M I N U T E S

KEIZER CITY COUNCIL
Monday, June 3, 1991
Robert L. Simon Council Chambers
Keizer City Hall

CALL TO ORDER

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

Present
Andrew J. Orcutt, Mayor
Mike Hart, Councilor
Dennis Koho, Councilor
Jerry McGee, Councilor
Al Miller, Councilor
Bob Newton, Councilor
Joe Van Meter, Councilor

Staff
Don Otterman, City Manager
John Morgan, Community Development Director
Kevin Wickman, Parks Director
Chuck Stull, Police Chief
John Lien, City Attorney
Shannon Johnson, City Attorney
Sue Darby, City Recorder

PUBLIC TESTIMONY

Marion Drake, a resident on Cummings Lane, indicated that she held a meeting at City Hall recently. Prior to holding the meeting, she contacted Chris to see about how to gain access to the building. After being put on hold for a couple of lengthy periods, Ms. Drake indicated that she was told to come into City Hall to pick up a key. She subsequently picked up the key from someone by the name of Sue, although she could not recall the last name. Ms. Drake expressed concern with the fact that she was not asked to sign a form or to make a key deposit. She apparently was trusted to return the key on her own. Ms. Drake stated that she eventually gave the key to Councilor McGee, and that he gave her a receipt for the key. Ms. Drake indicated that City Hall should have a policy to insure better security of City Hall, perhaps by charging a key deposit of $50 to $75 which would probably be the cost to replace the lock on the door. She stated that Salem has such a deposit requirement.

PRESENTATION

Optimist Club Award

Chief Stull gave a brief background on the history of the Keizer Optimist Club, and stated that Officer Brian Hunter is the recipient of the Optimist Club's respect for law award. Officer Hunter has been with the Keizer Police Department for four years, coming up through the Reserve program. He graduated in 1987 from the Police Academy in Monmouth and has been active in the D.A.R.E. program. Jan Wright, president of the Keizer Optimist Club, presented Officer Hunter with the award.

Officer Hunter stated that he has invested a lot of time into the D.A.R.E. program, and this week 80 students will graduate. Mayor Orcutt congratulated Officer Hunter.

Award to Keizer Rotary

Mayor Orcutt presented a community service award to Wes Craven, president of the Keizer Rotary, for the Rotary's involvement in the improvement of Keizer's parks by donating picnic tables.

Award to Archie Gallihugh

Mayor Orcutt also presented a community service award to Archie Gallihugh who has been instrumental in making Keizer parks safer and more enjoyable.

Mayor Orcutt noted that Keizer's parks, under Parks Director Kevin Wickman and the Keizer Parks Advisory Committee, are looking better and better.

PUBLIC HEARING - MCNARY ACTIVITY CENTER

Mayor Orcutt opened the public hearing to consider the draft McNary Activity Center Plan.

Mr. Morgan stated that the Planning Commission has not yet completed its review of this document, and has asked that the City Council hold its public hearing open until the June 17, 1991 meeting. Mr. Morgan noted that the Commission anticipates completion of its review on June 12 and that staff will then prepare the materials and have them to the Council by June 17.

Ken Sherman, Jr., Attorney representing the Staats' family, 687 Court Street, Salem, indicated that he will not be making any substantive comments tonight. He believed this would be premature until the Planning Commission completes its review of the plan. Mr. Sherman suggested that the City Council postpone its review until the first meeting in July. This will give all parties the opportunity to have plenty of time to review the plan prior to the public hearing. Mr. Sherman added that the Staats are as anxious as anyone to bring this matter to a close, but they feel it is preferable to have the extra time to review the written materials.

Marion Drake, a resident on Cummings Lane, asked for three specific considerations:

1. That the wildlife in the vicinity of the lake be preserved

2. That public foot access to the lake be provided

3. That as large an area as legally possible for park purposes be provided within the development.

Responding to a question from an unidentified gentleman in the audience, Mayor Orcutt stated that the Planning Commission had hoped to complete its review of the plan prior to tonight's City Council meeting. However, it now appears that it will not be completed until June 12 and, therefore, the public hearing will be held open until after that date. Mayor Orcutt also explained that Staats Lake is within the McNary Activity Center. The plan encompasses a larger area than just the lake.

Responding to a question from Councilor Newton, Mr. Morgan stated that the Planning Commission is prepared to wrap up its review of the plan at its June 12 meeting. Staff is concerned, however, that the written material may not be available prior to the City Council's June 17 meeting. He explained that the City has worked with urgency on this issue primarily at the request of the Staats.

