

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Public Hearing: An Ordinance Concerning Downtown Public Safety Zone; Amending Section 4.874 of the Eugene Code, 1971; and Providing a Sunset Date

Meeting Date: February 21, 2012
Department: Eugene Police
www.eugene-or.gov

Agenda Item Number: 3
Staff Contact: Pete Kerns, Chief of Police
Contact Telephone Number: 541-682-5102

ISSUE STATEMENT

This is an opportunity for the City Council to solicit community feedback on a proposal to extend the sunset date for the Downtown Public Safety Zone to April 30, 2014.

BACKGROUND

The City Council adopted the Downtown Public Safety Zone (DPSZ) Ordinance No. 20419 in August 2008. The original ordinance established a sunset date of August 2010, and required that the City's Police Commission hold a public forum and make recommendations related to the ordinance. That forum was held, and the Police Commission recommended that the DPSZ be continued and proposed several modifications based on the community input received, which were considered by the City Council. In December 2010, the City Council adopted Ordinance No. 20467, which extended the sunset date to April 30, 2012, and also made amendments to other provisions of the original ordinance.

In December 2009, the Downtown Safety Task Team prepared a list of recommendations they believed would improve downtown safety and make the downtown a more welcoming place. Subsequently, the 12-Point Downtown Safety Improvement Plan was adopted by the City Council in January 2010. Inherent in the recommendation was the understanding that the lack of jail beds as a sanction remains a critical component to the persistent problems occurring downtown. The civil exclusion process is a tool to offset the lack of jail sanctions, to create an alternative to incarceration for chronic violators, and to improve the perception of safety in the downtown core.

As long as there is inadequate jail bed capacity to meet the demand, the Downtown Public Safety Zone functions as a necessary stop-gap measure, to hold offenders accountable, and reduce the number of re-offenders in the downtown core. To address public safety, the community must have at minimum three equally important functions. First, there must be appropriate rules and laws to govern behavior. Second, there must be an enforcement emphasis to cite offenders. Last, there must be adequate consequences to hold offenders accountable for their actions. Other services to support individuals in crisis like CAHOOTS, youth services, and, perhaps, what is produced by the Mayor's recently formed task group on homelessness, will also be critical to improving safety downtown.

Regardless, these three components are critical. Eugene has adequate laws governing behavior, and increased funding for downtown enforcement has strengthened the Police Department's ability to

provide enforcement in the downtown core. However, with Lane County's critical jail bed capacity issues (down this last July from 280 to 196 beds and likely to decrease further in FY13), without the Downtown Public Safety Zone, the community lacks adequate consequences to hold offenders accountable and to reduce recidivism. For this reason, the Police Department has requested that the City Council discuss removing the sunset provision to the Downtown Public Safety Zone ordinance.

To provide the City Council with additional community perspective and comments, the City's Police Commission held a public forum on December 15, 2011. A brief report was made available prior to the Community Forum. It has been updated to include more recent information, and is included as Attachment A. The Police Commission discussed the input received at the Forum at its meeting January 12. A summary of the written and oral comments received at the Forum, via email, and at the subsequent Police Commission meeting is included as Attachment B.

At the conclusion of the discussion at its January 12 meeting, the Police Commission voted to recommend to the City Council that the Downtown Public Safety Zone be continued, and that the sunset provision be eliminated. This was approved in a 9:1 vote with two members absent.

Based on the discussion at the January 25 work session, an ordinance has been drafted. It includes two amendments from the current legislation:

- 1) Section one of the ordinance aligns the overall enforcement action to council intent and current practice. The current language in the ordinance would require that every violation "shall" receive an exclusion citation. Current practice and council intent is more permissive, allowing discretion in determining the circumstances when an exclusion citation is issued. This change replaces the word "shall" with the word "may".
- 2) Section two of the ordinance amends the sunset date from April 30, 2012 to April 30, 2014.

Following the public hearing on February 21, council action is scheduled for February 27, 2012.

RELATED CITY POLICIES

This topic relates to the Safe Community Vision: A community where people feel safe, valued and welcome, and increased downtown development, as well as support for small and local businesses.

COUNCIL OPTIONS

No formal action is required at this public hearing. Council action is scheduled for February 27, 2012.

CITY MANAGER'S RECOMMENDATION

This item is scheduled for public hearing only. No recommendation is being made at this time.

SUGGESTED MOTION

No motion is proposed for the public hearing.

ATTACHMENTS

- A. Program Update on Downtown Public Safety Zone
- B. Draft Ordinance

FOR MORE INFORMATION

Staff Contact: Lieutenant Sam Kamkar
Telephone: 541-682-5436
Staff E-Mail: sam.s.kamkar@ci.eugene.or.us

Eugene Police Department

**DOWNTOWN PUBLIC SAFETY ZONE
PROGRAM UPDATE**



February 13, 2012

Downtown Public Safety Zone – Program Update

Introduction

In August 2008, the Eugene City Council adopted Ordinance 20419, creating a Downtown Public Safety Zone, (DPSZ) and allowing Municipal Court judges to issue exclusion orders for certain offenders in and from the Downtown Public Safety Zone. The ordinance created a 20-block area in downtown Eugene where officers could request that the courts issue a temporary civil exclusion for persons arrested for certain offenses committed in this area. In September 2010, the Police Commission held a public forum and from that input, offered recommendations to the City Council. Addressing several of the recommendations, the City Council adopted Ordinance 20467 in December 2010. They voted to extend the Downtown Public Safety Zone until April 30, 2012, at which time the Ordinance will sunset.

When the City sought the April 30, 2012 extension, it anticipated the increased police patrol resources dedicated to downtown and increased jail bed capacity would ameliorate the need for the Downtown Public Safety Zone. However, the recent budget crisis has resulted in a reduction in jail beds to a point lower than in August 2008. Additionally, the increased patrol presence downtown has revealed greater problems, as indicated by increased citations. The use of exclusion for chronic offenders in the downtown core was identified as one step to reduce the incidence of adult predators harming more vulnerable populations, such as youth and people who are homeless (un-housed) and chronically inebriated adults.

The boundaries of the DPSZ are from Lincoln to Pearl Street between 7th and 11th Avenue, excluding the Lane County Courthouse block and extending to Lawrence Street between 7th and 8th Avenue. The area includes the Eugene Library, LTD Transit Station, WOW Hall, the downtown core and the park blocks.

From January 1, 2011 through November 30, 2011, 73 civil exclusions for 90-day and one-year were issued by the Eugene Municipal Court. In total, since the beginning of the DPSZ exclusion program in October 2008, through November 30, 2011, a total of 185, 90-day and one-year exclusions were issued. (Ordinance No. 20419, adopted in August 2008, was implemented in October 2008.) The 185 exclusions granted by the court and shown in Figure 2, represent 3.3 percent of the 5,632 total offenses that occurred in the three-year period following the adoption of the DPSZ ordinance. These are the offenses listed in Table 1, that occurred within the DPSZ geographic boundaries.

