and with implementing administrative rules within Oregon Administrative Rules.

Goal 2 – Land Use Planning: This ordinance amends the Keizer Development Code. The adoption proceeding was conducted in a manner consistent with requirements of the Keizer Comprehensive Plan, Keizer Development Code, and applicable state law. Notice was published in the Keizer Times. Public hearings were conducted before both the planning commission and city council where an opportunity for both verbal and written testimony was provided. Therefore, the proposed revision to the zone code is consistent with this statewide planning goal and administrative rules.

Goal 3 – Farm Land: The purpose of this goal is to protect lands that are designated for agricultural uses. Within the city limits there are only two zones (EFU and SA) which are designated to allow commercial agricultural uses. The amendment involves regulations within the boundaries of the city limits of Keizer. Since the text amendment will only involve lands that are designated Single Family Residential it will not affect either the EFU or the SA zoned lands. Therefore, the proposed amendment will comply with the Farm Land Goal and with any implementing administrative rules.

Goal 4 – Forest Land: The intent of this goal is to protect lands that are designated for commercial forest uses. There are no lands designated within the city limits to allow for commercial forestry. Also, there are no commercial forest lands near or adjacent to Keizer. The amendment to KDC Section 2.203 does not involve any land which is designated as forest land, nor will it impact the use of any forest lands. Therefore, this Goal and implementing administrative rules are not applicable to the proposed zone code amendments.

Goal 5 – Natural Resources: The intent of the Natural Resources Goal is to protect various natural resources such as wetlands, waterways, big game habitat, etc. The city established a Resource Conservation overlay zone to maintain, preserve and protect the natural features adjacent to Claggett Creek. The proposed amendments to the zone code regulations will not affect any of the city's natural resources protection regulations nor the lawful use of any properties that are within this overlay zone. Therefore, the amendment will be

consistent with this goal and with administrative rules designed to implement this goal.

Goal 6 – Air, Water and Land Quality: The intent of this goal is to protect the city's air, water and land qualities. The city provides its residents with city water from groundwater sources. New construction is required to be connected to the established sanitary sewer system thereby reducing the likelihood of groundwater contamination from failing on-site septic systems. The city has storm water regulations which are geared to maintain water quality in Willamette River or any local streams. Land quality is preserved through the city's erosion control regulations and through zone code development regulations. Air quality is preserved through the city development code regulations which limit certain types of uses in certain zones. Primarily, air quality regulations will continue to be enforced by the appropriate state agencies which govern air emission standards. The revision to the city's zone code regulations to allow home owners to keep 3 chickens for personal and not commercial use will have no impact on the quality of air, water, or land resources and so complies with this goal and with administrative rules that implement this goal.

Goal 7 – Natural Hazards: The purpose of this goal is to protect life and property from hazards resulting from flooding, steep slopes or other natural occurrences. The city has floodplain regulations that govern the placement of structures within identified 100-year floodplains within the city limits. A floodplain is the area that is adjacent to a body of water which may be subject to periodic inundation. In Keizer, these are primarily located along the Willamette River and smaller streams such as Claggett Creek. The floodplains have been mapped by the federal government. With the exception of areas removed from the 100-year floodplain through the Letter of Map Amendment the 100-year floodplain is the area of greatest concern. While this area is referred to as a 100-year floodplain it is because it has a statistical probability of having a 1% chance of flooding in any one year. The last major 100 year flood event was the 1964 flood. By contrast, the 1996 flood was not a 100 year flood event for Keizer, although clearly there was a significant amount of water flowing through parts of Keizer during that flood event. The intent of the floodplain regulations is to minimize the loss of life and property damage by preventing development, elevating structures above the flood elevation, or flood proofing structures in the floodplain. Only in the area identified as a floodway will most forms of development be prohibited. The floodway is that area that is generally the channels of rivers and streams which during a flood event will experience very significant water depth and velocity flows. The revision to the zone code will neither impact this goal nor any administrative rules.

Goal 8 – Recreation: This goal requires the city to identify and plan for the current and future recreation needs of the residents of the city. The city has an adopted Parks and Recreation Master Plan that inventories the parks,

playgrounds, and other recreational opportunities within the city limits and also plans for the city's future park and recreation needs. The proposed amendment to the city's regulations to allow the keeping of chickens will not have any impact on the recreational activities or uses within the city. Therefore, the amendments will not impact either this goal or any administrative rules that implement it.

Goal 9 – Economic Development: The intent of this goal is to ensure that the city plans for its overall economic vitality. The city is currently engaged with Marion and Polk Counties and with the City of Salem to conduct a planning study of an economic opportunity analysis for the Salem – Keizer regional area. The intent of this study is to identify potential economic opportunities facing the region so as to better plan to take advantage of these economic opportunities. Therefore, the proposal is consistent with this goal and with all administrative rules.

Goal 10 – Housing: This goal requires the city to plan and provide for the housing needs of its residents. The intent of the proposed text amendment is to allow the option for the keeping of 3 chickens on residential single family lots. The city is currently engaged in a housing needs analysis that will identify the projected 20 year housing needs for the city. The proposed amendment to KDC Section 2.203 will not impact either this goal or any related rules.

Goal 11- Public Facilities and Services: The intent of this goal is to develop a timely, orderly and efficient arrangement of public facilities and services necessary to serve the residents of Keizer. The city provides its residents with water, sanitary sewer, has an established street system, administrative and police and public safety also are provided by the city. Fire protection services will continue to be provided by the Keizer Fire District or Marion County Fire District #1 depending on which district the land proposed to be annexed is located. The allowance for the keeping of chickens will not impact any of the city's public facilities and services. The proposed amendment to KDC Section 2.203 will comply with this goal and all administrative rules.

Goal 12 – Transportation: The city has an adopted Transportation System Plan that describes the city's transportation systems. This system includes streets, transit bike, and pedestrian systems. The option to allow home owners to keep chickens on their property will not affect either this goal or any rules.

Goal 13 – Energy Conservation: This goal seeks to maximize the conservation of energy. All new construction requires compliance for review to applicable energy conservation standards. The proposed zone code text amendments will have not impact this goal nor any of the implementing administrative rules.

Goal 14 – Urbanization: The intent of this goal to provide for an orderly and efficient transition from rural to urban land use. The city has an adopted Comprehensive Plan and zone code that complies with the goal. The proposed text amendment to KDC Section 2.203 will allow the option for residential homeowners to be able to keep chickens on their property for personal and not commercial use. The proposed zone code revision will have no impact on the intent of this goal as it only will involve land that is within the city limits and not the use of land being transitioned from rural to urbanized uses.

Goal 15 – Willamette River: This goal seeks to protect, conserve, maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River. While the Willamette River is located along the western flanks of Keizer the proposed text amendments will not impact the Willamette River. The revision to the city's requirements in KDC Section 2.203 will have no impact on the ability of the city to regulate uses along the river or the Willamette River overlay zone regulations and so this goal is not applicable.

Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands), Goal 18 (Beaches and Dunes), and Goal 19 Ocean Resources) govern areas along the ocean. Since Keizer is not located along the coast, these goals are not applicable

In consideration of the above findings, the proposed zone code revision to KDC Section 2.203 complies with all applicable statewide land use goals and with all applicable administrative rules which implement the relevant goal.

5. **Section 3.111.04.D - The amendment is appropriate as measured by at least one of the following criteria:**

- a. It corrects identified error(s) in the previous plan.
- b. It represents a logical implementation of the plan.
- c. It is mandated by changes in federal, state, or local law.
- d. It is otherwise deemed by the council to be desirable, appropriate, and proper.

FINDINGS: The proposed amendments are intended in part to correct several identified errors within the existing regulations. The proposed revisions will allow the keeping of 3 chickens as an agricultural use subject to the requirements within Section 2.203 (Permitted Uses Generally) section of the Keizer Development Code. This will limit the chickens to only hens - no roosters, and only 3 hens may be kept on a property with a single family or duplex residence on it. The chickens shall be for personal and non-commercial use, and a coop will be required and shall be located in a side or rear yard a minimum of 10 feet from any adjacent property line. The Council required a no-fee permit.

While there are no Comprehensive Plan goals or policies that offer guidance, it is determined that the proposed amendment to the zone code represents a logical implementation of the Keizer Comprehensive Plan. The proposed amendment is not mandated by any federal, state, or local laws. The City Council has, by this adoption, determined that the text revision to KDC Section 2.203 is desirable, appropriate, and proper. As such, the proposal complies with this criterion.

2.203 PERMITTED USES GENERALLY

2.203.01 Permitted Uses

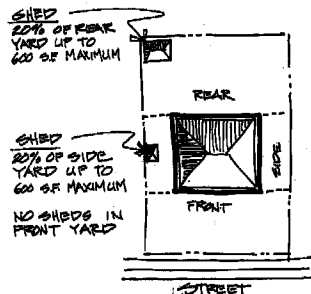
The following uses and activities are permitted in all zones:

- A. Utility Facilities. Placement and maintenance of underground or above ground wires, cables, pipes, guys, support structures, pump stations, drains, and detention basins within rights-of-ways by public agencies and utility companies for telephone, TV cable, or electrical power transmission, or transmission of natural gas, petroleum products, geothermal water, water, wastewater, sewage and rainwater. (5/98)
- B. Railroad Tracks. Railroad tracks and related structures and facilities located within rights-of-ways controlled by railroad companies. (5/98)
- C. Street Improvements. Surfaced travel lanes, curbs, gutters, drainage ditches, sidewalks, transit stops, landscaping and related structures and facilities located within rights-of-ways controlled by a public agency. (5/98)
- D. Public Right-of-way Expansion. Expansion of public right-of-way and widening or adding improvements within the right-of-way, provided the right-of-way is not expanded to more width than prescribed for the street in the Public Facilities segment of the Comprehensive Plan. (5/98)
- E. Signs. Signs as permitted in Section 2.300. (5/98)

2.203.02 Permitted Residential Accessory Structures and Uses

The following accessory uses shall be permitted subject to the following limitations and requirements:

- A. Accessory Structures and Uses. The following accessory structures and uses are permitted on a lot in any zone in conjunction with a permitted dwelling or manufactured home:
 - 1. Decks and patios (open, covered or enclosed). (5/98)
 - 2. Storage building for fire wood, yard maintenance equipment or tools, or, personal property not



Accessory Structure Locations

used in conjunction with any commercial or industrial business other than a home occupation. (5/98)

3. Green house or hobby shop. (5/98)
 4. Swimming pools, hot tubs, and saunas along with associated structures. (5/98)
 5. Pets, including outdoors shelters or runs. (5/98)
 6. Fall-out shelters. (5/98)
 7. Garages and carports. (5/98)
 8. Rooms for 1 or 2 boarders residing in the dwelling. (5/98)
- B. Fences. Fences are a permitted accessory or secondary use in all zones subject to the requirements in Section 2.312.10. (5/98)
- C. Residential Office. One manager's office of 400 square feet or less for rental of dwellings is a permitted accessory use in the RL, RM, RH and CM zones provided the office is located within a building containing dwelling units. (5/98)
- D. Agricultural Uses. Gardens, orchards and crop cultivation primarily for personal use is a permitted use accessory to a dwelling in residential zones, except that the keeping of livestock, poultry (except chickens) or the sale of such, as well as the selling of produce ~~livestock, poultry and produce~~ on site are prohibited. (5/98)Chickens are only permitted consistent with the following standards:
1. Chickens shall only be kept upon property occupied by a detached single family dwelling or duplex.
 2. No more than 3 hens may be kept on any one property.
 3. The keeping of roosters is prohibited.
 4. Chickens shall be kept for personal, non-commercial use only. No person shall sell eggs or engage in chicken breeding or fertilizer production for commercial purposes.
 5. Chickens and chicken coops shall only be located in a side or rear yard.
 6. Chicken coops shall comply with Accessory Structure requirements in Section 2.313 B, C, D, and F.

7. Chicken coops shall be kept clean, dry, free of noticeable odors, and in good repair.
8. A chicken coop is required.
9. Chicken coop shall be setback a minimum 10 feet from adjacent property lines.
10. Applicant shall obtain a permit from the city prior to the keeping of chickens.

2.203.03 Permitted Non-residential Accessory Structures and Uses

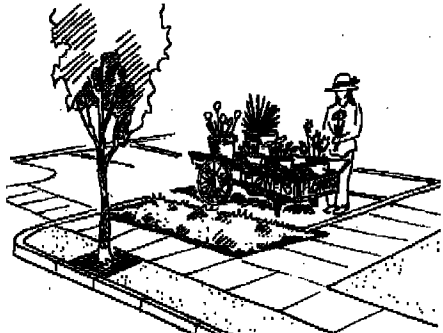
- A. Rental Office. A manager's office for rental of space in an industrial zone. (5/98)
- B. Mobile Classrooms. Mobile classrooms are a permitted accessory use in conjunction with elementary and secondary schools. (5/98)

2.203.04 Permitted Temporary Uses

The following temporary uses shall be permitted subject to the following limitations and requirements:

- A. Permitted Activities. Outdoor tree or fireworks sales are permitted in all zones except residential. Amusement and recreational service (SIC 799); and retail sales and services from a vehicle or temporary structure are permitted in all permitting zones, except residential, as a secondary use. However, houses of worship on arterial or collector streets may conduct any temporary use as described in this section. (2/01)

1. The uses are otherwise permitted to be outdoors in the zone. (5/98)
2. The activity is located on the same lot for no more than 90 days in any calendar year. (5/98)
3. The required parking for the primary uses on the same lot is not reduced below Ordinance requirements. (5/98)
4. The use does not block driveways, driveway



entrances or parking aisles. (5/98)

5. The activity conforms to all signage requirements in Section 2.308. (5/98)
 6. The activity conforms to all setback requirements applicable to the lot and zone. (5/98) Figure 3.210.04 Pre-Application Co - Temporary Business
 7. The operator of a temporary use shall provided the required information, pay the applicable fee, obtain and display the required temporary business permit. (5/98)
 8. The operator of a temporary use shall obtain all permits required by other agencies including those required for food handling and sales, and the sale of fireworks. (5/98)
- B. Temporary Construction Facilities. Mobile offices, temporary power equipment and temporary structures to house personnel and store equipment during construction, provided the structures are not used as dwellings. (5/98)
- C. Produce Stands. Temporary roadside stands in conjunction with a farm use provided:
1. Sales are limited to produce grown in the vicinity with at least 51% of the produce is grown on the premises. (5/98)
 2. One off-street parking space is provided for each 100 square feet of floor area. (5/98)
 3. The roadside stand is operated for no more than 6 months in any calendar year and only between official sunrise and sunset. (5/98)
- D. Yard Sales and Auctions. Yard sales in any residential zone, and auctions in Commercial and Industrial zones, provided there are not more than 3 sales in a calendar year with each sale not to exceed three consecutive days. Merchandise and signs shall remain on private property. (5/98)
- E. Additional Permitted Temporary Uses. The City Council may, by resolution, authorize additional permitted temporary uses during a specific event or festival. This may include setting forth reasonable types of uses, appropriate zones for such uses, temporary signs and any time restrictions the Council finds necessary to protect the health, safety and welfare of the public. (5/04 – Ord 2004-498)

CITY COUNCIL MEETING: August 15, 2011

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND COUNCIL MEMBERS

THROUGH: CHRISTOPHER C. EPPLEY, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

**SUBJECT: KEIZER FIRE DISTRICT/MARION COUNTY FIRE DISTRICT
NO. 1 ISSUES**

At the last Council meeting, Council directed me to prepare a response to the letter submitted August 1, 2011 by Chris Crean, attorney for Marion County Fire District No. 1 (Marion County Fire). The attached letter submitted to Council concerned the proposed withdrawal and annexation of the Clear Lake neighborhood. Keizer Fire District has proposed the withdrawal of such area from Marion County Fire boundaries, along with a subsequent annexation of such area to the Keizer Fire District boundaries.

I wanted to begin by reminding City Council of my role in this matter. As advisor to the City Council, I am neutral in my review. I do not support either Fire District. I am merely responding to the Council's request for clarification on the legal issues.

DISCUSSION

Below I have set forth Mr. Crean's numbered arguments and my response:

I. The City Lacks Authority to Withdraw Clear Lake.

Mr. Crean argues that the statutes regarding boundaries of special districts (ORS 198) should apply since essentially what Keizer Fire is proposing is a change in boundaries. Essentially, the argument is that the withdrawal statute (ORS 222.520) cannot be used. To support this position, Mr. Crean points out that the statutes make the City (not Keizer Fire) responsible for indebtedness and require the City (not Keizer Fire) to be responsible for the division of assets following withdrawal.

The fact that the City and not Keizer Fire is responsible does not mean that the withdrawal and subsequent annexation could not occur. It simply means that the City must rely on Keizer Fire to make good on their promise to indemnify via the proposed Intergovernmental Agreement, if there is liability to the City.

Mr. Crean also argues that the withdrawal/annexation process as proposed is a “transparent subterfuge.”

The main argument in this section is essentially that Keizer Fire’s proposed withdrawal and subsequent annexation accomplishes something indirectly that would not be allowed directly under the special district boundaries statute. ORS 198.720(2) provides that one district may not include territory included within another district when such other district is authorized to perform and is performing the same services. I understand Mr. Crean’s main argument to be that the withdrawal of Marion County Fire by the City and subsequent annexation of the area by Keizer Fire indirectly violates such statute.

The cases cited by Mr. Crean for this proposition are interesting and worthy of consideration. However, as described below I do not believe that they are necessarily persuasive on this question.

The first case cited, *Landis v. City of Roseburg*, 243 Or. 44, 411 P.2d 282 (1966), involved a timing issue regarding dueling annexations. A petition was filed with Douglas County Court (similar to county board of commissioners) for incorporation of a new town to be called “Edenbower.” After that, but before the incorporation election, the City of Roseburg accepted petitions and granted annexations for an area that was within the proposed Edenbower. The Edenbower incorporation vote went forward, but failed. However, the parties in favor of the incorporation of Edenbower sued saying that Roseburg did not have the authority to move forward while an incorporation proceeding was happening. Ultimately, the Court determined the matter was moot because the incorporation vote had failed. However, the Court did state that if the Edenbower plaintiffs had moved to enjoin the Roseburg annexation that that could have been granted temporarily while awaiting the incorporation vote.

The other case, *City of Maywood Park v. Jackson*, 2 Or. App. 568, 468 P.2d 905 (1970), involved the attempt to hold up the construction of Interstate 205 through an area that was in the beginning stages of incorporation (Maywood Park). The Court determined that the City of Maywood Park could not hold up the I-205 construction because the initial petition of incorporation did not grant it the right to move forward; in other words it was not a city yet.

I believe Mr. Crean's point is that the courts will not allow form over substance. In other words, the argument is that a court will not allow the fact that the withdrawal occurs prior to the annexation to overcome the general provision that one Fire District cannot take over the territory of another. Though I understand the argument, I do not believe either case supports the specific view that the proposed withdrawal/annexation process is a "transparent subterfuge" to avoid compliance with the law.

As I had stated at the Council meeting, I do believe that this is an interesting question that has not been addressed by the courts as far as I am aware. In my opinion, the Court that reviews this question will need to determine whether the letter of the statutes allow this process, or if the general statutory scheme is violated.

It is possible that a judge could agree with Mr. Crean's analysis that regardless of the structure, this violates ORS 198.720 in which one special district cannot take over the boundary of another special district. It is possible that such judge could say that the intent of such statute prevents the process as proposed by Keizer Fire. However, I believe it is more likely than not that a court will grant the City's authority under the statute to determine how fire services will be handled within its boundaries. I must state that I am not as certain as the Keizer Fire attorney (Bob Blackmore) is on this topic. However, due to the fact that the City has "home rule" authority and the fact that the reading of the plain language of the statute indicates that it should be allowed, I believe that a court would be more likely than not to allow it to move forward.

