

MINUTES

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

June 14, 2010
7:30 p.m.

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 meeting of the Eugene City Council to order.

1. PUBLIC FORUM

Mayor Piercy reviewed the rules for the public forum.

Judith Van, 89326 Old Coburg Road, discussed her experience with the City's assessment policies. She said when the City improved her street it had changed the character of the street, resulted in the removal of trees, and forced her to move foundation plants at personal cost. She was also required to annex to the City and to unnecessarily connect to City sewers at a very high cost. She had suffered from a high-handed, dictatorial, and rude City engineer. Subcontractors broke her water pipe, leaving her with an extremely high water bill for which she was never reimbursed, and no one at the City would talk to her about it. City staff had made mistakes in the assessment of her property and she was told to anticipate additional assessments and threatened with a lien. When her mother became ill, Ms. Van had wished to construct a small dwelling to house her and had applied to partition the property. She had learned the cost would be so high that she could not afford it, and lost another \$7,700. She considered it money thrown away. Ms. Van told the council it was not doing a good job.

Mary Salinas, General Delivery, 97401, identified herself as a spokesperson for the homeless. She objected to a City task force recommendation that those with small offenses clean up downtown as part of their community service because she believed the crews would include sex offenders and violent criminals who could harm the homeless. She asserted that the City had "sent sex offenders to the Eugene Mission," which had homeless women and children, for years. She asked how the City could fail to care about homeless women and children. She further asserted that Mayor Piercy had visited downtown Eugene without seeing the homeless youth.

Daniel Cooper discussed his positive and negative experiences with the City's emergency services personnel.

Planet Glassberg, PO Box 11011, Eugene, asked the council to place a measure limiting taser use on the ballot. She said tasers could kill people even when used correctly. Those most likely to be tasered were also those most likely to die or be disabled. There was no way to tell who would be permanently affected by tasers. She averred that some officers found the taser too convenient to use in controlling difficult situations. She reviewed the parameters of a ballot measure, which would define tasers as a deadly weapon.

to restrict its use. The measure would also preclude the use of tasers to punish and intimidate those not doing anything serious enough to justify death at the hands of an officer, and allow citizens to regulate tasers.

Ms. Glassberg said in October 2007, the American Civil Liberties Union (ACLU) of Oregon recommended that law enforcement agencies that employed tasers should use them subject to strict limitations suitable for a weapon that could result in fatalities. The ACLU further recommended that law enforcement agencies should emphasize training and non-violent techniques to minimize the circumstances in which tasers might be deployed.

Charlotte Behm, Springfield, endorsed the naming of the Willamette/I-5 Bridge to Whilamut Passage and thanked the council for considering the name during its deliberation on the Consent Calendar.

Carol Berg-Caldwell, 2510 Augusta Street, shared a poem with the council critical of the Police Department's public safety efforts downtown.

Chris Calef, East 35th Street, said he had many good experiences with the Eugene Police Department (EPD) and the majority of officers were respectful and polite. He was concerned about the other 10 percent, who caused the majority of the problem. He averred that those officers were not disciplined and further asserted that Eugene officers were not fired for failure to do their job unless they raped someone. He said without accountability, there would be continued community trust issues. Speaking to the subject of tasers, Mr. Taylor said that officers would use tasers without facing deadly force. He urged the council to place a measure limiting tasers on the ballot.

Randy Prince, PO Box 927, Eugene, identified himself as the chief proponent for a ballot measure to limit taser use. He called on the council to adopt an ordinance to curb taser use. He believed that the community approved the use of tasers only when their use represented a chance to reduce deadly force. He said the council's action in adopting the Police Commission's policy recommendation in regard to tasers was not in accord with the opinions of those he spoke to. The council's deliberations did not consider the range of options, such as banning tasers or a moratorium on their use. The recommendations were from the staff perspective only. He said that police officers have different interests than the community. They wanted to be free from bullying officers and death by taser. He said the council's job was to represent the citizens' interests.

