

MINUTES

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

June 14, 2010
5:30 p.m.

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

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

A. COMMITTEE REPORTS AND ITEMS OF INTEREST FROM MAYOR, CITY COUNCIL, AND CITY MANAGER

Mayor Piercy thanked Mr. Clark for facilitating council meetings in her absence. She reported that she attended the 2010 Rail Conference held by the American Public Transit Association (APTA) in Vancouver, British Columbia, and had learned a great deal. She noted that she had been one of the few elected officials in attendance. Mayor Piercy reported that she also met with representatives of the Cascadia Corridor group and the railway vehicle manufacturer Talgo and found that all were committed to the planning process. Mayor Piercy reported that she was forming a state caucus for rail and would serve as co-chair of that group. She invited councilors to contact her if they wished to be involved to a greater degree.

Mayor Piercy announced that the kick-off event for “Summer in the City” was on June 16.

Mayor Piercy reported the opening for the Envision Eugene Youth Art Contest was on July 2 at the Atrium and would start at 5 p.m. She congratulated City Manager Jon Ruiz for the positive profile of him recently published in *The Register-Guard*.

Mayor Piercy reported that downtown food cart vendors were asking to have the tables and chairs reinstalled and she hoped a balance could be found between their needs and the needs of public safety.

Mayor Piercy circulated a book commemorating the most recent Project Homeless Connect event.

Mayor Piercy noted the League of Oregon Cities Conference, scheduled in Eugene from September 23-25.

Mr. Clark said it had been an honor to sit in for the Mayor and he appreciated the opportunity. He had attended the welcoming home ceremony for Colonel James Dutton of the National Aeronautics and Space Administration in the Mayor’s stead and found the event very interesting.

Mr. Clark expressed appreciation for the chance to participate in the recent Envision Eugene workshops and anticipated more would be shared about those events later in the meeting. He thanked City staff for meeting with him to discuss his concerns about the Eugene Comprehensive Lands Analysis and the Envision Eugene process as it related to drainage ways in the Santa Clara area. Mr. Clark noted his attendance at the most recent Police Commission meeting on June 10, at which the commission discussed its work plan. He anticipated the commission

would present the work plan to the council soon. He commended Police Commission Chair Tamara Miller for her work.

Mr. Zelenka had also attended the welcoming ceremony for Colonel Dutton, who had been in his class at the United States Air Force Academy. He termed Colonel Dutton a true hero.

Mr. Zelenka shared a copy of a commemorative issue of the 1982 opening night playbill for the Hult Center, which featured a performance by Marilyn Horne. He noted that he had been the key note speaker at the graduating ceremony for University of Oregon graduates in the Environmental Studies Program. He congratulated all the graduates. He reported that he had attended the last meeting of the Eugene Climate and Energy Action Plan Citizen Committee and thanked that group for the work it had done over the last 12 months. He had also attended part of the recent three-day Envision Eugene workshops.

Mr. Zelenka said he enjoyed reading the article about City Manager Ruiz. He noted the upcoming June 16 Sustainability Commission meeting, at which it would discuss its action and work plans.

Ms. Ortiz announced that the Lane Regional Air Protection Authority was doing an outreach event at the Red Cross on June 16 for west Eugene residents concerned about their air quality. She reported she had attended the first day of the Envision Eugene workshops and found the event to be inspiring because of the number of residents who were willing to work together. She looked forward to the results. She said the Oregon Hispanic Commission meetings had conflicted with the second day. She had also attended the recent GANAS Program Assembly at Kelly Middle School for Latino Youth and Empowerment Group, "In the Spirit of Cesar and Dolores" and found it very entertaining. She had also attended the graduation ceremony for the Eugene Alternative High School and said all the kids got to talk about each other and discuss what they honored in each other.

Ms. Ortiz reported that she recently had breakfast with Mel Pine and his CEO group, which meets quarterly. She reported that she received the "Milk Toast Award" at the We Are Bethel Celebration. She had been glad to have Lorna Flormoe with her at the event. Lorna had worked with her on the initial Weed and Seed grant. Ms. Ortiz observed that it had been nine years since Eugene had been awarded the grant.

