MINUTES

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

June 23, 2010
Noon

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

ABSENT: Andrea Ortiz.

Her Honor Mayor Kitty Piercy called the June 23, 2010, work session of the Eugene City Council to order.

A. WORK SESSION:
West Eugene EmX Update

The council was joined by Lane Transit District (LTD) Board of Directors Chair Mike Eyster and EmX Project Manager Tom Schwetz. LTD General Manager Mark Pangborn and LTD Board member Gary Gillespie was also present, as were Rob Inerfeld of the City's Transportation Division and City Attorney Kathryn Brotherton.

Mr. Eyster noted the data-driven process LTD was going through to develop its alternatives for an EmX route to serve West Eugene. He said the LTD board would discuss the elimination of some of the alternatives under discussion to this point very soon and he wanted to share that information with the City Council.

Mr. Schwetz provided a PowerPoint presentation on the West Eugene EmX alignment selection process, noting the original 58 options under consideration, which led the Federal Transit Administration to suggest that LTD instead go through an alternatives analysis to narrow the options to a more reasonable number. He said that analysis involved public input opportunities, a technical advisory committee, and a citizen committee that included residents of the potentially affected areas.

Mr. Schwetz characterized the new process as a combination of an Environmental Impact Statement (EIS) and alternatives analysis and said it would lead to a locally preferred alternative. He discussed the advantages of the alternatives analysis approach, emphasizing the local nature of the process, its flexibility, and the opportunities for collaboration it provided.

Mr. Schwetz noted the criteria used to evaluate the options.

Mr. Schwetz reviewed the terminus and alignment options being considered for elimination from further consideration by LTD. Terminus options recommended for elimination included both full-length terminus options at Ed Cone and Ed Cone/Willow Creek and the Seneca terminus option. Alignment alternatives recommended for elimination included both Amazon alignments and West 7th Place. Mr. Schwetz shared a map showing ridership for the West 7th Place option.

Mr. Schwetz discussed options on West 11th Avenue west of Garfield. He emphasized LTD's confidence

that it could make West 11th Avenue work as an EmX route.

Mr. Schwetz reviewed LTD's recommendations for options to retain, which included:

- West 13th Avenue between the Downtown Eugene Station to West 11th Avenue via Chambers Street (this alternative includes two design options, a two-lane transitway or a frontage alley design option on West 13th Avenue between Polk and Taylor streets);
- West 6th/7th avenues between the Downtown Eugene Station to West 11th Avenue via Garfield (this alternative includes four design options: a Lincoln/Charnelton couplet or a two-way bus lane on Charnelton, and either adding or reassigning an existing lane on West 6th and West 7th avenues between Blair and Fillmore streets);
- West 11th Avenue (between Garfield Street and Commerce Street terminus)

Mr. Schwetz reported that LTD had received information from ODOT that indicated reassigning a lane on 6th/7th avenues was problematic. He reminded the council that 6th/7th avenues were ODOT facilities, and ODOT would be looking closely at LTD's impacts on those roads.

Mr. Schwetz reviewed the next steps in the process, which included board approval to narrow the options, the preparation of an Alternatives Analysis Report, followed by release of the report and the start of the locally-preferred alternative decision-making process.

Mayor Piercy believed it was wise to narrow the options at this point given the cost, time, and expense involved in analyzing 58 options. She wanted to learn more about 7th Place as an option. Mayor Piercy suggested that members of the West Eugene Collaborative could host a meeting of business owners in the West 11th Avenue area to facilitate further discussion, and offered her assistance in making that happen. Mr. Eyster endorsed the suggestion.

Mayor Piercy solicited questions and comments from the council.

Mr. Clark also wanted to hear more about the 7th Place alternative. He determined from Mr. Schwetz that the most compelling reason for eliminating its option was its longer travel time; Mr. Schwetz pointed out that the travel time was longer than the no-build option. Mr. Clark expressed concern about the impact of an EmX route on businesses along West 11th Avenue, west of Garfield Street. He appreciated that LTD proposed to mitigate that impact on a case-by-case basis, but he questioned if all impacts could be mitigated. For example, removal of parking could have a detrimental effect on a business. In addition, he perceived issues with the further constriction of West 11th Avenue, pointing out that many buildings had been constructed near the street, and there was no way to widen the street, and adding an EmX route could create a bottleneck. He hoped LTD could study a route that traveled relatively near by and avoided harmful effects. He urged LTD to retain the West 7th Place option, until it could engage more people in discussion.