Barbara Edmonds, 27th Avenue and McMillan Street, asked the council to place a measure limiting the use of tasers on the ballot. She reviewed a letter she had written to the editor of *The Register-Guard* in support of her position asserting that abuses of power occurred in the Eugene Police Department and officers knew but would not admit it. She said that she would support tasers if it was true that they were used only when an officer would otherwise use a gun. However, she did not think that was the case. Ms. Edmonds asserted that tasers were used by officers as an alternative to physical restraint and to inflict punishment. She questioned whether guns rather than tasers would have been used in recent high-profile incidents involving the police. She suggested that if the officers would had not have deployed guns in those instances, they should not have used tasers. She said that citizens could not trust officers to police themselves, and she called on the council to set limits on taser use and to hold officers who abused their authority accountable.

Ms. Edmonds shared the result of an informal poll she conducted of nearly 100 people, a vast majority of who favored her position.

Brian Keith Mason, 1458 Moss Street, #102, a member of the Eugene Human Rights Commission (HRC), said that based on recent events, he believed the actions of the commission were at odds with its charter responsibility. A majority of commissioners were seeking to dismiss another commissioner and he had become convinced there was no basis for that action. He thought a conflict of personalities existed, and that one member's passion for process was mistaken for racism. Mr. Mason believed that his fellow commissioners had chosen the route of least resistance and had decided to condemn a member without hearing a report on the incident. He objected to that as he believed that the commissioners should be a watchdog for all citizens, color blind, tolerant, gender-neutral, and must show courage of character by refusing to perpetuate bias in any form. Mr. Mason wanted to protect the voices of dissent in the ranks of the HRC. He asked the council to reject the commission's request that it dismiss the individual in question and that it direct the HRC to resolve its internal dispute.

Ruth Duemler, 1745 Fircrest Drive, Eugene, supported the Eugene Police Department's use of tasers but also supported putting a measure on the ballot to limit that use. She had collected signatures for the measure and had never found it so easy to collect signatures. Everyone she knew regretted what had happened in regard to the use of tasers in Eugene.

Laurie Stern, 1320 Lincoln Street, a Western Environmental Law Center intern, discussed how the State's new gray water goals could assist Eugene to meet its sustainability goals.

Joann Ernst, 1295 Buck Street, expressed appreciation for the work of the Police Commission on the taser policy but did not feel it was sufficient. She asserted she saw "confused looks on some of the councilors' faces" during the work session because of the wordy policy, which she thought was open to misinterpretation by the Police Department. She believed that allowing the department to use tasers on those displaying active resistance would lead to continuing abuse.

Speaking to Mayor Piercy's earlier comments during the work session that the community had supported the use of tasers following the death of Ryan Salisbury, Ms. Ernst recalled that the community advocated for tasers as an alternative to deadly force. She had collected 60 signatures for Mr. Prince's petition in just a few days. Most people were supportive of designating tasers as deadly force in the same way as guns. She thought that made sense. Ms. Ernst challenged the council to put Mr. Prince's petition on the ballot to see what the public had to say about tasers.

Robert Roth, Eugene, discussed his belief that the Police Department's perception of tasers was "entirely too casual." He said tasers killed people sometimes but it was not possible to know who would die from the effects of the taser until someone was killed. He criticized the Police Commission for failing to approach the issue by considering what sort of standard was appropriate for the use of the taser; instead, the commission started from the viewpoint that the taser was less lethal and merely ratcheted down the deadly force standard by eliminating the word "immediate." The taser sometimes represented deadly force and had ramifications that were not well-understood, which was why Amnesty International had urged a moratorium on its use. Mr. Roth believed the council should take responsibility for the policy and hold a public hearing. He believed the most appropriate approach was a moratorium pending adoption of the policy, and that the most appropriate policy would limit taser use to deadly force situations.

Kathy Ging, 2878 Harris Street, urged the council to place a measure limiting taser use on the ballot. She noted the many lawsuits filed by victims of tasers and their relatives. She said that many community

members, including many middle-class residents, signed her petition and expressed concern about the use of tasers by the police.