With the adoption of Ordinance No. 20467 in December 2010, a requirement was added to the notices to show cause, which are issued by police officers, to provide information that the person has the right to use the City's advocacy program at no cost. This notice must also provide contact information for the advocacy program. The Municipal Court established the program, printed the flyer providing information about the DPSZ Ordinance, exclusions, variances, and the advocacy program. To date, no one issued a notice to show cause has contacted the advocate program.

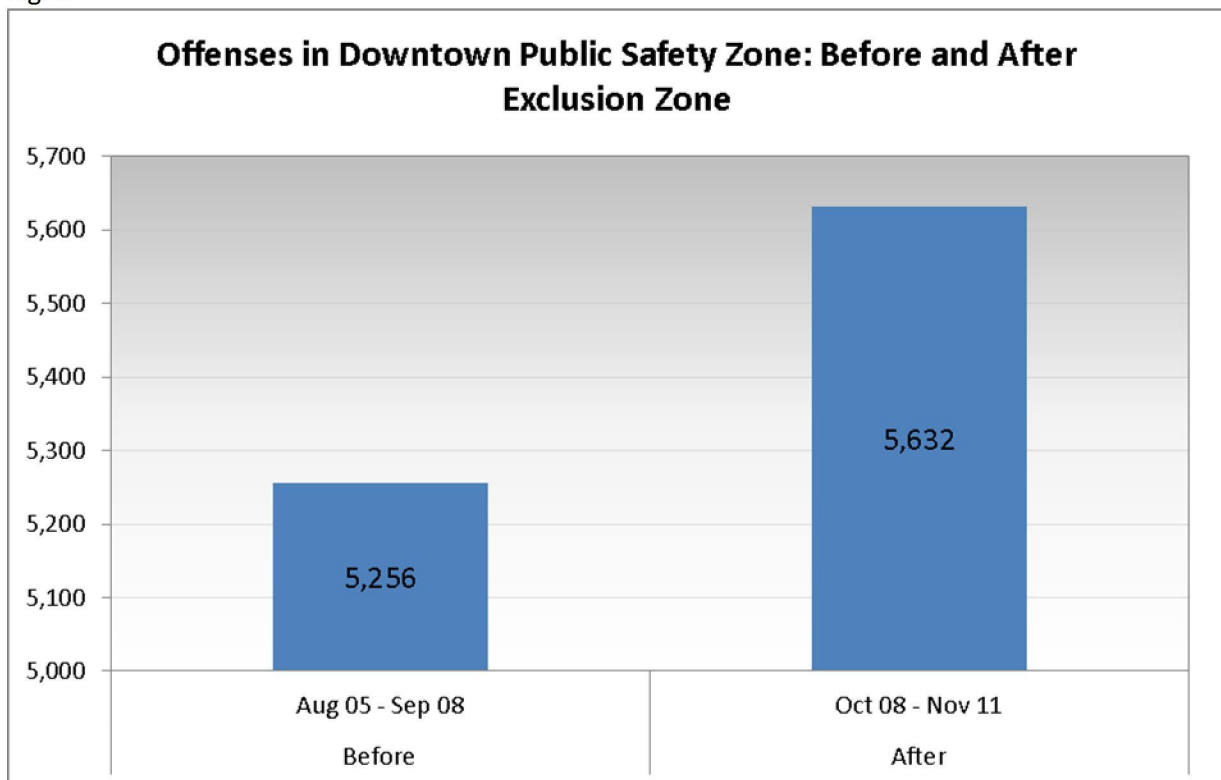
Quantitative Data

Overall, arrests and citations have increased in the DPSZ since Ordinance No. 20419 was implemented in October of 2008. The total number of arrests and citations for the three-year period before the

implementation of the DPSZ was 4,487. In the three-year period following the start of the DPSZ program, arrests and citations occurring within the boundaries of the DPSZ increased to 5,493; an increase of 22 percent. There was a marked increase in 2011, which coincided with the increased staffing levels of the downtown bicycle team.

The use of the Downtown Public Safety Zone was one of the steps in the City’s Downtown 12-Point Safety Improvement Plan adopted and funded by the City Council to contribute to the community’s efforts to enhance and improve the livability of downtown. Another tool that has been introduced is the downtown bicycle team, with additional resources allocated by Council to be directed to the downtown area. For each of the past three years, the size of the team, days of operation and length of assignment has gradually been increased as new police officers were hired and completed their training. Consistent with the findings in the Downtown Public Safety Zone Activity Report dated August 17, 2010, arrests and citations occurring in the DPSZ have increased along with the increased EPD presence in the downtown area.

Fig. 1



Offenses	Before	After	Difference	% Change
	Aug 05 - Sep 08	Oct 08 - Nov 11		
Actual	5,256	5,632	376	7.2%

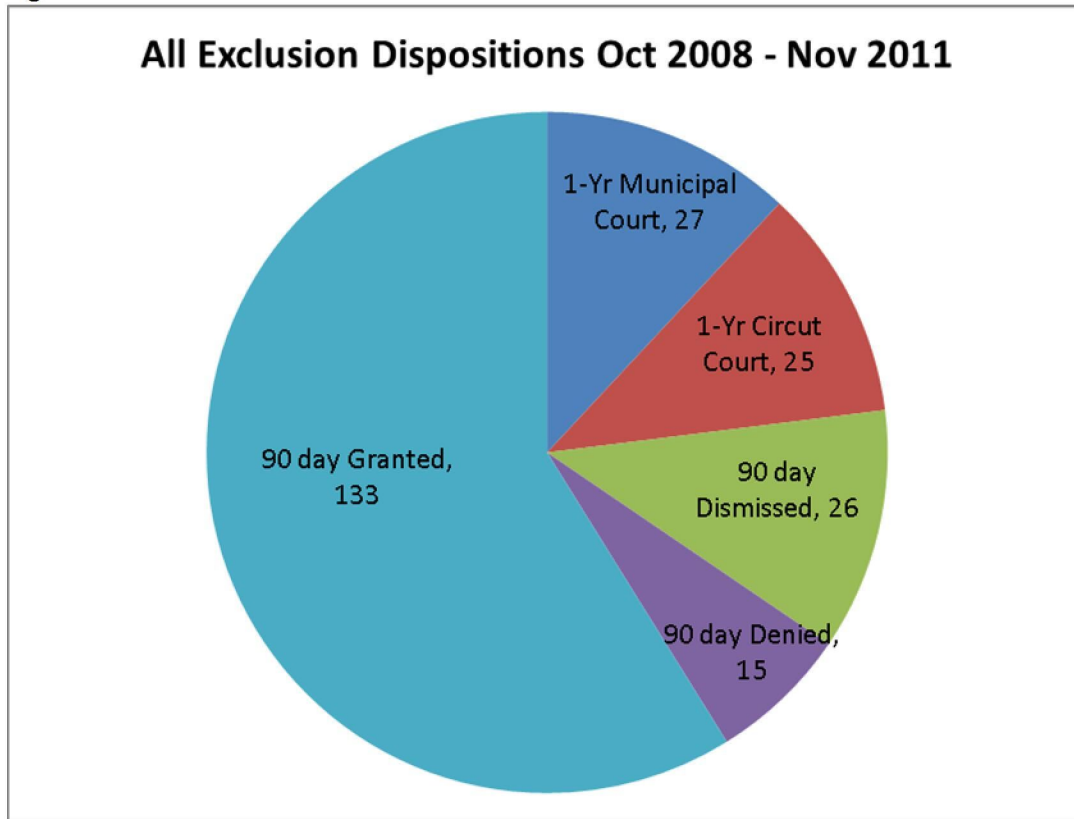
A correlation between the increase in visible police presence and a decrease in property crimes has been identified in other jurisdictions in their analysis of crime data. The increased staffing of the Eugene Police downtown bike patrol team can be credited with contributions to the property crimes decrease in downtown Eugene.

