

MINUTES

Eugene City Council
Council Chamber—City Hall
777 Pearl Street—Eugene, Oregon

February 27, 2012
7:30 p.m.

COUNCILORS PRESENT: George Brown, Pat Farr, Betty Taylor, Andrea Ortiz, George Poling, Mike Clark (via speakerphone), Chris Pryor, Alan Zelenka.

Her Honor Mayor Kitty Piercy called the February 27, 2012, regular meeting of the Eugene City Council to order.

1. PUBLIC FORUM

Mayor Piercy reviewed the rules of the Public Forum.

Carol Berg Caldwell, Ward 3, read a poem in opposition to the Downtown Public Safety Zone (DPSZ), asserting it was unequally enforced against the poor, could not be fixed by amendments, and would be challenged in court if extended.

Bill Bezyk, Ward 1, Backyard Farmers, advocated for code changes that gave residents greater opportunities to keep micro livestock and engage in urban farming. He believed his business's chicken sales demonstrated the strength of the local urban farming movement. He suggested that his store might be able to initiate a mobile processing unit (MPU) for on-site butchering in the urban environment as another business endeavor.

Genie Harden, a Lane County resident, responded to comments and questions at the earlier council work session. She reported that the Oregon Department of Agriculture had strict rules about slaughtering inside and outside the city limits. Mobile units were an option. She suggested that people were less likely to keep pygmy goats for urban agriculture as opposed to Nigerian dwarf goats and recommended the council employ the term "miniature goats" to describe the size of goats. She said her type of goats did not smell when neutered and she doubted they had any more fleas than a typical cat.

Claire Syrett, representing the American Civil Liberties Union (ACLU), asked the council to end the DPSZ, which she termed an "end run" against due process protections, or at minimum to suspend it until improvements were implemented. She called for details about the offenses being targeted by police and the reasons cases were denied or dismissed by judges. She questioned the zone's effectiveness in keeping repeat offenders from downtown given that offenders violated their exclusion orders an average of four times each. She objected that the advocacy program had not been mentioned during the zone's review. She questioned the nature of the proposed program enhancements and how the council would know they were effective.

Joe Tyndall, Ward 1, opposed the exclusion zone because he believed it was being used to exclude homeless people and nonviolent individuals from downtown. He said that Occupy Eugene sought police reports regarding the zone and had received three different reports that the organization found to be incomplete. He shared some statistics from the reports in support of his contention about how who was

being excluded. Mr. Tyndall reported that Occupy Eugene has begun a dialogue with downtown business owners about the homeless problem and those contacted did not support targeting nonviolent homeless people. He called for accurate policing reporting and said no exclusions should be issued for trivial or victimless crimes or prior to a court proceeding.

Jean Stacey, Ward 1, submitted her written remarks in opposition to the DPSZ.

Steve Michael Todd, homeless, was excluded from downtown. He believed innocent people were being targeted because they were being unwanted. Homeless people were afraid to speak out. The City was putting more bicycle officers in downtown to get undesirable people out. Mr. Todd pointed out that The Dining Room was frequently used by homeless people but it was in the exclusion zone, which made it impossible for excluded homeless people to use it. He said if the council could create the proper environment elsewhere the homeless would not be downtown. Mr. Todd believed the DPSZ was being abused.

Irene Cardenas, Ward 1, supported allowing more opportunities for goat rearing because of the benefits of goat's milk. She asked if the City had considered applying restorative justice in downtown so that people could meet and share perspectives with the assistance of a mediator or police officer. She did not think homeless people should be arrested for sleeping but should be given a place to stay and learn and contribute.

Mark Callahan, Ward 4, advocated against the proposal for a plastic bag in Eugene. He noted that such a ban was not supported by the State legislature. Portland had since implemented such a ban but he doubted what was good for Portland was good for Eugene, particularly for the low-income. He believed the ban was ecological fascism. He asked what happened to having faith in an individual's free will and choice. He predicted people would spend their money in other communities to avoid the ban.

Michael Gannon, Ward 7, suggested the council reconsider the use of tobacco in the downtown and whether tighter regulation might be a useful tool to address some of the problems the DPSZ was intended to address.

Jan Bedford, Ward 1, introduced the "Bag Monster," aka Lori, who wore 500 bags, which represented the number used by an average Oregonian each year. They took many years to biodegrade and she did not think that something that was used for such a short-time should be used. She spoke of the disadvantages of single-use plastic bags and their environmental impact. She urged the council to ban plastic bags in the City of Eugene. She also wanted to ban paper bags and to encourage people to bring their own bags to the store. She offered the council reusable bags that read "Make a Difference."

