

MINUTES

Eugene City Council
McNutt Room—Eugene City Hall
777 Pearl Street—Eugene, Oregon

December 8, 2010
Noon

COUNCILORS PRESENT: Mike Clark, Betty Taylor, Jennifer Solomon, George Poling, Andrea Ortiz, Chris Pryor, Alan Zelenka, George Brown, members.

Her Honor Mayor Kitty Piercy called the December 8, 2010, work session of the Eugene City Council to order.

A. WORK SESSION: Disposition of 858 Pearl Street Property

Central Services Department Director Kristi Hammitt and Senior Management Analyst Denny Braud were present to discuss the disposition of City-owned property at 858 Pearl Street. Mike Penwell of the City's Facilities Division was also present for the item.

Mr. Braud reminded the council that it had declared the property at 858 Pearl Street as surplus property in 2009. Subsequently, the City solicited offers for the property and received two offers, one from Network Charter School and one from Master Development. Mr. Braud reviewed the details of a proposal to sell the property to Master Development, and reported that the company's preferred concept was to redevelop the building as housing, with 15 units of housing and some commercial office space. He emphasized the use of the phrase "preferred concept," as the firm's intent was for housing but it might have to consider an office use if the housing concept was not feasible.

Mr. Braud referred the council to Attachment A of the meeting packet, *Outline of Terms—Disposition of 858 Pearl Street—Master Development*, and reviewed the proposed terms. Mr. Braud recommended approval of the sale terms.

Mayor Piercy determined from Mr. Braud that staff found Master Development's proposal to be acceptable because the firm proposed to use the building for housing, but the City was also willing to provide the firm with some flexibility in recognition of existing market conditions. Mr. Braud acknowledged the building could end up in office use depending on the results of the firm's feasibility study, but suggested a nice office building would not be a bad outcome of the sale. Mayor Piercy agreed. She observed the City had difficulty realizing its goal for downtown housing but she knew the council continued to support that goal. She hoped the firm's plans worked out. The proposal made sense to her.

Mayor Piercy solicited council comments and questions.

Ms. Solomon supported the proposal and hoped the City continued to dispose of its surplus properties.

Ms. Ortiz also supported the proposal. She determined from Mr. Braud that if the building was not redeveloped as housing, it would not be eligible for the Multi-Use Property Tax Exemption (MUPTE). She further determined from Mr. Braud that while the City had only two offers for the property, one from

Master Development and one from Network Charter School, several parties had requested information about the property.

Mr. Zelenka determined from Mr. Braud that the City had not solicited offers for the property since July 2009. Ms. Hammitt pointed out that the property had a "for sale" sign posted on it and the City had actively marketed the property since July 2009.

Mr. Zelenka agreed with Mayor Piercy that it would be desirable if the building was redeveloped as housing but he acknowledged the challenge of that. He believed the MUPTE was most appropriately used in the downtown area rather than in the other areas that it was being used.

Mr. Zelenka asked about the difference between the appraised price and the sale price. Mr. Braud said the appraisal was based on a commercial office use rather than a housing use. It would be more challenging to convert the property to housing, which changed the economics of the real estate value. The rents charged for housing would not be more than rents charged for office use, and were generally less. Mr. Braud said staff derived a lower value for a housing project than for a commercial office use. Mr. Zelenka asked why the City was not requiring housing but would still provide the purchaser with \$200,000. Mr. Braud attributed it to the market risk involved and suggested the City would not get a market value for the property because it was vacant and a purchaser would be buying a 'spec' office building with no tenants.

Responding to a question from Mr. Zelenka, Mr. Braud confirmed there was no time limit on the note. Mr. Zelenka asked if staff had done a spreadsheet analysis of the likelihood of receiving that payment. Mr. Braud acknowledged the risk involved and pointed out that it was the same risk the City took in regard to the Beam project. The City lacked a fully fleshed out pro forma because Master Development had not gotten into the building to determine rehabilitation costs or done a market analysis for the rents. He speculated that at some point the building would be sold, which would be a logical time for the money to be paid back to the City. He suggested that it was also possible that, like Broadway Place, rents would stabilize and the City would begin to see payments.

Mr. Zelenka likened the note to a zero interest loan. Mr. Braud said the City was a partner in the project as well as a participant in the success of the project.

Mr. Zelenka indicated support for the proposal because he believed the City would recover its money.

Mr. Clark believed that the City had other assets and properties it should dispose of to support the construction of a new city hall. He asked what City Manager Jon Ruiz planned to do with the \$1 million realized from the property sale. City Manager Ruiz indicated he had planned to use it to fund implementation of the strategies that came out of the Envision Eugene process. Mr. Clark strongly suggested the manager add the sale proceeds to the Facility Reserve because he believed the money should be used to defray the cost of renovating or rebuilding a new city hall. City Manager Ruiz said that the sale price would come in as unappropriated dollars, and the council could choose where to appropriate those dollars through either a supplemental budget or through the annual budget process.