Mr. Pryor reported that the Housing Policy Board met on June 7 to review applications for the next housing project near the old Westmoreland School. He envisioned a recommendation would be forwarded to the council soon. He had attended the recent Bailey Hill Safety Plaza dedication on May 18 and commended the quality of the event.

Mr. Pryor noted an upcoming special meeting of the West Eugene EmX Extension Corridor Steering Committee to review the results of a recent open house regarding routing options. He reported that the Lane Council of Governments Board of Directors would meet on June 24 in Florence to discuss its "prosperity agenda" items.

Mr. Poling congratulated his grandson Kyler on his recent graduation from middle school.

Mr. Brown said he attended a Human Rights and Equity Forum at the Baker Center. He regretted the poor attendance and said there had been interesting conversations. After the council's discussion of the potential that EWEB would sell water to Veneta he had attended a public forum on the subject where some good questions were asked and he was able to further his knowledge of the topic.

Mr. Brown supported the reinstallation of tables and chairs to assist the downtown food vendors. He did not think eight tables were enough to serve five businesses. He hoped the City could do something to assist them.

Ms. Solomon said she also attended the We are Bethel Celebration. She said every year the event got better and it captured what the Bethel community was all about. She thanked staff for its work in coordinating the event.

Ms. Solomon recognized the retirement of Community Development Director Richie Weinman and commended Mr. Weinman for his long-time service and wished him the best.

Ms. Taylor also supported reinstallation of tables and chairs downtown as otherwise it was hard to find a place to sit during First Friday Art Walks and other events.

Ms. Taylor reported she had suggested to some people hanging around the County courthouse that they clean up the area and they had responded that they would if they were given some equipment. She was happy to know that people would be able to work off their community service obligations by cleaning downtown but continued to believe it would be a positive thing if the City hired young people to do that work.

Ms. Taylor had attended the most recent meeting of the McKenzie Watershed Council and said the council continued to work with private property owners on riverbank cleanup and restoration projects. She said the Southeast Neighbors had met the previous week and had gone through a miniature Envision Eugene process. She announced the Crest Neighbors would meet the next evening to celebrate completion of its neighborhood history project.

Ms. Solomon determined from City Manager Ruiz that the staff was already working on the issue of table and chairs to support downtown food vendors.

City Manager Ruiz reported that the Fire and Emergency Medical Services Department had a new fire fighter recruit class. He had attended some of the events in the recent National Collegiate Athletic Association Outdoor Track and Field Championships held at Hayward Field at the University of Oregon campus in Eugene and commended the quality of the event and the event organizers. He looked forward to the Olympic Trials at Hayward Field in 2011. City Manager Ruiz reported that he had also attended the recent Bravo Breakfast and said it was a great effort to bring the arts and business community together.

City Manager Ruiz said Mr. Weinman would be missed both by the organization and the community. He thanked Mr. Weinman for all his work.

Ms. Ortiz hoped the City was committed to having an individual such as Mr. Weinman working on the issues of homelessness and affordable housing. City Manager Ruiz assured her that was a City priority.

Mayor Piercy said the track and field events held at Hayward Field were a demonstration of sportsmanship and audience participation in its best sense. She expressed appreciation to all those involved.

Mayor Piercy recognized there were 22,000 students attending college classes in Eugene and congratulated those who were graduating and wished them well. She also congratulated the graduating high school students.

B. WORK SESSION:
Eugene Police Department Taser Policy

The council was joined by Police Commission Chair Tamara Miller and commission member Marilyn Nelson. Ms. Miller recalled the previous council work session on the topic and updated the council on the work the commission had done on the policy since that time and the many opportunities the public had to comment on the commission's policy revisions.

Ms. Nelson reviewed the revised taser policy.

Mayor Piercy solicited council questions and comments, first recognizing commission members Mr. Brown and Mr. Clark.

Mr. Brown thanked commission members for their work on the policy. While he doubted the policy would ever be perfected, Mr. Brown believed the revised policy was an improvement over the previous policy. He found Section 309.4(1) and (2) somewhat complicated and hoped that training would help officers distinguish the difference between sections. He had reviewed the policy language used in Denver, Colorado, which seemed clearer, and asked if that had been examined. Mr. Brown thought that Denver's policy language related to no use was clearer than Eugene's language. He said if he was to change anything he would add back the word "physical" to Section 309.4(a)(2). He said the community wanted the policy to be as clear as possible for the safety of all concerned.