II. Withdraw is Not in the Best Interest of the City.

Under ORS 222.524, the City Council must find that the withdrawal of Marion County Fire is "for the best interest of the city." Mr. Crean's letter argues that it is not and has five separate subarguments in this regard.

1. Withdraw will increase property taxes in Clear Lake at the same time it reduces service. I will discuss the first part of the above sentence. Marion County Fire's Power Point program had the following slide:

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Future? Total Clear Lake Tax
Comparison

MCFD#1		KFD	
Permanent rate	\$1.90	Permanent rate	\$1.35
Local Op. Levy*	\$0.00	Local Op. Levy	\$.35
Bond rate	\$.35	MCFD#1 bond	\$.35
		Existing KFD bond	\$.14
		2012 KFD bond?	\$.17
Total	\$2.25	Total	\$2.36
*Current levy retires 11/2011		Taxes imposed by KFD will exceed MCFD#1 taxes.	
		Clear Lake taxes will Likely go UP	

The slide indicates that the “Existing KFD bond” of \$0.14 would continue in the Clear Lake area. This may be possible, but seems unlikely based on the proposed debt distribution plan that Keizer Fire has discussed. This issue is discussed under Section IV of this staff report.

The Marion County Fire slide has a question mark regarding a proposed 2012 KFD bond in the amount of \$0.17. My understanding is that this was discussed by Keizer Fire, but no decision has been made.

If the proposed 2012 Keizer Fire bond amount is removed, the Keizer Fire total taxes are less than Marion County Fire. If the proposed 2012 Keizer Fire bond remains, but the existing Keizer Fire bond of \$.014 is removed, then Keizer Fire is still less than the Marion County Fire taxes. If BOTH the existing Keizer Fire bond and proposed fire bond are imposed, then Keizer Fire’s total tax burden in Clear Lake would be more.

2. Clear Lake residents will be double-taxed for the debt of two fire districts.
There are two statements inherent in this argument. The first statement, that Clear Lake property owners remain liable for Marion County Fire bond debt even after

withdrawal, is accurate. ORS 222.520 provides that the withdrawn area “shall not thereby be relieved from liabilities and indebtedness previously contracted by the district.”

The second part of this argument indicates that the Clear Lake properties “will become subject to KFD’s existing and future bond debt.” As to Keizer Fire’s potential future bond debt, that is accurate if the Keizer Fire District electors approve such debt in an election. Such election would obviously include the Clear Lake voters if indeed the annexation proposal is enacted.

As to Keizer Fire’s existing bond debt, the question is not clear. However, it does appear that the 2011 amendment to ORS 198.860 provides for a debt distribution plan that would ultimately be voted on by the City electors. If that is the case, and Keizer Fire continues to propose that such existing debt not be spread to the Clear Lake property owners, then this part of Mr. Crean’s argument is inaccurate.

This matter is more fully discussed in Section IV.

3. Emergency services [to] Clear Lake residents will be reduced. The letter argues that the Clear Lake Station will close if the area is withdrawn from Marion County Fire. Mr. Crean posits that Marion County Fire will not have authority to operate the station if it is no longer within its boundaries. I have not been able to determine if that is accurate, however even if it were not, Marion County Fire would probably not have sufficient funds to operate the station due to the reduction of its tax base.

Mr. Crean also indicates that Keizer Fire could not simply take over the Clear Lake station in a timely manner and suggests that there would be a gap in service between when the withdrawal becomes effective and when Keizer Fire would be able to take over the station. His premise in this regard is that the division-of-assets step would not begin until at least June 2012, followed by a drawn-out arbitration and appeal process.

Though it could play out like that, it is also possible that it could move in a quicker fashion. If the Council chooses to adopt the withdrawal ordinance, there is no reason Marion County Fire and the City could not begin discussions on the division of assets pending the election results. That may be optimistic given the position of the parties and it is difficult to tell what the outcome would be.

In any event, I would hope and expect that the professional fire fighters would do whatever it takes to be sure that the Clear Lake station was manned by one District or the other.

4. The City becomes liable for MCFD#1 bond debt. The letter indicates that ORS 222.520(2) requires the City to assume the obligations for the existing Marion County Fire debt. This is accurate however the property will continue to be assessed in the same amount. Mr. Crean argues that the default rate (uncollectible) may need to be paid by the City. However, Keizer Fire has agreed to hold the City harmless with regard to any types of loss in connection with the proposed withdrawal/annexation. Depending on the amount and the ability of Keizer Fire to perform on such obligation, the City may be covered in this regard.
5. The City will be liable for any equalizing payments required under ORS 222.530. ORS 222.530 directs that the City and Marion County Fire negotiate an “equitable division” of assets. It requires that the City and Marion County Fire agree upon such division and disposal of assets within 90 days from “the date of such withdrawal...” Chris Crean argues that it is likely that a “substantial equalizing payment” will be required from the City.

It is not possible for me to determine what type or size of equalizing payment, if any, would be required. Mr. Crean is correct that the City is responsible for the equalizing payment and must rely on Keizer Fire under the indemnity agreement to make such payment.

III. Annexation Requires Approval by a Majority of Clear Lake Voters.

This argument indicates that there needs to be separate vote by the electors in the Clear Lake area. Mr. Crean’s argument is there should be no “forced annexations” and the area being annexed is the Clear Lake area. He indicates that it would be improper to force the annexation on that area as it is the Clear Lake residents whose taxes will be affected.

By phone call, Mr. Crean has clarified his argument to indicate that ORS 198.866 requires a vote by Keizer Fire District electors¹, and also a vote by the “City”. Mr. Crean argues that the vote in the “City” is for the Clear Lake residents only and not the rest of the Keizer electors.

¹ There is an argument that Keizer Fire District would not have to send the matter to the District electors as there is an exemption that may be in place. Since that is up to Keizer Fire District to determine, I will not comment on that matter.

The argument is that that statute discusses annexation of the City and implies that the whole City would be annexed. In the unique situation we face, only a portion of the City would be annexed and therefore only the portion being annexed should vote (Clear Lake).

This is an attractive argument and would resolve what Mr. Crean sees as the problematic “forced annexation.” However, I have reviewed the statute several times and cannot get away from the plain language set forth. The City is the one initially proposing the annexation; the Fire District approves or disapproves and moves forward with their own election, and at the same time the “governing body of the city shall call an election in the city...” ORS 198.866(7).

Though I understand the fairness argument regarding having the Clear Lake voters vote separately, it would appear that the statutes do not envision that and call for election by the Fire District electors and the City electors.

IV. ORS 198.860 Does Not Allow a Debt Distribution Plan.

In this argument, Mr. Crean is indicating that new House Bill 2807 does not allow a debt distribution plan in this type of situation where the City is proposing an annexation to the Keizer Fire District following withdrawal. The statutes were amended this year by the addition of the provision for debt distribution plan that would be voted on at the same time as the annexation election. Overall, it would appear that any type of annexation would be subject to the allowance of a debt distribution plan. As a reminder, Keizer Fire would propose under a new debt distribution plan that any of Keizer Fire’s bond debt not be spread to the Clear Lake area so that the Clear Lake area would only be subject to the Marion County Fire bonds.

Though the statute does not specifically reference ORS 198.866 (city-proposed annexation), when read as a whole House Bill 2807 appears to cover all types of annexations. In fact, the general statute allowing for the county board to enter the final order of annexation added the phrase “...unless otherwise provided in a debt distribution plan established under ORS 198.900.” ORS 198.860. This section appears to apply to all types of annexations. Similarly, the new section under 198.860 references the allocation pursuant to an approved debt distribution plan.

Although I understand Mr. Crean’s argument that the specific type of annexation was not referenced and that therefore it should not be appropriate to have a debt distribution plan as part of the election, I believe that it more likely than not that a court would determine that when read as a whole the debt distribution plan should be voted on in this type of situation. Since this is new legislation and the wording is admittedly imprecise, my opinion is not without some doubt and a court may determine otherwise.

V. The Proposed Withdrawal Ordinance.

Mr. Crean first argues in this section that the language in the Ordinance regarding directing another jurisdiction is a significant error. He is referring to a section which merely repeats the statute indicating that Marion County Fire District No. 1 shall agree on equitable division of assets. I do not believe that this is a problem, but have revised this section.

Mr. Crean also argues that Section 4 of the withdrawal Ordinance unlawfully delegates the City's legislative authority to Marion County by allowing the County to determine whether a City Ordinance will be effective. This section of the withdrawal Ordinance indicates that the withdrawal does not become effective until the annexation occurs which is subject to Marion County's final order. I do not believe that this presents much concern. It is not uncommon to condition the effective date on other governmental entities taking action.

An additional issue is the fact that it was not clear in a withdrawal Ordinance what might happen if Marion County does not approve the annexation after June 29, 2012. The withdrawal Ordinance has been revised to reflect the fact that if the annexation cannot be effective on June 30, 2012, then the withdrawal/annexation would roll over to the next June (June 2013).

The final argument under this section has to do with the issue that concerned the Council at the August 1, 2011 hearing, namely the question of an emergency clause for a matter that is subject to referendum.

I have considered this matter preliminarily and determined that at this point it really is not critical because the matter cannot be determined at the November election. Therefore, the withdrawal Ordinance will not have an emergency clause which makes this issue moot.

VI. The Findings Do Not Meet the Applicable Criteria.

The first argument under this section is a reference to ORS 195 regarding urban service agreements. Although Mr. Crean is correct that the language of ORS 195.065 appears to require urban service agreements between units of local government and special districts, in reality, many special districts and local governments have never entered into such urban service agreements. I do not believe that this is necessary in order to make the withdrawal Ordinance valid.

Mr. Crean's second argument under this section is that the annexation Resolution does not contain any findings. He is correct and I believe it is appropriate to have findings attached to the annexation Resolution. We are revising such Resolution.

VII. The Intergovernmental Agreement is Invalid.

The letter makes three arguments with regard to the intergovernmental agreement. First, it argues that the City cannot contract away its legislative authority. I would agree with this statement. However, the following statement by Mr. Crean, that the agreement requires the City "to convey the assets to Keizer Fire upon annexation" is not a legislative issue.

I also do not feel the other two issues regarding inserting the preferred election date in the agreement and failing to have a termination clause make the agreement invalid.

CONCLUSION

Some of the questions may be close. However, I believe that the Council can move forward in the manner proposed, if the Council after fully reviewing the matter believes that the withdrawal is for the best interest of the City, and that you feel comfortable in Keizer Fire's ability to indemnify the City.

RECOMMENDATION:

Review and discuss the matter and if there are no remaining questions, determine whether or not the withdrawal of Marion County Fire District No. 1 from the Clear Lake area is for the best interests of the City or not:

1. If the City Council determines that it is for the best interests of the City, then I would advise adopting the following documents in this order: Ordinance withdrawing the territory, the Resolution authorizing entering into the Intergovernmental Agreement, and the Resolution proposing annexation of the Clear Lake Area to the Keizer Fire District. However, if the withdrawal Ordinance is not passed unanimously, then Council should wait on the Resolutions.
2. If the City Council feels that the withdrawal of Marion County Fire District No. 1 from the Clear Lake area is not for the best interests of the City, the Council should adopt the alternate Resolution declining to withdraw the Clear Lake area from Marion County Fire District No. 1.

If you have any questions in this regard, please contact me. Thank you.
ESJ/tmh

August 1, 2011

Mayor Lore Christopher and City Council
City of Keizer
930 Chemawa Rd NE
Keizer, Oregon 97307

Re: Proposed Withdrawal and Annexation of Clear Lake Neighborhood

Dear Mayor Christopher and City Council:

This firm represents Marion County Fire District #1 ("MCFD#1") in the proposed withdrawal of the Clear Lake neighborhood ("Clear Lake") from the City of Keizer ("City" or "Keizer") and the subsequent annexation of Clear Lake to the Keizer Fire District ("KFD"). For the reasons described in greater detail below, we are concerned that the City lacks authority to approve the withdrawal and that doing so will not be in the best interest of either the City or the residents of Clear Lake. For these reasons, we ask that the City not approve the proposed ordinance, resolutions and intergovernmental agreement. At a minimum, we ask that the City Council take the time necessary to review all of the information available and to make a considered decision on this important and complicated issue.

I. The City Lacks Authority to Withdraw Clear Lake

ORS 198 governs the formation of and changes to special district boundaries. ORS 198.720 (2) provides that "a district may not include territory included within another district formed under the same principal Act when the other district is authorized to perform and is performing the services." Accordingly, when a special district is providing a service, another district cannot annex territory from the other district for the purpose of providing the same service. Conversely, when a service is not provided, a special district can be created to provide the service or the area can be annexed into a district that provides the service. *State ex rel. Hirsch v. Cornutt*, 317 Or. 92; 853 P.2d 1312 (1993) (health district created within territory of existing health district to provide ambulance not otherwise provided.) In either case, ORS 198 provides the procedural requirements to establish or change a district boundary.

The City is attempting to avoid compliance with ORS 198 by withdrawing the Clear Lake area under ORS 222.520. However, ORS 222.520 only applies when the city itself provides the service. Simply put, the statute authorizes the city to determine the boundary between a special district and the city—it does not authorize the city to determine the boundary between two special districts.

The text and context of the statute remove any doubt. ORS 522.520 make “the city” liable for the bonded indebtedness of the area withdrawn—not the subsequent special district. Similarly, ORS 222.530 directs “the city” and the affected district to reach an equitable distribution of the assets. It does not authorize—much less direct—the city to act simply as the agent for a competing district that wants to annex the same area but lacks authority to do so.

The proposed withdraw and annexation ordinances make it clear that the City is merely acting as a surrogate for Keizer Fire District for the purpose of avoiding compliance with the applicable statutes. ORS 198 is the exclusive means by which special district boundaries in Oregon are established and amended and the City’s proposed ordinances are a transparent subterfuge designed to avoid compliance with this law. A reviewing court will not endorse such action. See *Landis v. City of Roseburg*, 243 Or. 44, 411 P.2d 282 (1966) and *City of Maywood Park v. Jackson*, 2 Or. App. 568, 468 P.2d 905 (1970). Because the City lacks authority to withdraw the territory under the circumstances presented, a decision approving the withdrawal is void *ab initio*.

II. Withdraw is Not in the Best Interest of the City

1. Withdraw will increase property taxes in Clear Lake at the same time it reduces service.

By law, MCFD#1’s current bond debt rate will be charged to properties in Clear Lake through the end of the bond repayment period. ORS 222.520 (2). MCFD#1’s current bond rate is \$0.35/\$1,000 assessed value. Clear Lake properties will also be charged for KFD’s existing bonds. ORS 198.860.¹ In addition, KFD has announced its intent to seek an additional \$0.17/\$1,000 in 2012. When the total tax liability for both fire districts’ bonded debt is added to KFD’s permanent rate and operating levy, the total tax rate for fire service in Clear Lake will be \$2.36/\$1,000. That exceeds the \$2.25/\$1,000 that applies if the area remains within MCFD#1.

Aggravating this increased cost is the fact that if the territory is withdrawn from MCFD#1, the district will be compelled to remove its assets and discontinue service to the area. Both fire districts publicly tout their service to the Clear Lake area, which results in a “best of both worlds” situation for the residents of Clear Lake. That is, they are effectively covered by two emergency service providers. If the territory is withdrawn, the residents will lose one of these providers and pay for the privilege. Accordingly, it is not in the best interest of the residents of Clear Lake or the City to reduce fire protection in Clear Lake at the same time it increases the costs of such services.

¹ The amendment to ORS 198.860 by HB 2807 (2011) is discussed in detail below.

2. Clear Lake residents will be double-taxed for the debt of two fire districts.

As noted, MCFD#1's bond debt continues to apply to Clear Lake properties. If the area is withdrawn from MCFD#1 and handed over to KFD, Clear Lake properties will become subject to KFD's existing and future bond debt. ORS 198.860; Article 1, Section 32, Oregon Constitution. As a result, property owners in Clear Lake will be double-taxed for the bonds debt of two separate fire districts.

The requirement in ORS 222.520 that Clear Lake remains liable for MCFD#1's bond debt is not intended to protect the residents—it is intended to protect the bond holders. MCFD#1 will suffer a decrease in its operating revenue if Clear Lake is withdrawn but the bond holders will be held harmless. The practical result is the Clear Lake residents will be paying for MCFD#1's bond debt for the next 10-15 years, even though it does not receive services from the district.

3. Emergency services in Clear Lake residents will be reduced.

There is currently a newly-renovated fire station located in Clear Lake. KFD has a station located some distance to the south of Clear Lake. Even if response times to the southern parts of Clear Lake are equal from both stations, response times to the central and northern parts of Clear Lake are demonstrably shorter than from KFD. If Clear Lake is withdrawn from MCFD#1, the Clear Lake station will close. (MCFD#1 does not have independent authority to operate and maintain facilities outside its jurisdiction.)

In addition, the city cannot assume the Clear Lake station will be available to KFD anytime in the near future. Even a *discussion* regarding the distribution of MCFD#1's assets under ORS 222.530 does not occur until *after* the withdrawal becomes effective, which, according to the proposed ordinance, happens June 29, 2012. The City and MCFD#1 then have 90 days to agree on a distribution of assets. If the parties are unable to agree within 90 days, the matter is referred to non-binding arbitration. If that is unsuccessful, the discussion begins anew in circuit court. Ultimately, absent an agreement by the City to participate meaningfully in the creation of new assets to return the affected portion of MCFD#1's territory to the level of service it currently receives, it is unlikely the matter will be resolved in less than 18-24 months, beginning June 29, 2012. During all of this time, the Clear Lake station will remain closed and the residents of Clear Lake will be at greater risk.

4. The City becomes liable for MCFD#1 bond debt.

Under ORS 222.520, the City becomes liable for the payment of MCFD#1's bond debt attributable to Clear Lake. "The city of which it became a part shall, however, assume such

obligations.” ORS 222.520 (2). The statute also provides that the bond debt will continue to be charged to property owners, effectively resulting in the City becoming a surety of the debt. That is, the City is charged with ensuring that MCFD#1 is paid each year in the amount attributable to Clear Lake. Even assuming much of the debt will be collected from property owners and “passed through” to MCFD#1, the City will be liable for any amount not collected—i.e. the default rate.

Currently, MCFD#1 absorbs the default rate. However, if Clear Lake is withdrawn under ORS 222.520, the City becomes liable for this amount and will have to include it in its budget each year until the bonds mature in 2024.

Finally, if the county assessor determines the “pass through” is not authorized, the City will be liable for the entire amount of MCFD#1’s bond payment attributable to Clear Lake. We are not aware that the City has sought the appraiser’s opinion in the matter.

5. The City will be liable for any equalizing payments required under ORS 222.530.

After the withdrawal becomes effective, ORS 222.530 directs the City and MCFD#1 to negotiate an “equitable division” of assets. As noted at the July 11, 2011 hearing, approximately \$1,000,000.00 was invested in the Clear Lake station from the \$5,000,000.00 in MCFD#1 bonds that have been issued.² Even ignoring the other MCFD#1 assets located in Clear Lake, \$1,000,000.00 is far more than the eight-percent Clear Lake represents of the overall MCFD#1 district. Accordingly, and again, ignoring all other assets, it is likely that a substantial equalizing payment will be required from the City before the Clear Lake station can be turned over to it. If other assets are included, the payment will become even larger.

We recognize that the City has entered into an agreement with KFD that would require KFD to make this payment on the City’s behalf. However, KFD’s budget does not include *any* amount for this payment. If Clear Lake is withdrawn from MCFD#1 and neither the City nor KFD have the money to pay MCFD#1 for its assets, the Clear lake station will be shuttered and of no value to anyone. This is not in the best interest of the City, KFD or MCFD#1. And it is simply dangerous for Clear Lake residents.

² Because it substantially exceeds the portion Clear Lake constitutes of MCFD#1, the \$1,000,000.00 represents a disproportionate benefit to Clear lake residents. Conversely, it represents a disproportionate burden to the other residents of MCFD#1. However, expenditure of the remaining \$5,000,000.00 bonds approved by MCFD#1 voters is expected to equitably balance spending over the entire district.