Councilor Koho cited the need to have time to review the written materials prior to holding the public hearing. For this reason, he preferred to delay the public hearing until the Council's July meeting.

Councilor Miller agreed, adding that he would prefer to have staff still attempt to get the written material out to the Council by June 17 so that there will be sufficient time to review the information prior to the hearing. Mr. Morgan stated that staff could make its presentation on June 17 and then schedule the continued public hearing for the first meeting in July.

Mayor Orcutt indicated that testimony, if any, will be accepted at the City Council's June 17 meeting. The public hearing will be held open for the first Council meeting in July.

In response to a question from Councilor McGee, Mr. Morgan stated that staff will have the written materials prepared and 200 copies printed and available for the public.

DEPARTMENT HEAD CONTRACTS

Mr. Otterman outlined the staff report regarding the status of department heads and whether the Council wishes to place these employees under contracts. He indicated that it would be possible to develop a boiler plate contract and then fine tune the individual specifications for each department head. Mr. Otterman noted that Salem has contracts for its department heads, and a copy of the standard contract is enclosed in the agenda packets for the Council's information. He asked whether the Council does, in fact, wish to place department heads under contract and, if so, whether the Salem contract is similar to what the Council wishes to see in the contracts.

Councilor Miller stated that after the last meeting, he delivered to Mr. Blitz and Mr. Lien a legal memorandum which he prepared, along with copies of case law. Four of the Council members have yet to receive that memorandum which

Councilor Miller said he would distribute. Councilor Miller stated that Mr. Blitz was going to review the cases and supply Councilor Miller with additional legal precedents. He contacted Mr. Blitz on Friday, and they discussed three areas in the policies and procedures that need to be thoroughly researched because of the possibility of substantial liability to the City. Mr. Blitz indicated that the City would need to authorize him to conduct that research. Councilor Miller said that he was unsure whether the City of Keizer might incur additional liability with simply changing the policies and procedures. He questioned whether there may be certain rights reserved by the employees under those policies and procedures. Councilor Miller indicated that Mr. Blitz would be the attorney who would represent the City on behalf of the insurance company and that this is the reason he sought Mr. Blitz' advice. Councilor Miller said that Mr. Blitz authorized Councilor Miller to say, on his behalf, that he would recommend against making any changes until he has had a chance to research similar cases.

Councilor Hart questioned why Councilor Miller was making contact with the City's legal counsel within the day-to-day scope of the operation of the City. He noted that this is a responsibility for the City Manager. Councilor Miller responded that he had asked Mr. Lien for some authority on this subject because Councilor Miller was concerned about the City's liability. Mr. Lien had cited a 1972 case which Councilor Miller believed may not be a valid basis upon which to proceed. Councilor Miller said he and Councilor McGee attended an LGPI seminar. In that seminar he learned that employees' status cannot be changed. Mr. Lien cited a 1972 case, and Councilor Miller thought there were additional authorities which Mr. Lien did not cite. Councilor Miller said he questioned Mr. Lien at the meeting but Mayor Orcutt indicated he would rely on Mr. Lien's opinion. It was Mr. Blitz who said he would get back to Councilor Miller on his question regarding additional legal authority. Councilor Miller said that the only reason he contacted Mr. Blitz on Friday was because Mr.

Blitz had not gotten back to him and that Councilor Miller knew this issue was coming up on the Monday night agenda. He said he did not want to do anything in haste and end up sorry down the road. Mr. Lien stated that he spoke with Councilor Miller and Mr. Blitz after the last meeting.

Councilor Newton indicated that he would be interested in developing contracts with the department heads and adopting some type of boiler plate agreement. At this stage, if the City Council agrees with the contract arrangement, the City Manager needs to get with legal counsel to make sure the City is on solid ground. He questioned whether the Salem agreement has all of the components of the necessary agreement for Keizer. He asked for a copy of the City Manager's employment agreement for comparison.

Councilor McGee said that if the Council makes the decision to go with contracts for department heads, he would vote for it. It would be up to the City Manager to further research the question, although he believed that Councilor Miller's research has helped out. Councilor McGee stated that the City Manager's recommendation was for a standard employment agreement, however, he has problems with the sample agreement in the packet.

Councilor Koho indicated that he would agree to the language included in the City Manager's memorandum for department heads hired after July 1, 1991 to be placed under contract. There are still several questions to be resolved, including whether the current department heads are interested in contracts. He would not favor the Council granting open-ended authority for Mr. Blitz to conduct legal research into the matter.