Table 1. **Offense Detail in Downtown Public Safety Zone: Before and After Exclusion Zone**

Offenses	Before	After	Difference	% Change
	Aug 2005 – Sep 2008	Oct 2008 - Nov 2011		
ARSON	4	0	-4	-100%
ASSAULT	132	132	0	0%
BURGLARY	17	7	-10	-59%
CRIMINAL MISCHIEF	167	130	-37	-22%
CURFEW	7	13	6	86%
DISORDERLY	264	457	193	73%
DRUGS	827	1,003	176	21%
DUII	0	0	0	n/a
FAMILY OFFENSE	17	10	-7	-41%
FORGERY	23	6	-17	-74%
FRAUD	18	27	9	50%
KIDNAPPING	4	0	-4	-100%
LIQUOR VIOLATION	1,394	1,270	-124	-9%
OFFICER ASSULT	0	0	0	n/a
OTHER ASSAULT	130	215	85	65%
OTHER CRIME	1,988	2,067	79	4%
PROSTITUTION	0	0	0	n/a
ROBBERY	19	42	23	121%
SEX OFFENSE	15	24	9	60%
STOLEN PROPERTY	34	21	-13	-38%
THEFT	111	113	2	2%
VEHICLE THEFT	7	2	-5	-71%
WEAPONS	78	93	15	19%
Total	5,256	5,632	376	7.2%

The number of exclusions varies by month and year. Looking at 2011 (January 1 – November 30), 18 total exclusions were granted in the month of September, compared to 9 in 2010 and 7 in 2009. Three exclusions occurred in March of 2011, (the lowest of any month in the period), compared to 5 in 2010 and 1 in 2009. Throughout the three-years the DPSZ ordinance has been in effect, the use of exclusion orders for chronic, repeat offenders has been applied sparingly.

Fig. 2

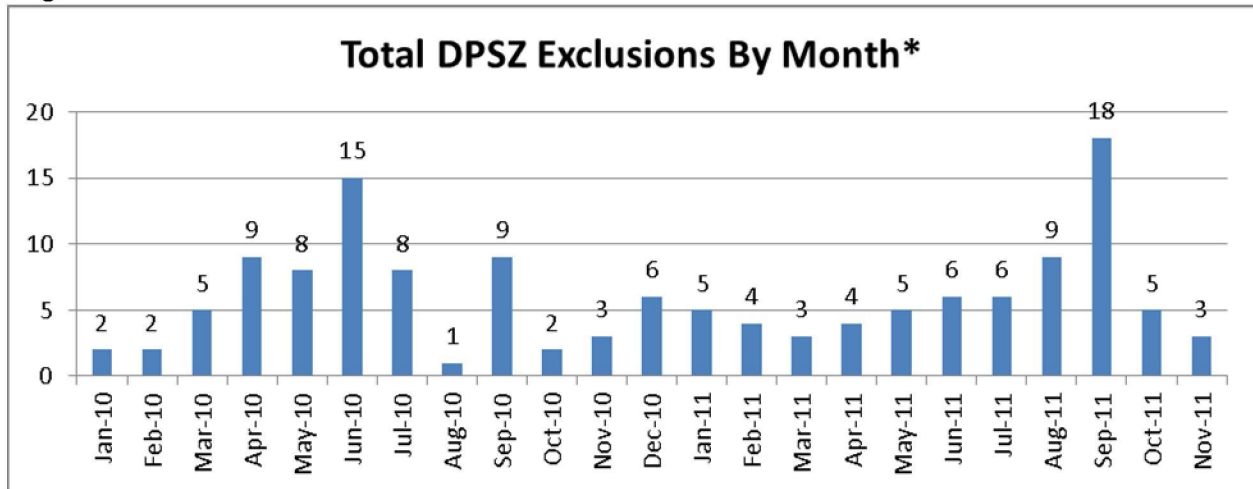


Category	Number	%
1-Yr Municipal Court	27	12%
1-Yr Circuit Court	25	11%
90 day Dismissed	26	12%
90 day Denied	15	7%
90 day Granted	133	59%
Total	226	100%

One exclusion was dismissed by the judge in 2008. Eight were dismissed in 2009, with one noted as having a charge that was not eligible. In 2010, 14 exclusions were dismissed; one with the charge not eligible, one wrong date, and one received after the appropriate date without specific reasons noted. In 2011, two exclusions were dismissed by the judge; specific reasons were not noted by the Courts.

The 185 exclusions granted by the court and shown in Figure 2, represent 3.3 percent of the 5,632 offenses that occurred in the three-year period following the adoption of the DPSZ ordinance. These are the offenses listed in Table 1 that occurred within the DPSZ geographic boundaries.