Ms. Ging further recommended that the council appoint a liaison to work with Lane County staff on the solar financial incentives research that the Board of County Commissioners supported on May 18, 2010. She shared information about the positive impacts of solar energy.

Samantha Chirillo, 3930 17th Avenue, suggested that the council and the community were at a cross road in regard to the use of tasers. She said that she was a petitioner and few people she spoke to had second thoughts about signing the petition. People understood “there was a problem here” and that there was “complete inaction on the part of the City Council.” She suggested that continued council inaction had a “chilling effect” on members of the youth community, who were seeing their peers being repeatedly abused without repercussion. Abusing officers did not suffer consequences. Ms. Chirillo said that the department needed training to reprioritize its communications nonviolently. She said the council needed to get on the same track as the citizens. She criticized the exclusion zone ordinance adopted by the council, saying it merely shifted activities and denied people civil liberties while failing to address public safety problems. She asked the council to adopt the “Curb Taser” ordinance or let the voters decide.

Drix, High Street, said he was present to share his vision for the community in the public forum created by the council. He said the forum reminded him how much of a community Eugene was. He acknowledged residents of his neighborhood sometimes had trouble connecting and suggested that when residents were connected, they became a “We-Gene.” He invited others to attend the forum and share their voice. He said that Eugene was the best community in the country and he encouraged everyone to work together.

Mayor Piercy closed the Public Forum.

Mayor Piercy expressed appreciation for the comments of Ms. Salinas, and said that she had been actively working on the issue of homelessness for several decades and had walked around with homeless youth. She did not go anywhere without seeing them. She did not think that the youth had anything to do with the problems downtown, but thought that they would benefit from increased public safety.

Speaking to the remarks of Mr. Prince, Mayor Piercy said the shift in her views on the taser policy had to do with her conversation with the ACLU. She had believed that the taser should only be used in lieu of guns, but the ACLU had recommended that the council accommodate situations where taser usage could prevent the escalation to the use of lethal weapons. She took the ACLU’s input seriously and had taken it into consideration in her thinking.

Mayor Piercy acknowledged that the use of a taser was serious and could have serious repercussions. If the department was to use them, it should use them in a limited way, seldom and carefully.

Mayor Piercy indicated that the council was aware of the situation mentioned by Mr. Mason and was working on it.

Councilor Zelenka believed Ms. Salinas’ remarks directed toward the mayor were unfair and unfortunate. He said that Mayor Piercy was a tireless advocate for the homeless.

Councilor Zelenka noted that the ACLU had recommended that the City allow officers to use tasers when an individual posed a credible threat of serious physical injury to themselves, the officer, or another person. That was reflected in the City's revised taser policy. He thought the policy both limited the use of tasers and addressed some of the ambiguity that previously existed. Councilor Zelenka said he had shared Mayor Piercy's earlier position but now agreed there were circumstances outside of the application of deadly force where taser use was appropriate. He thanked the Police Commission for its work on the policy. He suggested that people read and understand the new policy before signing the petition.

Councilor Ortiz was concerned about Ms. Van's situation, and asked if the City placed liens on property. City Manager Ruiz indicated he would research Ms. Van's situation and provide more information. Councilor Ortiz also expressed concern about Ms. Salinas' comments, particularly as they regarded the Eugene Mission. She said the Eugene Mission did its best to monitor those who used its facilities. The City had no control over the Eugene Mission, which it did not support with any funding. She believed the mission did a good job. She pointed out that sex offenders were to be found all over the community, not just downtown.

Speaking to the comments of Mr. Mason, Councilor Ortiz expressed appreciation for his remarks but was unsure what the council could do, given the power of the HRC to dismiss its own members. She hoped that the HRC had tolerance for the dissenting positions of its members.

Mayor Piercy clarified the HRC could make a recommendation to the council about its membership but could not dismiss a member.

Councilor Solomon was unsure what was going on in regard to the HRC and said she would like to know more about the incident that prompted the resignation of the individual in question from the commission.

Councilor Solomon also wanted some follow-up on Ms. Van's situation.