Responding to a question from Councilor Hart, Mr. Otterman indicated that the question of whether contracts could apply to existing department heads or only to future department heads should first be answered. He asked for a copy of Councilor Miller's legal research. If existing department heads cannot be covered under contract, then the question is moot at least in that respect. If the Council agrees that future department heads should be covered under contract, then he can get started on putting the contract together. In the meantime, the situation with the existing department heads can be worked out.

Mayor Orcutt indicated that it appears one of the major stumbling blocks is if the City Manager fires a department head without cause. He believed a contract including severance pay would resolve that problem.

Councilor Miller indicated that he has no problem in doing this with future hires, however, he questioned whether the current department heads could be forced into such a contract. He indicated he does not wish to proceed without the advice of Mr. Blitz.

Mayor Orcutt noted that the conversation had turned to future department heads and that his comment was intended for new hires only.

Councilor Koho stated that whatever the Council does regarding at-will employment of department heads, the final resolution may not come for one, two or ten years down the road. He brought up the matter of allowances for personal vehicle use for City business, noting that some things are best in written form rather than leaving them unwritten.
Councilor Miller said that it was his understanding that the City Council voted at its May 6 meeting to make department heads either at-will or contract employees. Mr. Otterman stated that there was not any wording in the personnel policies outlining the status of department heads. Councilor Miller asked whether the Council didn't vote six to one to make department heads contract employees. Mr. Otterman explained that this is why the issue is coming back before the Council - to amend the personnel policies to recognize that change.

Mayor Orcutt indicated that he brought this back to the Council because of the issue of considering the severance pay provisions. Councilor McGee indicated that if Mayor Orcutt wished to reconsider an item, there should be a motion for reconsideration.

Councilor Koho moved to amend the personnel policies with the language suggested by Don Otterman with one exception to change the word "who's" to "whose" in the first line, and to make that definition of department head applicable to those hired on or after July 1, 1991. Councilor McGee seconded the motion.

Councilor Newton indicated that he would support the motion but not the sample Salem contract. Councilor Koho agreed with this comment.

The motion passed by the following vote:

AYES: Hart, Koho, McGee, Miller, Newton, Van Meter (6)
NAYS: Orcutt (1)

Mayor Orcutt asked the City Manager to get together with Mr. Lien and Mr. Blitz to discuss the legal problems. He asked the Council members to discuss any of their concerns with Mr. Otterman.

CHARTER REVIEW COMMITTEE

Mr. Otterman reviewed the staff report regarding reinstituting the Charter Review Committee to review possible changes to the City's Charter. He noted that the former standing committee was abolished in 1988 by ordinance 88-118. In correspondence to the members at that time, former Mayor Simon indicated that if the need arises for the committee, it could be reinstituted on an ad-hoc basis. Therefore, the City Council should determine if there is a need for the committee and, if so, whether the Council wishes to form a formal standing committee or an ad-hoc committee and decide how the members will be appointed.

Councilor Koho indicated a need to form the committee with the involvement of the citizens. He suggested a committee comprised of five or seven members on an ad-hoc basis be created.

Some of the items to be considered might include the body responsible for supervision of the City Recorder's position, a determination on what the City Council can and cannot say in regards to employees of the city, along with other things. He indicated that it may not be necessary to change the charge of the committee from the one established in 1983 but that the Council may want to review it. He suggested that if changes are recommended by the committee, that an election be held during a regularly scheduled major election. In order to meet the November election, it would be necessary to have this information put together by August which may be impossible. The next deadline after that would be March for the May 1992 election. He also suggested looking at the ward system.

Councilor McGee moved to request the Mayor to establish an ad-hoc Charter Review Committee not to exceed seven members. Councilor Koho seconded the motion.

Councilor Koho asked that the Mayor consult with the Council when appointing individuals to the committee.

Councilor Newton indicated that the charge to the former Charter Review Committee would be a good charge for the new committee.

Responding to a question from Councilor Hart, Mr. Lien stated that the old ordinance was for a standing committee rather than an ad-hoc committee. The ad-hoc committee would be for a specific project on a one-shot deal. He stated that with the ordinance in place, it would not make a difference if the Council appointed members now or four years from now.

Councilor McGee said that the charge would be tied to a vote only if there is such a recommendation from the committee to do so. He believed that the Charter would stand for many years, as it has in the past.

Councilor Newton agreed, but added that the committee should be charged with completing its recommendation by a date certain to tie in with an election date.