Fig. 3

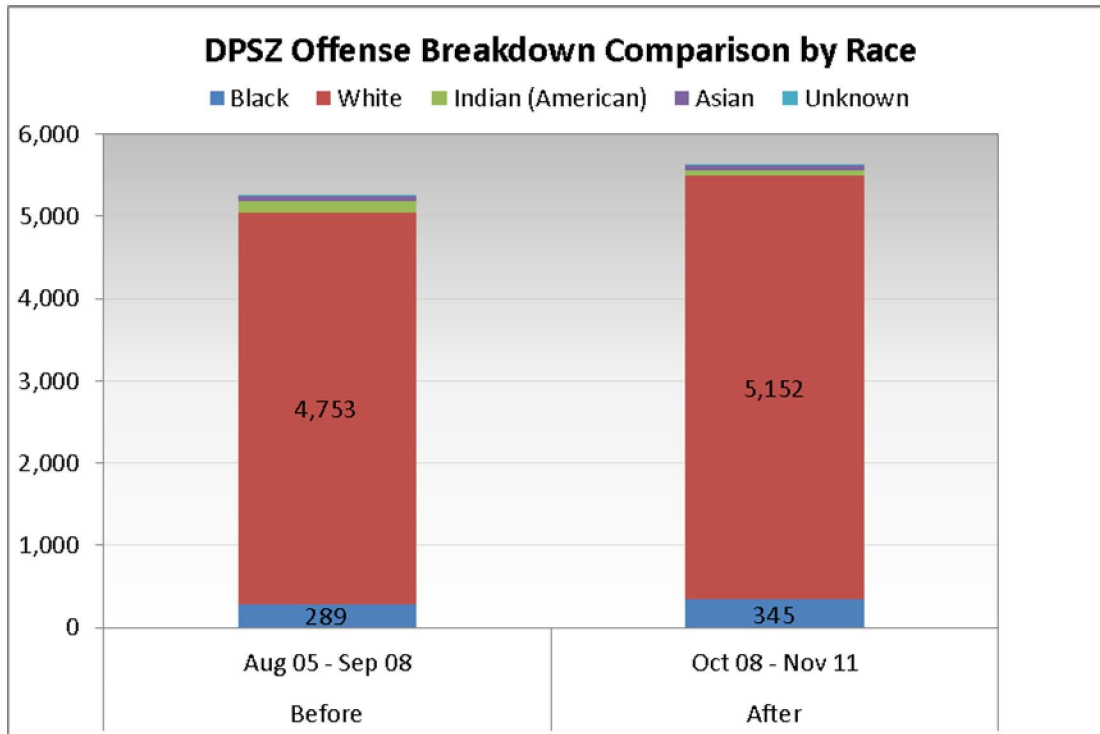


* Includes all cases including dismissed

Demographics

Using the implementation of the DPSZ as a mid-point, a three-year period before and after was reviewed to identify any significant difference in activity in within the boundaries of the zone. Gender, race and age were all analyzed. Despite the increased number of offenses following the adoption of the DPSZ Ordinance, there has not been a disproportionate impact on the gender of the offenders. Males, who committed 82.5 percent of all offenses in the DPSZ, increased by 6.6 percent the number of offenses they committed in the three-year period after the start of the program. Females increased by 10.4 percent the number of offenses they committed after the start of the program.

Fig. 4



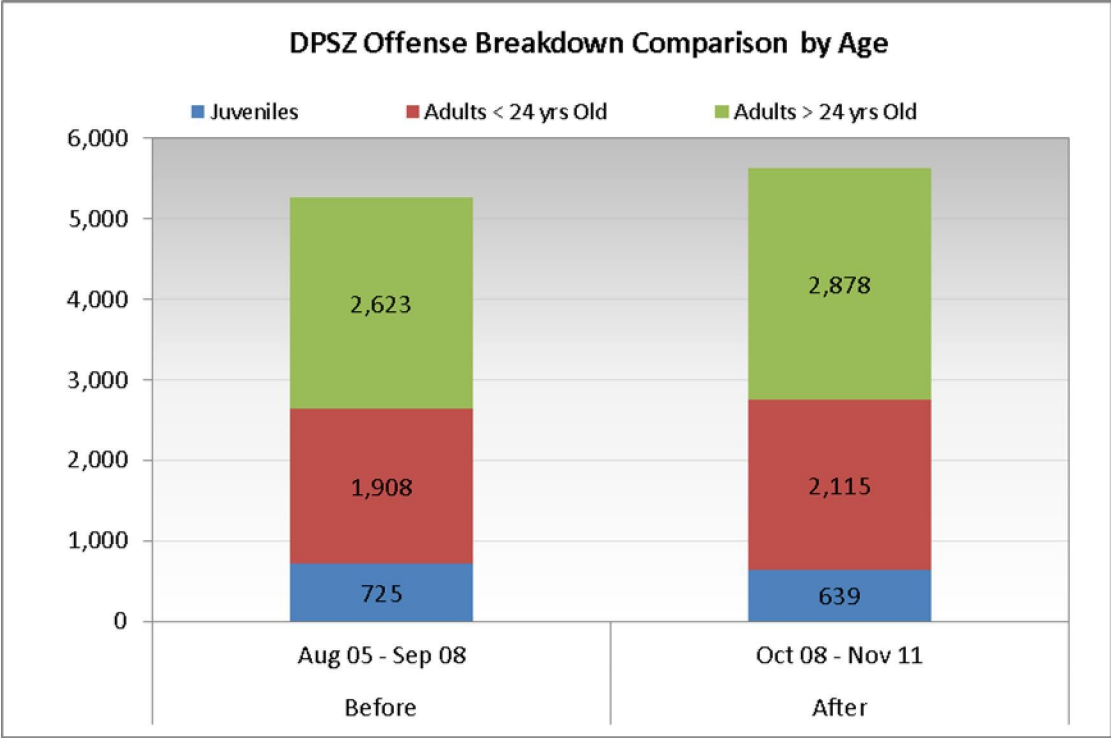
Whites and Blacks/African Americans are over-represented when compared to the US Census data for Eugene. Hispanics are considered an ethnicity by the US Census and are primarily represented in the “White” category.

Table 2. Downtown Public Safety Zone Offenses by Race

Race	2005-2008	%	2008-2011	%	2011 Census	%
White	4,041	90%	5,034	92%	134,018	86%
Native / Indian	125	3%	68	1%	3,720	2%
Black/Afr. Am	263	6%	336	6%	3,227	2%
Asian	56	1%	49	1%	8,685	6%
Other/ Unkn	2	0%	6	0%	6,535	4%
Total	4,487	100%	5,493	100%	156,185	

Fewer juveniles have committed offenses in the area of the DPSZ in the three year period after the program began. The largest group of offenders is adults, 24 years and older. The DPSZ exclusion ordinance does not apply to juveniles.

Fig. 5



Age Group	Before	After	Difference	% Change
	Aug 2005 - Sep 2008	Oct 2008 - Nov 2011		
Juveniles	725	639	-86	-11.9%
Adults < 24 yrs Old	1,908	2,115	207	10.8%
Adults > 24 yrs Old	2,623	2,878	255	9.7%
Total	5,256	5,632	376	7.2%

Qualitative Data

Looking at data from the 2008 and 2010 Community Survey, the public perception of downtown is improving. The percentage of people indicating they are “somewhat or very satisfied in Downtown Eugene the way it is”, has increased from 33 to 37 percent. More striking is the percentage of people who are somewhat or very dissatisfied, which has dropped from 64 to 54 percent. There has been a statistically significant reduction in the dissatisfaction in the perception of Downtown Eugene. It is a reasonable conclusion that the law enforcement elements of the City’s larger 12-Point Downtown Plan, including enhanced police presence and the Downtown Public Safety Zone, as well as the numerous construction projects currently underway have contributed to the improved perception of Eugene’s downtown by survey respondents.

Summary

As long as there is inadequate jail bed capacity to meet the demand, the Downtown Public Safety Zone functions as a necessary stop-gap measure, to hold offenders accountable, and reduce the number of re-offenders in the downtown core. To address public safety, our community must have at minimum three equally important functions. First, there must be appropriate rules and laws to govern behavior. Second, there must be an enforcement emphasis to cite offenders. Last, there must be adequate consequences to hold offenders accountable for their actions. Other services to support individuals in crisis such as CAHOOTS, youth services, and perhaps what is produced by the Mayor's recently formed task group on homelessness will also be critical to improving safety downtown.

Eugene has adequate laws governing behavior, and increased funding for the downtown bicycle team has strengthened the Police Department's ability to provide enforcement and other services in the city's downtown core. However, with Lane County's critical jail bed capacity issues (down this last July from 280 to 196 beds and likely to decrease further in FY13), the Eugene community lacks adequate consequences to hold offenders accountable and to reduce recidivism.

