

MINUTES

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

October 25, 2010
5:30 p.m.

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

Her Honor Mayor Kitty Piercy called the October 25, 2010, work session meeting of the Eugene City Council to order. She wished Councilor Clark and City Manager Jon Ruiz a Happy Birthday.

A. Committee Reports and Items of Interest from Mayor, City Council, and City Manager

Mayor Piercy invited citizens to join her and Mr. Clark for the Mayor's One-on-One at the Market of Choice on 1060 Green Acres Road between 5 p.m. and 6 p.m. on October 26.

Mayor Piercy thanked Mr. Clark for chairing the October 20 council work session while she attended the "Railvolution" Conference in Portland. She said the conference, which addressed issues such as bicycles, pedestrians, transit, and transit-oriented development, was excellent. She thought the information shared at the conference would be useful to the council as it worked through the Eugene Envision process. She reported that the conference's bus tour of Eugene's EmX system could not accommodate all those who wished to take the tour, and the system received much positive feedback.

Mayor Piercy noted the recent well-attended and well-received financial planning event co-sponsored by the City of Eugene, the United States Conference of Mayors, and the Mid-Oregon Chapter of the Financial Planning Association held at the Sheldon Community Center on October 23.

Mayor Piercy reported that the Tamarack Wellness Center received the Gold Steps Award at the Business to Business Expo the previous week and she had the opportunity to discuss the award with the recipients that morning on KUGN. She congratulated Tamarack Wellness Center.

Mr. Clark reported that the Cal Young Neighborhood Association would meet at 7 p.m. on October 28 at the Sheldon Community Center. The agenda included a discussion on public safety with representatives of Lane County Sheriff's Department.

Mr. Brown reported that the Police Commission reviewed and approved recommendations from its Use of Force Committee regarding Policy 307, the Eugene Police Department's carotid restraint policy, and Policy 304, the shooting policy. He said the commission also heard a report on the department's approach to riots such as that occurred near campus in early October, and he commended the strategies used by the department.

Mr. Brown reported that the Human Rights Commission had discussed a resolution it planned to forward to the City Council regarding the City of Eugene becoming a Human Rights City.

Mr. Brown said the Crest Drive area neighbors would soon be receiving financial aid forms from the City for the recent road improvement.

Mr. Brown said the Jefferson-Westside Neighbors would hold a tree planting party at Monroe Park on October 30 from 10 a.m. to 4 p.m.

Mr. Brown encouraged councilors to go to Opus VII to view archival photographs of downtown prior to urban renewal that were placed in contrast to views of downtown as it was now. He regretted the buildings that had been lost. Mayor Piercy observed that the exhibit included a picture of the McMorren Building, now the Center Court building, which was in the process of being renovated.

Ms. Ortiz encouraged citizens who went trick or treating to wear bright colors and be safe.

Ms. Ortiz noted her recent trip to Cleveland, where she learned that City had partnered with Lane Transit District to purchase buses. She said that community had many people who were committed to changing the landscape of the city and she thought the trip was very worth-while.

Ms. Ortiz reported that she met with representatives of three neighborhood groups, the Trainsong neighborhood and River Road/Santa Clara neighborhood organizations to discuss their plans to submit applications for SNAP grants. She said the River Road/Santa Clara groups would like to finish the work that was started with the transition team.

Mr. Zelenka reported he recently attended a well-attended lecture on climate change at the University of Oregon presented by Goddard Center Director Jim Hansen. He had also attended the Renewal Energy Markets Conference, and learned that between 2008-2009, green power purchases increased by 17 percent. He advocated for the City to increase its share of green power purchases. Mr. Zelenka had also attended the October Sustainability Commission meeting, during which the commission discussed the Envision Eugene process and finalized its work on the Car Share Program. He reported the next Metropolitan Policy Committee meeting would be November 4 rather than November 11.

Mr. Zelenka had attended the Business to Business Expo at the Lane County Fairgrounds and said the event was well-attended and fun. He had also heard Jason Minor of 1,000 Friends of Oregon speak on land use at the Friends of Eugene annual meeting. He noted the meeting dates of the South University Neighborhood (November 3), West University Neighborhood Association (November 4) Amazon Neighbors (November 10), Fairmount Neighbors (November 16), and the Laurelhill Valley Neighborhood Association (November 18).

Mr. Zelenka reported that the University of Oregon and City of Eugene were planning many Halloween related activities. He suggested that those who failed to behave themselves could go to jail in Springfield.

