



Beery Elsner
& Hammond LLP

May 29, 2012

VIA HAND-DELIVERY

The Honorable Vance D. Day
Circuit Court Judge
Marion County Courthouse
100 High Street NE, Courtroom 4D
Salem, OR 97301-3640

Re: *Marion County Fire District #1 v. City of Keizer and Keizer Fire District*
Marion County Circuit Court Case No. 11C19259

Dear Judge Day:

Enclosed for your consideration is Plaintiff's proposed Order on Plaintiff's Motion for Partial Summary Judgment, Defendants' Motion for Summary judgment, and Defendants' Motions to Stay and Dismiss, including proposed Findings of Fact and Conclusions of Law. Following consultation pursuant to UTCR 5.100, opposing counsel consents to the form of Order.

If the Order meets with your approval, please sign the Order and have the enclosed postcard processed.

Respectfully,

Christopher D. Crean

CDC/yh
Enclosures

cc: E. Shannon Johnson, City Attorney for the City of Keizer
Leta E. Gorman, Jordan Ramis PC, Of Attorneys for Keizer Fire District

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MARION
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7 MARION COUNTY FIRE DISTRICT #1, an
8 Oregon rural fire protection district,

9 Plaintiff,

10 v.

11 CITY OF KEIZER, an Oregon municipal
12 corporation, and KEIZER FIRE DISTRICT, an
13 Oregon rural fire protection district,

14 Defendants.

Case No. 11C19259
(The Honorable Vance D. Day)

ORDER ON PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT,
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, AND DEFENDANTS'
MOTIONS TO STAY AND DISMISS

15 THIS MATTER came before the Honorable Vance D. Day on May 18, 2012, on
16 Plaintiff's Motion for Partial Summary Judgment, Defendants' Motion for Summary Judgment,
17 and Defendants' Motions to Stay and Dismiss. Plaintiffs appeared by and through Christopher
18 D. Crean and Chad A. Jacobs; Defendants appeared by and through Leta E. Gorman and E.
19 Shannon Johnson. The Court, having reviewed the pleadings and files herein, having heard
20 arguments of counsel and being otherwise advised of all the relevant facts, hereby makes the
21 following findings of fact and conclusions of law.

22 FINDINGS OF FACT

- 23 1. The Court finds that there is no genuine issue as to any material fact.
24 2. Plaintiff Marion County Fire District #1 ("MCFD#1") provides fire services to that
25 portion of the City of Keizer known as the Clear Lake neighborhood.
26 3. Defendant Keizer Rural Fire Protection District ("KFD") provides fire services to the
remainder of the City of Keizer.

- 1 4. Defendant City of Keizer (“City”) does not provide fire and emergency services.
- 2 5. On September 19, 2011, pursuant to ORS 222.520 and 222.524, Defendant City adopted
- 3 Ordinance 2011-644 entitled “Withdrawing Territory from Marion County Fire District
- 4 No. 1” (“Ordinance”), which proposed withdrawing Clear Lake from MCFD#1.
- 5 6. On September 19, 2011, the City adopted Resolution 2011-2168 entitled “Proposing
- 6 Annexation to Keizer Fire,” which proposed annexing Clear Lake to KFD.
- 7 7. On October 18, 2011, MCFD#1 filed for declaratory judgment seeking a declaration that
- 8 City lacked authority to withdraw Clear Lake pursuant to ORS 222.520 and 222.524.

9 CONCLUSIONS OF LAW

- 10 1. ORS 198.705 to 198.955 governs the formation and change of special district boundaries.
- 11 The withdrawal of territory from a special district under ORS 222.520 and 222.524 is
- 12 exempt from the provisions of ORS 198.705 to 198.955.
- 13 2. Based on the rules of statutory construction as outlined in *PGE v. Bureau of Labor and*
- 14 *Industries*, 317 Or 606, 859 P2d 1143 (1993), and *State v. Gaines*, 346 Or 160, 206 P3d
- 15 1042 (2009), the Court concludes that ORS 222.520 and 222.524 authorize a city to
- 16 withdraw territory from an affected special district only when the city will be responsible
- 17 for providing fire services.
- 18 3. Because the City is not responsible for fire services, it cannot utilize ORS 222.520 and
- 19 222.524 to attempt to withdraw Clear Lake from MCFD#1. Instead, the City must
- 20 comply with ORS 198.705 to 198.955.
- 21 4. Because the City did not comply with ORS 198.705 to 198.955 when it passed the
- 22 Ordinance, the City lacked authority to attempt to withdraw Clear Lake from MCFD#1
- 23 and, therefore, the actions it took to adopt the Ordinance were *ultra virus* and the
- 24 Ordinance is void *ab initio*.
- 25
- 26

1 Now, therefore, IT IS HEREBY ORDERED THAT:

- 2 1. Defendants' Motion for Summary Judgment is DENIED.
- 3 2. Plaintiff's Motion for Partial Summary Judgment is GRANTED.
- 4 3. Defendants' Motion to Stay is GRANTED from this point forward until June 11,
- 5 2012.
- 6 4. The Court will take further action as necessary on Defendants' Motion to Dismiss
- 7 on June 11, 2012.
- 8 5. Defendants' answer to Plaintiff's First Amended Complaint is due June 29, 2012,
- 9 if an answer is necessary.

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11 DATED this ___ day of May, 2012.

12 _____
13 The Honorable Vance D. Day
14 Marion County Circuit Court Judge

15 Submitted by:

16 Christopher D. Crean, OSB No. 942804
17 Beery, Elsner & Hammond, LLP
18 Of Attorneys for Plaintiff

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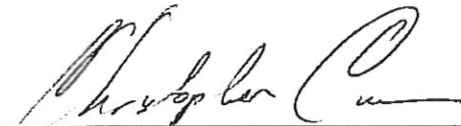
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1 UTCR 5.100 CERTIFICATION

2 Counsel for Plaintiff certifies that he served the foregoing Order on Plaintiff's Motion for
3 Partial Summary Judgment, Defendants' Motion for Summary Judgment, and Defendants'
4 Motions to Stay and Dismiss on opposing counsel not less than three (3) days prior to submission
5 to the court by sending the same to opposing counsel by e-mail at leta.gorman@jordanramis.com
6 and johnsons@keizer.org and by first-class mail on May 21, 2012.

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9 Christopher D. Crean, OSB No. 942804
10 Of Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on May 29, 2012, I caused to be served a true and correct copy of the
3 foregoing ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT,
4 DEFENDANTS' MOTION FOR SUMMARY JUDGMENT, AND DEFENDANTS'
5 MOTIONS TO STAY AND DISMISS on:

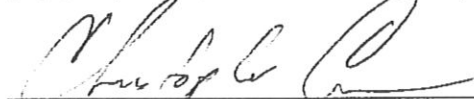
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7 Leta E. Gorman
8 Jordan Ramis PC
9 2 Centerpointe Dr 6th Flr
10 Lake Oswego OR 97035
11 Of Attorneys for Defendant Keizer Fire
12 District

E. Shannon Johnson
City of Keizer
P.O. Box 21000
Keizer OR 97307
Keizer City Attorney

13 by the following indicated method or methods:

- 14 by **First-Class Mail**
15 by **Hand Delivery**
16 by **Overnight Delivery**
17 by **Facsimile Transmission**
18 by **Electronic Mail**
19 by **CM/ECF**

20 BEERY, ELSNER & HAMMOND, LLP

21 
22 _____
23 Christopher D. Crean, OSB No. 942804
24 chris@gov-law.com
25 Of Attorneys for Plaintiff
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