Ms. Taylor agreed with Mr. Clark's points about West 7th Place, and the need to engage more people. She determined from Mr. Schwetz that the City had jurisdiction over 6th and 7th avenues, east of Jefferson Street. She continued to support a Highway 99 option but acknowledged that option had been eliminated.

Ms. Taylor observed that the locally preferred alternative for residents and businesses adjacent to the proposed EmX route seemed to be the no-build alternative.

Mr. Zelenka shared the concern expressed by Mayor Piercy and Mr. Clark, about removing the West 7th Place option. However, he agreed with the Mayor it was wise to narrow the options, and there appeared to

be a good rationale for removing the options mentioned by Mr. Schwetz.

Mr. Zelenka said his experience with the current Eugene route indicated that bus rapid transit seemed to work better with a dedicated lane. He asked how much of the West 11th Avenue corridor route would consist of dedicated lanes. Mr. Schwetz said that LTD proposed to add a lane in each direction. The lane would not impede egress, would allow turning movements, and would improve the flow of traffic. It lacked a hard curb so that motorists could cross it. It moved the buses out of the through-travel lanes, and pulled right-turn traffic out of the flow of traffic. He did not expect that LTD would make traffic conditions on West 11th Avenue, worse than they currently were.

Mr. Zelenka believed that the Eugene-Springfield EmX route had been "a spectacular success." He rode the route often and found EmX to be a good system. He speculated that as the community grew denser; such a system would be even more valuable in getting people out of their cars and into transit. The next corridor would be even more important and he thought the option created a "significant alternative." He did not want to see the recommendation option end up being the "no-build" alternative.

Mr. Schwetz agreed with Mr. Zelenka that exclusive rights-of-way were useful but pointed out that several segments of the first two routes ran in mixed traffic. He said that eventually, LTD might be able to establish exclusive lanes on those routes, but he believed the beauty of the system was its flexibility, and that it could be made to work with the state of the community as it was today as well as tomorrow.

Mr. Zelenka agreed with Mr. Clark that there were places on West 11th Avenue, where the construction of buildings up the street had created a problem.

Mr. Zelenka was willing to look at all of the options but emphasized the importance of dedicated lanes.

As a member of the West Eugene Collaborative, Mr. Pryor agreed that currently, West 7th Place was not viable, due to a lack of ridership. However, he agreed with Mayor Piercy and Mr. Clark that the option should be retained to see if it could be made to work.

Mr. Pryor acknowledged that LTD was being responsive to the community in the number of options that it considered, but he was pleased to see the options narrowed and particularly commended the elimination of the Amazon Creek option.

Mr. Pryor said he kept hearing the question of whether EmX was needed in the first place. He believed that public transit was desirable, but that local corridor service was getting more expensive to offer, and EmX was an affordable option to that existing service that still got people to their destinations quickly and efficiently. He perceived EmX as a replacement for corridor service, rather than an add-on to corridor service.

Mr. Pryor thought that LTD needed to put the routes where people lived and worked now and where they would live and work in the future in a way that did not disrupt what was in place now. Mr. Pryor did not want to see LTD implement EmX in a way that required the condemnation of property, the construction of infrastructure, or street widening.

Mr. Brown was not convinced that the no-build alternative was not the best option. He noted the cost involved in acquiring property to facilitate the route, which would be between $105 and $113 million in today's dollars. He determined from Mr. Schwetz that the local match would be about 20 to 40 percent of that total, and indicated LTD intended to seek State funding for the match. Mr. Brown observed that the cost involved was a lot of money to save three minutes of travel time.

Mr. Brown agreed with the mayor and other councilors about the West 7th Place option, and suggested that the area might further develop if LTD ran an EmX route through the area. He acknowledged that the businesses and jobs that people were trying to reach now, existed on West 11th Avenue.