APPENDIX A – Eugene Municipal Code – Downtown Public Safety Zone

DOWNTOWN PUBLIC SAFETY ZONE

- 4.873 Downtown Public Safety Zone
 - Boundaries
- 4.874 - Civil Exclusion
- 4.875 - Issuance of Notice to Show Cause
- 4.876 - Exclusion Orders - Procedure
- 4.877 - Variances
- 4.878 - Variances – Application/Revocation Procedure
- 4.879 Violation of Downtown Public Safety Zone Restrictions

4.870 Downtown Activity Zone – Purpose.

- (1) Eugene's downtown activity zone has been developed to renew, preserve, and enhance the economic and aesthetic value of the city's central business district and to provide facilities conducive to a harmonious blend of civic, social, cultural, residential, and economic pursuits. Streets, sidewalks and public areas are designed and constructed in a manner to encourage pedestrian oriented activities, including economic and commercial activities, and to provide a pleasant place for civic and cultural events, a public market, and an urban park. One significant purpose of the downtown activity zone is to enhance the economic vitality of adjacent property. For that reason, the former downtown mall has been reopened to vehicular traffic, and a larger area has been defined. This area is intended to encourage private investment in the downtown area and to enhance the value of such investments by encouraging pedestrians to come to the area. The multiple uses of the public pedestrian areas in the downtown activity zone are to be accommodated by reserving different areas (1) as visual amenities designed for everyone's enjoyment, (2) for pedestrian uses, (3) for use by abutting merchants, (4) for uses by other commercial pursuits and (5) for public events. When compatible, such uses may also occupy the same areas of the downtown activity zone.
- (2) Within the downtown activity zone, a core area has been identified as requiring additional regulation. This core area includes a concentration of public facilities (including urban parks and plazas, a transit station and a new public library) as well as the area where the former downtown mall was located. It has traditionally received a high demand for multiple public uses, and that demand is expected to continue and increase in the future. Because of recent changes to the area, this downtown core area requires greater protection to preserve and enhance its unique qualities and uses, and additional duties and responsibilities are therefore required of permittees and owners of property located within the boundaries of the area including, but not limited to, those set forth in section 3.344(4).

(Section 4.870 added by Ordinance No. 16614, enacted September 11, 1972; amended by Ordinance No. 19354, enacted September 18, 1985; Ordinance No. 19605, enacted February 27, 1989; Ordinance No. 20196, enacted May 8, 2000, effective June 7, 2000; and Ordinance No. 20303, enacted November 24, 2003, effective December 24, 2003.)

4.871 Downtown Activity Zone - Definitions. For purposes of sections 4.870 to 4.872 of this chapter, the following words shall have the meanings ascribed to them by this section:

Admission. A monetary fee charged for the privilege of attending, observing, or participating in an activity, event, or performance occurring in or upon public pedestrian areas in the downtown activity zone. "Admission" includes a monetary fee charged on a fixed basis or a donation basis. The charging of "admission" prevents those persons who have not paid the monetary fee from accessing the area in which the activity, event, or performance is occurring. Where access to the area is not restricted, "admission" does not include soliciting donations during an activity, event, or performance.

Authorized activity. Any activity for which a downtown activity permit has been issued or a city-sponsored activity.

City manager. The city manager or the city manager's designee.

City-sponsored event. An activity carried out by a city employee in the performance of assigned duties or an activity authorized by the city manager or city council to use the city's name.

Commercial pursuits. Any activity related to or connected with trade, commerce or fund raising involving the receipt of money or property, such as, but not limited to: advertising, displaying, distributing, selling, taking orders or offering to sell or take orders for goods or services; providing a place for customers to sit; fund raising activities; activities, events, and performances for which admission is charged; activities related to construction or demolition on abutting private premises.

Display. Visual portrayals or physical objects affixed to or standing upon public property within the downtown activity zone, including but not limited to signs, pictures, markers, inscriptions, and objects that are inanimate or mechanically or electronically animated but which remain stationary in location.

Downtown activity permit. A permit applied for and issued in accordance with section 3.341 of this code.

Downtown activity zone. Publicly-owned property and rights-of-way located within the area bounded by the centerlines of Sixth Avenue, Lincoln Street, Eleventh Avenue, and High Street, including all public improvements located therein.

Downtown core. Publicly-owned property and rights-of-way located within the area bounded by a line that runs from the intersection of 10th Avenue and Pearl Street, north to 8th Avenue, west on 8th Avenue to Lincoln Street, south on Lincoln Street to 10th Avenue, east on 10th Avenue to Charnelton Street, south on Charnelton Street to 11th Avenue, east on 11th Avenue to Willamette Street, north on Willamette Street to 10th Avenue, and east on 10th Avenue to Pearl Street, including sidewalks on both sides of the streets and avenues that define the area and all public improvements located therein.

Fund raising. Actions which directly or indirectly request anything of value from persons with whom the requestor has not been previously associated as a family member, friend or companion, and the resulting proceeds are given to a person, entity or organization other than the person engaged in the fund raising activity. "Fund raising" does not include personal solicitation.

Impede. To prevent progress or movement, or to engage in an activity that would deter a reasonable person from progressing or moving in the area of the activity.

Interferes with. A person "interferes with" an authorized activity if that person does one or more of the following:

- (a) Enters in or upon and uses an area of the downtown activity zone which has been reserved for an authorized activity for a purpose other than in accordance with the authorized use;
- (b) Engages in conduct which imminently threatens to cause or causes a speaker or performer to cease speaking or performing or threatens to cause or causes an audience to be unable to hear the speaker or performer(s);
- (c) Except when viewing or participating in an authorized activity, engages in conduct within 20 feet of an authorized activity which prevents reasonable people with normal sensitivities participating in the properly authorized activity from carrying on a normal conversation.

Newspaper dispenser. A box or other vending device that displays, holds or dispenses newspapers, flyers, brochures, pamphlets, newsletters or other written materials to the public, with or without requiring payment, and is intended to remain stationary in location.

Noise disturbance. A noise disturbance which is plainly audible to two or more persons who are located within a room with all windows and doors to the outside shut which is in a building open for business and is located within the boundaries of or is abutting the downtown core. The definitions of section 4.080(1) of this code shall apply to this definition.

Permittee. Includes any person designated as the applicant in the application for the downtown activity permit and any employee, agent, representative or volunteer assisting with an authorized activity.

Public pedestrian area. Any public sidewalk, alley, plaza, and park, excluding public areas under the primary control of entities other than the city. It also includes public streets during the time streets are closed to vehicular traffic for a city-sponsored or permitted event.

Street entertainment. The conducting of, presenting, or participating in musical, theatrical, cinematic, choreographic or athletic performances for which no admission is charged, and no specific area of public property is reserved for its use.

Written material. Any literature, pamphlet, packaging or similar material intended to communicate any message through writing.

(Section 4.871 added by Ordinance No. 16614, enacted September 11, 1972; amended by Ordinance No. 19354, enacted September 18, 1985; Ordinance No. 19605, enacted February 27, 1989; Ordinance No. 19914, enacted April 26, 1993, effective May 26, 1993; administratively amended by Ordinance No. 20113, enacted April 6, 1998, effective May 6, 1998; amended by Ordinance No. 20196, enacted May 8, 2000, effective June 8, 2000; Ordinance No. 20303, enacted November 24, 2003, effective December 24, 2003; and Ordinance No. 20322, enacted May 25, 2004, effective June 24, 2004.)