Mr. Pryor reported on the \$1.4 million federal opportunity planning grant given to the community as a result of a cooperative partnership that included Eugene, Springfield, the University of Oregon, and Eugene Water & Electric Board (EWEB). He also reported that the Housing Policy Board met to begin its discussion of the grant application process. The board hoped to revise its processes that did not require those wishing to propose housing projects to invest so heavily in their proposals.

Mr. Pryor had attended the opening of the new EWEB Operations Center and praised the facility and recommended that citizens tour the facility.

Mr. Pryor reported he had also attended the recent Prevention Convention at Sheldon High School and found the City to be quite well-represented.

Ms. Taylor had also attended the Business to Business Expo and Mr. Minor's presentation.

Ms. Taylor hoped that other residents living near Crest Drive contributed to the assessments paid by those living on the street. She reported that she had received a compliment about a member of the construction crew from a resident.

Ms. Taylor said she received many complaints from residents about the trash along Amazon Creek south of 30th Avenue and had viewed the trash herself and found it disgusting. She did not know who had jurisdiction of the area in question.

Ms. Taylor said she had also attended an all-day meeting of the McKenzie Watershed Council. The council was doing a great deal of work in cooperation with landowners, including habitat restoration, fencing, and was using students for much of the work. The council also discussed its long-time use of consensus. She reported she had attended the Executive Committee meeting of the Lane Workforce Partnership and believed that organization was doing good work.

City Manager Jon Ruiz said Eugene had been notified it was chosen to host the 2014 Neighborhoods USA Conference. He credited Neighborhood Services Program Manager Michael Kinnison and his staff for their work in securing the conference. He anticipated hundreds of neighborhood leaders from across the country would attend the conference and believed it would be a great opportunity to showcase Eugene and the work it did with its neighborhoods.

B. BRIEFING: Quarterly Briefing to City Council from Police Auditor

Police Auditor Mark Gissiner reviewed the Police Auditor's quarterly report, which was provided to the council in its meeting packet. He highlighted several items in the report, including the pending hiring of a new Deputy Police Auditor; his meetings with representatives of the University of Oregon and the Eugene Police Department regarding issues related to safety issues at Autzen Stadium and the recent riot near campus; his office's work on policy initiatives for study by the Police Commission related to vehicular pursuits, search and seizure, and use of K-9 teams; his office's investigation into two allegations of criminal conduct against members of the EPD that proved to be unfounded; and his office's focus on customer service improvements. Mr. Gissiner also noted the summary of complaints included in the report. He invited questions.

Mayor Piercy said she, Mr. Zelenka, City Manager Ruiz, and Assistant City Manager Sarah Medary met with representatives of the University of Oregon to discuss issues such as student alcohol use and how best to work with neighborhoods dominated by student residents. She believed that over time, the UO and City would make progress on those issues.

Ms. Ortiz asked if any non-English speakers made complaints to the Police Auditor's Office. Mr. Gissiner said there were a few complaints from people whose first language was not English but had none that the auditor's office was unable to communicate with. Ms. Ortiz was surprised Mr. Gissiner had received no such complaints.

Ms. Ortiz expressed concern about the potential an accident could occur in connection with a high speed

vehicle pursuit and looked forward to the Police Commission's discussion of that. She wondered what authority Eugene had to diffuse situations that started in other jurisdictions. Mr. Gissiner said that about 300 people were killed annually in the United States because of police pursuits and one-third of those killed were innocent bystanders, so he was quite concerned about the issue. There were about 19 pursuits this year and he was examining each one. Ms. Ortiz was happy to hear that. Mr. Gissiner noted that the department was also doing more training in vehicle pursuits.

Police Chief Pete Kerns said it was the department's policy to terminate pursuits at the direction of supervisors. He said that supervisors had a good record of doing so. He reported that recently, the patrol captains had asked the Emergency Vehicles Operations Supervisor to review pursuits. Such incidents were getting a more critical examination, and as a consequence, the threshold for continuing a pursuit had gone up for both officers and supervisors. Officers were informed during the September training that the department would not pursue vehicles in the absence of a very good reason to do so. Officers were less inclined to enter into such pursuits as a result. Ms. Ortiz thanked Chief Kerns for that change.

Mayor Piercy suggested that Chief Kerns' remarks illustrated how the independent auditor process was supposed to work.

Mr. Pryor expressed appreciation for the briefing and the job Mr. Gissiner did in keeping the council informed.