Mr. Brown noted the e-mail sent to the council by Ilona Kolezar of the West Eugene EmX Extension Steering Committee proposing that Pearl and Oak streets be added back to the options under consideration, and he supported the suggestion because of the potential loss of parking spaces on Lincoln and Charnelton streets.

Ms. Solomon determined from Mr. Schwetz that the option costs included the costs of property acquisition. She further determined from Mr. Schwetz that even though it did not have an elected board of directors, LTD was allowed to condemn property. Ms. Solomon expressed concern that a non-elected board could initiate condemnation of private property.

Mayor Piercy said while she wanted to retain the West 7th Place option, she thought that West 11th Avenue, was the option that reached the most businesses and jobs, and was closest to the existing neighborhoods. She said the farther a resident was from the route, the less easy it was to use the system. She reminded the council of the MAX system in Portland, which the community had initially resisted, but which she asserted had been "proven to be good to businesses and good for mobility."

Mayor Piercy hoped that at some future point the community had the capacity to consider the connection between the rail and bus systems. She said that the community needed to prepare for the needs of both today and tomorrow.

Mr. Pryor wanted to avoid an artificial conflict between the benefit to business and the benefit to the public. He urged a balanced approach as LTD moved forward. He encouraged LTD to consider a West 11th Avenue alternative that did not require a lot of infrastructure. That possibility was creating considerable concern among West 11th Avenue business owners. He wanted to believe that LTD could provide the service along West 11th Avenue, without the need to construct infrastructure that disrupted business, and asked LTD to keep that in mind as it explored that corridor.

Mr. Clark was also interested in hearing more about the no-build option in terms of its impact on people.

Mr. Clark was not convinced that it was wise for LTD to make such a heavy capital investment when the organization was facing operational funding shortfalls. He acknowledged the funding streams involved were different. He welcomed more information about the concept that EmX would lead to smaller operational budgets, as Mr. Pryor's remarks seemed to suggest.

Mr. Clark asked if LTD had secured funding for the West Eugene EmX extension. Mr. Schwetz said that LTD had yet to begin the actual grant application process. It had to go through the locally preferred alternative process before the Federal Transit Administration would consider a grant application. Mr. Clark asked if LTD would expect the region to fund the system if that funding was not forthcoming. Mr. Eyster assured Mr. Clark that would not happen.

Mr. Zelenka said LTD's goal was that the system would be completely funded by the State and federal governments. He asserted that such transit projects were good for businesses; they enhanced businesses along the route. He further asserted that Portland's experience was a great example of that. Mayor Piercy agreed.

Mr. Zelenka said the decision facing the community was a 30-40 year decision, not a decision for tomorrow, and the community needed to consider greenhouse gases and the impact transit could have in reducing greenhouse gases, which he maintained was significant.

Mr. Zelenka said it was not enough to provide alternatives, but those alternatives needed to be convenient and easy for people to use. He believed that EmX was successful for those reasons and would be successful in West Eugene for the same reasons.

Mr. Eyster acknowledged the City's commitment to reducing greenhouse gases, congestion, and reliance on fossil fuels, and said EmX realized those goals and moved people cost-effectively while promoting businesses along the way.

B. WORK SESSION:
Civilian Review Board Annual Report Presentation

The council was joined by Police Auditor Mark Gissiner and Civilian Review Board Chair Kate Wilkinson. Civilian Review Board members Steve McIntyre, Bernadette Conover, and Eric Van Houten were also present.

Mayor Piercy expressed appreciation for the remarks of the Civilian Review Board (CRB) regarding the work of the Police Auditor, and said those comments made her feel like the City was making progress. She noted the CRB's request for a review of the ordinance that governed its operations.

Ms. Wilkinson highlighted the recommendations in the Civilian Review Board's report, beginning on page 3 of the Agenda Item Summary.