Mr. Clark thanked the Police Commission for all its hard work on the policy. He particularly recognized the contributions of the commission's Use of Force Subcommittee. He said the process involved a great deal of review and public input.

Speaking to Mr. Brown's concerns regarding Section 309.4(a)(2), Mr. Clark said the word "physical" was deleted after Police Chief Pete Kerns had asked the commission to what situations it had envisioned the word would apply. The commission had discussed a person holding a knife who disobeyed an order to drop the knife but who took no active physical steps forward; as previously written, the person would not be subject to being tasered because they made no physical movement. However, the individual was still an immediate threat. That example had prompted a commission majority to remove the word.

Mr. Clark referred to 309.4(4), which spoke to consideration of other options and said he was challenged by the commission's request that officers consider other options because there was considerable work done to establish the use of force standard. It was "all necessary force" rather than "least necessary force," and there was a difference.

Mayor Piercy asked Police Auditor Mark Gissiner to speak to the policy. Mr. Gissiner said his primary responsibility was to evaluate officer conduct based on adopted policies and procedures, so he first asked himself if the policy was understandable to officers. He believed that with the proper training, which was a key component, the policy was understandable. Mr. Gissiner also asked himself if he could effectively evaluate police conduct using the policy, and the answer was yes. He asked himself if the policy was consistent with national standards; he believed it was.

Mr. Gissiner emphasized the importance of officer training, particularly training regarding the mentally ill, and hoped the appropriate treatment of mental illness was a major consideration in training. He also noted that the device would be tested biannually and he supported annually testing as recommended by the Institute of Justice.

Mr. Gissiner observed that the deaths that occurred from the application of a taser, either from a contributing or primary standpoint, were generally from applications that were longer than five seconds.

Mr. Gissiner emphasized the importance of thorough and accurate reporting from both supervisors and officers. He also felt that the issue of aftercare was very important.

Mr. Gissiner concluded by saying he found the policy workable for both the Police Department and the Police Auditor's Office.

Mr. Pryor expressed appreciation for all the work done by the commission. He said it was a difficult policy to create because the commission was defining the rules of engagement for the worst case scenarios, rather than the best case scenarios. He believed the commission had created a policy that addressed a difficult situation in the best possible way. Mr. Pryor wanted a policy that was as respectful as possible to both sides involved. He did not want to place an officer at unnecessary risk. He also did not want to ever think a taser would be used in Eugene arbitrarily, casually, or without justification. For that reason, Mr. Pryor wanted a policy that was useful to officers and potential perpetrators alike. He was grateful for the work the commission had done and was prepared to support the policy.

Ms. Ortiz also thanked the members of the Use of Force Subcommittee and the Police Commission. She acknowledged the considerable amount of work that had been done and thanked Ms. Miller for her work as chair. She had attended many meetings where the policy had been discussed and said the comments made by commission members and members of the public had been interesting and useful. She hoped the department could use the policy. She expressed appreciation to Mr. Gissiner for his comments.

Ms. Taylor thought it was up to the council rather than the department to decide whether the policy should be adopted as it was the organization's policy-making body. She asked City Manager Ruiz for comment. City Manager Ruiz said that the City was seeking feedback from the council. He believed it was within Police Chief Pete Kerns' purview as to how to deploy the tool. Ms. Taylor asked if the council could decide not to have the taser as a tool. City Manager Ruiz said yes. Ms. Taylor suggested a moratorium on the City's use of tasers until more public involvement could occur. City Manager Ruiz said he would certainly take a motion passed by the council to that effect as guidance.

Ms. Taylor believed the policy should be within the council's purview given its impact on the public. She asked how many times the taser was used last year. Ms. Nelson indicated the taser was employed 49 times between January 2007, and January 2009. Since January 1, 2010, there had been ten activations in nine incidents. Ms. Taylor asked how many times a gun would have been deployed in those instances. Ms. Miller said that in the pilot project, officers would have used a gun six times.

Ms. Taylor did not recall many times when guns had been used by officers against perpetrators. Chief Kerns indicated that the department did not have good figures on the times when deadly force would have been authorized, but officers were frequently involved in such situations. He said that the pilot project gave the department an opportunity to quantify that. Ms. Taylor speculated that the officers would not have used deadly force but the taser could be lethal. She asked what would have happened during the pilot without tasers. Chief Kerns said the officers would have had to use another kind of force, with the outcome being an injury to the officer (40 percent more) or subject (60 percent more).