Mr. Poling was very supportive of the proposal and agreed with Mr. Clark about how to use the money the City received for the building. He believed the council needed to demonstrate to the taxpayers it was trying to offset the costs of a new city hall.

Mr. Poling asked if the City would have room for negotiation in regard to potential mitigation costs related to hazardous substances found on the site. Mr. Braud said yes, and indicated staff had discussed the topic with the buyer. The City had not yet committed to anything.

Mr. Clark, seconded by Ms. Taylor, moved to authorize the City Manager to enter into a purchase and sale agreement with Master Development for the disposition of the 858 Pearl Street property consistent with the terms and conditions included in Attachment A. The motion passed unanimously, 8:0.

A. ACTION: Adoption of an Ordinance Concerning Downtown Public Safety Zone; Amending Section 4.874 of the Eugene Code, 1971; and Providing a Sunset Date

The council was joined by Police Chief Pete Kerns, who reviewed the changes made to the Downtown Public Safety Zone (DPSZ) ordinance since the public hearing the council held on the topic. City Attorney Glenn Klein and Police Analyst Linda Phelps were also present to answer council questions.

Mayor Piercy acknowledged her own concerns about zones such as the DPSZ but appreciated the revisions related to due process and the provision of advocacy services, which addressed some of those concerns.

Mr. Clark believed the ordinance as currently written was legally defensible from a due process standpoint. He had been satisfied with the ordinance as it existed, but acknowledged community concerns about the issue of due process as it related to Section 4.876, and was willing to support deletion of that section. He was pleased the revisions made it possible for the council to move forward with a greater degree of unanimity.

Mr. Pryor agreed with Mr. Clark that making the ordinance more broadly acceptable to the community was one of the tradeoffs the council faced. He had asked Municipal Court Judge Wayne Allen for input regarding the deletion of the temporary exclusion, and the judge's response made Mr. Pryor feel comfortable that the core of the ordinance was still in place, particularly with the addition of more offenses. He suggested the ordinance could be amended in the future if it did not work.

Mr. Pryor spoke to the provision of advocacy services. He emphasized the importance of ensuring accessibility to the legal system. He believed that many of those impacted by the ordinance would not be familiar with the law, and while he did not want to assume the liability of giving them legal advice, he believed they should be given assistance navigating the system. He thought the cost was reasonable.

Ms. Ortiz determined from Chief Kerns that staff proposed the ordinance expire in 18 months because he believed that was when new downtown officer team would be deployed.

Responding to a question from Ms. Ortiz, Chief Kerns indicated that Municipal Court would manage the contract for advocacy services. Responding to a follow-up question from Mr. Poling, Chief Kerns anticipated that advocacy services would be provided by an organization such as Whitebird or St. Vincent de Paul or by volunteers. The City would not add new staff or add to the duties of existing staff to provide those services. Mr. Poling asked if the advocates would be trained by the police or courts. He also asked who would monitor their work to ensure they did not shift from advocacy to giving legal advice. Chief Kerns said Municipal Court would be responsible for the contract and would oversee the work of the

advocates. He emphasized that there was always a judge in the Municipal Courtroom to ensure that advocates were not violating the law by acting as attorneys.

Mr. Poling had not initially favored giving up the temporary exclusion reflected in Section 8.476. However, based on information provided by staff and the overall nature of the approach being taken, he supported deleting the section.

Mr. Poling believed the ordinance was not perfect or necessarily the solution to downtown's problems, but it was a tool to address problems downtown. Because downtown was where the problem was occurring, Mr. Poling thought the council needed to take action to address it. He acknowledged that many positive things occurred downtown and he appreciated the changes that were being made, but he also believed the DPSZ would have positive benefits.

Mr. Poling determined from City Attorney Klein that City Manager Ruiz could return to the council with an ordinance to extend the sunset period. Mr. Poling thought that was necessary given unanticipated delays in the hiring, training, and officer deployment process.

Ms. Solomon asked how the City could offer advocacy for individuals cited for a DPSZ violation but did not provide similar services for those cited elsewhere in the community. She feared the council's action would open the door to a larger advocacy program. Chief Kerns indicated that the City offered advocates for targeted groups, such as those who spoke only Spanish. Speaking to the question of how to prevent expansion of the service, Chief Kerns suggested that City could not expand the service without the authority of the council. He said the City was not obliged to provide an advocate in other processes just because the council chose to do so in this circumstance.