Noting that the HRC would meet the following day, Mayor Piercy suggested that the council withhold judgment until the commission had finished its discussions.

Councilor Taylor thanked those who spoke about the subject of tasers and noted her own support for a moratorium on their use. She said she had not received the information from the ALCU that the Mayor mentioned.

Councilor Taylor expressed appreciation for the remarks of Mr. Mason. She also wanted to know more about his concerns. She also wanted to learn more about Ms. Van's situation.

Mayor Piercy indicated the input from the ACLU she mentioned was brought forth at the City Club.

2. CONSENT CALENDAR

A. Approval of City Council Minutes

- November 9, 2009, Work Session
- January 5, 2010, Work Session
- January 11, 2010, Work Session
- February 16, 2010, Council Meeting

- April 14, 2010, Work Session
- B. Approval of Tentative Working Agenda**
- C. Initiation of Public Comment Period on Proposal to Name New Willamette/I-5 Bridge the “Whilamut Passage Bridge”**
- D. Approval of Presiding Judge Term Extension**

Councilor Clark, seconded by Councilor Taylor, moved to adopt the Consent Calendar.
Roll call vote: the motion passed unanimously, 8:0.

3. PUBLIC HEARING:
Eugene Water & Electric Board Water Rights

City Manager Ruiz introduced the topic. He said the hearing was an opportunity for the council to hear from the public on the Eugene Water & Electric Board (EWEB) water rights issue and its proposal to provide water to the City of Veneta. He said that action was scheduled for June 28, 2010.

Mayor Piercy opened the public hearing.

Kevin Matthews, PO Box 1588, President of Friends of Eugene, objected to EWEB’s proposal to sell water to Veneta. He said Friends of Eugene was challenging the action as it had major growth implications. He said water rights were complicated and multi-layered but he did not think there was any “ticking clock deadline” other than the unstated goals of Veneta and EWEB. He called on the council to take its time and understand its options as well as take the growth implications of the action into account.

Ashley Miller, 2675 Norkenzie Road, objected to EWEB’s proposal to sell water to Veneta. She said that EWEB was acting beyond its charter authority. She suggested that the sale would encourage unsustainable growth by creating bedroom communities that promoted travel and added to green house gas emissions. Ms. Miller also feared that the sale would set a precedent for sales to other communities. She said that the water rights in the McKenzie River were not fully appropriated and there was no “back of the line” to return to, as had been suggested.

Kathy Ging, 2878 Harris Street, opposed EWEB’s proposal to sell water to Veneta. She noted the lowering water table in the rural areas and the fact of groundwater contamination and suggested the west was in a 500-year drought cycle. She said that people were aware of those facts when they moved to the area. She asked if the City should extend water to those with arsenic or high iron levels in other areas of the county as well. She discussed the danger of commuting back and forth from Veneta and said as a realtor she did not support additional property development in Veneta. She questioned why the subdivisions being created in such water-limited areas were not designed to exist appropriately in such a setting, particularly given the anticipation of continued drought. Ms. Ging did not think that EWEB should be selling water to Veneta when the community might need the water for its own agricultural use.

Michael Mattick, Region 2 State Water Master, introduced himself to the council and volunteered to answer any questions councilors might have that were related to water rights. He provided copies of his business card to the council.

Howard Bonnett, 1835 East 28th Avenue, was concerned about the planning implications of the proposal and recalled that he had been on the Planning Commission in the 1960s and 1970s when the commission discussed the urban service boundary. It was called an urban service boundary because it was intended to restrict service outside the boundary and facilitate infill and restrict sprawl. He objected to giving water to Veneta so it could grow, particularly in light of projected water consumption. Veneta residents often drive to Eugene for their work, which is antithetical to the community's attempts to combat climate change. He felt it was a big mistake to move forward. He averred that the McKenzie River kept the water quality of the Willamette River acceptable, and suggested that such use was more important than Veneta residents having drinking water. Mr. Bonnett recommended that the council study flow projections for both rivers to determine how much water was really available.