III. Annexation Requires Approval by a Majority of Clear Lake Voters

The City proposes to annex Clear Lake to KFD under ORS 198.866. Annexation under ORS 198.866 requires a vote in the district to which Clear Lake would be annexed (i.e. KFD) as well as a separate election in the City. ORS 198.866 (7). In order for the annexation to be approved, it must receive a majority of the votes cast in the area to be annexed (i.e. Clear Lake).

This conclusion is based on the premise that ORS 198 does not authorize forced annexation. When the electors of an area wish to annex to a service district, they file an annexation petition with the county under ORS 198.850. If the petition is not signed by a majority of voters in the area, the county holds an election in the territory to be annexed and directs the affected district to hold an election in the district. If a majority of voters in the district and a majority of voters in the territory to be annexed vote in favor of annexation, the county enters an order certifying the result. ORS 198.855.

Similarly, if a city wishes to annex to a district, the governing body of the City may adopt a resolution approving the annexation. If the affected district similarly adopts an ordinance approving the election, an election is held in both the city and a separate election in the district.³ Only if a majority of voters in both areas approve the annexation does it become effective.

Here, only a small portion of the City is proposed for annexation but the principle that ORS 198 does not allow forced annexation still applies. The residents of the territory to be annexed must still approve the annexation. (After all, it is their taxes that will be affected.) Accordingly, if the City and KFD approve resolutions, an election must be held in the territory to be annexed (Clear Lake) and a separate election in the annexing district (KFD). The annexation becomes effective only if it is approved by a majority of the voters in both areas.

Any other interpretation allows the residents of Clear Lake to be annexed to KFD without their consent. For example, even if every voter in Clear Lake voted against the annexation, it would become effective if approved by a majority of voters in the City, even though they are not affected by the measure.

Based on the text of ORS 198.866 within the context of the annexation statutes generally, it is clear that annexation of Clear Lake to KFD must be approved by a majority of voters in both KFD and Clear Lake in separate elections.

³ The district may dispense with an election in circumstances not present here.

IV. ORS 198.860 Does Not Allow a Debt Distribution Plan

The City and KFD argue that property in Clear Lake will not be subject to KFD's current bonded indebtedness because of amendments to ORS 198.860 enacted by the Oregon Legislature in House Bill 2807 (2011).⁴ See Staff Report page 2. This argument ignores the plain text of the statute.

Currently, the ORS 198.860 provides:

198.860. After the date of entry of an order by the county board annexing territory to a district, the territory annexed shall become subject to the outstanding indebtedness, bonded or otherwise, of the district in like manner as the territory within the district.

As amended by HB 2807, the statute now reads:

198.860. (1) After the date of entry of an order by the county board annexing territory to a district, the territory annexed shall become subject to the outstanding indebtedness, bonded or otherwise, of the district in like manner as the territory within the district, unless otherwise provided in a debt distribution plan *established under ORS 198.900*.

(2) On and after the effective date of the annexation of territory:

(a) The outstanding indebtedness, bonded or otherwise, of the annexing district and the territory annexed may be allocated pursuant to an approved debt distribution plan.

(b) The territory annexed is subject to the permanent rate limit established, and any local option taxes imposed, by the annexing district.

The statute as amended allows an affected district to establish a debt distribution plan—but only under ORS 198.900, which was also amended by HB 2807. As amended ORS 198.900 now provides:

198.900. (1) A *petition for annexation, merger or consolidation* may include a debt distribution plan to be voted upon as a part of the proposal. The plan may provide for any distribution of indebtedness and may require that the annexing district and any territory annexed, or merging or consolidating districts and any city to be joined to the surviving or successor district,

⁴ A copy of House Bill 2807 (2011) is attached to this letter.

remain solely liable for all or any portion of any indebtedness outstanding at the time of the annexation, merger or consolidation. (Emphasis added.)

As amended by HB 2807, only a “petition for annexation, merger or consolidation” may include a debt distribution plan. Of course, the ordinance pending before the Keizer City Council is not a “petition for annexation, merger or consolidation.” The withdrawal is going forward solely on the basis of an ordinance initiated by the City Council⁵ and the subsequent annexation by reciprocal KFD and City resolutions.

This is not a technical distinction. ORS chapter 198, which, as noted above, governs the formation and change of special district boundaries, includes very specific requirements for annexation petitions including signature requirements and approval by a majority of the people in the territory to be annexed. Significantly, a “petition for annexation” is reviewed by the County Board of Commissioners, not the Keizer City Council. None of the requirements for an annexation petition have been met in this case.

Because the City’s ordinance is not a “petition for annexation, merger or consolidation,” it may not include a debt distribution plan under ORS 198.900.

V. The Proposed Withdrawal Ordinance

The proposed withdrawal ordinance contains multiple and significant errors such that it would be void *ab initio* if adopted as proposed. For example, a city ordinance can only direct city action, yet Section 3 purports to direct the actions of MCFD#1. “The City and Marion County Fire District No. 1 *shall* agree on an equitable division of assets, including Station 6, within 90 days of the withdrawal.” (Emphasis added.) The City Council of the City of Keizer lacks authority to direct the activities of Marion County Fire District #1. Accordingly, this section is invalid as drafted.

Second, it is unclear whether Section 4 unlawfully delegates the City’s legislative authority to another jurisdiction to the extent it gives the county authority to determine whether a city ordinance will become effective. More practically, it does not address what happens if a county order is approved after June 29, 2012. Presumably, the withdrawal would not occur even though that is inconsistent with the City Council’s apparent intent.

⁵ The proposed ordinance states, “WHEREAS, the City Council initiated the withdrawal process by Resolution No. R2011-2149 on July 11, 2011.”

Finally, the emergency clause in Section 5 violates ORS 222.524 (4) which makes the ordinance subject to referendum. Under Article IV, Section 1 (5), Oregon Constitution, the referendum power over city legislation is reserved to the people and allows a period of not less than 30 days to collect signatures a refer the measure to the ballot.⁶ By attempting to circumvent the people's authority to refer the measure to the ballot, the proposed ordinance violates Article IV, Section 1, of the Oregon Constitution.

Because the ordinance exceeds the scope of the City's authority and violates ORS 222.520 and Article 1, Section 32, Oregon Constitution, it is void *ab initio*.

VI. The Findings Do not Meet the Applicable Criteria

1. The findings do not demonstrate compliance with ORS 195.

ORS 195.065 requires the City to have an urban service agreement with special districts that provide an urban service inside the urban growth boundary.

195.065. [U]nits of local government and special districts that provide an urban service to an area within an urban growth boundary that has a population greater than 2,500 persons . . . shall enter into urban service agreements that:

(a) Specify whether the urban service will be provided in the future by a city, county, district, authority or a combination of one or more cities, counties, districts or authorities.

(b) Set forth the functional role of each service provider in the future provision of the urban service.

(c) Determine the future service area for each provider of the urban service.

(d) Assign responsibilities for:

(A) Planning and coordinating provision of the urban service with other urban services;

(B) Planning, constructing and maintaining service facilities; and

(C) Managing and administering provision of services to urban users.

(e) Define the terms of necessary transitions in provision of urban services, ownership of facilities, annexation of service territory, transfer of moneys or project responsibility for projects proposed on a plan of the city or district prepared pursuant to ORS 223.309 and merger of service providers or other measures for enhancing the cost efficiency of providing urban services.

⁶ See also, ORS 250.255 and 250.265.

(f) Establish a process for review and modification of the urban service agreement.

The City's proposed findings note that the City does not have an urban service agreement with MCFD#1.⁷ However, the existence of an agreement with MCFD#1 is irrelevant if Clear Lake is withdrawn because MCFD#1 will no longer provide services inside the City urban growth boundary.

What *is* significant is that the City does *not* have an agreement with KFD. The City intends to turn over to KFD responsibility for fire and emergency services in Clear Lake but does not have an urban services agreement with KFD as required under ORS 195.065.⁸ Accordingly, the findings do not demonstrate compliance with the applicable law.

2. The annexation resolution does not contain any findings.

As noted in the findings for the withdrawal ordinance, ORS 197.175 provides in relevant part:

197.175. (1) Cities and counties shall exercise their planning and zoning responsibilities, including, but not limited to, a city or special district boundary change which shall mean the annexation of unincorporated territory by a city, the incorporation of a new city and the formation or change of organization of or annexation to any special district authorized by ORS 198.705 to 198.955, 199.410 to 199.534 or 451.010 to 451.620, in accordance with ORS chapters 195, 196 and 197 and the goals approved under ORS chapters 195, 196 and 197.

A City decision approving the annexation of Clear Lake to KFD is a "change of organization" decision under ORS 198.866. Accordingly, the decision must include findings of compliance with the applicable goals, comprehensive plan provisions and land use regulations. Here, the proposed annexation resolution does not contain any findings whatsoever. A land use decision that does not include the necessary findings lacks an adequate factual base and will be remanded by LUBA.

In addition, the City's comprehensive plan specifically identifies MCFD#1 as the fire service provider for the Clear Lake area. Neither the proposed withdrawal ordinance nor the annexation

⁷ Findings, Exhibit B, page 3.

⁸ The IGA between the City and KFD is not an urban services agreement under ORS 195.065 because it does not contain any of the provisions required by the statute. It is simply an indemnification agreement for the costs associated with the withdrawal and annexation process.

resolution purport to amend the comprehensive plan to remove this provision or demonstrate how the decision complies with it. Accordingly, the proposed ordinance and resolution do not comply with the City's comprehensive plan.

VII. The Intergovernmental Agreement is Invalid

It is axiomatic that a city cannot contract away its legislative authority,⁹ yet that is precisely what the intergovernmental agreement between the City and KFD does. For example, the agreement requires the City "to convey the assets to Keizer Fire upon annexation." Any division of MCFD#1 assets must be determined by mutual agreement of the City and MCFD#1, or by a court if the parties are unable to disagree. The subsequent disposition of those assets is a policy decision for the City and the Council cannot by contract give KFD authority to negotiate for the City, then simply turn them over before it even knows what they are.

Similarly, ORS 198.866 (7) requires the City to call an election in the City in order to annex Clear Lake to KFD. Calling for and setting an election are quintessential policy decisions but the agreement with KFD directs the fire district to "set the date for an election within the city." Merely stating a preference for a November election is not enough to retain lawful authority over this exercise of policy judgment and the City cannot contract away this authority.

Moreover, the agreement recites the ORS 190 as the legal basis for the agreement. Under ORS 190, the agreement must include provision governing "the rights of the parties to terminate the agreement." The proposed agreement does not contain any provisions regarding termination. This is not surprising because it is not in the City's interest to allow KFD to terminate the agreement and, thereby, sever its obligation to indemnify the City. Nonetheless, the statute requires the agreement to set forth the parties' rights to terminate the agreement and the proposed agreement with KFD does not comply with this requirement.

Finally, and most important, city action is lawful only to the extent it is rationally related to a legitimate government interest. In order for a decision to be rational, it must include an adequate factual base. With respect to the agreement, it is apparently based on the unsupported statement that "the parties have completed a comprehensive analysis demonstrating the operational and fiscal advantages" of withdrawing Clear Lake from MCFD#1 and annexing it to KFD.

⁹*Conley v. Union County*, 182 Or. 565, 187 P.2d 150 (1947). "True, the 'District' has authority to contract, but can it thus surrender or abdicate authority conferred upon it by the legislature? We think it cannot. As stated in 1 McOuillin on Municipal Corporations, 2d Ed. Revised, § 393: '* * * the principle is fundamental and of universal application that public powers conferred upon a municipal corporation and its officers and agents cannot be surrendered or delegated to others.'" *Conley*, 182 Or. at 577.

August 1, 2011

Page 11

When asked for a copy of the analysis, City staff could only provide pictures of KFD's foam-board exhibits from the July 11, 2011, City Council meeting. Under any reasonable standard, six foam boards do not constitute a "comprehensive analysis." If KFD has done a more thorough analysis, we are not aware of it. Moreover, to the extent any analysis has been done, it has been done by KFD, not "the parties." The agreement lacks an adequate factual basis and, therefore, a decision by the City Council to approve the agreement is necessarily arbitrary.

VIII. Conclusion

The City of Keizer does not provide fire protection service. The sole purpose for the proposed withdrawal and annexation is to move the KFD boundary to include Clear Lake. The City does not have authority to establish the boundary between two rural fire protection districts. The City may only establish the boundary between a rural fire protection district and the City when the City provides the service. Because the City does not provide fire protection service, it lacks authority under ORS 222.520 to withdraw Clear Lake from Marion County Fire District #1.

In addition, withdrawal is not in the best interest of the City because it will increase costs to Clear Lake while simultaneously reducing fire protection services.

Finally, for the reasons set forth above, the ordinance, resolutions and agreement with KFD lack an adequate factual base, misinterpret the applicable law, and are not rationally related to a legitimate governmental interest.

We encourage the City Council to forego further action on the proposed withdrawal and annexation at least until these issues can be adequately addressed and resolved.

Thank you for your consideration of this matter and please feel free to contact me if you have any questions.

Sincerely,

Christopher D. Crean

Enclosure

cc: Chief Kevin Henson, Marion County Fire District No. 1
Randy Franke, Chair, Board of Directors for Marion County Fire District No. 1
Shannon Johnson, City Attorney

BEH

Enrolled
House Bill 2807

Sponsored by Representative WINGARD; Senator STARR (at the request of Special Districts Association of Oregon) (Presession filed.)

CHAPTER

AN ACT

Relating to annexation of territory by districts; creating new provisions; amending ORS 198.860 and 198.900; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 198.

SECTION 2. Upon dissolution of a district pursuant to ORS 198.920, a district that was formed under the same principal Act as the district that was dissolved may annex, pursuant to ORS 198.850 to 198.867, all or any part of the territory of the dissolved district.

SECTION 3. ORS 198.860 is amended to read:

198.860. (1) After the date of entry of an order by the county board annexing territory to a district, the territory annexed shall become subject to the outstanding indebtedness, bonded or otherwise, of the district in like manner as the territory within the district, unless otherwise provided in a debt distribution plan established under ORS 198.900.

(2) On and after the effective date of the annexation of territory:

(a) The outstanding indebtedness, bonded or otherwise, of the annexing district and the territory annexed may be allocated pursuant to an approved debt distribution plan.

(b) The territory annexed is subject to the permanent rate limit established, and any local option taxes imposed, by the annexing district.

SECTION 4. ORS 198.900 is amended to read:

198.900. (1) A petition for annexation, merger or consolidation may include a debt distribution plan to be voted upon as a part of the proposal. The plan may provide for any distribution of indebtedness and may require that the annexing district and any territory annexed, or merging or consolidating districts and any city to be joined to the surviving or successor district, remain solely liable for all or any portion of any indebtedness outstanding at the time of the annexation, merger or consolidation.

(2) If the merger or consolidation is approved, the district board of the successor or surviving district shall, in accordance with the plan, levy taxes and assessments for the liquidation of any prior existing indebtedness. Such a levy shall be subject to the principal Act of the consolidated or merged district.

SECTION 5. This 2011 Act takes effect on the 91st day after the date on which the 2011 session of the Seventy-sixth Legislative Assembly adjourns sine die.

1 BILL NO. ____

A BILL

ORDINANCE NO.

2011-_____

3 FOR

4
5 AN ORDINANCE

6
7 WITHDRAWING TERRITORY FROM MARION COUNTY
8 FIRE DISTRICT NO. 1

9 WHEREAS, the tracts of land described in Exhibit "A" attached hereto and
10 hereby incorporated by reference and depicted on the attached map have been included
11 within the boundaries of the City of Keizer since incorporation, but have not been
12 withdrawn from the Marion County Fire District No. 1;

13 WHEREAS, the City desires to withdraw from the Marion County Fire District
14 No. 1 the tracts of land described in Exhibit "A";

15 WHEREAS, ORS 222.520 provides that the City may cause territory to be
16 withdrawn from a fire protection district when the territory is a part less than the entire
17 area of a district;

18 WHEREAS, ORS 222.524 provides the manner in which the territory that has
19 been previously incorporated into the City may be withdrawn;

20 WHEREAS, the City Council initiated the withdrawal process by Resolution No.
21 R2011-2149 on July 11, 2011;

22 WHEREAS, a decision to withdraw property is a land use decision as defined in
23 ORS 197.015(10), thus requiring findings that the decision complies with the statewide
24 planning goals and the applicable comprehensive plan, as well as applicable provisions
25 of the ORS Chapters 195, 197, and, 222, and such findings are contained in Exhibit "B",

1 which is attached hereto and incorporated herein by reference;

2 WHEREAS, ORS 222.530 allows 90 days from the date of such withdrawal for
3 the City of Keizer and Marion County Fire District No. 1 to agree upon an equitable
4 division of assets of the District;

5 WHEREAS, ORS 222.520(2) provides that the area withdrawn shall not thereby
6 be relieved from liabilities and indebtedness previously contracted by the district, and for
7 the purposes of paying such liabilities and indebtedness of the district, property in the
8 part withdrawn shall continue to be subject to assessment and taxation uniformly with
9 the remaining area of Marion County Fire District No. 1;

10 WHEREAS, the City has published and posted Notices of Hearing as required by
11 ORS 222.524(2);

12 WHEREAS, on August 1, 2011, the City held a hearing as required by ORS
13 222.524(1) for the purpose of hearing objections to the withdrawal and determining
14 whether such withdrawal is for the best interest of the City;

15 NOW THEREFORE,

16 The City of Keizer ordains as follows:

17 Section 1. The City of Keizer adopts the Findings set forth in Exhibit "B"
18 attached hereto and by this reference incorporated herein.

19 Section 2. The tracts of land described in Exhibit "A" and depicted on the
20 attached map, are hereby declared to be withdrawn from the Marion County Fire District
21 No. 1 in accordance with ORS 222.524(3).

1 Section 3. Pursuant to state statute, the City and Marion County Fire District
2 No. 1 shall attempt to agree on an equitable division of assets of the District, including
3 Station 6, within 90 days of the withdrawal or proceed with arbitration pursuant to state
4 statute.

5 Section 4. This withdrawal shall become effective on June 29, 2012, subject to
6 an order by the Marion County Board of County Commissioners to annex the territory to
7 Keizer Fire District, and subject to all other state, county, and local acts being completed
8 to allow the annexation to take effect June 30, 2012. However, if all acts have been
9 completed, but not in a timely manner to allow the annexation to take effect June 30,
10 2012, the withdrawal shall become effective June 29, 2013.