- *Community impact case designations*—now only the auditor could classify a case as community impact case, which impacted how the board could handle a case; many members of the public had suggested that the board should have a role in that decision or make the decision. Ms. Wilkinson acknowledged there was no consensus on the board in regard to the issue.
- *Information/disclosure*—the board wanted to provide as much information as possible to the public, but members of the public complained about not being able to see things such as the Internal Affairs report. Ms. Wilkinson acknowledged the constraints of State law.
- *CRB authority to order cases reopened*—a CRB majority had voted to order the City to reopen an investigation, which led to a legal opinion from the City Attorney that the board lacked that authority. The ordinance allows the CRB to reopen community impact cases but was silent in regard to closed cases.
- *Exception of good cause exception to six-month filing deadline*—the ordinance allowed the auditor to make an exception without providing a definition of "good cause." The CRB believed such a definition was needed.

Mayor Piercy left the meeting and turned the gavel over to Mr. Clark.

Mr. Clark expressed appreciation for the work of the CRB and noted that he and Ms. Taylor had the opportunity to discuss such issues with Mr. Gissiner frequently. He noted the CRB report was prepared by the chair and vice chair and asked if it was reviewed and voted on by the CRB. Ms. Wilkinson said that the report was circulated among members, and revisions were suggested and made ,and the report was again circulated. There was no formal vote on the report but she believed members were in general agreement.

Mr. Clark noted the CRB's recommendation to form another Police Auditor Ordinance Review Committee (PAORC) and requested Mr. Gissiner's comments on that subject as well as on the remainder of the report.

Mr. Gissiner believed the report represented consensus on the part of the CRB. He suggested that the council keep in mind that several CRB members were relatively new. He was hesitant to ask for major changes in the ordinance until the current CRB had gotten more experience. Speaking to the recommendations, Mr. Gissiner noted that the decision regarding who could designate a community impact case was a council decision. He believed that the Police Auditor's Office provided as much information to the public as was possible in a manner consistent with State law. He had discussed the CRB's concerns with the State Attorney General, who indicated he planned to offer changes to State law regarding personnel records.

Mr. Clark asked what was uncertain about State law as it related to confidentiality. Ms. Wilkinson said that one of the State statutes that discussed personnel records spoke to disclosing the record if it was considered to be in the public interest, but there was no statutory direction as to who decided that or what was in the public interest. She did not think the City Attorney had issued such a definition, and the Attorney General had declined to respond to the CRB's inquiry.

City Attorney Glenn Klein reported that there were no cases that defined what was in the public interest for purposes of the statute in question. He said that the City Code or City Charter guided the City in regard to who made the determination as to what was in the public interest. In regard to the Internal Affairs files, the City Manager or Police Chief made that determination. If someone disagreed, that individual could challenge the determination under State law, and the District Attorney would rule on the subject. That decision could also be appealed to Circuit Court. He had advised the CRB that determination was not within its purview or the purview of the Police Auditor. Mr. Clark said that the issue did not appear to be one of confidentiality, but one of authority over who determined what was in the public interest. Ms. Wilkinson agreed.

Mr. Gissiner said the Attorney General had indicated there was no legislative definition of "public interest" and he believed one was needed. Currently, the Attorney General made that determination on behalf of the State.

Mr. Gissiner noted that many of the CRB's recommendations were related to collective bargaining agreements, and he deferred to the attorneys as to whether one superseded the other. He did not think that Oregon had yet had a court case that stipulated a collective bargaining agreement overrode an ordinance, or vice versa.

Speaking to Mr. Clark's question about reconstituting the PAORC, Mr. Gissiner said he could see a case being made for that. He reiterated his concern about the need for the CRB to gain more experience with the revised ordinance.

Mr. Clark said he thought the PAORC did a thorough job and he was happy with the way the revised ordinance had worked to this point. He believed that it might be premature to form another review committee at this time.

Mr. Zelenka thanked Ms. Wilkinson and the other CRB members and expressed appreciation for the board's work. He believed that eventually the City would want to review the ordinance again, but pointed out that the last review was fairly recent. He suggested that the CRB begin to compile a list of issues for future review. However, he thought it would be good for the CRB to work with the revised ordinance and

get more experience before returning to the ordinance.

Speaking to the Public Records Law, Mr. Zelenka suggested that if the CRB had specific ideas for changes to the law, it should forward them to the Council Committee on Intergovernmental Relations to consider as a legislative priority. He was interested in pursuing a legislative definition of "public interest."

Mr. Zelenka did not believe that a collective bargaining agreement could trump a municipal ordinance.