Debra McGee, Lane County, advocated for a plastic bag ban in Eugene. She supported a ban of all things carcinogenic and non-biodegradable.

Mike Brinkley, Ward 8, expressed the Sierra Club's support for the proposed plastic bag ban. He perceived the problem of plastic bags had grown since 1960. He suggested the benefit of paper bags was that they were made in the state. No plastic bags were made in Oregon. He spoke of some of the alternatives to plastic bags that existed.

Michael Carrigan, Ward 7, Community Alliance of Lane County (ALC), opposed the extension of the DPSZ. He did not think the changes went far enough and asked the council to reject the ordinance and allow the zone to sunset. CALC was concerned the law was used to target the homeless, which was

confirmed by statistics. He recommended that the City develop an inclusive day center that welcomed the homeless. He supported the proposed ban on plastic bags.

Randy Caine, Ward 1, supported the proposed plastic bag ban to avoid pollution of the oceans. He opposed the extension of the DPSZ. He said the City must address the types of issues that bring violent and criminal people downtown. He applauded efforts to increase opportunities for urban livestock husbandry in Eugene and encouraged the creation of more community gardens.

Kimberly Gladen, Ward 1, spoke of the fiscal impact that recent vandalism at the Davis Restaurant would have on its employees. She said lost jobs in downtown had an impact on the entire community. She said Occupy Eugene talked about the fact transients left downtown for the Occupy encampment but Occupy Eugene conducted many protests in downtown, leading to bank and business closures that affected their employees. She recommended that Occupy Eugene participants wishing to protest the banks stop using credit cards and consider what products they consumed. She advised Occupy Eugene to broaden its focus and bother Phil Knight to bring manufacturing to the community, which could help reduce global warming. She said if people walked their talk, change would happen.

Ashley Miller, Ward 5, Oregon League of Conservation Voters, expressed support for the proposed plastic bag ban. She submitted a letter of support from 60 local businesses and the Northwest Grocers Association. She repeated admonitions about the harms caused by plastic bags mentioned by others. She supported a five-cent pass-through fee because it reduced costs for business and created a disincentive for one-use paper bags.

David Gerber, Ward 2, editor of the Oregon Vagabond, shared copies with the council. He believed the community could do better than the DPSZ. It should not need more downtown police, the DPSZ, or more jail beds. He maintained the community could police itself. The community needed jobs, which his organization provided.

Alley Valkyrie, Ward 1, discussed the details of some exclusion orders she was aware of. She opposed the extension of the DPSZ because it was being used against people who committed minor offenses, including Ms. Valkyrie.

John Monroe, Ward 1, traced the decline of downtown to the development of Valley River Center, made possible by poor decisions. Since then the community had been dealing with downtown problems. The DPSZ did not solve the lack of money to drive downtown business and the City should be stimulating business downtown instead.

Majeska Seese Green, Ward 7, was opposed to the DPSZ. She shared some proposed changes to the ordinance.

Art Bowman, Ward 2, shared a *Boycott Bully Businesses* flier. He averred that Eugene was getting a black eye nationally as a result of the DPSZ because radio personality Amy Goodman mentioned it on her show. He termed the zone a "lose-lose" strategy and said other downtowns were suffering similarly but did not have an exclusion zone.

Moshe Immerman, Ward 1, opposed the extension of the DPSZ because he believed that the community was living in a police state. He believed judges rather than the police should be issuing exclusion orders. He agreed with the establishment of a no smoking zone. He concurred with the remarks of Ms. Syrett.

Gavin McComas, Ward 3, spoke in support of the proposed ban on plastic bags. He shared that his store, Sundance Natural Foods, had never used plastic bags and encouraged customers to bring their own bags and reusable containers. His store had offered a rebate for those who brought their own bags and charged those who did not. His customers were very enthusiastic about using their own bags. He did not think paper bags were the solution either as they were energy-intensive to manufacture.

Mayor Piercy closed the Public Forum. She thanked those who offered testimony and called on the council for questions and comments.

Councilor Ortiz also thanked those who offered testimony. Speaking to the store owners in support of the proposed plastic bag ban, she thought it was great that they could do things in their smaller stores to encourage better habits, but she had some angst when she considered her ward, which lacked such stores. Her constituents shopped at WinCo and Fred Meyer. While she supported the ban, she said the devil was in the details.

Councilor Farr encouraged residents to purchase a copy of *The Vagabond*.

Councilor Clark thanked all those who testified. He was generally in favor of the plastic bag ban and was a major advocate for urban agriculture and envisioned he would support more opportunities for urban livestock.

