

MINUTES

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

February 8, 2010
5:30 p.m.

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

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

A. WORK SESSION:
Federal Surface Transportation Program – Urban Funds

Mayor Piercy said she and Mr. Zelenka served on the Metropolitan Policy Committee (MPC) and it was their responsibility to represent the transportation goals for the City. She wanted to ensure that the councilors had an opportunity to give input. She noted that the council had made a commitment to using flexible dollars in the Surface Transportation Program – Urban Funds (STP-U) for road preservation. She wanted everyone to be aware of this and how it affected what they did on the MPC. She recommended that they discuss whether they wanted to continue the commitment to preservation or whether they wanted to have some flexibility to use the funding for other projects.

City Engineer Mark Schoening stated that the Metropolitan Planning Organization (MPO) had initiated the process to allocate STP-U funds for the federal Fiscal Year (FY) 2011-2013, with the MPC scheduled to take action on the allocation on April 8. He said under the existing framework, between \$3.18 million and \$5.28 million would be available in the category for project development, preservation, and modernization projects.

Mr. Schoening related that, consistent with council policy, staff had developed and prioritized a list of preservation projects. He said the Coburg Road project was at the top of the list, primarily because it was between two segments scheduled to be maintained with the bond measure funding. Martin Luther King Boulevard and Hilyard Street were the other two projects, in order of priority. He explained that when the MPO allocated funds in the past, Eugene had received approximately half of those funds. He said the three projects were at an estimated cost of \$2.77 million, or approximately half of the high end of what could potentially be allocated.

Continuing, Mr. Schoening said at the time the council had established the policy, the backlog had been \$94 million. He stated that the preservation backlog had exceeded \$107 million, according to the most recent data analysis from 2009. He related that though the backlog had increased, quite a bit of progress had been made and they had established several funding sources between the federal STP dollars, the gas tax, the bond measure, and the reimbursement component of the transportation Systems Development Charge (SDC). He noted that when the SDC had been identified as a source for pavement preservation it was estimated to provide \$700,000 in annual revenue, but with the decline in development that number had fallen to between \$150,000 and \$200,000. He said even though progress had been made, a long-term sustainable source for funds for pavement preservation had still not been established. Because of this, it was staff's recommendation to continue to prioritize pavement preservation for federal STP-U funds.

Mr. Schoening had provided data on how much the City had spent on bicycle and pedestrian improvements in the past five years at the request of Mr. Zelenka. He said it totaled \$12.5 million over five years and represented a wide range of funding sources, including federal transportation enhancement funds, federal earmarked funds, federal STP-U funds, some of the stimulus funds that had come to the City in the past year, Oregon Department of Transportation (ODOT) bicycle and pedestrian grant funds, bond measure revenue, transportation SDCs, Community Development Block Grant (CDBG) funds, and, more recently, a Safe Routes to School program. He noted that the latter was a new state program that used federal funds. He said what was not included in the summary were the bicycle/pedestrian improvements that were part of the urban standard projects, such as the Court House District, the Crest Drive/Friendly Street/Storey Boulevard project, the Elmira Road/Maple Street project, and the Chad Drive project, or the money used for accessible pedestrian signals and access ramps, paid for primarily out of CDBG funds. He stated that *Alternative Projects for STP-U Funding* was listed in *Attachment A*.

Mr. Poling asked if the alternative projects would be in addition or in lieu of the suggested projects. Mr. Schoening replied that the alternative projects would be in lieu of those recommended.

Mr. Poling asked if it would be possible to get more than \$2.7 million. Mr. Schoening responded that historically the MPC would allocate funding at a lower level and then, when it became clear how much federal STP-U funding would be available, the MPC refined and added to the allocations.

Mr. Poling related that the council had received a number of emails in response to the Sustainability Commission's recommendations. He said while they were noteworthy, because of the backlog of pavement preservation, he thought it important to maintain the current infrastructure. He supported the staff recommendation.