Councilor Van Meter commented that the City has a short history and that the issues that have been dealt with recently can be dealt with within the scope of the existing Charter. He believed that having different citizens involved on the Charter Review Committee now is poor timing considering the missions of the other committees now in progress.

The motion passed by the following vote:

AYES: Orcutt, Hart, Koho, McGee, Miller, Newton (6)
NAYS: Van Meter (1)

GOAL STRATEGIES

Mr. Morgan outlined the strategies for accomplishing the 1991-92 goals as adopted by the City Council.

In response to a question from Councilor Miller, Mr. Morgan indicated that one strategy involves the possibility of hiring an outside consultant. That strategy, exploring alternative library services, may involve a consultant cost estimated in the range of $3,000 to $5,000, however, no funding has been identified for accomplishing the strategies at this point. He recommended the strategies be amended and/or adopted which would allow staff to develop its own in-house work program on the goals.

Councilor Van Meter moved to adopt the goal strategy plan as outlined. Councilor Newton seconded the motion.

Councilor Koho indicated that there are some changes he would like to see, such as moving Regional Issues ahead on the list. He suggested that some progress may be made now that there has been a change of councils and commissions and that there has, in the past, perhaps been some staff level problems. He stressed that in supporting the adoption of the strategies, he is not endorsing the hiring of a consultant at this point. Councilor Koho suggested the Council look at creative alternatives.

Mr. Morgan noted that it may be only the Library Alternatives goal which would require hiring of consultant. For the most part, many of the goals do not involve substantial amounts of General Fund monies with the exception of the Library goal.

Councilor McGee indicated that Councilor Van Meter's motion was to adopt the strategies in principle and concept. To do so would give staff time to modify and make improvements to the strategies. Councilor Van Meter indicated that this was the intent of his motion.

Councilor Miller complimented Mr. Morgan for the amount of work put into the goal strategies. He agreed with the concept and principle of the plan, without authorizing any expenditures at this point in time.

Councilor Hart indicated that he would support the motion, and that he appreciates the work done to develop the plan.

The motion passed unanimously, as follows:

AYES: Orcutt, Hart, Koho, McGee, Miller, Newton, Van Meter (7)
NAYS: None (0)

Mr. Otterman stated that all of the department heads worked to put the strategies together. Mr. Morgan, because of his access to the computer program, put the strategies into this format.

PERSONNEL POLICIES

Mr. Otterman stated that an amendment to the personnel policies is being made at the suggestion of Councilor Koho who submitted wording for adoption of an ordinance regarding the use of city equipment. Mr. Otterman noted that the personnel policies were adopted by motion rather than by ordinance and, therefore, without changing any of Councilor Koho's wording, the format of the amendment was changed to that of the personnel policies. The change proposed would involve a new section being added to the policies.

Councilor Koho moved to amend the personnel policies by adopting the amendment regarding use of city equipment. Councilor McGee seconded the motion.

Councilor Koho noted that the word "unless" needs to be inserted between the words "vehicles," and "specifically."

Councilor Miller expressed reservations over amending the personnel policies in this manner based on a conversation he had with Mr. Blitz. This is a proposed change which could result in disciplinary action. He questioned whether the change needs to be made with the consent of the employees. In the meantime, he suggested the City Manager issue a policy indicating that any violation of the policy would be a violation of the personnel policies and procedures.

Councilor McGee indicated he would support this position. He noted that there are some things for which no policy is needed; which common sense and decency tell you not to do. He cited examples of using city equipment for personal use and sleeping while on the job.

Mr. Otterman said that if he issues an administrative policy, a violation of that policy would be deemed a violation of the personnel policies subject to disciplinary action.

Councilor Koho indicated that Councilor Miller's argument would only fool an attorney.

The motion passed by the following vote:

AYES: Orcutt, Koho, Hart, McGee, Newton, Van Meter (6)
NAYS: Miller (1)

CONSENT CALENDAR

Items on the Consent Calendar consisted of:

- May 6, 1991 Regular Session Minutes
- May 20, 1991 Regular Session Minutes
- May 28, 1991 Regular Session Minutes

Changes to the May 6 minutes were made as follows:

Page 4, third paragraph, insert "Newton."
Page 4, eighth paragraph, insert "Van Meter."
Page 10, Change the sentence, "The Motion died" to "The motion failed."
Page 12, Show the vote taken as follows:
AYES: Orcutt, Hart, Koho, McGee, Newton, Van Meter (6)
NAYS: Miller (1)
Page 14, show the Councilor who seconded the motion as Newton.
Page 18, Correct the vote taken from "unanimously" to "AYES: Hart, Koho, Miller, Newton, Van Meter; NAYS: Orcutt, McGee"
Page 22, seventh paragraph, insert "Koho."
Page 23, second paragraph, insert "Koho."
Page 23, fourth paragraph, change wording to read, "A councilor questioned..."
Page 23, sixth paragraph, change wording to read, "A councilor questioned..."