Mr. Pryor referred to the summary of 63 reported allegations against the department and asked how many contacts the police had with the community in the ten-month period covered by the summary. Management Analyst Linda Phelps estimated the department had 90,000 and 100,000 contacts with the public over that period. Mr. Pryor observed that 63 was a relatively small number in light of that number of contacts, and he pointed out that many had been unfounded or found to be within policy. He acknowledged the goal was for no allegations at all, and believed the City was making progress that moved it in the right direction, and he did not want to lose sight of that fact.

Mr. Clark expressed appreciation for the Police Auditor system. He appreciated the manner in which the auditor and Civilian Review Board identified policy issues for the Police Commission to examine. He believed the result would be much-improved policies.

Mr. Clark asked if the Police Auditor accepted e-mailed and telephoned complaints. Mr. Gissiner said yes.

Mr. Clark determined from Mr. Gissiner that he had not received any complaints about the City's Downtown Public Safety Zone (DPSZ).

Mr. Poling said it appeared Mr. Gissiner was doing something right. The program had started out with controversy but that was now gone. He found it interesting to look at the statistics, pointing out that during the same period the department received 63 allegations of misconduct, it had received 101 recorded commendations, which he thought spoke louder than the 63 allegations. He wished the public could see the commendations and suggested they be posted on the City's Web site. He was glad people took the time to recognize the officers for the positive actions they took.

Mr. Brown asked Mr. Gissiner questions to clarify the hiring process for the Deputy Police Auditor position. Mr. Gissiner indicated that background checks were being done on two finalists.

Mr. Brown asked if the auditor and representatives of the UO Department of Public Safety (DPS) had discussed the UO's request to the City to give DPS officers more authority. Mr. Gissiner said the topic was discussed generally but was not a focus on the conversation.

C. WORK SESSION: Downtown Public Safety Zone

The council was joined by Police Chief Kerns and Municipal Court Judge Wayne Allen. Chief Kerns provided a PowerPoint presentation that identified the scope of the Downtown Public Safety Zone (DPSZ), the three types of exclusions permitted under the DPSZ, and the factors officers took into consideration when recommending in favor of excluding someone from downtown.

Chief Kerns reviewed the exclusion order process and noted that copies of the forms completed by officers and the court and an informational brochure about the DPSZ had been provided to councilors at their places.

Chief Kerns reviewed data indicating that officers excluded people only eight percent of the time they had the opportunity to do so. He reviewed the crime and penalty for offenses involved in exclusion actions, noting the liquor violations and trespassing made up the majority of violations for which people were excluded.

Chief Kerns provided statistical data on sexual offenses in the DPSZ that indicated criminal activity in that category was up to a degree sufficient to warrant the category's inclusion in the zone.

Chief Kerns reviewed the options before the council and recommended that: 1) the ordinance be extended for 18 months, 2) the council add sexual abuse offenses to the categories covered by the ordinance, and 3) to add the Oregon Revised Statute (ORS) for Eugene Code offenses with an ORS equivalent.

Mayor Piercy solicited council comments and questions.

Ms. Taylor asked Chief Kerns questions clarifying the nature of the offenses for which one could be excluded from downtown.

Ms. Taylor suggested that under the ordinance, people had to prove they were not guilty. In response, Judge Allen first clarified that he was not present to speak to the merits of the ordinance. He was taking a neutral position because of his position as a judge. He pointed out to Ms. Taylor that under the ordinance, judges did not have to grant the exclusion if they did not find it in the spirit of the ordinance, which was to reduce repeat offenses. Judges asked themselves if they had a good reason to exclude someone from public property because they believed there was a chance of a repeat offense. Judge Allen said that judges reviewed the police report and supporting affidavits before making that decision even when defendants did not appear.

Ms. Taylor asked what recompense one excluded from downtown received if they were found not guilty, other than the end of the exclusion. Judge Allen indicated Municipal Court offered no remedy.

In response to a question from Mr. Brown, Judge Allen shared a bar graph that indicated the exclusions issued over two years.

Mr. Brown recalled that Portland had established an exclusion zone that was no longer in place. He asked

what happened to that zone. Chief Kerns said Portland had drug-free and prostitution-free zones that were designed differently than Eugene's zones in that the police could impose exclusions without the involvement of a judge. Portland also had an exclusion zone in the downtown zone and subsequently ended it but he did not know why. City Attorney Jerome Lidz added that Portland's drug-free and prostitution-free zones covered substantial parts of the City. One of the zones was challenged and upheld by the courts but Portland let both ordinances expire.