Mayor Piercy supported the projects before them, unless council feedback indicated that they should do otherwise. She added that she would not want people to think that because they supported those projects there was not strong support for the bicycle conveyance infrastructure. She pointed out that the list of proposed bicycle improvements was long and there were other sources to seek funding for those types of projects.

Mr. Clark said the list of bicycle improvements was impressive and it showed the City's leadership on that front. His concerns lay with making sure they maintained preservation as a high priority for the present. He considered this a high priority because of cost, if needs were not addressed quickly enough, the cost would escalate and the City would lose its ability to do other things. He supported the staff recommendations.

Mr. Pryor indicated that because the backlog of pavement preservation projects was significant and impacted many people it was still his top priority. He underscored that this did not mean he did not want the other projects to go forward. He wanted to do so to the greatest degree they could with other sources of money.

Mr. Zelenka thanked Mr. Schoening for the memorandum. He averred that the City did spend a lot of money on bicycles, but it also spent a great deal of money on cars. To him, the issue was one of flexibility. When he read the policy, it discussed preservation in terms of existing capital transportation infrastructure and it did not say roads. He thought this could be construed to include bicycle and pedestrian paths because this was part of transportation. He pointed to Lane Transit District (LTD) route reductions and greenhouse gas planning and the work he had done on the Governor's task force as

examples of emerging issues that needed to be taken into consideration. He felt that the existing policy constrained Eugene.

In response to a question from Mr. Brown, Mr. Schoening stated that STP-U funds had been used for the North Bank Path overlay and three like projects.

Mr. Brown said in reviewing the list of the three priority projects he wondered if it would hurt to add a couple of bicycle projects, perhaps in the fourth and fifth places on a list. Mr. Schoening reiterated that the \$5.28 million would be the amount shared by all of the MPO areas, which included Coburg and Springfield and historically Eugene received about half of the allocation. Mr. Brown ascertained that to add a bicycle project would mean that one of the recommended projects would have to come off the list.

Ms. Taylor commented that she had not noticed that Martin Luther King Boulevard was in bad shape and asked if it was. Mr. Schoening replied that all three projects were for roads that needed an overlay prior to failing.

Ms. Taylor thought Hilyard Street should be higher on the list. She indicated that she would not be in favor of flexibility to use the STP-U funding for new roads. She would support being more flexible when it came to more preservation projects or more bicycle paths.

Ms. Ortiz commented that the three examples on the list of pedestrian and bicycle projects on *Attachment A* were not very comprehensive. She thought if they were going to look for ways to increase the usability of bicycle paths, West Eugene was “sorely underutilized.” She said she would look to the *Pedestrian and Bicycle Master Plan Update* to see how to get safely from West Eugene to town. She would support discussing a little more flexibility when it came to the STP-U funding, but she also felt they needed to address the road and pothole issues.

Mayor Piercy related that there had been a discussion at the MPC of being conscious of moving in the direction of preservation and greenhouse gas emission reductions as well as determining some metrics to see what they were accomplishing. She passed around copies of an application that a sub-group of the MPC had put together that sought to indicate where any project was “moving the dial” on those issues. She said it would come before the MPC for approval in the coming week.

Mr. Zelenka asked Mr. Schoening to describe the process that the funding went through.

Mr. Schoening pointed to the timeline on the second page of the Agenda Item Summary (AIS) and briefly highlighted it. Mr. Zelenka surmised that all of the jurisdictions made their recommendations and then the staff committee convened to sort them out and the MPC made the final decision.

Mr. Zelenka related that he had asked Mr. Schoening about two projects listed in *Attachment A*, the Martin Luther King Boulevard Corridor and Coburg Road Corridor, both of which contained pedestrian enhancements and the latter included safety improvements for bicycles. Mr. Schoening had, at his request, estimated the costs to be approximately \$200,000. Mr. Zelenka thought adding those two projects to the pavement preservation projects would provide them with “a better bang for the buck.” He supported doing so and intended to add them as an amendment.

In response to a question from Ms. Ortiz, Mr. Schoening affirmed that it would be more cost effective to include the pedestrian and bicycle amenities with the pavement preservation projects.

