

1 BILL NO. 686

A BILL

ORDINANCE NO.

2014- 707

3 FOR

4 AN ORDINANCE

5 ESTABLISHING A STORMWATER UTILITY, PROVIDING  
6 FOR UTILITY FEE; REPEAL OF ORDINANCE NO. 2007-563

7  
8 The City of Keizer ordains as follows:

9  
10 Section 1. FINDINGS.

11 A. The City provides a valuable public service by providing stormwater  
12 facilities for the collection, treatment, management, and disposal of stormwater  
13 discharged from properties and public right-of-ways within the City. The stormwater  
14 facilities constitute a public utility owned and operated by the City. The utility exists  
15 for the benefit of any person within the City who directly or indirectly utilizes the  
16 public stormwater facilities available for the diversion, collection, treatment,  
17 management and disposal of stormwater and other runoff water from the person's  
18 property and represents a municipal service in a developed urban environment which  
19 is essential to the public health, safety and welfare.

20 B. The City is a permittee for the National Pollutant Discharge  
21 Elimination System (NPDES) permit and the Water Pollution Control Facilities  
22 (WPCF) permit. The City maintains compliance with these permits through  
23 regulations of the federal Clean Water Act and Safe Drinking Water Act.

1 C. Federal and state law mandate stormwater programs implemented by  
2 the City.

3 D. Stormwater fees should reflect the cost of the management,  
4 maintenance, extension, replacement and construction of the public stormwater  
5 facility and implementation of NPDES and WPCF permit requirements.

6 E. Accordingly, the structure of the stormwater utility is intended to be a  
7 fee for service and not a charge against property. Although this structure is intended  
8 to constitute a service fee, even if it is viewed as a fee against property or against the  
9 person responsible, as a direct consequence of ownership of that property, the  
10 utility's fee structure should allow the person responsible to have the ability to  
11 control the amount of the fee above the Single Family Unit (SFU) rate. Similarly, the  
12 utility fee structure should reflect the actual cost of providing the service and not  
13 impose fees on persons not receiving a service directly or indirectly. Such services  
14 include, but are not limited to maintenance, management, installation, replacement,  
15 collection, treatment, and disposal of stormwater and implementation of management  
16 plans required by the NPDES and WPCF permits.

17 Section 2. DEFINITIONS. Except where the context otherwise requires,  
18 the definitions contained in this section shall govern the construction of this  
19 Ordinance.

1           A.     Commercial or Industrial unit shall be as defined in the Keizer  
2 Development Code as “Commercial, or commercial use” and “Industrial, or  
3 industrial use”.

4           B.     Development shall mean any constructed change to improved or  
5 unimproved property including, but not limited to, buildings or other structures,  
6 private stormwater facilities, mining, dredging, filling, grading, paving, excavation or  
7 drilling operations.

8           C.     Director shall mean the City Director of Public Works or the person  
9 designated by the Director.

10          D.     Duplex shall be as defined in the Keizer Development Code as  
11 “Dwelling, two-family or duplex”.

12          E.     Equivalent Service Unit (ESU) shall mean an area which is estimated to  
13 place approximately equal demand on the public facilities as defined in the Keizer  
14 Development Code as “Dwelling, single family”. One (1) ESU shall be equal to  
15 3,000 square feet of impervious surface.

16          F.     Impervious Surfaces are those surface areas which either prevent or  
17 retard saturation of water into the land surface and cause water to run off the land  
18 surface in greater quantities or at an increased rate of flow from that present under  
19 natural conditions pre-existent to development. Examples of impervious surfaces  
20 include, but are not limited to, rooftops, concrete or asphalt sidewalks, walkways,

1 patio areas, driveways, parking lots or storage areas, and gravel, oil, macadam or  
2 other surfaces which similarly impact the natural saturation or runoff patterns which  
3 existed prior to development.

4 G. Improved Property shall mean any area which has been altered such  
5 that the runoff from the site is changed compared with what would have been  
6 historically expected. Such a condition shall be determined by the Director.

7 H. Master Plan shall mean the “City of Keizer Storm Drain Master Plan”  
8 including such amendments to such plan.

9 I. Mobile Home Park shall be as defined in the Keizer Development Code  
10 as “Mobile home court, park or subdivision”.

11 J. Multiple-family unit (MFU) shall be as defined in the Keizer  
12 Development Code as a “Dwelling, multiple-family”.

13 K. Open Drainageway shall mean a natural or constructed path, ditch, or  
14 channel which has the specific function of transmitting natural stream water or  
15 stormwater from a point of higher elevation to a point of lower elevation.

16 L. Person responsible shall mean the owner, agent, occupant, lessee,  
17 tenant, contract purchaser or other person having possession or control of property or  
18 the supervision of an improvement on the property.

1 M. Single Family Unit (SFU) shall be as defined in the Keizer  
2 Development Code as “Dwelling, single-family”. A SFU is presumed to have 3,000  
3 square feet of impervious surface area for purposes of this Ordinance.