Mr. Zelenka said the PAORC purposely created a strong auditor's position to ensure the authority was vested in the auditor, and the CRB was advisory to the auditor. He was unsure he wanted to change that as he believed it was a still a good thing to have a strong auditor.

Mr. Pryor commended the work of the CRB. He agreed that the CRB would benefit from more experience but he did want to see its concerns addressed in an effective way at some point.

Mr. Pryor was pleased with the direction the Police Auditor's Office had taken over the past four years. He thought the City had stayed on the right course. It acted thoughtfully, deliberately, and collaboratively. He agreed with the comments he had heard from Mr. Clark and Mr. Zelenka in regard to forming a new PAORC at this time.

Mr. Gissiner suggested that staff could consider how to address the issues related to information disclosure, as opposed to the City being forced into a court situation that took years to resolve.

Ms. Taylor agreed that the council should wait a while before reconsidering the ordinance. She thought the CRB should be a smaller body of three to five and pointed out it took longer for a larger group of people to work together effectively. She suggested that the CRB could serve as the next PAORC. She suggested that it might be that the CRB should be able to overrule the Police Auditor in some instances as well as reopen cases, and recommended the council discuss the issue in more detail with advice from the CRB.

Mr. Clark recognized CRB member Steve McIntyre for comment.

Mr. McIntyre did not believe the issues that the CRB raised were related to its lack of experience, but rather to ambiguities in the ordinance. He said that clarity in regard to those ambiguities would make the CRB's job easier. He suggested the council consider the CRB's request through that lens. He thought the CRB was working well as a body and encouraged the council to attend its meetings. Ms. Wilkinson agreed. She anticipated that some of the same issues that prompted the recommendations could come up again and the CRB would be in the same position. She said the CRB's suggestion for a new PAORC was just one idea for how to move forward.

Mr. Clark agreed with Mr. Zelenka that the City Council created the system with a strong auditor in mind and he was happy with that decision. He saw no ambiguity in the current ordinance in regard to the auditor's ability to determine what is good cause. However, he could appreciate that when there was disagreement between the auditor and the CRB one way to address it was through a new arrangement. He anticipated the council would discuss the issues again in a work session.

Mr. Brown commended the work of the CRB. He agreed with Mr. McIntyre that the recommendations were not born of inexperience. He though the CRB was merely requesting clarity on the issues involved. He thought that the issue related to disclosure was somewhat out of the City's hands given that it was

governed by State law. He said that Oregon was quite restrictive in what was disclosed. Mr. Brown believed that the council should clarify the other two issues and suggested that the CRB be asked to come up with some recommendations.

Mr. Zelenka distinguished the issues of definitions and clarifications from that of structural authority changes. He believed that issues related to authority and structural changes needed to be reviewed by a new PAORC. He also believed that the lack of a definition of "good cause" was not an issue of structural authority but rather something that the auditor and CRB could work through and bring back to the council. He suggested that the CRB continue to identify such issues and recommend remedies.

Mr. Zelenka expressed appreciation for the CRB's evaluation of the Police Auditor. He agreed with the remarks of Mayor Piercy regarding that assessment and commended the work of Mr. Gissiner.

Mr. Gissiner agreed with Mr. McIntyre about some of the clarity issues raised by the CRB and the agreements that had been written before he arrived; some of them created ambiguities, depending on one's interpretation.

Mr. Gissiner commended the preparation and hard work of the CRB.

Speaking to Mr. Zelenka's earlier remark that a municipal ordinance trumped a collective bargaining agreement, Mr. Klein indicated that the CRB's protocols were part of the City's collective bargaining agreement with the police union, and when that agreement was renegotiated, the City and union could revisit them. The collective bargaining agreement did not override the local ordinance, but if a local ordinance inconsistent with the agreement was passed after the contract was signed by the manager, that ordinance was not consistent with State law and was unenforceable. If management and the union could not reach agreement, the issue went to arbitration, and the arbitrator was not bound by local ordinances.

Mr. Clark adjourned the work session at 1:30 p.m.

Respectfully submitted,

Sandra Stubbs
Deputy City Recorder

(Recorded by Kimberly Young)