11 Section 5. This Ordinance shall take effect thirty (30) days after its passage.

12 PASSED this _____ day of _____, 2011.

13

14 SIGNED this _____ day of _____, 2011.

15

16

17

18

Mayor

19

20

City Recorder

21

Description for Expanded Keizer
Fire District Service Area

June 10, 2011

Beginning at the Southeast corner of Keizer Prairie Estates as recorded in Volume 40, Page 77 of the Book of Town Plats for Marion County, Oregon and located in Section 26, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Thence North 89° 48' 16" West a distance of 665.39 feet along the Southerly line of said Keizer Prairie Estates to the Southwest corner thereof;

Thence North 00° 21' 16" East a distance of 330.99 feet along the Westerly line of said Keizer Prairie Estates to the Northwest corner of Lot 38 of said Keizer Prairie Estates, said point also being the Northeast corner of Lot 258 of the Meadows Phase 7 as recorded in Volume 40, Page 68 of the Book of Town Plats for Marion County, Oregon;

Thence North 89° 44' 48" West a distance of 651.41 feet along the Northerly line of said The Meadows Phase 7 to the Northwest corner of Lot 250 of said The Meadows Phase 7, said point also being on the Easterly right-of-way line of Meadowglen Street;

Thence continuing North 89° 44' 48" West a distance of 60.00 feet, parallel with the North line of said The Meadows Phase 7, to a point on the Westerly right-of-way line of said Meadowglen Street, said point also being on the Easterly line of Lot 249, of said Meadows Phase 7;

Thence continuing North 89° 44' 48" West a distance of 585.00 feet, parallel with the North line of said The Meadows Phase 7 to a point; said point being the Northeast corner of Lot 228, The Meadows Phase 6 as recorded in Volume 40, Page 51 of the Book of Town Plats for Marion for Marion County, Oregon;

Thence continuing North 89° 44' 48" West a distance of 23.11 feet to a point, said point being the Southeasterly corner of Caterwood Estates as recorded in Volume 40, Page 75 of the Book of Town Plats for Marion County, Oregon;

Thence North 89° 18' 54" West a distance of 1,281.63 feet along the Southerly line of said Caterwood Estates to a point, said point being the Southwest corner of said Caterwood Estates and also being on the Easterly right-of-way line of Wheatland Road North (Market Road 24);

Thence North 89° 18' 54" West a distance of 34.00 feet to a point, said point being on the centerline of Wheatland Road (Market Road No. 24);

Thence South 00° 13' 00" West a distance of 360.00 feet, more or less, along the centerline of Wheatland Road (Market Road No. 24) to a point, said point being on the Easterly extension of the

Northerly line of that certain tract of land conveyed by deed to Robert F. and Barbara J. Haskins and recorded in Reel 1329, Page 62 Deed Records for Marion County, Oregon;

Thence North 89° 51' West a distance of 228.00 feet, more or less, along the Northerly line and the Easterly extension thereof, of said Haskins tract to a point, said point being the Northeast corner of Lot 7, Orchard Crest Phase 1 as recorded in Volume 39, Page 82 Book of Town Plats for Marion County, Oregon;

Thence North 89° 46' 42" West a distance of 487.47 feet to a point, said point being the most Northerly Northwest corner of Lot 16 of said Orchard Crest Phase 1;

Thence North 89° 46' 42" West a distance of 169.00 feet, more or less, to a point on the East line of the Alvis Smith Donation Land Claim No. 69 in Section 26, Township 6 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, said point also being the Northwest corner of that certain tract of land conveyed by deed to David W. and Joanne M. Dempster and recorded in Reel 2334, Page 367 Deed Records for Marion County, Oregon;

Thence South a distance of 365.20 feet, more or less, along the East line of said Smith DLC No. 69, to a point, said point being the Southeast corner of a certain tract of land described as Parcel 1 and conveyed by deed to Dennis C. and Sandra J. Blackman and recorded in Reel 2899, Page 439 Deed Records for Marion County, Oregon;

Thence West a distance of 120.00 feet, more or less, along the Southerly line of said Parcel 1 to a point, said point being the 170' Elevation line as described and noted in City of Keizer Ordinance No. 91-211, dated October 7, 1991 annexing certain property into the City of Keizer;

Thence Northerly a distance of 480.00 feet, more or less, along said 170' Elevation line to a point on the East line of said Smith DLC No. 69, said point being the Northwest corner of a tract of land conveyed to H.D. and T.L. Roach as described in Volume 471, Page 242 Deed Records for Marion County, Oregon;

Thence continuing North a distance of 150.00 feet, more or less, along the East line of said Smith DLC No. 69 to a point on the high bank line of the Willamette River 100 year flood terrace, said point also being located 1,100.00 feet, more or less, South from the Northeast corner of said Alvis Smith DLC No. 69;

Thence Northerly along said high bank line, a distance of 4,800.00 feet, more or less, to the Northwest corner of a tract of land conveyed to J. and V. Cooper as described in Reel 49, Page 1501, Deed Records for Marion County, Oregon, said point also being located North a distance of 622.50 feet, more or less, from the center of Section 23, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Thence Easterly a distance of 127.00 feet along the North line of said Cooper tract to a point on the Westerly right-of-way line of Wheatland Road (Market Road 24);

Thence Northeasterly a distance of 114.00 feet, more or less, along said Westerly right-of-way line to the point of intersection of said right-of-way line and the Westerly extension of the North line of Clear Lake Addition as recorded in Volume 17, Page 48, Book of Town Plats for Marion County, Oregon;

Thence Easterly a distance of 72.00 feet, more or less, along said Westerly extension to the Northwest corner of Lot 1, Block 2 of said Clear Lake Addition;

Thence Easterly a distance of 418.30 feet along said North line of said Clear Lake Addition to the Northwest corner of Clear Lake Addition No. 2 as recorded in Volume 18, Page 33 Book of Town Plats for Marion County, Oregon;

Thence continuing Easterly a distance of 300.41 feet along the North line of said Clear Lake Addition No.2 to the Northeast corner thereof;

Thence South 00° 03' East a distance of 565.48 feet, more or less, to the Northwest corner of a tract of land conveyed to L.D. and M.C. Roth as described in Reel 179, Page 514 Deed Records for Marion County, Oregon, said point also being located North 00° 03' West a distance of 145.00 feet from the Southwest corner of said Roth tract being located on the centerline of Clearlake Road (county Road 613);

Thence Easterly a distance of 457.79 feet parallel with said centerline of Clearlake Road to a point located on the East line of a tract of land conveyed to D. and M. Schlag as described in Reel, 234, Page 153, Deed Records for Marion County, Oregon;

Thence South 00° 03' East a distance of 5.00 feet along said East line of said Schlag tract to a point which is located North 00° 03' West a distance of 140.00 feet from said centerline of Clearlake Road;

Thence Easterly a distance of 1,099.32 feet parallel with said centerline of Clearlake Road to the point of intersection of said line and the Northerly extension of the West line of a tract of land conveyed to C.C. and A.J. Johnson as described in Volume 540, Page 672 Deed Records for Marion County, Oregon;

Thence Southerly 20.00 feet along said Northerly extension to the Northwest corner of said Johnson tract;

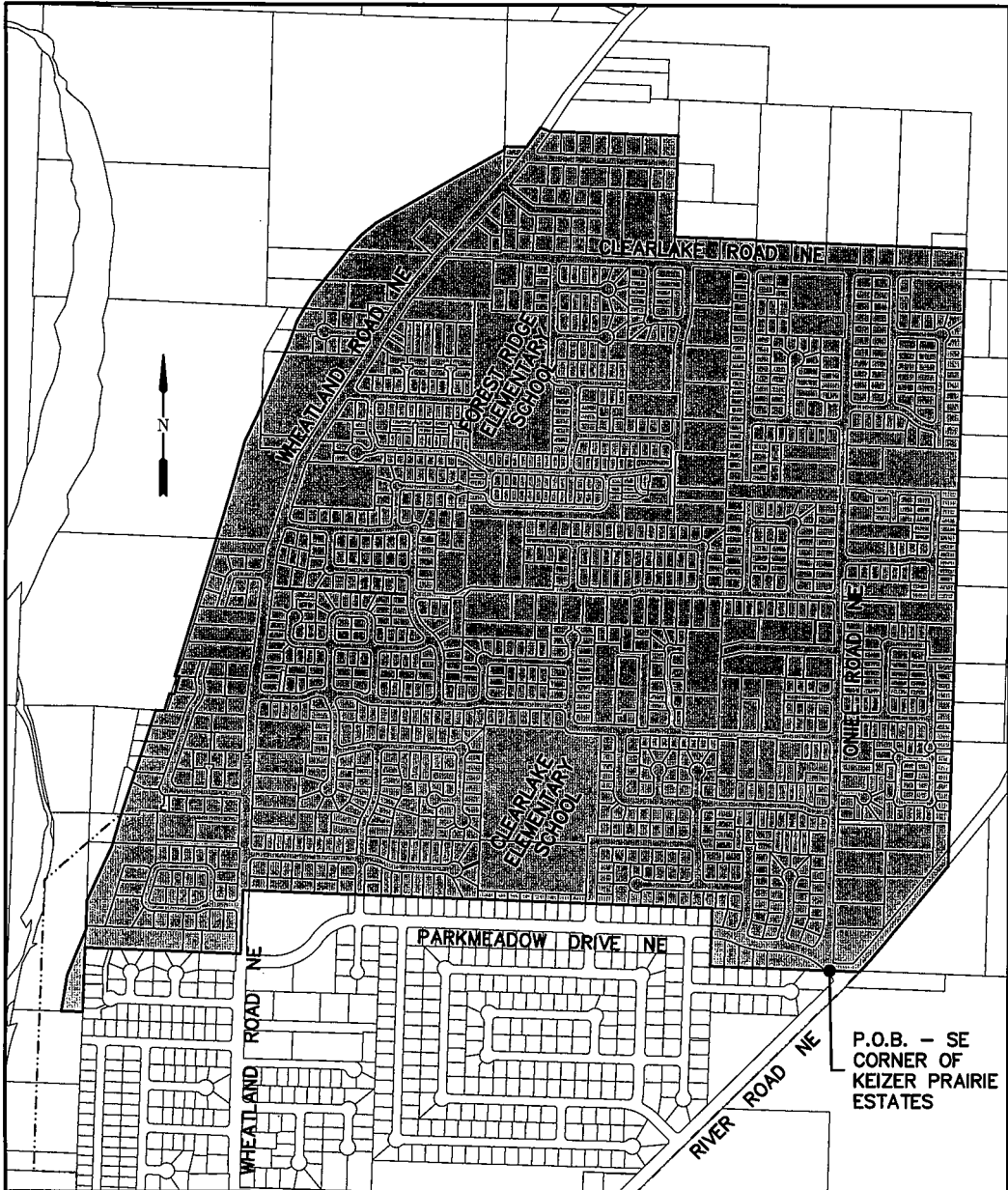
Thence Easterly 90.00 feet along the North line of said Johnson tract to a point on the section line common to Section 23 and 24, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Thence Southerly a distance of 2,760.00 feet along said section line to the section corner of common to Sections 23, 24, 25, and 26, Township 6 South, Range 3 West of said Meridian, County, and State;

Thence continuing Southerly a distance of 706.90 feet, more or less, along the section line common to Sections 25 and 26, Township 6 South, Range 3 West of said Meridian, County, and State to the Easterly right-of-way line of River Road (Market Road 36);

Thence South $37^{\circ} 46'$ West a distance of 763.00 feet, more or less, along said Easterly right-of-way line to the point of intersection with the South line of a tract of land conveyed to R.J. Zielinski as described in Reel 79, Page 276 Deed Records for Marion County, Oregon;

Thence Westerly a distance of 180.00 feet, more or less, to a point, said point being the Southeast corner of Keizer Prairie Estates as recorded in Volume 40, Page 77 Book of Town Plats for Marion County, Oregon, and the Point of Beginning.



EXPANDED KEIZER FIRE DISTRICT
SERVICE AREA
EXHIBIT "A"

Exhibit “B”

Findings regarding the withdrawing of territory from Marion County Fire District No. 1

The City of Keizer finds that:

1. The purpose of the withdrawal is to continue, maintain, and enhance fire protection services to all of the City; to lower the tax rate for residents of the Affected Territory; to prevent further loss of substantial tax revenue by Keizer Fire District (Keizer Fire); to continue orderly provision of municipal services; to enhance the ability of Keizer Fire to continue ambulance services to the Affected Territory through the county ASA process; and to potentially improve fire insurance classification ratings in the Affected Territory.
2. Currently the boundary between Keizer Fire and Marion County Fire District No. 1 divides territory that is entirely within the City of Keizer. This proposal will withdraw the balance of those properties from Marion County Fire District No. 1, and will allow for annexation by Keizer Fire, which currently serves all other properties within the City of Keizer.
3. There are several statutes that contain criteria applicable to withdrawal decisions made by cities. They are in ORS Chapters 195, 196, 197 & 222.

ORS 195.060 to 195.080 requires first “Coordination Agreements” and then “Urban Service Agreements” between governments that provide an urban service. For purposes of ORS 195 urban services include: sanitary sewers; water; fire protection; parks; open space; recreation; and streets, roads and mass transit.

Urban service agreements require the parties to determine which entities will be responsible for providing which urban services to which areas.

Compliance with the requirement for coordination agreements and urban service agreements is required no later than the first periodic review that begins after November 4, 1993 or a date set by LCDC.

There are no urban service agreements relating to the Affected Territory.

ORS Chapter 196 concerns matters which are not relevant to this proposal and therefore does not apply here.

ORS 197.175 provides that:

- (1) Cities . . . shall exercise their planning and zoning responsibilities, including, but not limited to, a city . . . special district boundary change which shall mean the . . . change of organization of ...any special district....in accordance with ORS chapters 195, 196 and 197 and the goals approved under ORS chapters 195, 196 and 197.
- (2) Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:
 - (a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;
 - (b) Enact land use regulations to implement their comprehensive plans;
 - (c) If its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the goals;

The main criterion for determining whether to declare that the territory is withdrawn within ORS 222 is whether such withdrawal is for the best interest of the City. The withdrawal is for the best interest of the City because it will continue, maintain, and enhance services to all of the City; it will result in a lower tax rate for residents of the Affected Territory; it will prevent further loss of substantial tax revenue by Keizer Fire; it is consistent with the orderly provision of municipal services; it will be consistent with and enhance the ability of Keizer Fire to continue ambulance services to the Affected Territory through the county ASA process; and it may result in an improvement to fire insurance classification ratings in the Affected Territory.

5. Allocation of Assets and Liabilities

Assets: ORS 222.530 allows 90 days from the date of the withdrawal for the City of Keizer and Marion County Fire District No. 1 to agree upon an equitable division of assets of the District or thereafter proceed to arbitration pursuant to state statute.

Marion County Fire District No. 1 Bonded Indebtedness and Local Option Levy: ORS 222.520(2) provides that the area withdrawn shall not thereby be relieved from liabilities and indebtedness previously contracted by the district, and for the purposes of paying such liabilities and indebtedness of the district, property in the part withdrawn shall continue to be subject to assessment and taxation uniformly with the remaining area of Marion County Fire District No. 1.

Permanent Rate & Keizer Fire Local Option Levy: The Affected Territory, when annexed by Keizer Fire, will be subject to the permanent rate limit established and any local option taxes imposed by Keizer Fire.

6. The Affected Territory lies entirely within the City of Keizer.

Based on the above Findings, the City Council determined:

1. ORS 197.175 requires the City's decision to be made in accord with ORS Chapter 195. ORS Chapter 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. The City does not have an urban service agreement with Marion County Fire District No. 1 that identifies the subject territory to be within the service area of the District. Therefore the Council finds this withdrawal to be in accord with ORS Chapter 195.
2. ORS 197.175 requires the City's decision to be made in accord with ORS Chapter 196. As noted above in Finding No. 3, the City concludes that ORS Chapter 196 is not applicable here.
3. ORS 197.175 requires the City's decision to be made in accord with ORS Chapter 197 and the LCDC Goals. City conclusions and reasons for decision are as follows:

Goal # 1 – Citizen Involvement. This goal requires a city to develop a citizen involvement program that insures that citizens have the opportunity to be involved in the planning process. Section III(F)(1)(2) of the Keizer Comprehensive Plan set forth general goals that: 1) provide for widespread citizen involvement; 2) assure

effective two-way communication with citizens; 3) provide the opportunity for citizens to be involved in all stages of the planning process; 4) assure that technical information is available in an understandable form; 5) assure that citizens will receive a response from policymakers; and 6) insure funding for the citizen involvement program. Citizen involvement is accomplished by publishing notice to all property owners once each week for two successive weeks prior to the date of the hearing in the Keizer Times, which is a newspaper of general circulation in the City, and by publishing notice in four public places around the City for the same period, and by holding a public hearing at which any and all participants can state their positions. And thus this land use decision is consistent with Goal #1.

Goal # 2 – Land Use Planning. Goal 2 relates to establishment of a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions. The City Comprehensive plan established a goal to assure an adequate factual base for decisions and actions. This decision is based on factual information gathered from residents and government entities related to property tax rates, legal boundary descriptions, response time information, and insurance ratings, and is thus consistent with Goal #2.

Goal # 3 – Agricultural Lands. Preservation of agricultural lands was addressed through establishment of the regional Urban Growth Boundary (UGB) (See Keizer Comprehensive Plan Section IV(G)). The area that is subject to this withdrawal is within the UGB, and thus this land use decision is consistent with Goal #3.

Goal # 4 – Forest Lands. Preservation of forest lands was addressed through establishment of the regional Urban Growth Boundary (UGB) (See Keizer Comprehensive Plan Section IV(G)). The area that is subject to this withdrawal is within the UGB, and thus this land use decision is consistent with Goal #4.

Goal # 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces. Protection of natural resources and conservation of scenic and historic areas and open spaces has been addressed with the City's comprehensive plan and zoning (See Keizer Comprehensive Plan Section III(A)(2)(c)). The withdrawal is

consistent with the stated policies in the City's acknowledged comprehensive plan because it does not affect any of the areas noted in the plan. Thus, this land use decision is consistent with Goal #5.

Goal # 6 – Air, Water and Land Resources Quality. This goal is being complied with through the general goals in the City's acknowledged plan (See Keizer Comprehensive Plan Section III(A)(2)(a)(3)), whereby the City adopted a general goal of maintaining and improving the quality of air, water, and land resources. The withdrawal maintains and improves the quality of air because it results in lower emissions with reduced vehicle travel time when responding to the Affected Territory with emergency vehicles that are already servicing the area. It has no impact on water and land resources. Thus, this land use decision is consistent with Goal #6.

Goal # 7 – Areas Subject to Natural Hazards. This Goal is currently being applied through the comprehensive plan (see Keizer Comprehensive Plan Section III(A)(2)(a)(4)). Withdrawal will be consistent with this goal of protecting life and property from natural disasters and hazards because it will improve emergency response times to residents of the affected territory. Thus, this land use decision is consistent with Goal #7.

Goal # 8 – Recreational Needs. This Goal is currently being applied through the comprehensive plan (See Keizer Comprehensive Plan Section III(E)(8)). Withdrawal will not affect this goal, as the provision of emergency services is unrelated to recreational needs. Thus, this land use decision is consistent with Goal #8.

Goal # 9 – Economic Development. This Goal is currently being applied through the comprehensive plan. (See Keizer Comprehensive Plan Section III(C)(2)(a)(2), which sets forth a goal of encouraging the location of residential development where full urban services are available.) Withdrawal is consistent with this goal because it improves urban services to the affected area. Thus, this land use decision is consistent with Goal #9.

Goal # 10 – Housing. This Goal is currently being applied through the comprehensive plan. (See Keizer Comprehensive Plan Section III(C)(2)(a)(3), which sets forth a goal of providing housing opportunities for all types of housing needs.) Withdrawal will not

affect this goal. Thus, this land use decision is consistent with Goal #10.

Goal # 11 – Public Facilities and Services. This Goal is currently being applied through the comprehensive plan. (See Keizer Comprehensive Plan Section III(E)(2)(11), which sets forth a goal of ensuring that public facility and service planning and implementation are consistent with the Urban Growth and Growth Management policies of the plan.) The withdrawal will ensure that the area that is already incorporated in the urban growth boundary is served consistently with the remaining territory in the City. Thus, this land use decision is consistent with Goal #11.

Goal # 12 – Transportation. This Goal is currently being applied through the comprehensive plan. (See Keizer Comprehensive Plan Section III(E)(4), which sets forth a goal of providing for the safe and efficient movement of people and goods throughout the metropolitan area.) Withdrawal is consistent with this goal because it allows for improved response times to the affected area, which may reduce the need for a district responding from another location to speed through the City when responding to a call. Thus, this land use decision is consistent with Goal #12.

Goal # 13 – Energy Conservation. This Goal is currently being applied through the comprehensive plan. (See Keizer Comprehensive Plan Section III(A)(2)(a)(5), which sets forth a general goal of encouraging energy conservation). Withdrawal will be consistent with this goal, as it reduces the fuel consumption by responding from a territory that is in close proximity to the area. Thus, this land use decision is consistent with Goal #13.