4 N. Stormwater Facilities shall mean any structure(s) or configuration of  
5 the ground that is used or by its location becomes a place where stormwater flows or  
6 is accumulated including, but not limited to, pipes, curblines, manholes, catch basins,  
7 ponds, open drainage-ways and their appurtenances, Vegetated Stormwater Facilities,  
8 and UICs.

9 O. Stormwater shall mean water runoff from precipitation, snowmelt, or  
10 any surface runoff and drainage.

11 P. Underground Injection Control (UIC) device shall mean an  
12 underground stormwater management system designed to distribute stormwater  
13 beneath the surface of the ground.

14 Q. Vegetated Stormwater Facility shall mean an above ground stormwater  
15 conveyance and treatment system which includes approved plants for this type of  
16 facility.

17 Section 3. STORMWATER UTILITY POLICY.

18 A. Council declares its intention to acquire, own, manage, construct,  
19 equip, operate and maintain within the City open drainageways, underground storm  
20 drains, UICs, equipment and appurtenances necessary, useful, or convenient for

1 public stormwater facilities. The Council also declares its intention to manage,  
2 maintain and extend existing public stormwater facilities, and meet the conditions of  
3 state and federally mandated permits.

4 B. The improvement of both public and private stormwater facilities  
5 through or adjacent to a new development shall be the responsibility of the person  
6 responsible. The improvements shall comply with all applicable City ordinances,  
7 resolutions, policies, Master Plan, standards and permits.

8 C. No portion of this ordinance or statement or subsequent Council  
9 interpretation or policies shall relieve the person responsible of assessments lawfully  
10 levied against their property for public facility improvement projects, nor for adopted  
11 reimbursement districts.

12 D. It is the policy of the City to participate in improvement to stormwater  
13 facilities when approved by the Director. To be considered for approval by the  
14 Director, a stormwater facility must:

- 15 1. be public; and
- 16 2. be a benefit to the community; and
- 17 3. be located in or on a City property, City right-of-way or City  
18 easement; and
- 19 4. meet all City construction standards.

1 The City will evaluate rehabilitation and/or replacement of existing public  
2 stormwater facilities for possible participation in improvement projects.

3 E. The City shall maintain public stormwater facilities located on City  
4 property, City right-of-way or City easements. Public stormwater facilities to be  
5 maintained by the City include, but are not limited to;

- 6 1. officially identified open drainageways when on City property,  
7 City right-of-way or City easement;
- 8 2. piped drainage system and related appurtenances which has been  
9 designed and constructed expressly for use by the general public  
10 and accepted by the Director in writing;
- 11 3. officially identified roadside drainage ditches along  
12 unimproved/semi-improved City streets;
- 13 4. flood control facilities (levees, dikes, overflow channels, pump  
14 stations, etc.) that have been designed and constructed expressly  
15 for use by the general public and accepted by the City.

16 F. Stormwater facilities not to be maintained by the City except through  
17 special agreement including, but are not limited to:

- 18 1. stormwater facilities not located on City property, City right-of-  
19 way, or City easement;
- 20 2. private parking lot storm drainages;

- 1           3.     roof, footing, and area drainages;
- 2           4.     drainages designed and constructed for use by private
- 3                 development (even if used by the general public);
- 4           5.     vegetated stormwater facilities that are not located on City
- 5                 property, public right-of-way or City easement;
- 6           6.     private access drive culverts;
- 7           7.     ditches, vegetated stormwater facilities, culverts and similar
- 8                 facilities owned and operated by the U.S. Bureau of
- 9                 Reclamation, statutory drainage/water control districts or other
- 10                governmental entities.

11           Section 4.   ESTABLISHMENT OF A STORMWATER UTILITY.

12   Council finds, determines and declares the necessity of providing for the  
13   management, maintenance, extension and construction of City stormwater facilities  
14   and implementation of stormwater programs for its inhabitants, and to comply with  
15   state and federal law. A Stormwater Utility is created for the purpose of providing  
16   funds for the management, maintenance, extension and construction of public  
17   stormwater facilities within the City.

18           Section 5.   ESTABLISHMENT OF A STORMWATER UTILITY FEE. A

19   stormwater utility fee shall be paid by each person(s) responsible and shall be  
20   established by resolution of the Council for all Improved Property, including but not

1 limited to, commercial or industrial units, duplexes, mobile home parks, multiple  
2 family units, single family units and equivalent residential units, such as  
3 retirement/assisted living residences and any other residential development.

4 A. Such fee shall be established by Council Resolution in amounts which  
5 will provide sufficient funds to properly manage and maintain public stormwater  
6 facilities.

7 B. Such fee may be used to meet the requirements of the National  
8 Pollutant Discharge Elimination System permit, the Water Pollution Control  
9 Facilities permit and other state and federal laws and regulations. Such fees may also  
10 pertain to stormwater quality regulations, or the preparation of any Master Plan or  
11 Master Plan amendment.

12 C. Such fee may be used for the construction of new stormwater facilities  
13 or for the extension of existing stormwater facilities.