Jan Wilson, Western Environmental Law Center, submitted her comments in opposition to EWEB's proposal to sell water to Veneta in writing.

Karen Booth, 3015 Emerald Street, did not want EWEB, as the City's agent, to act without the City's consent in selling water to Veneta. She was also concerned that City water rights would be used to facilitate urban sprawl. She said that it was a way of getting around the urban growth boundary, which was established for a good reason.

Mayor Piercy closed the public hearing.

Councilor Clark recalled that during the recent council work session, he had heard that it would take 120 years to perfect the next McKenzie River water right and that the sale to Veneta went toward furthering that end. He asked what would be required to perfect the water right in its entirety. Intergovernmental Relations Director Brenda Wilson said she did not have exact figures, but believed that the third and final water right on the McKenzie River was divided into 25 percent chunks. EWEB did not believe that current growth projections would allow the community to hit the target that triggered the first 25 percent mark. In order to secure the water right, EWEB would have to certify the water in 25 percent chunks, and the service to Veneta as well as projected growth would give EWEB a better chance of hitting the first 25 percent, which guaranteed the community the use of the water and gave it time to figure out how to secure the next 25 percent allocation. She said that EWEB could certify a smaller amount, but the community would then lose its rights to seek the remaining rights up to 100 percent of the right. In the future, if the community wanted additional water, it got into the "back of the line."

Councilor Brown stated there was no date from the Water Commission for perfecting the rights. Ms. Wilson said the State Legislature passed new laws regarding water right perfections for Oregon municipalities because of water hoarding issues. Currently, the time line was not clear; it was somewhere between five and twenty years. She suggested the State would realize if a community was not moving toward certification of its water rights; if it appeared a municipality was moving toward certification, the State was more likely to issue an extension of time for certification or moving toward the next 25 percent than it would if the municipality was not making a reasonable effort toward certification.

Councilor Brown asked if EWEB had an estimate of when Eugene growth would achieve the target without water sales to another community. Ms. Wilson said that those projections would not be realized for more than 50 years, and EWEB did not believe that the State would consider that a reasonable amount of time. Councilor Brown concluded that EWEB did not believe that but he suggested it had not been told that by

the State. Ms. Wilson agreed, saying that the new laws passed in 2005 were meant to address long-held, uncertified water rights. At that time, a reasonable time was considered five years.

Councilor Brown speculated that EWEB would have to sell more water to more communities to reach the target in a reasonable time. He further speculated that fears about the water rights could spur sales to other communities such as Creswell, Junction City, and Coburg.

Councilor Zelenka said that another wholesale water sale beyond the sale to Veneta would be needed to reach the next 25 percent target. He questioned how much more water EWEB would have to sell to reach the next 25 percent.

Councilor Zelenka recalled that he had asked who was in line for the McKenzie River water rights now, and the council had learned that the rights were not fully allocated and there was a surplus of 200 million gallons and an additional 18 million gallons that Eugene had the rights to. He asked what would happen if EWEB did not perfect all the future rights and then filed for a water right immediately, and what the impact of that would be. Ms. Wilson said that EWEB would have to hope that there would be water available. She understood that two permits had been applied for on the McKenzie River, which was the only body of its size in Oregon with water still available for appropriation. She reported that there was also an in-stream water right related to water flow; anyone on the other side of that water right had a junior water right. If flow was limited by drought, the State could step in and require junior water right holders, which would include Eugene if it got to the back of the line, to shut off their water. She said that EWEB wanted to both protect its water right and the 1961 date stamp that accompanied it. The only way to do that was to put the water to beneficial use, which could include serving unanticipated growth in Eugene. She said the City would not come close to needing another 25 percent increment for two decades. Councilor Zelenka questioned how many more water sales EWEB would need to make to perfect the water right. City Manager Ruiz indicated staff would return with that information.

Councilor Zelenka asked if Veneta could claim a water right on the McKenzie River. Ms. Wilson said yes. However, it would have to build a treatment plant. The City was running that scenario through the triple bottom line tool.