Goal # 14 – Urbanization. This Goal is currently being applied through the comprehensive plan (See Keizer Comprehensive Plan Section II(C)(3)). Withdrawal will not affect this Goal #14.

Goal # 15 – Willamette River, Goal # 16 Estuarine Resources, Goal # 17 Coastal Shorelands, Goal # 18 Beaches and Dunes, and Goal # 19 Ocean Resources. These Goals do not apply in this area.

Based on the above the City finds the withdrawal to be in accordance with the Goals.

1 CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

2
3 Resolution R2011- _____

4
5 AUTHORIZING MAYOR TO SIGN INTERGOVERNMENTAL
6 AGREEMENT RELATING TO FIRE AND EMERGENCY
7 SERVICES WITHIN THE CITY OF KEIZER

8
9 WHEREAS, Keizer Fire has provided fire and emergency services to the territory
10 described in Exhibit “A” (the “Affected Territory”) through automatic and mutual aid
11 agreements, and has provided ambulance service through an intergovernmental
12 agreement;

13 WHEREAS, the parties have completed a comprehensive analysis demonstrating
14 the operational and fiscal advantages of providing such services to the Affected Territory
15 for the purposes of providing fire and emergency services by Keizer Fire;

16 WHEREAS, the City is considering whether withdrawing the Affected Territory
17 from Marion County Fire District No. 1 (hereafter “Marion Fire”) under the provisions
18 of ORS 222.520 and ORS 222.524 is in its best interests, and whether the City should
19 seek such services from Keizer Fire;

20 WHEREAS, the City is considering adopting a resolution to propose annexation
21 of the Affected Territory by Keizer Fire under the provisions of ORS 198.866 for the
22 purpose of receiving service from Keizer Fire; and

23 WHEREAS, Keizer Fire is considering approving the City’s annexation proposal
24 under the provisions of ORS 198.866;

1 WHEREAS, the City of Keizer desires to ensure continuity of service upon
2 withdrawal of the Affected Territory from Marion Fire;

3 WHEREAS, the City of Keizer and Keizer Fire desire to provide clarity as to their
4 agreement with regard to the process and the costs associated with the withdrawal and
5 subsequent annexation.

6 NOW, THEREFORE,

7 BE IT RESOLVED by the City Council of the City of Keizer that the Mayor is
8 authorized to sign the attached Intergovernmental Agreement, attached as Exhibit "B"
9 hereto and by this reference incorporated herein, relating to Fire and Emergency Services
10 within the City of Keizer.

11 PASSED this _____ day of _____, 2011.

12
13 SIGNED this _____ day of _____, 2011.

14

15

16

Mayor

17

18

19

City Recorder

Description for Expanded Keizer
Fire District Service Area

June 10, 2011

Beginning at the Southeast corner of Keizer Prairie Estates as recorded in Volume 40, Page 77 of the Book of Town Plats for Marion County, Oregon and located in Section 26, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Thence North 89° 48' 16" West a distance of 665.39 feet along the Southerly line of said Keizer Prairie Estates to the Southwest corner thereof;

Thence North 00° 21' 16" East a distance of 330.99 feet along the Westerly line of said Keizer Prairie Estates to the Northwest corner of Lot 38 of said Keizer Prairie Estates, said point also being the Northeast corner of Lot 258 of the Meadows Phase 7 as recorded in Volume 40, Page 68 of the Book of Town Plats for Marion County, Oregon;

Thence North 89° 44' 48" West a distance of 651.41 feet along the Northerly line of said The Meadows Phase 7 to the Northwest corner of Lot 250 of said The Meadows Phase 7, said point also being on the Easterly right-of-way line of Meadowglen Street;

Thence continuing North 89° 44' 48" West a distance of 60.00 feet, parallel with the North line of said The Meadows Phase 7, to a point on the Westerly right-of-way line of said Meadowglen Street, said point also being on the Easterly line of Lot 249, of said Meadows Phase 7;

Thence continuing North 89° 44' 48" West a distance of 585.00 feet, parallel with the North line of said The Meadows Phase 7 to a point; said point being the Northeast corner of Lot 228, The Meadows Phase 6 as recorded in Volume 40, Page 51 of the Book of Town Plats for Marion for Marion County, Oregon;

Thence continuing North 89° 44' 48" West a distance of 23.11 feet to a point, said point being the Southeasterly corner of Caterwood Estates as recorded in Volume 40, Page 75 of the Book of Town Plats for Marion County, Oregon;

Thence North 89° 18' 54" West a distance of 1,281.63 feet along the Southerly line of said Caterwood Estates to a point, said point being the Southwest corner of said Caterwood Estates and also being on the Easterly right-of-way line of Wheatland Road North (Market Road 24);

Thence North 89° 18' 54" West a distance of 34.00 feet to a point, said point being on the centerline of Wheatland Road (Market Road No. 24);

Thence South 00° 13' 00" West a distance of 360.00 feet, more or less, along the centerline of Wheatland Road (Market Road No. 24) to a point, said point being on the Easterly extension of the

Northerly line of that certain tract of land conveyed by deed to Robert F. and Barbara J. Haskins and recorded in Reel 1329, Page 62 Deed Records for Marion County, Oregon;

Thence North 89° 51' West a distance of 228.00 feet, more or less, along the Northerly line and the Easterly extension thereof, of said Haskins tract to a point, said point being the Northeast corner of Lot 7, Orchard Crest Phase 1 as recorded in Volume 39, Page 82 Book of Town Plats for Marion County, Oregon;

Thence North 89° 46' 42" West a distance of 487.47 feet to a point, said point being the most Northerly Northwest corner of Lot 16 of said Orchard Crest Phase 1;

Thence North 89° 46' 42" West a distance of 169.00 feet, more or less, to a point on the East line of the Alvis Smith Donation Land Claim No. 69 in Section 26, Township 6 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, said point also being the Northwest corner of that certain tract of land conveyed by deed to David W. and Joanne M. Dempster and recorded in Reel 2334, Page 367 Deed Records for Marion County, Oregon;

Thence South a distance of 365.20 feet, more or less, along the East line of said Smith DLC No. 69, to a point, said point being the Southeast corner of a certain tract of land described as Parcel 1 and conveyed by deed to Dennis C. and Sandra J. Blackman and recorded in Reel 2899, Page 439 Deed Records for Marion County, Oregon;

Thence West a distance of 120.00 feet, more or less, along the Southerly line of said Parcel 1 to a point, said point being the 170' Elevation line as described and noted in City of Keizer Ordinance No. 91-211, dated October 7, 1991 annexing certain property into the City of Keizer;

Thence Northerly a distance of 480.00 feet, more or less, along said 170' Elevation line to a point on the East line of said Smith DLC No. 69, said point being the Northwest corner of a tract of land conveyed to H.D. and T.L. Roach as described in Volume 471, Page 242 Deed Records for Marion County, Oregon;

Thence continuing North a distance of 150.00 feet, more or less, along the East line of said Smith DLC No. 69 to a point on the high bank line of the Willamette River 100 year flood terrace, said point also being located 1,100.00 feet, more or less, South from the Northeast corner of said Alvis Smith DLC No. 69;

Thence Northerly along said high bank line, a distance of 4,800.00 feet, more or less, to the Northwest corner of a tract of land conveyed to J. and V. Cooper as described in Reel 49, Page 1501, Deed Records for Marion County, Oregon, said point also being located North a distance of 622.50 feet, more or less, from the center of Section 23, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Thence Easterly a distance of 127.00 feet along the North line of said Cooper tract to a point on the Westerly right-of-way line of Wheatland Road (Market Road 24);

Thence Northeasterly a distance of 114.00 feet, more or less, along said Westerly right-of-way line to the point of intersection of said right-of-way line and the Westerly extension of the North line of Clear Lake Addition as recorded in Volume 17, Page 48, Book of Town Plats for Marion County, Oregon;

Thence Easterly a distance of 72.00 feet, more or less, along said Westerly extension to the Northwest corner of Lot 1, Block 2 of said Clear Lake Addition;

Thence Easterly a distance of 418.30 feet along said North line of said Clear Lake Addition to the Northwest corner of Clear Lake Addition No. 2 as recorded in Volume 18, Page 33 Book of Town Plats for Marion County, Oregon;

Thence continuing Easterly a distance of 300.41 feet along the North line of said Clear Lake Addition No.2 to the Northeast corner thereof;

Thence South 00° 03' East a distance of 565.48 feet, more or less, to the Northwest corner of a tract of land conveyed to L.D. and M.C. Roth as described in Reel 179, Page 514 Deed Records for Marion County, Oregon, said point also being located North 00° 03' West a distance of 145.00 feet from the Southwest corner of said Roth tract being located on the centerline of Clearlake Road (county Road 613);

Thence Easterly a distance of 457.79 feet parallel with said centerline of Clearlake Road to a point located on the East line of a tract of land conveyed to D. and M. Schlag as described in Reel, 234, Page 153, Deed Records for Marion County, Oregon;

Thence South 00° 03' East a distance of 5.00 feet along said East line of said Schlag tract to a point which is located North 00° 03' West a distance of 140.00 feet from said centerline of Clearlake Road;

Thence Easterly a distance of 1,099.32 feet parallel with said centerline of Clearlake Road to the point of intersection of said line and the Northerly extension of the West line of a tract of land conveyed to C.C. and A.J. Johnson as described in Volume 540, Page 672 Deed Records for Marion County, Oregon;

Thence Southerly 20.00 feet along said Northerly extension to the Northwest corner of said Johnson tract;

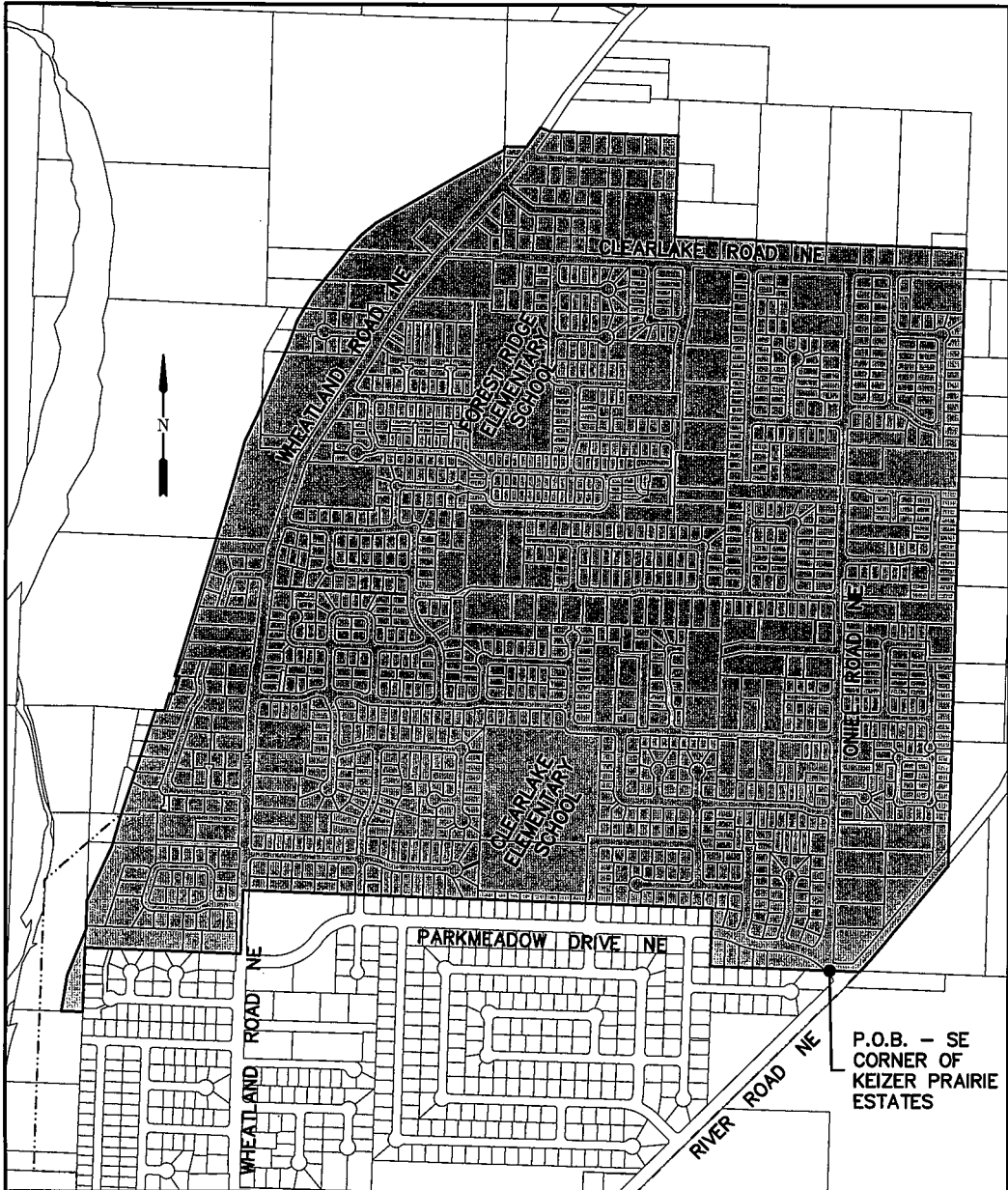
Thence Easterly 90.00 feet along the North line of said Johnson tract to a point on the section line common to Section 23 and 24, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Thence Southerly a distance of 2,760.00 feet along said section line to the section corner of common to Sections 23, 24, 25, and 26, Township 6 South, Range 3 West of said Meridian, County, and State;

Thence continuing Southerly a distance of 706.90 feet, more or less, along the section line common to Sections 25 and 26, Township 6 South, Range 3 West of said Meridian, County, and State to the Easterly right-of-way line of River Road (Market Road 36);

Thence South $37^{\circ} 46'$ West a distance of 763.00 feet, more or less, along said Easterly right-of-way line to the point of intersection with the South line of a tract of land conveyed to R.J. Zielinski as described in Reel 79, Page 276 Deed Records for Marion County, Oregon;

Thence Westerly a distance of 180.00 feet, more or less, to a point, said point being the Southeast corner of Keizer Prairie Estates as recorded in Volume 40, Page 77 Book of Town Plats for Marion County, Oregon, and the Point of Beginning.



EXPANDED KEIZER FIRE DISTRICT
SERVICE AREA
EXHIBIT "A"

1 **INTERGOVERNMENTAL AGREEMENT**

2 **RELATING TO**

3 **FIRE AND EMERGENCY SERVICES WITHIN THE CITY OF KEIZER**

4 THIS AGREEMENT is made and entered into by and among the City of Keizer, an
5 Oregon municipal corporation (hereafter “City”), and Keizer Fire District, a Rural Fire
6 Protection District (hereafter “Keizer Fire”).

7 WHEREAS, Keizer Fire has provided fire and emergency services to the territory
8 described in Exhibit A (the “Affected Territory”) through automatic and mutual aid
9 agreements, and has provided ambulance service through an intergovernmental agreement;
10 and

11 WHEREAS, the parties have completed a comprehensive analysis demonstrating the
12 operational and fiscal advantages of providing such services to the Affected Territory for the
13 purposes of providing fire and emergency services by Keizer Fire; and

14 WHEREAS, the City is considering whether withdrawing the Affected Territory from
15 Marion County Fire District 1 (hereafter “Marion Fire”) under the provisions of ORS
16 222.520 and ORS 222.524 is in its best interests, and whether the City should seek such
17 services from Keizer Fire; and

18 WHEREAS, the City is considering adopting a resolution to propose annexation of
19 the Affected Territory by Keizer Fire under the provisions of ORS 198.866 for the purpose of
20 receiving service from Keizer Fire; and

21 WHEREAS, Keizer Fire is considering approving the City’s annexation proposal
22 under the provisions of ORS 198.866; and

23 NOW, THEREFORE, under the contractual authority of ORS Chapter 190 and
24 consistent with the requirements of Oregon statutes, it is agreed between the parties:

25 **Affected Territory**

26 The Affected Territory includes all parcels as identified as Exhibit A.

27 **Withdrawal by City**

28 In the event the City withdraws the Affected Territory from Marion Fire pursuant to
29 ORS 222.520, Keizer Fire agrees that it will approve the annexation of the Affected Territory
30 to Keizer Fire, provided the terms of annexation are consistent with this Agreement.

1 Debt Distribution Plan

2 The parties agree that, upon annexation of the Affected Territory by Keizer Fire,
3 Keizer Fire shall assume the obligations of the City for any debts and liabilities assumed by
4 the City under ORS 222.520 arising from the withdrawal of the Affected Territory. Pursuant
5 to ORS 198.860, as amended, the property in Clearlake shall remain subject to the
6 outstanding indebtedness of Marion Fire in the amount of \$.3560/thousand of assessed value.
7 Upon annexation, the Affected Territory shall become subject to the permanent rate
8 established for Keizer Fire and the local option levy for Keizer Fire, which are in the
9 amounts of \$1.3526 and \$0.3500, respectively. The Affected Territory shall not be subjected
10 to the permanent rate or local option levy of Marion Fire, which are \$1.9045 and \$0.16,
11 respectively.

12 Equitable Distribution of Assets

13 Keizer Fire agrees that it shall negotiate the equitable distribution of assets on behalf
14 of the City, and the City hereby agrees to convey the assets to Keizer Fire upon annexation.
15 Keizer Fire further agrees that it will pay, indemnify and hold the City harmless from any
16 award on behalf of Marion Fire, and the costs of negotiation, arbitration or appeal, including
17 attorney fees.

18 Election and Election Costs

19 Under ORS 198.866, Keizer Fire will set the date for an election within the City on
20 the question of withdrawal and annexation of the Affected Territory, and the proposed debt
21 distribution plan. Keizer Fire agrees that it will pay, indemnify and hold the City harmless
22 from the costs of the election and any other elections in connection with the
23 withdrawal/annexation process. The parties agree that they prefer for the election to be held
24 during the November 2011 general election.

25 Timing and Process/Indemnity

26 The City agrees to designate an effective date for withdrawal of the Affected
27 Territory on June 29, 2012, and to designate the date for annexation to Keizer Fire to be June
28 30, 2012. The intent is that the party that collects the permanent rate taxes and local option
29 levies will provide services, so that neither Marion Fire or Keizer Fire are providing services
30 while not receiving operating funds. Keizer Fire's agreement to pay, indemnify and hold the
31 City harmless from costs in this Agreement is contingent upon the City consulting with
32 Keizer Fire's legal counsel and Keizer Fire's agreement on legal process, i.e. the City will
33 not engage in a process that is opposed by Keizer Fire.

34 Additional Hold Harmless/Indemnity

35 It is the intent of the parties that the provisions to defend, hold harmless and
36 indemnify the City be interpreted broadly. In addition to the specific provisions noted above,
37 should City directly or indirectly be subject to any claim in connection with or arising out of
38 in any way this withdrawal and annexation process, including without limitation liability for

operating expenses or indebtedness, Keizer Fire agrees to defend, hold harmless and indemnify the City from and for any and all costs associated therewith.

Appeal

Should any appeal or legal action be initiated in opposition to the withdrawal, annexation, election, or equitable distribution of assets, Keizer Fire agrees that it shall intervene, and the City will agree to such intervention, and Keizer Fire will pay, indemnify and hold the City harmless from the costs of appeal, including attorney fees.

Default:

If either the City or District has cause to believe that the other is in default of any of the terms and conditions of this Agreement, the non-defaulting party shall request a joint meeting of the City Council and District Board of Directors. If satisfaction is not reached through the efforts of the governing boards within 60 days, the party believing the other to be in default shall give the party alleged to be in default notice of the default in writing and allow not less than 30 days in which the default may be cured; and, if not so cured, the complaining party may declare this Agreement to be terminated effective 30 days after the expiration of the period for curing the default, or upon ruling by an arbitrator as set forth below, whichever is later. Provided, however, that Keizer Fire's obligations to pay costs and indemnify and hold the City harmless shall survive termination.