Mr. Clark asked if Mr. Zelenka's amendment would increase the chance that the City would not be able to do a project at this point and would have to spend more on it in the future. Mr. Schoening responded that the chance this would happen was small. Mr. Clark said he would be happy to add that amendment to the motion.

Mr. Clark, seconded by Ms. Taylor, moved to approve submittal of Surface Transportation Program – Urban funding applications for the Hilyard Street, Martin Luther King Boulevard, and Coburg Road pavement preservation projects as well as the pedestrian and bicycle projects on Martin Luther King Boulevard and Coburg Road.

Mr. Poling asked if it would be possible to drop the last two projects if it appeared the City would not get full funding. Mr. Schoening replied that if the City was allocated less funding, the Hilyard Street project would need to be dropped or they would have to scale back the Martin Luther King Boulevard project. He noted that the Coburg Road project needed to go forward because of the preservation work that was also being done on that road using bond money. He said it was possible that they could put in more local funds should they want to fund all three.

Mr. Poling surmised that the most likely scenario in the event that the funding allocation was less than the projects would cost would be that the Hilyard Street project would be dropped from the list for the current round of STP-U funding.

Mr. Zelenka said Eugene's share would be between \$1.6 and \$2.6 million. He pointed out that the staff proposal would cost \$2.77 million and with \$200,000 more for the bicycle/pedestrian amenities this made \$2.97 million. He thought that if the money from STP-U came in at \$3.1 million, the City would be down to one project anyway given that its allocation was half of that. He noted that this had happened all three years he had served on the MPC.

In response to a question from Mr. Pryor, Mr. Schoening said he understood the direction to be that if full funding was not allocated, the Hilyard Street project would be deferred first and then the scope of the Martin Luther King Boulevard project would be reduced. Mr. Pryor commented that he wanted to do the project that had the best outcome. He would be interested in knowing what material impact there would be to shortening the Martin Luther King Boulevard project, for instance. Mr. Schoening thought the most likely outcome would be that some other funding source would be tapped to complete the project, such as the local gas tax, and a project that was not even on the table at the present meeting would be deferred.

Mr. Pryor was willing to support the addition of the bicycle/pedestrian amenities to the motion, but he wanted them to be the first things to be backed out if the City did not receive enough money.

Ms. Taylor asked why Hilyard Street was on the bottom of the list. Mr. Schoening replied that Coburg Road had been on the top of the list because of the gap that needed to be filled between the two bond measure projects. He said the difference between the Hilyard Street and Martin Luther King Boulevard projects had to do with magnitude in that the latter was estimated at \$1.8 million and Hilyard Street was only projected to cost \$800,000. He said it appeared that the pieces would come together for the larger of the two projects.

Ms. Taylor asked when Hilyard Street would be fixed in that case. Mr. Schoening did not know the answer at this point. He pointed out that Hilyard Street had been upgraded between 13th and 24th Avenues a couple of years earlier and, with bond money, it had been upgraded between 24th and 30th Avenues. Ms. Taylor commented that she knew where there were potholes on the road beyond 30th Avenue.

Mayor Piercy said what constituted a real road was a conveyance that met a multi-modal purpose. She felt the community supported a multi-modal transportation system. She echoed the concern that if the work was not done now it would cost more, later.

Mr. Zelenka observed that many streets needed to be fixed. He likened taking one project out of the queue to taking one bucket of water out of the ocean. He clarified that the project on the list for Hilyard Street was for the stretch of the street in front of the hospital. He said the area beyond what had already been done was in the queue to be reconstructed in 2011. He liked the idea of taking five to ten percent of STP-U money and putting it into bicycle and pedestrian projects. He reiterated that coordinating the bicycle/pedestrian projects with the road projects would make them cheaper to accomplish.

Mr. Clark asked if it was more cost-effective to build-in the bicycle/pedestrian amenities and shorten the length of the project on Martin Luther King Boulevard. Mr. Schoening responded that he did not think that this was how they would proceed. He thought they would augment the funding with local gas tax revenue and defer another project.