4.872 Downtown Activity Zone - Prohibited Acts.

- (1) Except when approved as part of an authorized activity, the following acts are prohibited in the public pedestrian areas within the downtown activity zone:
- (a) Interfering with an authorized activity.
 - (b) Impeding access to any public pedestrian area or to any public or private building adjacent to the public pedestrian area.
 - (c) Engaging in a commercial pursuit, except for personal solicitation and street entertainment.
 - (d) Placing a display.
 - (e) Placing a newspaper dispenser:
 - 1. Within ten feet of a street corner;
 - 2. Within one foot of a street curb;
 - 3. Within one foot of, or connected or affixed by any means to, a sidewalk fixture, such as a light pole, bicycle rack, planter, bench or art work;
 - 4. Except with the permission of the person in charge of the building, between the central traveled portion of the adjacent sidewalk and any window abutting a public pedestrian area; or
 - 5. Within the central traveled portion of the sidewalk or in any other location likely to impede pedestrian traffic.
 - (f) Setting up or operating a public address system or other amplified sound equipment.
- (2) In addition to the acts prohibited in subsection (1) of this section, except when approved as part of an authorized activity, the following acts are prohibited in the public pedestrian areas in the downtown core:
- (a) Climbing any tree.
 - (b) Except for stairways, climbing any structure that is more than six feet in height on any side.
 - (c) Climbing any structure in such a manner as to create a danger of personal injury or property damage.
 - (d) Leaving a dog or other animal unattended, whether leashed or unleashed.
 - (e) Creating or continuing a noise disturbance.
 - (f) Entering into a landscaped planting area or acting in a manner harmful to any plant life, including walking, lying or sitting in a landscaped planting area. A "landscaped planting area" is any public area set aside for planting of trees, shrubs, flowers or other vegetation, except grass.
 - (g) Setting up any temporary structures or enclosures, including but not limited to canopies, tents or tables, or restricting access to any portion of the public pedestrian area so that other persons may not freely enter such area.
 - (h) Picking or cutting flowers or other vegetation from landscaped planting areas.
 - (i) Allowing a child who is in one's charge and is under 12 years old to violate any provision of this section or of section 3.344.

(Section 4.872 added by Ordinance No. 16614, enacted September 11, 1972; amended by Ordinance No. 19354, enacted September 18, 1985; Ordinance No. 19605, enacted February 27, 1989; Ordinance No. 19841, enacted April 15, 1992, effective May 19, 1992; administratively amended by Ordinance No. 19914, enacted April 28, 1993, effective May 28, 1993; amended by Ordinance No. 19969, enacted July 21, 1994; Ordinance No. 20196, enacted May 8, 2000, effective June 8, 2000; Ordinance No. 20303, enacted November 24, 2003, effective December 24, 2003; Ordinance No. 20322, enacted May 25, 2004, effective June 24, 2004; and administratively amended September 9, 2004.)

DOWNTOWN PUBLIC SAFETY ZONE

4.873 **Downtown Public Safety Zone - Boundaries.** For purposes of sections 4.874 through 4.879 of this code, the downtown public safety zone includes that area generally bounded on the north by, and including, the south sidewalk of 7th Avenue, then south along, and including, the east sidewalk of Lawrence Street, then east along, and including, the south sidewalk of 8th Avenue, then south along, and including the west sidewalk of Lincoln Street, then east along, and including, the south sidewalk of 11th Avenue, then north along, and including, the east sidewalk of Pearl Street, then west along, and including, the south sidewalk of 8th Avenue, then north along, and including, the west sidewalk of Oak Street to the south sidewalk of 7th Avenue.

(Section 4.873 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010; sunset date extended to January 8, 2011, by Ordinance No. 20462 enacted August 9, 2010, effective August 11, 2010; sunset date extended to April 30, 2012, by Ordinance No. 20467, enacted December 8, 2010, effective January 8, 2011.)

4.874 **Downtown Public Safety Zone - Civil Exclusion.**

- (1)** The municipal court may exclude a person pursuant to subsections (1), (3), or (4) of section 4.876 for violation of any of the provisions in sections 4.110(2), 4.230, 4.240, 4.726, 4.729, 4.730, 4.731, 4.770, 4.780 and 4.782 of this code, and for violation of any of the provisions of ORS 163.160, ORS 163.165, ORS 163.175, ORS 163.185, ORS 163.190, ORS 163.275, ORS 163.355, ORS 163.365, ORS 163.375, ORS 163.385, ORS 163.395, ORS 163.405, ORS 163.408, ORS 163.411, ORS 163.415, ORS 163.425, ORS 163.427, ORS 163.435, ORS 163.575, ORS 164.345, ORS 164.354, ORS 164.365, ORS 166.065, ORS 166.155, ORS 166.165, ORS 167.012, ORS 167.017, ORS 167.262, ORS 167.808, ORS 471.475, ORS 475.840, ORS 475.846 through ORS 475.894, ORS 475.904, and ORS 475.906.
- (2)** The municipal court may exclude a person pursuant to subsection (5) of section 4.876 of this code for violation of any of the provisions in sections 4.080, 4.115, 4.190, 4.230, 4.240, 4.685, 4.705, 4.707, 4.725, 4.726, 4.728, 4.729, 4.730, 4.731, 4.755, 4.760, 4.770, 4.780, 4.782, 4.806, 4.807, 4.808, 4.809, 4.822, 4.882, 4.887, 4.888, 4.930, and 4.977, of this code, and for violation of any of the provisions of ORS 163.160, ORS 163.165, ORS 163.175, ORS 163.185, ORS 163.190, ORS 163.195, ORS 163.275, ORS 163.355, ORS 163.365, ORS 163.375, ORS 163.385, ORS 163.395, ORS 163.405, ORS 163.408, ORS 163.411, ORS 163.415, ORS 163.425, ORS 163.427, ORS 163.435, ORS 163.465, ORS 163.575, ORS 164.043, ORS 164.045, ORS 164.055, ORS 164.125, ORS 164.245, ORS 164.255, ORS 164.265, ORS 164.272, ORS 164.345, ORS 164.354, ORS 164.365, ORS 164.395, ORS 164.405, ORS 164.415, ORS 166.025, ORS 166.065, ORS 166.115, ORS 166.155, ORS 166.165, ORS 166.170, ORS 166.220, ORS 166.240, ORS 166.250, ORS 167.012, ORS 167.017, 167.262, ORS 167.808, ORS 471.430, ORS 475.840, ORS 475.846 – ORS 475.894, ORS 475.904, and ORS 475.906. In addition, persons who attempt, as defined in section 4.015 of this code or ORS 161.405, to commit offenses listed in this section are subject to exclusion pursuant to section 4.876 of this code.
- (3)** The municipal court may exclude a person from the public parks and public streets, alleys, sidewalks and other public ways in the downtown public safety zone for a period of one (1) year from the date of conviction if the person is convicted of any of the offenses enumerated in subsection (2) of this section and the person committed the offense while in the downtown public safety zone.
- (4)** Except as allowed under section 4.878 of this code, a person excluded under authority of this section may not enter the downtown public safety zone except to:
 - (a) Attend a meeting with an attorney;
 - (b) Attend a scheduled meeting with a medical or social service provider;
 - (c) Comply with court- or corrections-ordered obligations or appearances;
 - (d) Contact criminal justice personnel at a criminal justice facility;
 - (e) Attend any administrative or judicial hearing relating to an appeal of:
 1. The person's notice of exclusion; or
 2. The denial, revocation or amendment of the person's variance; or
 - (f) Travel through the downtown public safety zone on a Lane Transit District vehicle. Travel on a Lane Transit District vehicle includes reasonable time spent waiting to transfer to another Lane Transit District vehicle.
- (5)** While in the downtown public safety zone, a person who is otherwise excluded but enters the zone pursuant to subsections (4)(a) - (f) of this section may only travel directly to and from the purposes enumerated in subsections (4)(a) - (f) of this section.