Councilor Clark said that EWEB Commissioner John Brown spoke of other rights farther down the river, and asked if there was another municipality with the capacity to sell water to Veneta. Ms. Wilson was not aware of any such municipality but acknowledged she was not aware of all the municipalities with water rights and would have to do more research.

Councilor Brown asked Water Master Mattick about the two entities that applied for water rights. Mr. Mattick indicated that a private entity, White Water Ranch, had applied for irrigation rights from the McKenzie River and Goose Creek. That entity could get a contract use for stored water from the BLM and could take that water from the river for irrigation.

Water Master Mattick shared information about the State's water right permit application requirements and emphasized the benefits of certification. He said once a certificate was issued, the State could put no more conditions on it, whereas the right developed under an extension could be conditional.

Speaking to Councilor Brown's question about the deadline for the perfection of water rights, Water Master Mattick said that EWEB's time frame for perfection, 2074 – 2123, was a time frame beyond what

the State typically considered in terms of extensions. He confirmed there was a deadline. The deadline had already been extended multiple times. If EWEB did not secure another extension, the State would certificate the need that had been demonstrated.

Water Master Mattick confirmed that there was unallocated water in the McKenzie River and each application would be reviewed and would be subject to a public process. As time went on, it would be harder to secure a permit. He also confirmed there was no other municipality that could sell water to Veneta.

Responding to a question from Councilor Zelenka, City Attorney Glenn Klein indicated that the matter before the council was not a land use issue so the council did not have to hold the record open. Staff would attach any submitted testimony to the next council agenda item summary related to the item. He suggested that any additional materials be provided to the council by June 21 by 5 p.m.

Councilor Taylor believed the “City could take EWEB back if it wanted to.”

4. ACTION: Human Rights Commission Membership

Councilor Clark, seconded by Councilor Taylor, moved to concur with the Human Rights Commission recommendation to remove the Position 6 incumbent from the commission and fill the vacancy from the non-commission members of the commission’s standing committees.

Councilor Taylor, seconded by Councilor Zelenka, moved to amend the motion by making the council the body that makes the appointment.

Human Rights Commission staff Holly LeMasurier indicated that the code calls for the commission to appoint a member from among its standing committees.

Councilor Taylor withdrew her motion. Councilor Zelenka withdrew his second.

Responding to a question from Councilor Poling, Ms. LeMasurier indicated that the commissioner in question would have missed six months, including two absences before a proposed leave.

Responding to a question from Councilor Clark, Ms. LeMasurier indicated the term in question was due to expire in July.

Councilor Clark concurred with Councilor Poling’s remarks.

Councilor Poling said he did not understand what was going on and for that reason would not support the motion.

City Manager Ruiz said it was not merely an issue of missed meetings, but an anticipated absence that would mean a total of six meetings, or half the individual’s term, would be missed. Councilor Poling pointed out that a leave of absence could be granted by the commission.

Councilor Brown said the individual in question also missed events and subcommittee meetings that were attended by other commissioners. It was not merely a question of missing two meetings.

Councilor Poling said he had considerable respect for HRC Chair Linda Hamilton but the letter that was sent was not informative and lacked transparency.

Councilor Pryor agreed that a significant part of the problem was the lack of full communication about the rationale for removing the commissioner in question. He understood the concern about attendance but said that removing a person from a commission should not be done capriciously. He did not have enough information about the situation to make a judgment at this time.

Councilor Ortiz noted her long-time membership on the commission and noted that there was no precedent in her memory, as persons who did not attend were encouraged to resign. She did not know why that approach was not taken, but if the chair of the commission was making the request she was happy to support the motion. However, she did not perceive the votes were in place.

Councilor Pryor left the meeting.

City Manager Ruiz recommended that the council postpone action until June 28.

Councilor Clark, seconded by Councilor Taylor, moved to postpone action until June 28.
Roll call vote; the motion passed unanimously, 7:0.

Mayor Piercy adjourned the meeting at 9:35 p.m.

Respectfully submitted,

Beth Forrest
City Recorder

(Recorded by Kimberly Young)