Mr. Clark ascertained from Mr. Schoening that he did not think the specific direction to back-out the bicycle/pedestrian projects needed to be included in the motion as an amendment.

Mr. Poling wanted to be clear that if the City did not receive the full amount of STP-U funding, the first things to come off the list of the projects should be the bicycle/pedestrian amenities. He declared that the people wanted the streets fixed and this should be the primary use of the funding.

Mr. Poling, seconded by Ms. Solomon, moved to amend the motion to include that, should the complete funding needed for the list of projects not be allocated to the City, the first things to come off the list should be the bicycle/pedestrian amenities for Martin Luther King Boulevard and Coburg Road.

Mr. Zelenka preferred to leave this up to the discretion of the professional staff. He said staff would be making adjustments to the projects and the council should not be micro-managing it. He would leave it up to Mr. Schoening and his professional judgment to make the STP-U funding work within the priorities they had stated.

The motion to amend failed, 5:3; Mr. Poling, Ms. Solomon, and Mr. Clark voting in favor.

The main motion passed unanimously, 8:0.

B. WORK SESSION:

Safe and Efficient Streets through Access Management

Peggy Keppler, Development Review Manager for the Engineering Division of the Public Works Department, recalled that three years earlier the City Council had asked staff to initiate some regulatory changes to the land use code that would allow them to implement access management on the arterial and collector streets. She said after the council meeting in 2006, staff had done research and looked at different access management codes and policies across the nation. They had put together a list of strategies they felt were appropriate for the Eugene area. She related that they took that list to a department advisory committee. She said there were two primary strategies: a reduction in the number of conflict points on arterial and collector streets and to ensure the access points were spaced far enough apart that it did not interfere with traffic flow. She explained that the Planning Commission had reviewed

the policies and weighed in on them and then they had developed the draft code. She noted that they also met with several different stakeholder groups, including the realtors and the Homebuilders Association. She said they had sent notice to a little over 10,000 property owners on the arterial and collector streets to make them aware of the public hearing on this item, held on August 25 with the Planning Commission. She stated that the new code would not make changes on any existing properties; the code would only be implemented when a building permit was applied for. They had received approximately 200 calls regarding this notice and staff had responded to them. She said in some cases, the input they received caused them to reconsider some of the ordinance and make changes.

Mayor Piercy thanked Ms. Keppler and staff for their work.

Ms. Solomon found the explanation to be very helpful. She asked for the member list of the department advisory committee.

In response to a question from Ms. Solomon, Ms. Keppler stated that staff had put together a citizen involvement plan, which they had presented to the Planning Commission and to which the commission had provided input. She said the advisory committee had met four or five times during the process and they had met with interested parties.

Ms. Solomon understood from the AIS that staff had provided examples to the Planning Commission of how the proposed amendments would apply to properties. She said it would be helpful to her to see those examples.

Ms. Keppler explained that they had put a property on the board and had walked through the code as it applied to the property so that the commissioners could see how it would be impacted by the proposed code amendments. She thought they could do the same exercise for the council prior to the public hearing.

Ms. Solomon ascertained that her colleagues were interested in a visual example. She suggested that staff bring three examples.

Mr. Zelenka wanted to emphasize that seeing a visual example of how it would work would benefit the conversation. He also wanted to underscore that they had been working on this for three years. He acknowledged that it was a large body of work and thanked staff "for slogging through this."

Ms. Keppler related that one thing they observed was that there were only a few properties that would experience a real impact. She cited one property, as an example, that was a commercial site and the changes in the code would change the development proposal so that the driveway would be moved from where the owner originally intended to place it.

C. WORK SESSION:

Auditor Report on Taser Case Involving Asian Student

Police Auditor Mark Gissiner commented that valuable lessons had been learned from this incident. He recapped the events of that night. He had been contacted by Captain Rich Stronach regarding the incident and Mayor Piercy and Mr. Brown had been contacted as well. He did not expect to receive a complaint from the individual who had been Tased.