In the event the party declared to be in default believes the declaration to be unjustified, the parties agree to resolve such dispute using intergovernmental arbitration procedures set forth in ORS 190.710 through 190.800; provided, however, that the parties shall use the Arbitration Service of Portland or other local arbitration service as they may agree.

Waiver

The failure of either party to enforce any provision under this Agreement shall not constitute a waiver by it or any other provision.

Compliance with All Laws

The parties will comply with all applicable laws in the performance of their obligations under this contract.

Entire Agreement; Amendments; Severability:

This instrument contains the entire agreement of the parties on the subjects enumerated herein. An addition or modification of the provisions of this agreement shall not be effective unless it is in writing and acknowledged by the authorizing signature of each party.

If any provision of the agreement is rendered impractical, unenforceable, or illegal as a result of legislative action (including initiative), the balance of the agreement remains in force.

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<u>For City:</u>	<u>For District:</u>
Chris Eppley	Chief Jeff Cowan
City Manager	Fire Chief/Administrator
City of Keizer	Keizer Fire District
930 Chemawa Rd NE	661 Chemawa Rd NE
Keizer OR 97303	Keizer OR 97303

Each signatory, by affixing his or her signature hereto, personally certifies that he or she is authorized to do so by the Charter, Ordinances, and/or governing body of his or her respective governmental entity for which he or she is executing this Agreement, and that his or her signature shall cause this Agreement to be binding upon such party.

IN WITNESS WHEREOF, this agreement has been approved by the respective governing authority of each party as of the date set forth below, and is effective on the date of the party approving last.

By: _____
Joe Van Meter, President

By: _____
Lore Christopher, Mayor

Description for Expanded Keizer
Fire District Service Area

June 10, 2011

Beginning at the Southeast corner of Keizer Prairie Estates as recorded in Volume 40, Page 77 of the Book of Town Plats for Marion County, Oregon and located in Section 26, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Thence North 89° 48' 16" West a distance of 665.39 feet along the Southerly line of said Keizer Prairie Estates to the Southwest corner thereof;

Thence North 00° 21' 16" East a distance of 330.99 feet along the Westerly line of said Keizer Prairie Estates to the Northwest corner of Lot 38 of said Keizer Prairie Estates, said point also being the Northeast corner of Lot 258 of the Meadows Phase 7 as recorded in Volume 40, Page 68 of the Book of Town Plats for Marion County, Oregon;

Thence North 89° 44' 48" West a distance of 651.41 feet along the Northerly line of said The Meadows Phase 7 to the Northwest corner of Lot 250 of said The Meadows Phase 7, said point also being on the Easterly right-of-way line of Meadowglen Street;

Thence continuing North 89° 44' 48" West a distance of 60.00 feet, parallel with the North line of said The Meadows Phase 7, to a point on the Westerly right-of-way line of said Meadowglen Street, said point also being on the Easterly line of Lot 249, of said Meadows Phase 7;

Thence continuing North 89° 44' 48" West a distance of 585.00 feet, parallel with the North line of said The Meadows Phase 7 to a point; said point being the Northeast corner of Lot 228, The Meadows Phase 6 as recorded in Volume 40, Page 51 of the Book of Town Plats for Marion for Marion County, Oregon;

Thence continuing North 89° 44' 48" West a distance of 23.11 feet to a point, said point being the Southeasterly corner of Caterwood Estates as recorded in Volume 40, Page 75 of the Book of Town Plats for Marion County, Oregon;

Thence North 89° 18' 54" West a distance of 1,281.63 feet along the Southerly line of said Caterwood Estates to a point, said point being the Southwest corner of said Caterwood Estates and also being on the Easterly right-of-way line of Wheatland Road North (Market Road 24);

Thence North 89° 18' 54" West a distance of 34.00 feet to a point, said point being on the centerline of Wheatland Road (Market Road No. 24);

Thence South 00° 13' 00" West a distance of 360.00 feet, more or less, along the centerline of Wheatland Road (Market Road No. 24) to a point, said point being on the Easterly extension of the

EXHIBIT A
PAGE 1 OF 4

Northerly line of that certain tract of land conveyed by deed to Robert F. and Barbara J. Haskins and recorded in Reel 1329, Page 62 Deed Records for Marion County, Oregon;

Thence North $89^{\circ} 51' 42''$ West a distance of 228.00 feet, more or less, along the Northerly line and the Easterly extension thereof, of said Haskins tract to a point, said point being the Northeast corner of Lot 7, Orchard Crest Phase 1 as recorded in Volume 39, Page 82 Book of Town Plats for Marion County, Oregon;

Thence North $89^{\circ} 46' 42''$ West a distance of 487.47 feet to a point, said point being the most Northerly Northwest corner of Lot 16 of said Orchard Crest Phase 1;

Thence North $89^{\circ} 46' 42''$ West a distance of 169.00 feet, more or less, to a point on the East line of the Alvis Smith Donation Land Claim No. 69 in Section 26, Township 6 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, said point also being the Northwest corner of that certain tract of land conveyed by deed to David W. and Joanne M. Dempster and recorded in Reel 2334, Page 367 Deed Records for Marion County, Oregon;

Thence South a distance of 365.20 feet, more or less, along the East line of said Smith DLC No. 69, to a point, said point being the Southeast corner of a certain tract of land described as Parcel 1 and conveyed by deed to Dennis C. and Sandra J. Blackman and recorded in Reel 2899, Page 439 Deed Records for Marion County, Oregon;

Thence West a distance of 120.00 feet, more or less, along the Southerly line of said Parcel 1 to a point, said point being the 170' Elevation line as described and noted in City of Keizer Ordinance No. 91-211, dated October 7, 1991 annexing certain property into the City of Keizer;

Thence Northerly a distance of 480.00 feet, more or less, along said 170' Elevation line to a point on the East line of said Smith DLC No. 69, said point being the Northwest corner of a tract of land conveyed to H.D. and T.L. Roach as described in Volume 471, Page 242 Deed Records for Marion County, Oregon;

Thence continuing North a distance of 150.00 feet, more or less, along the East line of said Smith DLC No. 69 to a point on the high bank line of the Willamette River 100 year flood terrace, said point also being located 1,100.00 feet, more or less, South from the Northeast corner of said Alvis Smith DLC No. 69;

Thence Northerly along said high bank line, a distance of 4,800.00 feet, more or less, to the Northwest corner of a tract of land conveyed to J. and V. Cooper as described in Reel 49, Page 1501, Deed Records for Marion County, Oregon, said point also being located North a distance of 622.50 feet, more or less, from the center of Section 23, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Thence Easterly a distance of 127.00 feet along the North line of said Cooper tract to a point on the Westerly right-of-way line of Wheatland Road (Market Road 24);

Thence Northeasterly a distance of 114.00 feet, more or less, along said Westerly right-of-way line to the point of intersection of said right-of-way line and the Westerly extension of the North line of Clear Lake Addition as recorded in Volume 17, Page 48, Book of Town Plats for Marion County, Oregon;

Thence Easterly a distance of 72.00 feet, more or less, along said Westerly extension to the Northwest corner of Lot 1, Block 2 of said Clear Lake Addition;

Thence Easterly a distance of 418.30 feet along said North line of said Clear Lake Addition to the Northwest corner of Clear Lake Addition No. 2 as recorded in Volume 18, Page 33 Book of Town Plats for Marion County, Oregon;

Thence continuing Easterly a distance of 300.41 feet along the North line of said Clear Lake Addition No.2 to the Northeast corner thereof;

Thence South 00° 03' East a distance of 565.48 feet, more or less, to the Northwest corner of a tract of land conveyed to L.D. and M.C. Roth as described in Reel 179, Page 514 Deed Records for Marion County, Oregon, said point also being located North 00° 03' West a distance of 145.00 feet from the Southwest corner of said Roth tract being located on the centerline of Clearlake Road (county Road 613);

Thence Easterly a distance of 457.79 feet parallel with said centerline of Clearlake Road to a point located on the East line of a tract of land conveyed to D. and M. Schlag as described in Reel, 234, Page 153, Deed Records for Marion County, Oregon;

Thence South 00° 03' East a distance of 5.00 feet along said East line of said Schlag tract to a point which is located North 00° 03' West a distance of 140.00 feet from said centerline of Clearlake Road;

Thence Easterly a distance of 1,099.32 feet parallel with said centerline of Clearlake Road to the point of intersection of said line and the Northerly extension of the West line of a tract of land conveyed to C.C. and A.J. Johnson as described in Volume 540, Page 672 Deed Records for Marion County, Oregon;

Thence Southerly 20.00 feet along said Northerly extension to the Northwest corner of said Johnson tract;

Thence Easterly 90.00 feet along the North line of said Johnson tract to a point on the section line common to Section 23 and 24, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Page 4

Thence Southerly a distance of 2,760.00 feet along said section line to the section corner of common to Sections 23, 24, 25, and 26, Township 6 South, Range 3 West of said Meridian, County, and State;

Thence continuing Southerly a distance of 706.90 feet, more or less, along the section line common to Sections 25 and 26, Township 6 South, Range 3 West of said Meridian, County, and State to the Easterly right-of-way line of River Road (Market Road 36);

Thence South $37^{\circ} 46'$ West a distance of 763.00 feet, more or less, along said Easterly right-of-way line to the point of intersection with the South line of a tract of land conveyed to R.J. Zielinski as described in Reel 79, Page 276 Deed Records for Marion County, Oregon;

Thence Westerly a distance of 180.00 feet, more or less, to a point, said point being the Southeast corner of Keizer Prairie Estates as recorded in Volume 40, Page 77 Book of Town Plats for Marion County, Oregon, and the Point of Beginning.

EXHIBIT A
PAGE 4 OF 4

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2011-_____

PROPOSING ANNEXATION TO KEIZER FIRE

WHEREAS, the Keizer City Council has determined that it is in the best interests of the City for the Keizer Fire District, a Rural Fire Protection District (“Keizer Fire”) to annex the Clear Lake Area for the purpose of Keizer Fire providing fire and emergency services;

WHEREAS, the legal description and map of the Clear Lake Area (“Affected Territory”) are attached as Exhibit “A” and by this reference incorporated herein;

WHEREAS, ORS 198.866 and 198.867 describe the process whereby the City may propose the annexation to a special district for purposes of receiving services from such district;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that annexation of the Affected Territory to Keizer Fire is hereby proposed for the purpose of providing fire and emergency services to such Affected Territory effective June 30, 2012.

BE IT FURTHER RESOLVED that the City Council adopts the Findings set forth in Exhibit “B” attached hereto and by this reference incorporated herein.

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1 BE IT FURTHER RESOLVED that pursuant to ORS 198.866, immediately
2 following its adoption, this Resolution shall be certified to the Keizer Board for
3 approval.

4 PASSED this _____ day of _____, 2011.

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6 SIGNED this _____ day of _____, 2011.

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Mayor

City Recorder

Description for Expanded Keizer
Fire District Service Area

June 10, 2011

Beginning at the Southeast corner of Keizer Prairie Estates as recorded in Volume 40, Page 77 of the Book of Town Plats for Marion County, Oregon and located in Section 26, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Thence North 89° 48' 16" West a distance of 665.39 feet along the Southerly line of said Keizer Prairie Estates to the Southwest corner thereof;

Thence North 00° 21' 16" East a distance of 330.99 feet along the Westerly line of said Keizer Prairie Estates to the Northwest corner of Lot 38 of said Keizer Prairie Estates, said point also being the Northeast corner of Lot 258 of the Meadows Phase 7 as recorded in Volume 40, Page 68 of the Book of Town Plats for Marion County, Oregon;

Thence North 89° 44' 48" West a distance of 651.41 feet along the Northerly line of said The Meadows Phase 7 to the Northwest corner of Lot 250 of said The Meadows Phase 7, said point also being on the Easterly right-of-way line of Meadowglen Street;

Thence continuing North 89° 44' 48" West a distance of 60.00 feet, parallel with the North line of said The Meadows Phase 7, to a point on the Westerly right-of-way line of said Meadowglen Street, said point also being on the Easterly line of Lot 249, of said Meadows Phase 7;

Thence continuing North 89° 44' 48" West a distance of 585.00 feet, parallel with the North line of said The Meadows Phase 7 to a point; said point being the Northeast corner of Lot 228, The Meadows Phase 6 as recorded in Volume 40, Page 51 of the Book of Town Plats for Marion for Marion County, Oregon;

Thence continuing North 89° 44' 48" West a distance of 23.11 feet to a point, said point being the Southeasterly corner of Caterwood Estates as recorded in Volume 40, Page 75 of the Book of Town Plats for Marion County, Oregon;

Thence North 89° 18' 54" West a distance of 1,281.63 feet along the Southerly line of said Caterwood Estates to a point, said point being the Southwest corner of said Caterwood Estates and also being on the Easterly right-of-way line of Wheatland Road North (Market Road 24);

Thence North 89° 18' 54" West a distance of 34.00 feet to a point, said point being on the centerline of Wheatland Road (Market Road No. 24);

Thence South 00° 13' 00" West a distance of 360.00 feet, more or less, along the centerline of Wheatland Road (Market Road No. 24) to a point, said point being on the Easterly extension of the

Northerly line of that certain tract of land conveyed by deed to Robert F. and Barbara J. Haskins and recorded in Reel 1329, Page 62 Deed Records for Marion County, Oregon;

Thence North 89° 51' West a distance of 228.00 feet, more or less, along the Northerly line and the Easterly extension thereof, of said Haskins tract to a point, said point being the Northeast corner of Lot 7, Orchard Crest Phase 1 as recorded in Volume 39, Page 82 Book of Town Plats for Marion County, Oregon;

Thence North 89° 46' 42" West a distance of 487.47 feet to a point, said point being the most Northerly Northwest corner of Lot 16 of said Orchard Crest Phase 1;

Thence North 89° 46' 42" West a distance of 169.00 feet, more or less, to a point on the East line of the Alvis Smith Donation Land Claim No. 69 in Section 26, Township 6 South, Range 3 West of the Willamette Meridian in Marion County, Oregon, said point also being the Northwest corner of that certain tract of land conveyed by deed to David W. and Joanne M. Dempster and recorded in Reel 2334, Page 367 Deed Records for Marion County, Oregon;

Thence South a distance of 365.20 feet, more or less, along the East line of said Smith DLC No. 69, to a point, said point being the Southeast corner of a certain tract of land described as Parcel 1 and conveyed by deed to Dennis C. and Sandra J. Blackman and recorded in Reel 2899, Page 439 Deed Records for Marion County, Oregon;

Thence West a distance of 120.00 feet, more or less, along the Southerly line of said Parcel 1 to a point, said point being the 170' Elevation line as described and noted in City of Keizer Ordinance No. 91-211, dated October 7, 1991 annexing certain property into the City of Keizer;

Thence Northerly a distance of 480.00 feet, more or less, along said 170' Elevation line to a point on the East line of said Smith DLC No. 69, said point being the Northwest corner of a tract of land conveyed to H.D. and T.L. Roach as described in Volume 471, Page 242 Deed Records for Marion County, Oregon;

Thence continuing North a distance of 150.00 feet, more or less, along the East line of said Smith DLC No. 69 to a point on the high bank line of the Willamette River 100 year flood terrace, said point also being located 1,100.00 feet, more or less, South from the Northeast corner of said Alvis Smith DLC No. 69;

Thence Northerly along said high bank line, a distance of 4,800.00 feet, more or less, to the Northwest corner of a tract of land conveyed to J. and V. Cooper as described in Reel 49, Page 1501, Deed Records for Marion County, Oregon, said point also being located North a distance of 622.50 feet, more or less, from the center of Section 23, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Thence Easterly a distance of 127.00 feet along the North line of said Cooper tract to a point on the Westerly right-of-way line of Wheatland Road (Market Road 24);

Thence Northeasterly a distance of 114.00 feet, more or less, along said Westerly right-of-way line to the point of intersection of said right-of-way line and the Westerly extension of the North line of Clear Lake Addition as recorded in Volume 17, Page 48, Book of Town Plats for Marion County, Oregon;

Thence Easterly a distance of 72.00 feet, more or less, along said Westerly extension to the Northwest corner of Lot 1, Block 2 of said Clear Lake Addition;

Thence Easterly a distance of 418.30 feet along said North line of said Clear Lake Addition to the Northwest corner of Clear Lake Addition No. 2 as recorded in Volume 18, Page 33 Book of Town Plats for Marion County, Oregon;

Thence continuing Easterly a distance of 300.41 feet along the North line of said Clear Lake Addition No.2 to the Northeast corner thereof;

Thence South 00° 03' East a distance of 565.48 feet, more or less, to the Northwest corner of a tract of land conveyed to L.D. and M.C. Roth as described in Reel 179, Page 514 Deed Records for Marion County, Oregon, said point also being located North 00° 03' West a distance of 145.00 feet from the Southwest corner of said Roth tract being located on the centerline of Clearlake Road (county Road 613);

Thence Easterly a distance of 457.79 feet parallel with said centerline of Clearlake Road to a point located on the East line of a tract of land conveyed to D. and M. Schlag as described in Reel, 234, Page 153, Deed Records for Marion County, Oregon;

Thence South 00° 03' East a distance of 5.00 feet along said East line of said Schlag tract to a point which is located North 00° 03' West a distance of 140.00 feet from said centerline of Clearlake Road;

Thence Easterly a distance of 1,099.32 feet parallel with said centerline of Clearlake Road to the point of intersection of said line and the Northerly extension of the West line of a tract of land conveyed to C.C. and A.J. Johnson as described in Volume 540, Page 672 Deed Records for Marion County, Oregon;

Thence Southerly 20.00 feet along said Northerly extension to the Northwest corner of said Johnson tract;

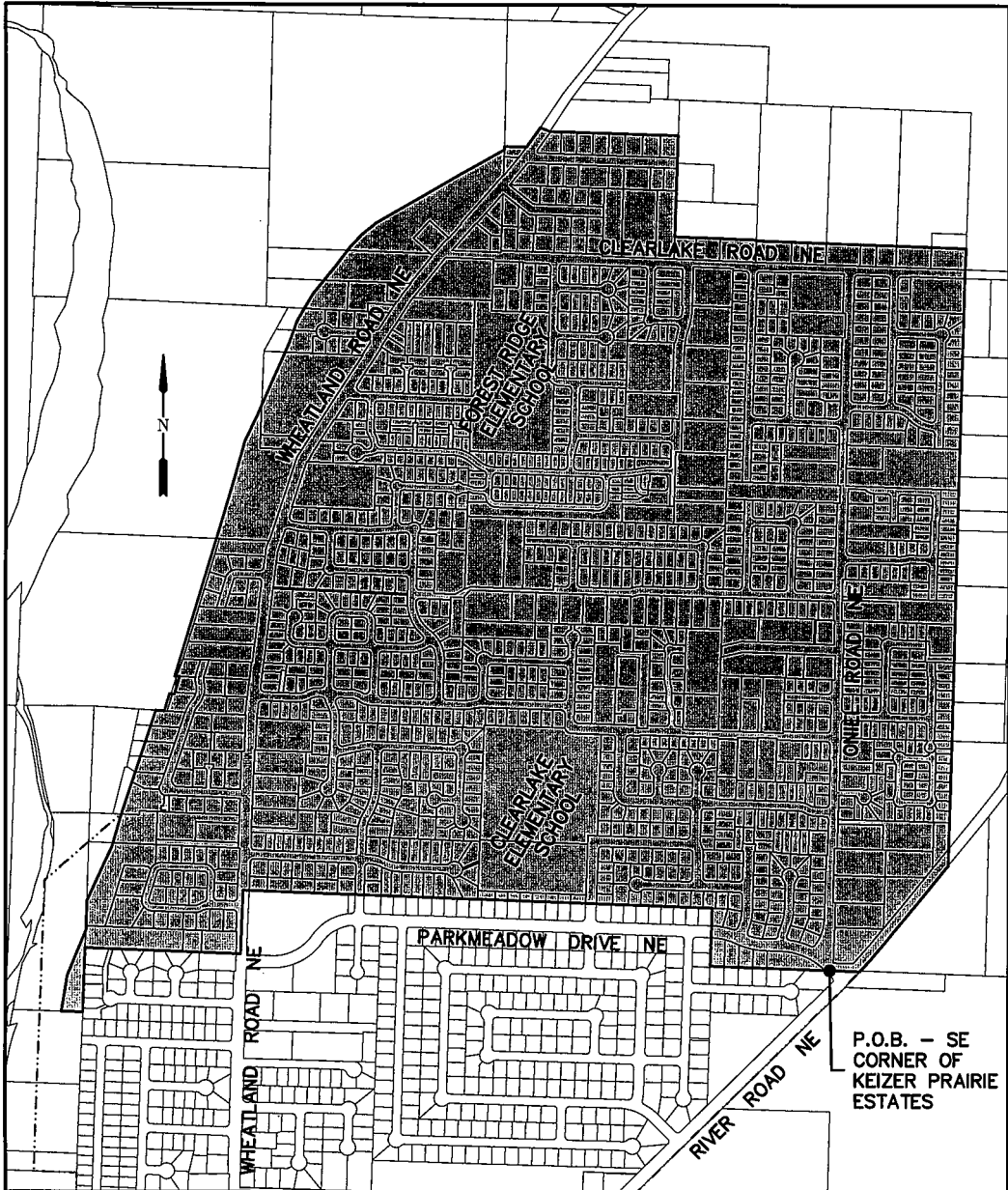
Thence Easterly 90.00 feet along the North line of said Johnson tract to a point on the section line common to Section 23 and 24, Township 6 South, Range 3 West of the Willamette Meridian, Marion County, Oregon;

Thence Southerly a distance of 2,760.00 feet along said section line to the section corner of common to Sections 23, 24, 25, and 26, Township 6 South, Range 3 West of said Meridian, County, and State;

Thence continuing Southerly a distance of 706.90 feet, more or less, along the section line common to Sections 25 and 26, Township 6 South, Range 3 West of said Meridian, County, and State to the Easterly right-of-way line of River Road (Market Road 36);

Thence South $37^{\circ} 46'$ West a distance of 763.00 feet, more or less, along said Easterly right-of-way line to the point of intersection with the South line of a tract of land conveyed to R.J. Zielinski as described in Reel 79, Page 276 Deed Records for Marion County, Oregon;

Thence Westerly a distance of 180.00 feet, more or less, to a point, said point being the Southeast corner of Keizer Prairie Estates as recorded in Volume 40, Page 77 Book of Town Plats for Marion County, Oregon, and the Point of Beginning.