Ms. Solomon asked if the advocacy program would go away when the ordinance expired. Chief Kerns said yes. Ms. Solomon determined from Chief Kerns that the City's current contract for advocacy service called for payment by the hour and he anticipated that approach would continue.

Ms. Solomon asked if the City received had complaints about a lack of advocacy services. Chief Kerns said no. Ms. Solomon suggested the advocacy services element of the ordinance was a solution in search of a problem and she could not support the expenditure.

Mr. Brown could not support the ordinance for reasons he had stated before. He termed the revisions made to the ordinance "lipstick on a gorilla." He did not think the statistics provided to the council demonstrated the program's effectiveness. He believed criminal activity had been shifted. Some crimes were down in the DPSZ but they were up outside the zone. There had been an increase in assault inside the DPSZ. Mr. Brown suggested the number of sex offenses in downtown in the last 2-1/2 years did not warrant their inclusion in the list of crimes for which one could be excluded.

Mr. Zelenka supported the revisions to the ordinance, particularly the addition of advocacy services and the elimination of the temporary exclusion. He appreciated the council's willingness to consider changes. He had not supported the initial ordinance because of concerns regarding its constitutionality. He had been concerned that Eugene Police Department statistics indicated 60 percent of those excluded were homeless. He speculated the remainder of those excluded were low-income and lacked education. Mr. Zelenka continued to be concerned that the DPSZ would move crime out of downtown and into other areas.

Mr. Zelenka believed the extension of the ordinance had majority support and he preferred to change the ordinance for the better rather than be a symbolic 'no' vote. He acknowledged he preferred not to have such a zone. Mr. Zelenka supported the advocacy services contract arrangement outlined by Chief Kerns.

Ms. Taylor noted her initial opposition to the ordinance and said she continued to oppose it. She preferred the DPSZ be morally defensible as well as legally defensible, and she did not find it morally defensible.

Ms. Taylor asked Chief Kerns if he had an example of a case involving a person who was excluded from downtown but would not be punished in any other way. In other words, exclusion was the only punishment available. Chief Kerns said a person could not be excluded unless there was reason to believe they committed a crime and criminal action against them was moving forward. Such individuals could be excluded from downtown for 90 days pending a trial. The one-year exclusion could only be imposed upon someone upon conviction.

Ms. Taylor believed that the effect of the ordinance was to shift criminals around the community, in many cases before they were convicted of crimes. She asked Chief Kerns questions clarifying the nature of some of the crimes mentioned in the ordinance. Ms. Taylor pointed out that all the crimes on the list for which one could be excluded from downtown were already crimes. Chief Kerns acknowledged that they were crimes, but pointed out the City lacked jail capacity to keep such people who committed such crimes confined in jail until their trial date. When the City put people in jail for minor offenses such as theft and disorderly conduct they were released immediately and went back where they came from to commit more crimes. When people were arrested for violating the exclusion order, they did not come back downtown.

Ms. Taylor was concerned about the 'rightness' of excluding people from an area and about dissipating criminal behavior to other parts of the community. She believed the best approach to dealing with undesirable people was to dilute their presence and have everybody together.

Mayor Piercy observed that whenever the City interrupted such behavior it did tend to move elsewhere but it also seemed to lose intensity. One did not solve the problem, but it improved the situation. Chief Kerns concurred. He said that was particularly true with street and behavior crimes, and he believed the council's action to fund a new downtown police team would allow the department to place those officers where the crime was happening, and over time behavior crimes would be reduced.

Mayor Piercy said she knew that police officers were deeply concerned about young women downtown and the predatory situations they frequently found themselves in, and suggested that was the reason sex crimes had been added to the ordinance. Chief Kerns concurred.

Mr. Clark, seconded by Ms. Taylor, moved to extend the Downtown Public Safety Zone for 18 months to April 2012, adding the sexual violations and crimes portion, adding the revised statutes portion, adding a new section 4.875 on the issuance of notice to show cause, and deleting Section 4.876 with regard to the temporary exclusion by adopting Council Bill 5042, the Option B ordinance concerning the Downtown Public Safety Zone. The motion passed, 5:3; Ms. Taylor, Ms. Solomon, and Mr. Brown voting no.

Mr. Clark, seconded by Ms. Taylor, moved to direct the City Manager to create an advocacy program to be available without cost to persons who have received a notice to show cause under Section 4.875 of the Eugene Code, 1971. The motion passed, 7:1; Ms. Solomon voting no.

Mayor Piercy adjourned the meeting at 12:52 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Sandra J. Stubbs". The signature is written in dark ink and is positioned above the printed name and title.

Beth Forrest
City Recorder

(Recorded by Kimberly Young)