Ms. Taylor asked what de-escalation techniques were. Chief Kerns said the department used crisis intervention training (CIT) to teach officers how to calm someone into a compliant state. There were a number of products that taught officers verbal de-escalation techniques that allowed the officer to gain compliance. He clarified that those techniques were employed before a taser was deployed, not after deployment.

Ms. Taylor believed the council should hold a public hearing on the policy and make a decision on its use.

Mayor Piercy said her position had originally been in support of tasers in lieu of lethal weapons, but she had subsequently learned that there were situations where it became desirable for an officer to employ a taser to avoid the need to use a lethal weapon. She acknowledged that was a judgment call on the part of the officer. She pointed out that it was the department's goal to avoid having to hurt someone.

Mr. Zelenka thanked Ms. Miller and Ms. Nelson for the many hours of work the commission spent on the issue. He suggested the policy was a balance between the need to keep officers out of harm's way and protection of citizens. He found the minority report very helpful.

Mr. Zelenka suggested the policy before the council, due to the fact it was controversial, was under the purview of the council.

Responding to a question from Mr. Zelenka, Chief Kerns indicated that it was the department's practice to summon Emergency Medical Services directly after an individual was tasered. That would not change under the revised policy.

Mr. Zelenka noted disagreement among commission members about whether police officers should be tasered in training, and the fact the training did not require tasering. Ms. Miller recalled that there was some liability for the City involved in requiring an officer to be tasered in training. Chief Kerns said that departments varied in that requirement but he had decided against it as unnecessary. He pointed out the department did not require that officers be struck by batons or other less lethal forms of force.

Mr. Poling asked Chief Kerns to share his opinion of the policy. Chief Kerns said he thought the policy was a good one and he was comfortable with the recommended thresholds as being consistent with other departments around the country. The policy allowed the police to treat people humanely while reducing the likelihood of injury and the need to use deadly force.

Referring to Section 309.2 of the policy, Mr. Poling suggested semi-annual testing for tasers in recognition of Eugene weather conditions.

Mr. Poling questioned the deletion of text in Section 309.4(1)(a)(3) that allowed the officer to gain control of a fleeing person with the use of a taser. Ms. Nelson said the commission felt the situation was already covered by Section 309.4(1)(a)(2). Mr. Poling suggested that an officer was likely to be harmed by someone resisting arrest and supported adding back the text.

Mr. Clark shared Mr. Poling's concerns about the safety of officers and believed the policy would help address that concern. However, he agreed with Ms. Nelson that the language the commission adopted in subsection (2) addressed the concern about fleeing suspects.

Mr. Clark referred to the text in the policy that called for an officer to consider all force options, which he believed was wise in general but which he thought watered down the use of force standard to some degree. He said the commission had a lengthy discussion that the use of force standard was not the least force necessary but rather all necessary force. He pointed out that when a fire broke out, residents did not want the fire department to use the least water necessary. He thought the case was the same when an officer or community member was in danger. Mr. Clark said he had supported removing that text but other commission members did not share his concern.

Responding to a question from Mr. Zelenka about the deletion of the word “immediate” from the phrase that previously read “creates an immediate credible threat,” Chief Kerns shared a typical scenario involving domestic violence to illustrate how a credible threat might not be immediate.

Ms. Ortiz said the policy was about placing safety first. She agreed that training was important, but noted her own experience working in an emergency room and witnessing out-of-control individuals in mental health crisis who required physical brute strength to be brought under control. She viewed the taser as a tool to allow the police to do their work.

Speaking to Ms. Taylor’s remarks, Ms. Ortiz said she did not know if she would want to tell the police to use a taser anymore than she would tell Public Works what size tires to buy. She believed it was up to Police Chief Kerns to decide whether to deploy tasers in Eugene and hoped that the chief took the amount of work the commission had done on the policy into consideration.