Mr. Brown observed that levels for what was described by the police as two minor offenses, alcohol and trespass, declined, but overall crime volume did not go down, suggesting increases in other categories. He suggested the identified declines in alcohol violations could be attributed to Sgt. Fitzpatrick's work to persuade convenience store owners not to sell malt liquor downtown. He noted that alcohol and trespass levels went steeply outside the zone in nearby areas. Mr. Brown questioned if the City could actually state that the ordinance was working. Chief Kerns pointed out that 9.8 percent of all such crimes occurred in the 20-block area of downtown, unlike those other areas, and when crime went up in those areas it did not have the consequences it did in the downtown core. He also noted that the statistics about behavior crimes in downtown were generated by police officers who witnessed crimes rather than by calls for service.

Mr. Poling highlighted the fact that Chief Kerns had reported that about ten percent of all offenses that occurred in Eugene took place in an area that constituted about .0205 of the city. He suggested that "told the tale" about what was happening downtown.

Mr. Poling determined from Chief Kerns that a police officer could not issue an exclusion order without support from the prosecutor's office and the Municipal Court. Mr. Poling recalled that at one time, police officers could issue temporary staking orders that took immediate effect until a hearing could occur. He suggested that was even more restrictive than what the council was discussing. He did not think the ordinance violated anyone's rights.

Mr. Zelenka acknowledged that he was conflicted about the ordinance because he was concerned both about public safety and individual rights. He thought the combined impact of downtown development and an increased police presence would help improve conditions downtown over time, but also saw the immediate need for more tools to address downtown issues now. He said that crime levels downtown were down but he questioned the role the exclusion zone had in that, and agreed with Mr. Brown that activity had shifted to other areas. He emphasized the need for more jail beds and treatment options.

Mr. Zelenka asked Chief Kerns his thoughts on the impact of the exclusion zone. Chief Kerns believed that a series of initiatives would be needed to reduce crime in downtown. Speaking to the suggestion that while crime was down in the zone it had been shifted to other areas, Chief Kerns did not think that demonstrated the zone was not successful. The exclusion zone was taking dangerous and frightening people out of downtown where they wanted to be.

Judge Allen expressed disappointment in the number of people who failed to obey their exclusions. He said of the 135 exclusions issued, 33 people have violated their exclusion, and some repeatedly. He said that some of those individuals had mental health issues, but it still represented a significant number. Judge Allen emphasized the importance of the Springfield jail beds to successful sanctions and hoped it would make a difference.

Mr. Pryor believed there were two questions to consider, whether the zone worked and whether it was being abused by officers. Speaking to the first question, he said he learned from his conversations with

those who spent time downtown that they were seeing less illegal activity. Speaking to the second question, Mr. Pryor suggested there was a trail of accountability that went from officers to the judge. He recalled asking Judge Allen if he had seen such abuse, and Judge Allen had indicated he was not. Judge Allen had indicated he was not seeing people because of their appearance or status as a homeless person. Instead, he was seeing cases based on actual offenses.

Responding to a question from Ms. Ortiz, Judge Allen said he believed that the questions mentioned by Mr. Pryor were the questions of concern. Speaking to the question of whether it was being abused, he said he was not seeing that. It was more difficult to say if the ordinance was working.

Ms. Ortiz asked when the new downtown police officers would be the job. Chief Kerns said that three officers had been hired to date and by December 2011 would have five-person full-time team.

Ms. Ortiz did not object to adding sex offenses to the list of offenses for which one could be excluded. She wished the City could ban malt liquor citywide, not just in downtown, as its abuse affected the entire community.

Speaking to the question of whether the ordinance was working, Chief Kerns said it was statistically difficult to demonstrate in comparison to more major additions, such as more jail beds, for example. He suggested the department was "tweaking the dials" to determine what approaches were effective, and he thought it was a combination of those approaches that would work in the end. Chief Kerns was also discouraged by the number of people violating the exclusion order. However, that did not mean the zone was not successful. The removal of a single harmful person could do a great deal of good.