Mr. Gissiner stated that the interviews with the officer and the landlord of the apartment complex involved in the incident had been conducted in his presence. He had participated in the interviews with the Chinese students, which were somewhat hampered by the language barrier. He had also reviewed the Taser video of the incident and the recording of the 911 call that had been made. Seven of the Eugene Police Department (EPD) policies and procedures were most appropriate for this case, and they fell into the following policy categories:

- The use of force policy
- The Taser policy
- The search and seizure policy
- The policy related to probable cause to detain
- The language competency policy

He added that he had gone to the apartment since the Tasing incident on two occasions to understand the scene of the incident.

Mr. Gissiner stated that with regard to the entry of the apartment, his assessment had been made more difficult because policy on warrantless entry to homes was lacking in the current EPD policies and procedures. His experience in such policies was that the more specificity they contained, the better the officers understood their obligations and responsibilities. He said there were some constitutional issues involved in such cases and there were eight to ten Supreme Court cases that spoke to them. He had referred to the Illinois v. Rodriguez case for this case because it discussed who had authority over a property and how to enter that property. He had used this assessment to determine whether the officers had appropriately entered the property based on a reasonable belief that there were authority figures backed by other evidence that would cause a reasonable officer to believe that these authority figures had control over the property. He said this circumstance segued into the belief that anyone on that property would be there unlawfully.

Continuing, Mr. Gissiner spoke regarding the use of force and the use of the Taser. He referred to the Graham v. Connor case which established a reasonable standard to evaluate an officer's use of force. He explained that it was based on a reasonable officer standard which evaluated the severity of the crime, whether the suspect posed an immediate threat to the safety of the officer or others, or if the suspect actively resisted or attempted to evade the police by flight. He said the EPD policy also elaborated on these basic standards. He considered it to be coincidental that a particular officer was involved; the evaluation was to be made without deference to a particular individual. He underscored that the incident was supposed to be evaluated from the standpoint of a reasonable officer on the scene, rather than 20-20 hindsight, and the totality of circumstances that they needed to consider. He said they needed to recognize that officers were forced to make split second decisions in circumstances that were tense, uncertain, and rapidly evolving. He thought this incident would be a great case to use as a use of force case and this was under consideration as the Police Commission considers the use of force policy.

Mr. Gissiner had assessed both the officer's report on the incident and that of the Chinese student. He said they now knew that the Chinese students had spent nearly 24 hours traveling to Eugene and were exhausted. He had reviewed the Taser tape and considered it a good tool for the Taser, though not a panacea. Based on this, he had tried to take all of the standards and apply them to the incident. He had provided his analysis to the Police Chief.

Mr. Gissiner stated that there was a policy regarding language competency and he had reviewed it. He had found it difficult to tie that policy to a warrantless entry to a home. He had shared some policies from other cities with the Police Chief that addressed that issue well. He remarked that everyone appreciated

the sanctity of their homes and did not want those rights infringed upon. He said they needed to ensure that EPD officers had a clear understanding of what their responsibilities were in these types of circumstances. He felt the Chief had an appreciation of this. He stated that interactions with divergent populations were very important to the Chief and the department would work to handle that better and to reduce the possibility of a similar incident occurring in the future. He observed that police officers had 200,000 to 300,000 contacts in a year and said it would be unrealistic to think that all of the contacts would go smoothly. Nonetheless, they could try to reduce the problems by improving training, policy, procedures, and thought processes with regard to these kinds of issues. He noted that he had posted the recommendations for changes to the policies and procedures on the Police Auditor web site.

Ms. Ortiz thanked Mr. Gissiner for the report. She asked if there was any advocacy from the volunteer community on behalf of complainants. Mr. Gissiner replied that it was not the responsibility of the auditor's office to advocate, it was their responsibility to monitor and evaluate the investigative process and to make recommendations on training, policies, and procedures.