- (6) If an excluded person is in the downtown public safety zone in violation of the exclusion during the exclusion period, that person is subject to immediate arrest for violation of downtown public safety zone restrictions pursuant to section 4.879 of this code.

(Section 4.874 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010; administratively corrected Section (5) January 20, 2009; amended by Ordinance No. 20446, enacted December 14, 2009, effective January 1, 2010; sunset date adopted by Ordinance No. 20419 extended to January 8, 2011, by Ordinance No. 20462 enacted August 9, 2010, effective August 11, 2010; amended, and sunset date extended to April 30, 2012, by Ordinance No. 20467, enacted December 8, 2010, effective January 8, 2011.)

4.875 **Downtown Public Safety Zone - Issuance of Notice to Show Cause.** When a peace officer arrests a person or issues a citation for any of the offenses enumerated in subsection (1) of section 4.874 of this code, the officer shall also issue to the person being arrested or cited a notice to show cause. The notice shall require the person to appear at municipal court at a designated time within three (3) to five (5) business days, at which time the court will set a date and time for the hearing for the person to show cause why the person should not be excluded from the downtown public safety zone. The notice shall contain:

- (a) The date, time and place the person is to appear;
- (b) The name of person ordered to appear;
- (c) The name of the peace officer issuing the notice;
- (d) A brief explanation of the purpose of and procedure for the court appearance;
- (e) The following statement: "If you fail to appear at Municipal Court at the date and time set forth above, the Municipal Court may enter an order excluding you for ninety days from the Downtown Public Safety Zone, shown on the attached map;"
- (f) A statement that the person has the right to utilize the city's advocacy program, at no expense to the person, and a statement providing advocate contact information;
- (g) A statement that the person has the right to be represented by an attorney, at the person's own expense, at the hearing.
- (h) A statement that, if the person is convicted of the offense for which the person was arrested or cited, the person may be excluded from the downtown public safety zone for an additional period of one year from the date of conviction;
- (i) A map showing boundaries of the downtown public safety zone; and
- (j) A brief description of the reasons for which the court may grant a variance and the procedure for requesting a variance.

(Section 4.875 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010; sunset date extended to January 8, 2011, by Ordinance No. 20462 enacted August 9, 2010, effective August 11, 2010; amended, and sunset date extended to April 30, 2012, by Ordinance No. 20467, enacted December 8, 2010, effective January 8, 2011.)

4.876 **Downtown Public Safety Zone - Exclusion Orders - Procedure.**

- (1) At the date and time set forth in the notice described in section 4.875 of this code, if the person appears, the court shall set a date and time for the show cause hearing, which shall be not less than five (5) nor more than fourteen (14) calendar days from the date the person was required to appear under section 4.875 of this code. If the person does not appear, the court shall not schedule a show cause hearing and if, based on a police report or affidavit from a witness, the court finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone, the court may enter an order excluding the person from the downtown public safety zone for a period of ninety (90) calendar days, effective at 12:01 a.m. the next day.
- (2) At the show cause hearing, the person shall have the opportunity to show cause why the person should not be excluded from the downtown public safety zone.
- (3) If the court at the show cause hearing finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone, the court may enter an order excluding the person from the downtown public safety zone for a period of ninety (90) calendar days effective at 12:01 a.m. the next day.
- (4) If the person does not appear at the show cause hearing, and, based on a police report or an affidavit from a witness, the court finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone, the court may enter an order of exclusion as described in subsection (1) of this section.

- (5) Upon receipt of a copy of the conviction for an offense enumerated in subsection (2) of section 4.874 of this code and based on information in a police report or an affidavit from a witness that the conduct supporting the conviction occurred in the downtown public safety zone, the municipal court may enter an order excluding the convicted person from the downtown public safety zone for one (1) year from the date of conviction. The person shall be informed of the exclusion order by first-class mail sent to the person's last-known address. The excluded person may request a hearing on the exclusion. The only issues at such hearing shall be whether the person was convicted of an offense enumerated in subsection (2) of section 4.874 of this code and whether the conduct supporting the conviction occurred in the downtown public safety zone. A certified copy of the conviction shall be conclusive evidence of the conviction.
- (6) A person subject to an exclusion order under subsection (1), (3), (4) or (5) of this section may apply for a variance pursuant to section 4.878 of this code.
- (7) An exclusion ordered by the court pursuant to subsections (1), (3) or (4) of this section shall terminate upon acquittal, dismissal of charges, or failure to prosecute.

(Section 4.876 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010; sunset date extended to January 8, 2011, by Ordinance No. 20462 enacted August 9, 2010, effective August 11, 2010; amended, and sunset date extended to April 30, 2012, by Ordinance No. 20467, enacted December 8, 2010, effective January 8, 2011.)

4.877 **Downtown Public Safety Zone - Variances.** Variances shall be granted, denied or revoked in accordance with section 4.878 of this code. All variances shall be in writing; shall be valid for a specific period of time and shall only accommodate a specific purpose, all of which shall be stated on the variance. The purpose of the variance is to allow travel to and from locations within the downtown public safety zone according to the terms of the variance. In order for the variance to be effective, the excluded person must carry the variance on his or her person while in the downtown public safety zone and must present the variance to a police officer upon request. In the event a person who has been granted a variance is found in the downtown public safety zone in violation of the terms of the variance, that person is subject to immediate arrest for violation of downtown public safety zone restrictions pursuant to section 4.879 of this code.

(Section 4.877 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010; sunset date extended to January 8, 2011, by Ordinance No. 20462 enacted August 9, 2010, effective August 11, 2010; sunset date extended to April 30, 2012, by Ordinance No. 20467, enacted December 8, 2010, effective January 8, 2011.)