EXPANDED KEIZER FIRE DISTRICT
SERVICE AREA
EXHIBIT "A"

Exhibit “B”

Findings regarding the withdrawing of territory from Marion County Fire District No. 1

The City of Keizer finds that:

1. The purpose of the withdrawal is to continue, maintain, and enhance fire protection services to all of the City; to lower the tax rate for residents of the Affected Territory; to prevent further loss of substantial tax revenue by Keizer Fire District (Keizer Fire); to continue orderly provision of municipal services; to enhance the ability of Keizer Fire to continue ambulance services to the Affected Territory through the county ASA process; and to potentially improve fire insurance classification ratings in the Affected Territory.
2. Currently the boundary between Keizer Fire and Marion County Fire District No. 1 divides territory that is entirely within the City of Keizer. This proposal will withdraw the balance of those properties from Marion County Fire District No. 1, and will allow for annexation by Keizer Fire, which currently serves all other properties within the City of Keizer.
3. There are several statutes that contain criteria applicable to withdrawal decisions made by cities. They are in ORS Chapters 195, 196, 197 & 222.

ORS 195.060 to 195.080 requires first “Coordination Agreements” and then “Urban Service Agreements” between governments that provide an urban service. For purposes of ORS 195 urban services include: sanitary sewers; water; fire protection; parks; open space; recreation; and streets, roads and mass transit.

Urban service agreements require the parties to determine which entities will be responsible for providing which urban services to which areas.

Compliance with the requirement for coordination agreements and urban service agreements is required no later than the first periodic review that begins after November 4, 1993 or a date set by LCDC.

There are no urban service agreements relating to the Affected Territory.

ORS Chapter 196 concerns matters which are not relevant to this proposal and therefore does not apply here.

ORS 197.175 provides that:

- (1) Cities . . . shall exercise their planning and zoning responsibilities, including, but not limited to, a city . . . special district boundary change which shall mean the . . . change of organization of ...any special district....in accordance with ORS chapters 195, 196 and 197 and the goals approved under ORS chapters 195, 196 and 197.
- (2) Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:
 - (a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;
 - (b) Enact land use regulations to implement their comprehensive plans;
 - (c) If its comprehensive plan and land use regulations have not been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the goals;

The main criterion for determining whether to declare that the territory is withdrawn within ORS 222 is whether such withdrawal is for the best interest of the City. The withdrawal is for the best interest of the City because it will continue, maintain, and enhance services to all of the City; it will result in a lower tax rate for residents of the Affected Territory; it will prevent further loss of substantial tax revenue by Keizer Fire; it is consistent with the orderly provision of municipal services; it will be consistent with and enhance the ability of Keizer Fire to continue ambulance services to the Affected Territory through the county ASA process; and it may result in an improvement to fire insurance classification ratings in the Affected Territory.

5. Allocation of Assets and Liabilities

Assets: ORS 222.530 allows 90 days from the date of the withdrawal for the City of Keizer and Marion County Fire District No. 1 to agree upon an equitable division of assets of the District or thereafter proceed to arbitration pursuant to state statute.

Marion County Fire District No. 1 Bonded Indebtedness and Local Option Levy: ORS 222.520(2) provides that the area withdrawn shall not thereby be relieved from liabilities and indebtedness previously contracted by the district, and for the purposes of paying such liabilities and indebtedness of the district, property in the part withdrawn shall continue to be subject to assessment and taxation uniformly with the remaining area of Marion County Fire District No. 1.

Permanent Rate & Keizer Fire Local Option Levy: The Affected Territory, when annexed by Keizer Fire, will be subject to the permanent rate limit established and any local option taxes imposed by Keizer Fire.

6. The Affected Territory lies entirely within the City of Keizer.

Based on the above Findings, the City Council determined:

1. ORS 197.175 requires the City's decision to be made in accord with ORS Chapter 195. ORS Chapter 195 requires agreements between providers of urban services. Urban services are defined as: sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit. These agreements are to specify which governmental entity will provide which service to which area in the long term. The counties are responsible for facilitating the creation of these agreements. The City does not have an urban service agreement with Marion County Fire District No. 1 that identifies the subject territory to be within the service area of the District. Therefore the Council finds this withdrawal to be in accord with ORS Chapter 195.
2. ORS 197.175 requires the City's decision to be made in accord with ORS Chapter 196. As noted above in Finding No. 3, the City concludes that ORS Chapter 196 is not applicable here.
3. ORS 197.175 requires the City's decision to be made in accord with ORS Chapter 197 and the LCDC Goals. City conclusions and reasons for decision are as follows:

Goal # 1 – Citizen Involvement. This goal requires a city to develop a citizen involvement program that insures that citizens have the opportunity to be involved in the planning process. Section III(F)(1)(2) of the Keizer Comprehensive Plan set forth general goals that: 1) provide for widespread citizen involvement; 2) assure

effective two-way communication with citizens; 3) provide the opportunity for citizens to be involved in all stages of the planning process; 4) assure that technical information is available in an understandable form; 5) assure that citizens will receive a response from policymakers; and 6) insure funding for the citizen involvement program. Citizen involvement is accomplished by publishing notice to all property owners once each week for two successive weeks prior to the date of the hearing in the Keizer Times, which is a newspaper of general circulation in the City, and by publishing notice in four public places around the City for the same period, and by holding a public hearing at which any and all participants can state their positions. And thus this land use decision is consistent with Goal #1.

Goal # 2 – Land Use Planning. Goal 2 relates to establishment of a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions. The City Comprehensive plan established a goal to assure an adequate factual base for decisions and actions. This decision is based on factual information gathered from residents and government entities related to property tax rates, legal boundary descriptions, response time information, and insurance ratings, and is thus consistent with Goal #2.

Goal # 3 – Agricultural Lands. Preservation of agricultural lands was addressed through establishment of the regional Urban Growth Boundary (UGB) (See Keizer Comprehensive Plan Section IV(G)). The area that is subject to this withdrawal is within the UGB, and thus this land use decision is consistent with Goal #3.

Goal # 4 – Forest Lands. Preservation of forest lands was addressed through establishment of the regional Urban Growth Boundary (UGB) (See Keizer Comprehensive Plan Section IV(G)). The area that is subject to this withdrawal is within the UGB, and thus this land use decision is consistent with Goal #4.

Goal # 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces. Protection of natural resources and conservation of scenic and historic areas and open spaces has been addressed with the City's comprehensive plan and zoning (See Keizer Comprehensive Plan Section III(A)(2)(c)). The withdrawal is

consistent with the stated policies in the City's acknowledged comprehensive plan because it does not affect any of the areas noted in the plan. Thus, this land use decision is consistent with Goal #5.

Goal # 6 – Air, Water and Land Resources Quality. This goal is being complied with through the general goals in the City's acknowledged plan (See Keizer Comprehensive Plan Section III(A)(2)(a)(3)), whereby the City adopted a general goal of maintaining and improving the quality of air, water, and land resources. The withdrawal maintains and improves the quality of air because it results in lower emissions with reduced vehicle travel time when responding to the Affected Territory with emergency vehicles that are already servicing the area. It has no impact on water and land resources. Thus, this land use decision is consistent with Goal #6.

Goal # 7 – Areas Subject to Natural Hazards. This Goal is currently being applied through the comprehensive plan (see Keizer Comprehensive Plan Section III(A)(2)(a)(4)). Withdrawal will be consistent with this goal of protecting life and property from natural disasters and hazards because it will improve emergency response times to residents of the affected territory. Thus, this land use decision is consistent with Goal #7.

Goal # 8 – Recreational Needs. This Goal is currently being applied through the comprehensive plan (See Keizer Comprehensive Plan Section III(E)(8)). Withdrawal will not affect this goal, as the provision of emergency services is unrelated to recreational needs. Thus, this land use decision is consistent with Goal #8.

Goal # 9 – Economic Development. This Goal is currently being applied through the comprehensive plan. (See Keizer Comprehensive Plan Section III(C)(2)(a)(2), which sets forth a goal of encouraging the location of residential development where full urban services are available.) Withdrawal is consistent with this goal because it improves urban services to the affected area. Thus, this land use decision is consistent with Goal #9.

Goal # 10 – Housing. This Goal is currently being applied through the comprehensive plan. (See Keizer Comprehensive Plan Section III(C)(2)(a)(3), which sets forth a goal of providing housing opportunities for all types of housing needs.) Withdrawal will not

affect this goal. Thus, this land use decision is consistent with Goal #10.

Goal # 11 – Public Facilities and Services. This Goal is currently being applied through the comprehensive plan. (See Keizer Comprehensive Plan Section III(E)(2)(11), which sets forth a goal of ensuring that public facility and service planning and implementation are consistent with the Urban Growth and Growth Management policies of the plan.) The withdrawal will ensure that the area that is already incorporated in the urban growth boundary is served consistently with the remaining territory in the City. Thus, this land use decision is consistent with Goal #11.

Goal # 12 – Transportation. This Goal is currently being applied through the comprehensive plan. (See Keizer Comprehensive Plan Section III(E)(4), which sets forth a goal of providing for the safe and efficient movement of people and goods throughout the metropolitan area.) Withdrawal is consistent with this goal because it allows for improved response times to the affected area, which may reduce the need for a district responding from another location to speed through the City when responding to a call. Thus, this land use decision is consistent with Goal #12.

Goal # 13 – Energy Conservation. This Goal is currently being applied through the comprehensive plan. (See Keizer Comprehensive Plan Section III(A)(2)(a)(5), which sets forth a general goal of encouraging energy conservation). Withdrawal will be consistent with this goal, as it reduces the fuel consumption by responding from a territory that is in close proximity to the area. Thus, this land use decision is consistent with Goal #13.

Goal # 14 – Urbanization. This Goal is currently being applied through the comprehensive plan (See Keizer Comprehensive Plan Section II(C)(3)). Withdrawal will not affect this Goal #14.

Goal # 15 – Willamette River, Goal # 16 Estuarine Resources, Goal # 17 Coastal Shorelands, Goal # 18 Beaches and Dunes, and Goal # 19 Ocean Resources. These Goals do not apply in this area.

Based on the above the City finds the withdrawal to be in accordance with the Goals.

1 CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

2
3 Resolution R2011-_____

4
5 DECLINING TO WITHDRAW CLEAR LAKE AREA FROM MARION
6 COUNTY FIRE DISTRICT NO. 1
7

8 WHEREAS, the Keizer Fire District requested the City Council consider
9 exercising its authority under ORS 222.520 to withdraw the Clear Lake Area from
10 Marion County Fire District No. 1;

11 WHEREAS, pursuant to ORS 222.524, the City Council called for a public
12 hearing on August 1, 2011, for the purpose of hearing objections to the withdrawal
13 and determining whether such withdrawal is for the best interests of the City;

14 WHEREAS, at the public hearing on August 1, 2011, the City Council heard
15 public testimony on the proposed withdrawal; and

16 WHEREAS, the City Council has carefully reviewed the staff report, written
17 record and considered the public testimony;

18 NOW, THEREFORE, BE IT RESOLVED by the City Council for the City of
19 Keizer:

20 Section 1. The City Council determines that the proposed withdrawal of the
21 Clear Lake Area from Marion County Fire District No. 1 is not for the best interests
22 of the City.
23
24

Section 2. The City Council declines to withdraw the Clear Lake Area from Marion County Fire District No. 1.

PASSED this _____ day of _____, 2011.

SIGNED this _____ day of _____, 2011.

Mayor

City Recorder

CITY COUNCIL MEETING: August 15, 2011

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND COUNCIL MEMBERS

THROUGH: CHRISTOPHER C. EPPLEY, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

**SUBJECT: RESOLUTION – CHARTER AMENDMENT ELECTION –
PUBLIC SAFETY COMMUNICATIONS FEE**

I have prepared a Resolution, Charter Amendment and Ballot Title to provide for a new public safety communications fee.

The Charter amendment is relatively straight-forward and envisions a later Ordinance spelling out details of collection. It is my understanding the Council clearly wanted the fee adopted as a Charter amendment which limits our ability to make changes later.

The amendment provides that the monthly fee of \$4.86 be divided between the City (69%) and any Fire Districts (31%) operating within the City limits. The Fire District's share of 31% is divided between Fire Districts in proportion to the land area they serve within the City boundaries.

The Charter amendment also requires that the fee be placed in the new public safety communications fund and only used for such purposes. In addition, there cannot be any reduction or supplanting of the Police Department funding due to the fee.

RECOMMENDATION:

Review the enclosed Charter Amendment and take action as Council sees fit.

Please let me know if you have any questions. Thank you.

ESJ/tmh

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2011-_____

CHARTER AMENDMENT ELECTION –
PUBLIC SAFETY COMMUNICATIONS FEE

WHEREAS, the City of Keizer has limited revenue available to fund public safety operations;

WHEREAS, the City Council finds that increasing public safety communications costs have caused a decrease in the public safety level of service;

WHEREAS, the City Council has determined that it is appropriate for Keizer voters to decide if the City Charter should be amended to specifically approve establishing and collecting a public safety communications fee that would be used for public safety communications costs;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the Keizer City Charter amendment as set forth in Exhibit “A”, attached hereto and by this reference incorporated herein, be filed with the City Elections Officer to be referred to a vote of the people by placing the Keizer City Charter amendment on the ballot at the next available election date in accordance with Oregon law.

1 BE IT FURTHER RESOLVED by the City Council of the City of Keizer that the
2 Ballot Title set forth in Exhibit “B”, attached hereto and by this reference incorporated
3 herein, be filed with the City Elections Officer.

4 PASSED this _____ day of _____, 2011.

5
6 SIGNED this _____ day of _____, 2011.

7

8

9

10

11

12

Mayor

City Recorder

EXHIBIT "A"

CHARTER AMENDMENT

The following shall be added as Section 45 in the Keizer City Charter, Chapter X – Miscellaneous Provisions:

Section 45. PUBLIC SAFETY COMMUNICATIONS FEE.

- a) There is hereby established a Public Safety Communications Fee within the City of Keizer. The main purpose of such fee is to assist in paying for communications costs for public safety agencies.
- b) The amount of such fee shall be \$4.86 per month per residential dwelling unit or non-residential unit. Increases to the fee may not be implemented for at least five (5) years after the effective date of this Charter amendment. Thereafter, beginning in the sixth year after the effective date of this Charter amendment, fee increases may be imposed annually. The City Council may decrease the fee at any time. The City Council shall hold a public hearing prior to adopting any increase or decrease in the fee. In no event shall the fee be increased in an amount greater than the Portland Consumer Price Index for Wage Earners from the effective date of the last fee established to the effective date of the proposed fee increase for as close in time as allowed by the latest figures. If the Portland Consumer Price Index for Wage Earners no longer exists, the City Council may choose a similar index. The City Council shall by Ordinance establish administrative procedures for imposition and collection of the public safety communications fee.
- c) The fees collected hereunder shall be shared between the City of Keizer and any Fire Districts whose boundaries are within the City limits. The

total fee shall be shared based on the following proportion:

City of Keizer	69%
Fire Districts	31%

The Fire Districts' portion shall be shared between Fire Districts based on proportion of land area served within the City boundaries.

- d) There is hereby established a Public Safety Communications Fund. All Public Safety Communication Fees shall be placed in such fund. The fund is dedicated only for Police Department communication expenses.
- e) The fee established herein shall not indirectly or directly cause other police funding to be reduced. The City Council shall by Resolution adopt specific budget restrictions to ensure that the Public Safety Communications Fees shall in no way supplant other Police Department funding.

EXHIBIT "B"

BALLOT TITLE

Caption: CHARTER AMENDMENT WOULD APPROVE PUBLIC SAFETY COMMUNICATIONS FEE

Question: Shall Charter be amended to establish a public safety communications fee?

Summary: This would be a Charter amendment. The proposed amendment would impose a fee of \$4.86 per month on each residential dwelling unit or non-residential unit. No increases in the fee would be allowed for five years after the Charter amendment became effective; annual increases would be allowed thereafter. A public hearing before the Keizer City Council would be required before any increase or decrease in the fee is adopted. Any proposed increase could be no more than the Portland Consumer Price Index for Wage Earners or similar index. The City would receive 69% of the fee and fire districts would receive 31% of the fee. Fire districts' portion would be shared based on proportion of land area served within the City boundaries. The City portion of the fee would be dedicated to Police Department communications expenses. Other Police Department funding could not be reduced or supplanted by the fee.

COUNCIL MEETING: August 15, 2011

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND COUNCIL MEMBERS

**THROUGH: CHRIS EPPLEY
CITY MANAGER**

FROM: SUSAN GAHLSDORF, FINANCE DIRECTOR

SUBJECT: Authorization for Supplemental Budget to Expend Good Vibration Donations, Reimburse General Fund for Legal Costs for Keizer Station LID and amend Community Center budget to reflect administration costs.

BACKGROUND: The City received \$1,000 in donations for the Good Vibrations event raised by Councilor McKane. These donations were not anticipated in the FY11-12 adopted budget. Councilor McKane requests \$30 be used to reimburse him for signs used at the event and the remaining \$970 be split equally between Young Life and Lake Point Community Church, both of which helped out at the event.