Mayor Piercy said she had heard people critical of the ordinance say that a disproportionate number of those excluded were self-identified as homeless. She said the homeless were as varied as other people, and were both good and bad. Some committed crimes and some did not. Being homeless did not make a person a criminal. She said it would be a problem if the ordinance targeted the homeless. Mayor Piercy pointed out that when the police removed offenders from the non-criminal population, they were removing predators that preyed on the young people downtown. That had the potential to improve lives that were not being counted statistically. She agreed with Mr. Zelenka about the need for more services that could make a change in offenders' lives.

Mayor Piercy suggested the ordinance sent a message that the council cared about downtown. She was not comfortable with exclusion zones and continued to consider the issues involved.

Mayor Piercy observed that there were many people who failed to appear in the courts, and the lack of jail space exacerbated that problem in all areas.

Mayor Piercy suggested a third question not asked by Mr. Pryor was whether the ordinance interfered with people's rights.

Mayor Piercy asked the council to consider the people affected by the ordinance, who included the offenders, their victims, and the people who lived in downtown.

Mr. Clark said he was downtown every day and could state that things had been better downtown during the past summer with the zone in place. The ordinance was a tool the police could use to address the problems that occurred regularly downtown, including violent confrontation, harassment, and predatory behavior. He believed Lane County was criminally under-serving the community because of the lack of

jail beds and the ordinance was one of the only ways to hold those who ignored the system accountable.

Mr. Clark said he wanted to extend the ordinance beyond 18 months but recognized that some councilors did not support that. He was willing to amend the ordinance to have the exclusion take effect after the hearing to address other councilors' concerns about due process.

Mr. Zelenka agreed that downtown faced serious problems, which he believed were complex and not easy to solve. He continued to be concerned that 60 percent of excluded were homeless. He also had concerns about due process. He asked Judge Allen how many defendants were accompanied by legal counsel. Judge Allen conceded that few defendants had counsel for 90-day exclusions, although almost all had counsel for one-year exclusions. Mr. Zelenka wanted to provide funding for legal counsel for indigent defendants. He also wanted to see the pre-hearing exclusions eliminated.

Responding to a question from Mr. Zelenka about the constitutionality of the ordinance, City Attorney Lidz indicated his belief the ordinance met due process requirements. Mr. Zelenka questioned if the ordinance would be constitutional if it was expanded to another neighborhood or the entire community. He did not think so. He said the tool was a very serious one to use on minor crimes committed by only a few people.

Mr. Brown referred to the mention of further discussions to occur with stakeholders and questioned whether that would actually happen in a meaningful way. He also questioned who the stakeholders were. City Manager Ruiz said the 18-month period prior to the sunset date was an opportunity for further discussion about efficacy of the ordinance and ways to refine it. Chief Kerns anticipated the stakeholders would include downtown residents and civil rights advocates.

Mr. Brown was concerned the exclusion zone would be like urban renewal and would never end and would instead be expanded to other areas. He did not see any value in what he termed a "parallel legal systems" because the community already had a good justice system. He did not think the statistics demonstrated any improvement downtown.

Ms. Taylor asked City Attorney Lidz to respond to Mr. Zelenka's question about the applicability of the zone to the entire city. Mr. Lidz was unaware of any city that had tried to apply such a zone more broadly and he had no case law to refer to. He said the way to determinate what process was due under the due process clause was to consider the interests at stake; what was the citizen's interest that was at issue from the government action? What were the government's needs? Would additional procedures make a difference and improve the accuracy of decision making? How burdensome would those procedures be? City Attorney Lidz believed if the council made the entire city an exclusion zone it would have to "beef up" the due process requirements and he would not recommend such an approach.

Ms. Taylor believed the stakeholders in the ordinance were all citizens with an interest in justice for everyone. She thought harassment and disorderly conduct were very vague terms and were dependent on one's point of view.

Speaking to Mr. Zelenka's earlier comments about providing funding for legal counsel, Mr. Clark said he had researched that issue and learned that it was cost-prohibitive to do so and could also set a dangerous precedent.

Mr. Clark, seconded by Ms. Taylor, moved to direct the City Manager to bring back for final action a revision to the Downtown Public Safety Zone Ordinance that would add cer-

tain sex offenses to the list of violations and crimes subject to exclusion, as well as add Oregon Revised Statutes equivalent offenses in promoting and compelling prostitution, and set a sunset date for the ordinance of 18 months. The motion passed, 5:3; Ms. Taylor, Mr. Zelenka, and Mr. Brown voting no.

Mayor Piercy adjourned the meeting of the Eugene City Council at 7:27 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sandra J. Subbs".

Beth Forrest
City Recorder

(Recorded by Kimberly Young)