2. CONSENT CALENDAR

A. Approval of City Council Minutes

- November 28, 2011, Work Session
- January 9, 2012, Work Session
- January 23, 2012, Regular Meeting

B. Approval of Tentative Working Agenda

C. Ratification of Intergovernmental Relations Committee Minutes of February 1, 2012, and February 8, 2012

Councilor Brown, seconded by Councilor Farr, moved to approve the items on the Consent Calendar. Roll call vote: The motion passed unanimously, 8:0.

3. ACTION:

An Ordinance Adopting Hazardous Substance User Fees for the Fiscal Year Commencing July 1, 2012

City Manager Jon Ruiz introduced the item, announcing that provisions of the Eugene City Charter and Code required that the Toxics Right to Know Program be fully funded by fees charged assessed local manufacturing businesses that used hazardous substances. The Toxics Board recommended a fee of \$79 per FTE for participating businesses up to a maximum of \$2,000 as allowed by State law.

Councilor Brown, seconded by Councilor Farr, moved to adopt Council Bill 5063 adopting hazardous substance user fees for the fiscal year commencing July 1, 2012. Roll call vote: The motion passed unanimously, 8:0.

4. **ACTION:**

An Ordinance Concerning Downtown Public Safety Zone; Amending Section 4.874 of the Eugene Code, 1971; and Providing a Sunset Date

City Manager Ruiz reported that the DPSZ expired April 30, 2012, unless the council chose to extend it. The ordinance before the council extended the DPSZ to April 30, 2014.

Police Chief Pete Kerns referred councilors to the handout provided them entitled *DPSZ—Supplemental Information, February 27, 2012*. He led the council through the handout, which responded to council questions from the work session held on February 13.

Councilor Brown suggested that data for the period three years after implementation of the zone would help the council determine if the problems downtown were merely being moved around. Chief Kerns recalled that the department reported on the impact on other neighborhoods in 2010 and it would take some time to collate that information. Councilor Brown wanted to see a more fine-grained listing of all the exclusion orders issued and the reason for exclusion to gauge the effectiveness of the zone.

Councilor Brown, seconded by Councilor Farr, moved that the City Council approve Council Bill 5064.

Councilor Ortiz pointed out to those offering testimony in the public forum that police officers could target people and cite them with or without the DPSZ. She did not think the EPD would put additional effort into analyzing the data if the council did not extend the DPSZ for six months because the program would be dead. She anticipated that while the analysis was occurring, the City could explore additional opportunities for street vending downtown to provide the homeless with a source of income, an option that had been discussed by the Opportunity Eugene Task Force.

Councilor Ortiz asked who would bear the liability of a court challenge. City Attorney Emily Jerome responded that the City Attorney's Office would defend the ordinance on behalf of the City. She reported that City Attorney Jerry Lidz had reviewed case law to determine if new cases or statutes had arisen that dealt with the constitutionality issues raised by opponents and found nothing new. The City Attorney's Office believed the law was constitutional.

Councilor Pryor said the council could end the DPSZ immediately if it had an alternative to put in place, but he was uncomfortable ending the zone in the absence of such an alternative. He wanted to continue to work on an alternative. Councilor Pryor was intrigued by suggestions that the community could receive real time information. He also emphasized the importance of officer training and wanted to send a clear message to officers that the DPSZ was a safety effort and not punitive.

Councilor Poling agreed with Councilor Pryor's remarks about alternatives. He said the DPSZ was just one of many tools the City was using downtown. It was not perfect but it was the best the City had. He believed the DPSZ targeted behavior rather than socio-economic status. He likened the zone to a temporary restraining order, which placed restrictions on a person's activities and was issued before the individual receiving the order could talk to a judge. Councilor Poling thought it was a good idea to review the DPSZ in two years to determine if the increased activity from downtown redevelopment helped improved the behavior targeted by the zone.

Councilor Ortiz determined from Chief Kerns that the last three officers assigned to downtown would be assigned in July, bringing the officers downtown to a total of nine. She concluded that the nine officers represented "plenty of tools in that one tool box." She would not support the motion unless the date the

zone expired was changed to September 30, 2012. Councilors Brown and Farr accepted that as a friendly amendment to the motion.

It was Councilor Ortiz's perception that the DPSZ was being used punitively against people protesting downtown and she was very concerned about that. She believed that protesters were being targeted and that was not what the zone was intended for. It was intended to address exploitative and violent crimes.