Toward the end of FY10-11 staff requested legal research by the City's Bond Council regarding Keizer Station LID Assessments. Sufficient funds were available in the General Fund Legal Services line item to pay the cost; however, in FY11-12 sufficient funds are available in the Keizer Station LID Fund, Legal Services line item to reimburse the General Fund for these costs.

The FY11-12 Council adopted budget provides for the Community Center fund to reimburse the General Fund for the administrative costs associated with running the Community Center. In order to simplify and make more transparent the financial presentment of the results of the Community Centers operations it is recommended that the administrative costs associated with running the Community Center be charged directly to the Community Center fund rather than charged to the General Fund and subsequently reimbursed by the Community Center fund.

The FY 11-12 Council adopted budget provides for 100% of the Transient Occupancy Tax (TOT) to be recorded as resources in the General Fund. In order to aid in tracking compliance with ORS 320, it is recommended that 20% of the TOT revenues be taken from the General Fund and allocated as resources in the Community Center Fund.

ISSUE: Oregon Budget Law allows for a supplemental budget when an occurrence or condition which had not been ascertained at the time of the preparation of a budget for the current year which requires a change in financial planning (ORS 294.480);

Council Meeting August 15, 2011

Supplemental Budget – Good Vibrations, Legal Costs, Community Center

FISCAL IMPACT: The \$1,000 donations to the General Fund are offset by \$1,000 to repay expenses and make distributions to event participant groups.

The \$3100 transfer from the Keizer Station LID fund will be used to replenish the General Fund Legal Services line item.

There is no net fiscal impact to the General Fund or the Community Center Fund by charging Administrative Costs directly to the Community Center Fund.

RECOMMENDATION: Staff recommends the council adopt the attached resolution authorizing the expenditure of funds as described above.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2011-_____

**AUTHORIZATION FOR SUPPLEMENTAL BUDGET - KEIZER STATION LID LEGAL
SERVICES, DONATION FUNDS, COMMUNITY CENTER FUNDS**

WHEREAS ORS 294 provides that a supplemental budget may be adopted when an occurrence or condition that was not know at the time the adopted budget was prepared requires a change in financial planning;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Keizer, that the following appropriations be made for fiscal year ending June 30, 2012:

	Adopted/ Amended Budget	Adjustment		Revised Budget
		Increase	Decrease	
Keizer Station LID				
Materials & Services	40,000		3,100	36,900
Transfer Out	-	3,100		3,100
General Fund				
Resources	8,762,000		86,500	8,675,500
General Services	1,313,600		86,500	1,227,100
Community Center Fund				
Resources	121,400	11,500		132,900
Materials & Services	9,000	86,500		95,500
Transfers Out	75,000		75,000	-
In FY10-11 the General Fund paid legal costs associated with researching Keizer Station LID assessments. The transfer is needed to reimburse the General Fund for these costs.				
The General Fund received \$1000 in unanticipated donations. Council requests funds to be disbursed to reimburse costs for signs with the remainder to be allocated equally and remitted to Young Life and Lake Point Community Church.				
The Community Center Fund has been amended to make transparent the costs associated with running the center and to recognize that 20% of the City's Transient Occupancy Tax Revenues are used for tourist facilities in compliance with ORS 320.				

PASSED this ____ day of _____, 2011

SIGNED this ____ day of _____, 2011

Mayor

City Recorder

CITY COUNCIL MEETING: August 15, 2011

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND COUNCIL MEMBERS

THROUGH: CHRISTOPHER C. EPPLEY, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

**SUBJECT: AMENDMENT OF ELECTRIC AND GAS UTILITY LICENSE
FEE ORDINANCES**

The gas and electric utility license fee Ordinances were extended to August 31, 2011. We have been able to reach tentative agreement with Portland General Electric on a new franchise agreement. However, we have not yet been able to discuss the matter in detail with Northwest Natural Gas.

I would prefer waiting on adopting the PGE franchise agreement until we have reached agreement with Northwest Natural Gas in case there are provisions that are appropriate to change in the PGE agreement. If the negotiations for the Northwest Natural Gas agreement becomes extended, we will be back to adopt the PGE agreement.

RECOMMENDATION:

Adopt the attached Ordinances allowing for the extension of the gas and electric utility license fee Ordinance.

Please let me know if you have any questions. Thank you.

ESJ/tmh

1 BILL NO. _____

A BILL

ORDINANCE NO.

2011-_____

3 FOR

4
5 AN ORDINANCE

6
7 RELATING TO THE AMENDMENT OF THE GAS UTILITY
8 LICENSE FEE ORDINANCE; DECLARING AN EMERGENCY
9 **(AMENDING ORDINANCE NO. 94-285)**

10
11 WHEREAS, the City Council of the City of Keizer has adopted Ordinance No.

12 94-285 which establishes utility license fees for gas utilities;

13 WHEREAS, Ordinance No. 94-285 has been extended to August 31, 2011;

14 WHEREAS, the City Council of the City of Keizer has determined that it is
15 appropriate to renew the ordinance to November 23, 2011;

16 NOW THEREFORE, the City of Keizer ordains as follows:

17 Section 1. AMENDMENT OF ORDINANCE NO. 94-285. Ordinance No. 94-
18 285 (An Ordinance Relating to Gas Utilities in the City of Keizer; Establishing Utility
19 License Fees and Declaring an Emergency) is hereby amended at Section 9 as follows:

20 Section 9. TERMINATION. This Ordinance shall automatically terminate
21 on November 23, 2011 unless the City Council shall renew it, provided,
22 however, that any such termination shall not restrict or terminate the City's
23 right and authority to collect from any subject utility any amounts which
24 become due under this Ordinance prior to that termination.
25
26
27
28

1 Section 2. EFFECTIVE DATE. This Ordinance being necessary for the
2 immediate preservation of the public health, safety and welfare, an emergency is
3 declared to exist and this Ordinance shall take effect immediately upon its passage.

4 PASSED this _____ day of _____, 2011.

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6 SIGNED this _____ day of _____, 2011.

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Mayor

City Recorder

1 BILL NO. _____

A BILL

ORDINANCE NO.

2011-_____

3 FOR

4
5 AN ORDINANCE

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7 RELATING TO THE AMENDMENT OF THE ELECTRIC UTILITY
8 LICENSE FEE ORDINANCE; DECLARING AN EMERGENCY
9 **(AMENDING ORDINANCE NO. 94-286)**

10
11 WHEREAS, the City Council of the City of Keizer has adopted Ordinance No.

12 94-286 which establishes utility license fees for electric utilities;

13 WHEREAS, Ordinance No. 94-286 has been extended to August 31, 2011;

14 WHEREAS, the City Council of the City of Keizer has determined that it is
15 appropriate to renew the ordinance to November 23, 2011;

16 NOW THEREFORE, the City of Keizer ordains as follows:

17 Section 1. AMENDMENT OF ORDINANCE NO. 94-286. Ordinance No. 94-
18 286 (An Ordinance Relating to Electric Utilities in the City of Keizer; Establishing
19 Utility License Fees and Declaring an Emergency) is hereby amended at Section 9 as
20 follows:

21 Section 9. TERMINATION. This Ordinance shall automatically terminate
22 on November 23, 2011 unless the City Council shall renew it, provided,
23 however, that any such termination shall not restrict or terminate the City's
24 right and authority to collect from any subject utility any amounts which
25 become due under this Ordinance prior to that termination.
26
27

1 Section 2. EFFECTIVE DATE. This Ordinance being necessary for the
2 immediate preservation of the public health, safety and welfare, an emergency is
3 declared to exist and this Ordinance shall take effect immediately upon its passage.

4 PASSED this _____ day of _____, 2011.

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6 SIGNED this _____ day of _____, 2011.

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Mayor

City Recorder

CITY COUNCIL MEETING: August 15, 2011

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

**FROM: MACHELL DEPINA
HUMAN RESOURCES DIRECTOR**

SUBJECT: CITY ATTORNEY EVALUATION AND SALARY FREEZE

ISSUE

The City Attorney's contract provides for a yearly performance review and Council action if a step increase or cost-of-living increase is not granted. The yearly performance review has been completed for the year ending June 30, 2011 and the Council has determined the City Attorney's performance to be satisfactory.

The Council has also determined the City Attorney will not be given a salary increase for the 2011-12 fiscal year, to remain consistent with other non-represented employees not provided such an increase due to budget cuts. The attached Resolution implements a salary freeze for the City Attorney for the 2011-12 fiscal year.

RECOMMENDATION

It is recommended that the Council review the attached Resolution and take appropriate action.

If you have any questions regarding this staff report, please contact me by phone at 503-856-3417 or by email at depinam@keizer.org.

Thank you.

1 CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

2 Resolution R2011-_____

3 REGARDING EVALUATION OF CITY ATTORNEY
4 AND DECLINING TO GRANT SALARY INCREASE
5

6 WHEREAS, the Keizer City Council has extended the contract of the City
7 Attorney to June 30, 2012 pursuant to Resolution R2011-2098;

8 WHEREAS, the Employment Contract between the City of Keizer and E.
9 Shannon Johnson provides for a performance review at least once each fiscal year;

10 WHEREAS, the City Council has conducted the performance review for the fiscal
11 year ending June 30, 2011 and the Council has determined that E. Shannon Johnson's
12 performance is satisfactory;

13 WHEREAS, the Employment Contract does not require formal contract
14 amendment for salary increases, but requires Council action if a step increase/cost-of-
15 living increase is not granted;

16 WHEREAS, a salary freeze for all non-represented City employees has been
17 implemented for the 2011-12 fiscal year;

18 WHEREAS, the Council has determined that the City Attorney will not be given a
19 salary increase for the 2011-12 fiscal year to remain consistent with other non-
20 represented employees;

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NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that a salary freeze for the City Attorney will be implemented for the 2011-12 fiscal year. This shall equate to no step increase or cost-of-living increase.

PASSED this _____ day of _____, 2011.

SIGNED this _____ day of _____, 2011.

Mayor

City Recorder

CITY COUNCIL MEETING: August 15, 2011

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

**FROM: MACHELL DEPINA
HUMAN RESOURCES DIRECTOR**

SUBJECT: CITY MANAGER EVALUATION AND SALARY FREEZE

ISSUE

The City Manager's contract provides for a yearly performance review and Council action if a step increase or cost-of-living increase is not granted. The yearly performance review has been completed for the year ending June 30, 2011 and the Council has determined the City Manager's performance to be satisfactory.

The Council has also determined the City Manager will not be given a salary increase for the 2011-12 fiscal year, to remain consistent with other non-represented employees not provided such an increase due to budget cuts. The attached Resolution implements a salary freeze for the City Manager for the 2011-12 fiscal year.

RECOMMENDATION

It is recommended that the Council review the attached Resolution and take appropriate action.

If you have any questions regarding this staff report, please contact me by phone at 503-856-3417 or by email at depinam@keizer.org.

Thank you.

1 CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

2 Resolution R2011-_____

3 REGARDING EVALUATION OF CITY MANAGER AND
4 DECLINING TO GRANT SALARY INCREASE
5

6 WHEREAS, the Keizer City Council has extended the contract of the City
7 Manager to June 30, 2012 pursuant to Resolution R2011-2097;

8 WHEREAS, the Employment Contract between the City of Keizer and
9 Christopher C. Eppey provides for a performance review at least once each fiscal year;

10 WHEREAS, the City Council has conducted the performance review for the fiscal
11 year ending June 30, 2011 and the Council has determined that Christopher C. Eppey's
12 performance is satisfactory;

13 WHEREAS, the Employment Contract does not require formal contract
14 amendment for salary increases, but requires Council action if a step increase/cost-of-
15 living increase is not granted;

16 WHEREAS, a salary freeze for all non-represented City employees has been
17 implemented for the 2011-12 fiscal year;

18 WHEREAS, the Council has determined that the City Manager will not be given a
19 salary increase for the 2011-12 fiscal year to remain consistent with other non-
20 represented employees;

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NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that a salary freeze for the City Manager will be implemented for the 2011-12 fiscal year. This shall equate to no step increase or cost-of-living increase.

PASSED this _____ day of _____, 2011.

SIGNED this _____ day of _____, 2011.

Mayor

City Recorder

COUNCIL MEETING: August 15, 2011

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND CITY COUNCILORS

**THROUGH: CHRIS EPPLEY
CITY MANAGER**

**FROM: MACHELL DEPINA
HUMAN RESOURCES DIRECTOR**

SUBJECT: ROTH 457(b) AMENDMENTS TO CITY'S EXISTING 457(b) PLANS

ISSUE:

The Small Business Jobs Act of 2010 permits governmental 457(b) plans to adopt provisions to establish Roth elective deferral accounts and accept after-tax contributions. Offering such an account within the City's existing 457(b) plans allows participants to make after-tax contributions and potentially benefit from tax-free withdrawals of the original contributions and the associated earnings. Unlike Roth IRAs, a participant's eligibility to make Roth contributions to the 457 plan is not restricted by income. Therefore, all City employees are eligible to participate if they so choose.

FISCAL IMPACT:

There is no direct fiscal impact as there are no additional administrative fees by any of our three current providers.

While initial implementation and ongoing support will take a small amount of additional staff time in both Payroll and Human Resources, the Finance and Human Resources Directors agree the additional plan flexibility for City employees is worthwhile.

RECOMMENDATION:

Staff recommends the City Council adopt the attached Resolution. Personnel Policy Committee members support this recommendation.

If you have any questions regarding the staff report, please contact Machell DePina at 503-856-3417 or email her at depinam@keizer.org.

Thank you.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2011-_____

AMENDING THE CITY'S DEFERRED COMPENSATION
PLANS TO INCLUDE ROTH 457(b) AMENDMENTS

WHEREAS, the City of Keizer has established a deferred compensation plan for such employees that serves the interest of the City by enabling it to provide reasonable retirement security for its employees, flexibility in its retirement benefit options, and assisting in the attraction and retention of competent personnel;

WHEREAS, the City of Keizer has determined that the enhancement of deferred compensation plans where possible will further serve these objectives;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City of Keizer hereby modifies the following plans to provide for Roth after-tax contributions, the provisions of which to be set forth in the amendments for each plan listed below:

VALIC – City of Keizer 457(b) Plan

ICMA-Retirement Corporation – City of Keizer 457(b) Plan

Nationwide Retirement Solutions, Inc. – City of Keizer 457(b) Plan

PASSED this _____ day of _____, 2011.

SIGNED this _____ day of _____, 2011.

Mayor

City Recorder

CITY COUNCIL MEETING: August 15, 2011

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND COUNCIL MEMBERS

THROUGH: CHRISTOPHER C. EPPLEY, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

**SUBJECT: AMENDING RESOLUTION ESTABLISHING THE KEIZER
CHANNEL 23 ADVISORY COMMITTEE**

In January 2008, the City Council established the Keizer Channel 23 Advisory Committee. The City Council amended the membership of the Committee in November 2008 to include the Assistant to the City Manager as a non-voting member of the Committee. As a result of reassignment of duties, the membership section requires amendment to allow the City Manager to appoint a staff liaison to serve as a non-voting member.

RECOMMENDATION:

Adopt the attached Resolution amending the Keizer Channel 23 Advisory Committee membership.

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

ESJ/tmh

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2011-_____

AMENDING THE RESOLUTION ESTABLISHING THE KEIZER
CHANNEL 23 ADVISORY COMMITTEE; **(AMENDING
RESOLUTION R2008-1837)**; REPEALING RESOLUTION R2008-
1905 AMENDING THE RESOLUTION ESTABLISHING THE
KEIZER CHANNEL 23 ADVISORY COMMITTEE; **(REPEALING
RESOLUTION R2008-1905)**

WHEREAS, the City Council adopted Resolution No. R2008-1387 establishing
the Keizer Channel 23 Advisory Committee in January 2008;

WHEREAS, the City Council amended the membership of the Committee by
Resolution No. 2008-1905 on November 17, 2008;

WHEREAS, the City Council wishes to amend the membership section in
Appendix "A";

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that Resolution
R2008-1837 is hereby amended in Appendix "A", which is attached hereto and by this
reference incorporated herein.

1 BE IT FURTHER RESOLVED that Resolution No. R2008-1905 is hereby
2 repealed in its entirety.

3 PASSED this _____ day of _____, 2011.

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5 SIGNED this _____ day of _____, 2011.

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Mayor

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City Recorder

Appendix “A”
City Council Committee

Name: Keizer Channel 23 Advisory Committee

Purpose: To refine the policy governing the operation of the channel and expansion of programming.

Membership: The Committee will consist of seven (7) voting members; a representative of Chamber of Commerce/Business Community, an Education/McNary High School and five citizen-at-large members. The City Council will appoint a non-voting liaison to the Committee. The Committee will be staffed by a staff liaison to be appointed by the City Manager, a member of the Keizer Fire District, a member of the Keizer Police Department, the City’s Information Technology Manager, and a member of the City’s Television Production company, all who will serve as non-voting members. The five at-large members shall be appointed as outlined by the City Council Rules of Procedure.

Chair and Vice-Chair: The Committee will elect a Chair and Vice-Chair at the first meeting of each calendar year.

Meetings: Members of the Committee shall establish a regular meeting date. All meetings of the Committee shall follow Roberts Rules of Order Newly Revised and the Oregon Public Meeting Laws.

Attendance: It is the duty of each member to attend at least 75% of the meetings each calendar year. When a member is unable to attend a meeting, the member shall notify the Chair.

CITY COUNCIL MEETING: August 15, 2011

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND COUNCIL MEMBERS

THROUGH: CHRISTOPHER C. EPPLEY, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

**SUBJECT: AMENDING CITY SUMMER CONCERT BAND SELECTION
TASK FORCE RESOLUTION**

The City Council established the City Summer Concert Band Selection Task Force in 2010 and later continued such Task Force to October 1, 2011. The Task Force membership included the Assistant to the City Manager as a non-voting member. As a result of reassignment of duties, the membership section requires amendment to allow the City Manager to appoint a staff liaison to serve as a non-voting member.

RECOMMENDATION:

Adopt the attached Resolution amending the City Summer Concert Band Selection Task Force membership.

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

ESJ/tmh

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2011-_____

AMENDING CITY SUMMER CONCERT BAND SELECTION TASK
FORCE; AMENDING RESOLUTION NO. R2010-2081

WHEREAS, a City Summer Concert Band Selection Task Force was established
under Resolution No. R2010-2032 to ensure that the series of concerts sponsored by the
City are comprised of concerts that the community can enjoy and be proud of;

WHEREAS, the City Council continued the Task Force to October 1, 2011 by
Resolution R2010-2081;

WHEREAS, the City Council wishes to amend the membership section of the
City Summer Concert Band Selection Task Force in Appendix "A";

WHEREAS,

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that Resolution No.
R2010-2081 is hereby amended in Appendix "A", which is attached hereto and by this
reference incorporated herein.

PASSED this _____ day of _____, 2011.

SIGNED this _____ day of _____, 2011.

Mayor

City Recorder

Appendix "A"

City Council Task Force

Name: City Summer Concert Band Selection Task Force

Purpose: To work with the event management group to select the bands for the city summer concert services that the community can enjoy and be proud of. The City Summer Concert Band Selection Task Force will have the final approval on the selection of the bands for the concert series.

Membership: The Task Force shall consist of one City Council member to be appointed by the Mayor as Chair, and six (6) additional members appointed by the Chair. The Task Force will be staffed by a staff liaison to be appointed by the City Manager and other city staff members as non-voting members.

Vice-Chair: The Task Force will elect the Vice-Chair at the first meeting.

Meetings: The Task Force shall meet as determined by a majority of the members. All meetings of the Committee shall follow Robert Rules of Order Newly Revised and the Oregon Public Meeting Laws.

Attendance: It is the duty of each member to attend at least 75% of the meetings each calendar year. When a member is unable to attend a meeting, the member shall notify the Chair.

Duration: This Task Force shall be dissolved no later than October 1, 2011, unless extended by City Council action.