Ms. Ortiz said historically the Human Rights Commission (HRC) had a component of advocacy that helped people process such incidents. She agreed that the Police Auditor should not serve in the role of an advocate, but she felt the City needed to offer some kind of advocacy to help people through this type of process. She recalled the program that the City used to have and noted that being an advocate only meant that they provided help to the people and not that an advocate would have an opinion one way or another.

Mr. Gissiner stated that the auditor's office served as an advocate for a fair process and for insuring that investigations were thorough and unbiased and that there were subsequent improvements to policies, procedures, and community relations.

Mr. Clark noted that he and Mr. Brown served as the council liaisons to the Police Commission. He asked if all of the systems were in place for them to bring pieces related to warrantless entry and language competency to the commission to develop policy. Mr. Gissiner responded that the 9th Circuit Court had issued a rapid policy directive regarding the use of Tasers. He was hopeful that warrantless entry to homes would be done "expeditiously." He considered that to be very important and wanted the policies to be crystal clear to the officers and in the training manuals.

Mr. Brown had been disturbed that the incident had not been reported more widely and that the HRC had not been contacted. He was glad that the problems were being identified and steps were being taken to remediate them. He agreed that the department needed a clear policy on warrantless entry.

Mr. Gissiner related that a different judge had ruled on a Taser case in Hawaii. He said the ruling was very different from the previous ruling. He called it unfortunate because it sent different messages to the officers.

Mr. Zelenka commended the auditor's handling of this case. He asked how the case would play out at this point. Mr. Gissiner replied that the Civilian Review Board (CRB) was authorized to review and discuss the chief's adjudication and whether or not they agreed with it.

Mr. Zelenka asked what happened with policy issues that were raised by a case. Mr. Gissiner responded that he was not certain that this particular case would cause direct changes to policies, but the chief had issued a policy directive after the 9th Circuit Court ruling regarding Taser use.

Chief of Police Pete Kerns stated that the policy was in the queue along with other policies. He said they would be addressing warrantless entry policies in a memorandum to the division manager in charge of policy and internal affairs. He related that they had also contracted with an attorney to provide ongoing training to officers regarding search and seizure and other legal matters.

Mr. Pryor appreciated the presentation. He felt it important to focus on the best possible outcomes. He believed that Chief Kerns and Mr. Gissiner shared this goal. He recalled being asked if he knew the difference between discipline, which meant learning, and punishment, which meant hurting someone. He stressed that they were not seeking punishment or revenge. He said if they were seeking discipline, it was because they wanted a disciplined, effective, organized police department. He appreciated that Mr. Gissiner had approached the situation from the standpoint of determining what they needed to learn from it.

Ms. Solomon found the presentation to be very helpful. It sounded to her like training was the issue in this case. She said if officers were not being trained for all circumstances, it made her wonder how they could be in violation of policy. Mr. Gissiner replied that this case would have been difficult to predict and place in a textbook. He had not faced a case like this one previously. He said there were still certain expectations for how threat assessments were conducted and these could be addressed by training.

Ms. Taylor asked if the council could put a moratorium on the use of Tasers. City Attorney Glenn Klein explained that it would require an ordinance.

Ms. Taylor supported such a moratorium. She cited the Tasing case that arose from the demonstration on Kesey Square in May, 2008, and asked what policies were involved, and questioned whether having different policies would have led to a different outcome. Mr. Gissiner replied that he was not prepared for that question. He offered to review the case and discuss the policies at a future point.

In response to a question from Ms. Taylor, Mr. Gissiner stated that there was a policy on warrantless entry into homes that covered a number of different circumstances. He said a reasonable belief an emergency was happening in a home or that an intruder was in the home were examples of grounds for warrantless entry.

Mayor Piercy wanted to stress that the students in this case were not at fault. She stated that they had been innocent victims of misidentification and underscored how very sorry she and her colleagues were that the incident had happened. She averred that they could not apologize enough.

The meeting adjourned at 7:15 p.m.

Respectfully submitted,


Jon Ruiz
City Manager

(Recorded by Ruth Atcherson)