14 D. Council may change the fees by Resolution based upon revised  
15 estimates of the cost of properly managing, maintaining, extending and constructing  
16 public stormwater facilities, or due to a change in state or federal regulations.

17 E. Property not used for single family dwelling purposes shall be  
18 considered to be furnished service in proportion to the amount of the property's  
19 impervious surface, and that for each 3,000 square feet (rounded to the nearest 3,000  
20 square foot increment) of impervious surface, the property is furnished service

1 equivalent to that furnished to a single family unit. The minimum service charge  
2 shall be the fee established for a single family unit.

3 Section 6. STORMWATER UTILITY FEE- DEDICATED. All fees  
4 collected for the purposes specified in this Ordinance shall be paid into the  
5 stormwater fund. Such revenues shall only be used for the purposes of the  
6 management, maintenance, treatment, collection, disposal, extension and  
7 construction of public stormwater facilities, including all monitoring, reporting, and  
8 program implementation requirements under state and federal law.

9 Section 7. ENFORCEMENT.

10 A. Any fee due which is not paid when due may be recovered in an action  
11 at law by the City. In addition to any other remedies or penalties provided by this or  
12 any other City ordinance, failure of any person responsible to pay fees promptly  
13 when due shall subject the person responsible to discontinuance of any utility  
14 services provided by the City and the City Manager is empowered and directed to  
15 enforce this provision against such delinquent users. Any fee not paid when due  
16 shall automatically be placed on the municipal lien docket as a lien upon the premises  
17 served. Such lien may be foreclosed and charges collected in the manner required by  
18 law for the collection of liens upon real property.

19 B. The employees of the City shall, at all reasonable times, have access to  
20 any improved property served by the City for inspection, repair, or the enforcement

1 of the provisions of this Ordinance. In the event the owner or occupant refuses entry  
2 after a request to enter and inspect has been made, the City is hereby empowered to  
3 seek warrant or other assistance from any court of competent jurisdiction in obtaining  
4 such entry, including, but not limited to Municipal Court Warrant.

5 Section 8. ADMINISTRATIVE REVIEW – APPEALS.

6 A. Any person responsible who disputes the amount of the fee, or disputes  
7 any determination made by or on behalf of the City pursuant to and by the authority  
8 of this Ordinance may petition the Council for a hearing on a revision or modification  
9 of such fee or determination. Such petitions may be filed only once in connection  
10 with any fee for determination, except upon the showing of changed circumstances  
11 sufficient to justify the filing of an additional petition.

12 B. Such petitions, including all facts and figures, shall be submitted in  
13 writing and filed with the City Recorder at least 14 days prior to a hearing scheduled  
14 by the Council. The petitioner shall have the burden of proof.

15 C. Within 30 days of filing of the petition, unless an extension is granted  
16 by Petitioner, the Council shall make findings of fact based on all relevant  
17 information, shall make a determination based upon such findings and, if appropriate,  
18 modify such fee or determination accordingly. Such determination by the Council  
19 shall be considered a final order. Appeal from the Council's final order shall be by  
20 way of writ of review only, pursuant to ORS 34.020 et seq.

1           Section 9.    NOTICE OF DECISION. Every determination of the Council  
2 shall be in writing, and notice shall be mailed to or served upon the petitioner within  
3 a reasonable time from the date of such action. Personal service or service by  
4 certified mail, return receipt requested, shall be conclusive evidence of service for the  
5 purpose of this Ordinance.

6           Section 10. CITY PROPERTY EXEMPT. Except as noted below, property  
7 owned by the City of Keizer and Keizer Urban Renewal Agency is exempt from the  
8 payment of any stormwater fees. By City Council budget authority, a budget transfer  
9 from the Street Fund to the Stormwater Fund for equivalent service units concerning  
10 sidewalks, streets, easement areas, and right-of-ways shall be made as a fee for  
11 service for maintenance of impervious surfaces.

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

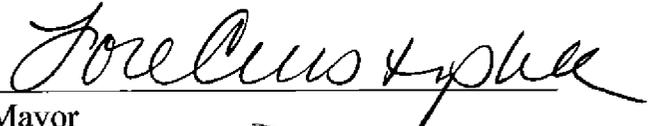
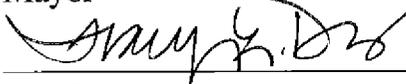
1 Section 12. REPEAL OF ORDINANCE NO. 2007-563. Ordinance No.  
2 2007-563 (Establishing a StormWater Utility, Providing for Utility Fee) is hereby  
3 repealed in its entirety, but such Ordinance shall remain in force for the purpose of  
4 authorizing the citation, prosecution, conviction and judgment of a person who  
5 violated that Ordinance, the imposition of any fees, or for the purposes of abating a  
6 nuisance that occurred when such Ordinance was in effect.

7 Section 13. EFFECTIVE DATE. This Ordinance shall take effect thirty (30)  
8 days after its passage.

9 PASSED this 20th day of October, 2014.

10  
11 SIGNED this 20th day of October, 2014.

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Mayor  
  
\_\_\_\_\_  
City Recorder