Councilor Brown said the amendment might persuade him to support the motion and a short extension. He believed the DPSZ was unconstitutional and had not been challenged because those sanctioned were poor and could not afford an attorney. He said the zone struck at the heart of the country's judicial system, which, unlike other countries, presumed innocence. The DPSZ presumed guilt. He did not believe anyone had the legal right to anyone from a public space without a trial and conviction.

Councilor Brown did not think the data provided by EPD demonstrated downtown was safer or more welcoming. He suggested the existing system was the alternative. He added that he was not saying that exclusion orders were always unwarranted because there were people who should be excluded from downtown, but he considered the DPSZ an unnecessary overlay to the judicial system.

City Manager Ruiz raised logistical concerns about the September 2012 date.

Councilor Farr sought to withdraw his acceptance of the friendly amendment. City Attorney Jerome suggested that instead Councilor Farr ask Councilor Ortiz to change the date. Councilor Ortiz declined to accept a date change to April 30, 2014. City Attorney Jerome advised the council that the motion with the friendly amendment offered by Councilor Ortiz was the motion on the table.

Councilor Clark believed the City could refine the DPSZ in a manner that addressed many of the concerns that had been raised. He was willing to continue to work on the issue. He reminded the council that the DPSZ was not put in place because of a lack of downtown police officers, but because of a lack of jail beds to hold offenders accountable. The community was already deficient in jail beds and would soon lose more. He believed it was the wrong time to eliminate the zone. He wanted to extend the zone while the City worked to refine it.

Responding to a question from Councilor Zelenka, Chief Kerns said the Municipal Court informed him that those jailed for municipal offenses such as violation of an exclusion order were held until arraignment, which was the next business day; following that, the judge had an opportunity to sentence the offender. He anticipated the loss of ten beds as of July 1, 2012, could affect the City's ability to hold offenders until arraignment. He said it was a deterrent to be able to hold someone in jail.

Councilor Zelenka said he had not supported the DPSZ for reasons related to due process. He disagreed with Councilor Poling's analogy likening the zone to a restraining order because he believed restraining orders were only issued when someone was in imminent danger. He asked for more information about how staff proposed to enhance the advocacy program and what timeline was involved. City Prosecutor Dan Barkovic reported that judges were now proactive about letting defendants, particularly those in custody, know of the program's availability; prior to that, officers handed out fliers about the program. In addition, the flier was being revised to be more simple and clear. He anticipated the flier would be revised within the month. He invited suggestions about additional resources to employ in the advocacy program.

Mayor Piercy said had been convinced by legal counsel that the ordinance would probably withstand a legal challenge but she believed the issue to consider was what the community was and what it aspired to

be. She was interested in data that showed the impact of the zone and did not want to end the DPSZ until the council had seen that information. If called on to vote, she would not support a two-year extension. She was willing to extend the DPSZ for six months to get that data and work toward a better solution.

Councilor Taylor did not think a six-month extension would improve the DPSZ. She termed the zone wrong and said it was something to be ashamed of. People were innocent until proven guilty. Councilor Taylor said that people were going to be somewhere and the City could not make them disappear. She advocated for an inclusive downtown and wanted Eugene to be known for including everybody. Councilor Taylor said there were already laws in place to address the violations that occurred downtown. She said if the City could jail people overnight for violating an exclusion order it could jail them overnight for the crime they committed. She did not want to spend City funds fighting a possible court challenge.

Councilor Farr was concerned about the logistics issue raised by City Manager Ruiz.

City Attorney Jerome pointed out that a six-month extension would be October 30 rather than September 30. She suggested that November 30, 2012 would be more realistic.

The council accepted a friendly amendment from Councilor Farr to change the date the zone ended to November 30, 2012.

Councilor Zelenka said it was not clear that the DPSZ was the reason for improved downtown conditions. He wanted to see better data about who was being excluded, the reason for the exclusion, and a characterization of the excluded. He was disturbed that so many of those receiving exclusion orders were homeless. He asked where the excluded individuals went and the impacts of that shift. He suggested that a way to test the DPSZ's effectiveness was to end it. He could not support a two-year extension given that the zone was initially intended to be temporary. He supported the motion with the hope it was the last time the zone was extended.

Councilor Brown said as distasteful as he found it, he would support the amended motion as a way to test the effectiveness of three more officers downtown and to get more data. He considered the motion a reasonable compromise.

Mayor Piercy did not like to see downtown characterized as a place of exclusion. She wanted it to be a great place to be for everyone, including visitors and downtown employees.

Roll call vote: The motion passed, 6:2; councilors Taylor and Clark voting no.

Mayor Piercy adjourned the meeting at 9:32 p.m.

Respectfully submitted,



Beth Forrest
City Recorder

(Recorded by Kimberly Young)