Mr. Pryor said that the policy spoke to the alternatives that existed for officers and provided guidelines for the reasonable use of the taser. He said the commission had attempted to provide guidelines for reasonable preemptive use of the taser. He understood that people would have different comfort levels in regard to what constituted reasonable preemptive use. Mr. Pryor thought the commission got close to defining what was difficult to define, but he believed that the commission also recognized that ultimately, officers would have to use their judgment about when to use the taser. He believed the policy might require additional tweaks but considered it a step forward.

Ms. Taylor asked Chief Kerns if there were any situations that would have had different outcomes if the revised policy had been in place. Chief Kerns did not know. He said the policy set a high standard for the use of the taser but was only one element of a larger overall approach toward reducing the department’s use of force. He emphasized the importance of training in reducing force as well as the importance of the other factors, such as how a call was dispatched and how an officer positioned himself or herself in the response, in reducing force, making it less likely that the department would have to use the taser.

Mr. Brown agreed that training was a key factor in reducing the use of force. He said that ultimately, the citizens decided on the job description for police officers as well as other City employees, and the ultimate decision to use tasers rested with the council in consultation with the department.

Mr. Brown was willing to accept the policy with the acknowledgement it might need to be refined in the future. He envisioned the possibility that the council might decide it did not want to use tasers, and noted that both Memphis, Tennessee and San Francisco, California, did not use tasers.

Mayor Piercy believed Chief Kerns would take all the council input to heart. She conceded that the taser was a controversial tool but recalled that the community had asked that the City employ them as an alternative to more lethal weapons. She acknowledged tasers were dangerous but the City wanted to use them carefully as that alternative. Mayor Piercy believed the Police Department was admired for its rare use of weapons and hoped the same approach was taken to taser use, in that they were rarely but appropriately used.

Mayor Piercy appreciated the fact that the commission and chief acknowledged the policy needed to be revised and that they recognized other changes might be needed.

Mayor Piercy said that some citizens did not want the City to use tasers at all but she believed there were legitimate uses for tasers and that the City would use them in a way that satisfied community standards.

Mr. Zelenka reiterated his belief that the policy represented a rare situation where the council should take purview. He thought otherwise, the policy would remain controversial. He indicated he was willing to accept the policy as written. He thanked the commission for its hard work and for proposing the well- thought-out revisions. He called for a council vote on the policy.

Mayor Piercy expressed concern that outside of the fact there was a purview question, a motion could tie the hands of the organization when it came to making changes to the policy. She suggested that rather than approve or adopt the policy, the council could accept it.

Mr. Zelenka noted his own use of the word “accept,” which applied council acceptance of reports that were subject to change, as opposed to documents or policies that the council adopted.

Mr. Poling indicated he could not accept the policy due to his concerns about Section 309.4(1).

Mr. Poling indicated support for leaving the policy within the purview of the Manager and Police Chief.

Ms. Taylor believed that the policy was the public’s business and the public was very interested in the policy. She again called for a public hearing. She reiterated her belief that the policy was within the purview of the council.

Ms. Ortiz believed the council had given the subject a lot of time because the community asked it to. She thought the council had fulfilled its role by directing the commission to examine the policy, and she recognized the amount of public input that occurred. She did not object to holding another public hearing, but thought the commission, council, and staff had already given the subject considerable time and energy.

Mr. Clark emphasized the time the commission had put into the issue. While he was willing to offer the council a motion related to the policy, he personally felt that approach was inappropriate because he considered the policy to be like any other policy recommendation put forth by the commission to the chief. However, he did not object to endorsing the policy.

Mr. Clark, seconded by Ms. Taylor, moved to accept the Police Commission’s draft policy and endorse to the chief.

Ms. Taylor indicated she seconded the motion as a matter of form but would not vote for the motion.

Mr. Pryor thought if the council endorsed the policy, it placed a stamp of approval that sent a message to the community that the council had heard it and endorsed the work that been done, but was not trying to control it. He wanted to be supportive, and thought endorsing the policy sent the right message of support. He emphasized the element of the motion related to endorsement of the policy.

The motion passed, 6:2; Ms. Taylor and Mr. Poling voting no.

C. WORK SESSION:
Envision Eugene—Project Approach

Due to a lack of time, this item was not addressed.

Mayor Piercy adjourned the work session at 7:25 p.m.

Respectfully submitted,

Beth Forrest,
City Recorder

(Recorded by Kimberly Young)