It was also noted that changes were made to the May 6 minutes during the May 20, 1991 meeting as follows:

Page 15, the correct vote taken.
Page 19, include the omitted motion.

Councilor Koho moved for approval of the May 6, 1991 minutes as corrected. Councilor Van Meter seconded the motion. The motion passed as follows:

AYES: Orcutt, Hart, Koho, McGee, Miller, Newton, Van Meter (7)
NAYS: None (0)

The May 28, 1991 minutes were corrected as follows:

Page 2, first paragraph, insert the name "Van Meter" in the blank space.

Councilor Hart moved for approval of items (b) and (c) on the Consent Calendar. Councilor Newton seconded the motion. The motion passed by the following vote:

AYES: Orcutt, Hart, Koho, McGee, Miller, Newton, Van Meter (7)
NAYS: None (0)

OTHER BUSINESS

City Recorder Position Supervision

Mr. Otterman indicated that Councilor Koho and Mr. Lien jointly prepared the resolution regarding the City Manager's authority to supervise the City Recorder's position.

Councilor Van Meter moved for passage of a resolution delegating authority to the City Manager for the supervision of the City Recorder. Councilor Koho seconded the motion.

Councilor Koho questioned whether it is legal to pass this resolution since it was not listed as an agenda item. Mr. Lien indicated that he believed the Council could do so under Other Business.

The motion passed as follows:

AYES: Orcutt, Hart, Koho, McGee, Miller, Newton, Van Meter (7)
NAYS: None (0)

Fernwood Park Legal Expenses

Councilor Van Meter asked about the budget for the Parks Committee as it relates to an expenditure for Fernwood Park legal services. Mr. Otterman explained that the expenditure was incorrectly applied to the parks budget. That has since been rectified.

Willow Lake Treatment Plant

Councilor McGee expressed outrage at the City of Salem negotiating on the sewer treatment plant area of influence with Keizer, and now reading in the newspaper that Salem plans to haul 4,200 tons of manure into the plant for treatment. Mr. Otterman explained that he discussed this with Salem City Manager Gary Eide. Mr. Eide said that Salem has been talking about this proposal which was suggested by the grass seed growers. Mr. Eide assured Mr. Otterman that the odors resulting from this use will not be any worse than when the canneries are in operation, and will allow the treatment plant full utilization at its maximum capacity. Mr. Otterman expressed a concern about the trucking of the waste across Keizer streets and the impact that will have. Mr. Eide indicated that he would pass the word along to the Public Works Department to include Keizer in the traffic study to be conducted.

Councilor McGee commented that Salem owns a small island within the city limits of Keizer, but that Salem does not own the regional treatment plant.

Councilor Koho suggested the possibility of Keizer prohibiting the trucking of such materials through Keizer.

Personnel Policies Amendment

Councilor Miller wished to clarify his vote in opposition to the resolution regarding use of city equipment. He stated that while he supports the wording in the resolution, he opposed it as a change to the personnel policies at this point. He said his vote was based on the potential legal ramifications.

WRITTEN COMMUNICATIONS

Turner Complaint

Mayor Orcutt indicated that he received a letter from Mr. Turner regarding the change from green street signs to blue street signs. He said he contacted Mr. Turner and discussed the situation with him.

AGENDA INPUT

Systems Development Charges

Mr. Morgan indicated that he would place on the next Council agenda an ordinance to amend the existing systems development charges ordinance in order to bring Keizer into conformance with State law.

Audit Proposals

Mr. Otterman stated that on June 17 staff will present to the Council for approval the award of contract for auditors. He noted that four firms responded to the request for proposals.

Budget Committee Meeting Set

Mr. Otterman said that a Budget Committee meeting has been set for June 10 at 7 p.m. to discuss the urban renewal budget. Once the Budget Committee reviews the budget, it will be forwarded to the City Council for adoption at the end of June.

EXECUTIVE SESSION The Council met pursuant to the provisions of ORS 192.660(1)(f), Exempt Public Records.

ADJOURNMENT Following the close of the Executive Session, the Council adjourned the meeting.

Respectfully submitted,

Susan Darby, City Recorder

APPROVED:

MAYOR