4.878 **Downtown Public Safety Zone - Variances - Application/Revocation Procedure.**

- (1) At any time after an order of exclusion is entered against a person, the person may apply in writing to the municipal court for a variance from the exclusion. The application shall be made on forms provided by the court. A variance granted under this subsection allows travel in the downtown public safety zone only according to the terms specified in the variance.
 - (a) **General Variance.** The municipal court may for any reason grant a variance from an exclusion at any time during an exclusion period.
 - (b) **Residential Variance.** The court shall grant a residential variance to an excluded person if the person certifies:
 - 1. That the person lived in the downtown public safety zone, other than transient occupancy in a hotel or motel, when excluded; and
 - 2. Continues to live in the downtown public safety zone.
 - (c) **Essential Needs Variance.** The court may grant an essential needs variance to an excluded person if the excluded person certifies:
 - 1. That the excluded person possesses a residential variance;
 - 2. That the excluded person must access a public or private place within the downtown public safety zone that fulfills an essential need; and
 - 3. That the essential need sought by the excluded person cannot reasonably be accessed by the excluded person without violating the downtown public safety zone exclusion.
 - (d) **Employment Variance.**
 - 1. The court shall grant an employment variance to an excluded person if the excluded person certifies that the person is an owner, principal, agent or employee of a place of lawful employment located in a downtown public safety zone.
 - 2. The court may grant an employment variance to an excluded person to allow travel within the downtown public safety zone in accordance with the terms of the variance if the excluded person certifies:
 - a. That the person is an owner, principal, agent or employee of a place of lawful employment; and

- b. The excluded person will be required to perform employment-related services in the downtown public safety zone.
 - (e) Social Services Variance. The court may grant a social services variance to an excluded person if the excluded person certifies:
 - 1. That the person is in need of social services located in the downtown public safety zone;
 - 2. The social services are sought for reasons relating to the health or well-being of the excluded person; and
 - 3. The social services agency has written rules and regulations prohibiting the unlawful use and sale of controlled substances by their clients.
 - (f) Educational Variance.
 - 1. The court shall grant an educational variance to an excluded person if the excluded person certifies:
 - a. That the person was enrolled as a student at an educational facility located within the downtown public safety zone when excluded; and
 - b. Is currently enrolled as a student at the same educational facility.
 - 2. The court may grant an educational variance to an excluded person if the excluded person certifies that the person will be enrolled at an educational facility within the downtown public safety zone if the variance is granted.
- (2) Revocation of Variances. Variances may be revoked in accordance with the following provisions:
 - (a) The grounds for revocation of any variance other than a residential variance are as follows:
 - 1. The applicant provided false information in order to obtain the variance;
 - 2. The person is arrested or cited for any of the offenses enumerated in subsection (2) of section 4.874 of this code in the downtown public safety zone subsequent to the issuance of the variance; or
 - 3. The circumstances giving rise to the issuance of the variance no longer support a continuation of the variance.
 - (b) Residential Variance Exception. A residential variance may be revoked only:
 - 1. If the applicant provided false residential information in order to obtain the variance; or
 - 2. If the circumstances giving rise to the issuance of the variance no longer support a continuation of the issuance of the variance.
- (3) Revocation Procedure.
 - (a) A peace officer who has probable cause to believe a person who has been granted a variance has violated its terms or conditions may issue to the person a notice to show cause that requires the person to appear at municipal court at a specified date and time, at which time the court will set a date and time for a show cause hearing.
 - (b) If the person fails to appear at the time and date specified in the notice, the court may revoke or modify the variance. If the person does appear, the court shall set a time for a hearing, at which the person shall have the opportunity to show cause why the variance should not be revoked or modified. At the hearing, the city shall have the burden to prove by a preponderance of the evidence that the person violated the terms or conditions of the variance. If the court finds that the city proved by a preponderance of the evidence that the person violated the terms or conditions of the variance, the court may revoke or modify the variance.
- (4) Definitions.
 - (a) Arrest. As used in this section and sections 4.874, 4.875, and 4.877, of this code, "arrest" includes taking a person under 18 years of age into custody as defined in ORS 419C.080(1)(a).
 - (b) Essential Needs. As used in this section, "essential needs" means food, physical care and medical attention for both physical and mental conditions.
 - (c) Travel. As used in this section and section 4.874 of this code, travel means the movement on foot or within or upon a vehicle within the downtown public safety zone from one point to another without delay other than to obey traffic control devices.

(Section 4.878 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010; sunset date extended to January 8, 2011, by Ordinance No. 20462 enacted August 9, 2010, effective August 11, 2010; sunset date extended to April 30, 2012, by Ordinance No. 20467, enacted December 8, 2010, effective January 8, 2011.)

4.879 Violation of Downtown Public Safety Zone Restrictions.

- (1)** A person commits the crime of violation of downtown public safety zone restrictions if the person enters or remains unlawfully in or upon premises in the downtown public safety zone.
- (2)** The term “enter and remain unlawfully” shall have the meaning provided in section 4.805 of this code. For purposes of this section, “premises” means the public parks and public streets, alleys, sidewalks and other public ways in the downtown public safety zone.

(Section 4.879 added by Ordinance No. 20419, enacted August 11, 2008, effective September 13, 2008; and unless extended by the City Council, to sunset and be repealed August 11, 2010; sunset date extended to January 8, 2011, by Ordinance No. 20462 enacted August 9, 2010, effective August 11, 2010; sunset date extended to April 30, 2012, by Ordinance No. 20467, enacted December 8, 2010, effective January 8, 2011.)

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 4.875 OF THE EUGENE CODE, 1971, AND EXTENDING THE SUNSET DATE FOR THE DOWNTOWN PUBLIC SAFETY ZONE.

The City Council of the City of Eugene finds as follows:

On December 8, 2010, Ordinance No. 20467 was adopted providing that Sections 4.873, 4.874, 4.875, 4.876, 4.877, 4.878 and 4.879 of the Eugene Code, 1971 (the Downtown Public Safety Zone), and the amendments made to Section 4.990 by Ordinance No. 20419, automatically sunset on April 30, 2012. The Council has determined that the April 30, 2012 sunset date of the Downtown Public Safety Zone provisions should be extended.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The lead-in paragraph of Section 4.875 of the Eugene Code, 1971, is amended to provide as follows:

4.875 **Downtown Public Safety Zone - Issuance of Notice to Show Cause.**
When a peace officer arrests a person or issues a citation for any of the offenses enumerated in subsection (1) of section 4.874 of this code, the officer [~~shall~~] **may** also issue to the person being arrested or cited a notice to show cause. The notice shall require the person to appear at municipal court at a designated time within three (3) to five (5) business days, at which time the court will set a date and time for the hearing for the person to show cause why the person should not be excluded from the downtown public safety zone. The notice shall contain:

Section 2. The sunset date of Sections 4.873, 4.874, 4.875, 4.876, 4.877, 4.878 and 4.879 of the Eugene Code, 1971, and the amendments made to Section 4.990 by Ordinance No. 20419, is hereby extended to April 30, 2014. The City Recorder is requested to note this sunset date on appropriate City logs.

Section 3. Notwithstanding Section 2 of this Ordinance, any enforcement actions commenced to enforce the downtown public safety zone provisions prior to the sunset

date may continue to be pursued, and the provisions related to such enforcement actions shall remain in effect with respect to those actions.

Passed by the City Council this

_____ day of February, 2012.

Approved by the Mayor this

_____ day of February, 2012.

City Recorder

Mayor