

EUGENE CITY COUNCIL

AGENDA ITEM SUMMARY



Action: An Ordinance Extending the Sunset Date for the Downtown Public Safety Zone; Amending Sections 4.875 and 4.876 of the Eugene Code, 1971; Providing for Court-Appointed Attorneys; and Providing for an Effective Date

Meeting Date: October 8, 2012
Department: Eugene Police
www.eugene-or.gov

Agenda Item Number: 5
Staff Contact: Pete Kerns, Chief of Police
Contact Telephone Number: 541-682-5102

ISSUE STATEMENT

The Downtown Public Safety Zone is scheduled to sunset November 30, 2012. This proposed ordinance will extend the Downtown Public Safety Zone until November 30, 2014, and provide court-appointed attorneys upon request by defendants receiving a notice to show cause.

BACKGROUND

The City Council adopted the Downtown Public Safety Zone (DPSZ) in August 2008. Most recently, the City Council extended the ordinance until November 30, 2012. 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 safety in the downtown core.

As long as there is inadequate jail bed capacity to meet the demand, the Downtown Public Safety Zone has functioned as a stop-gap measure, to hold offenders accountable, and reduce the number of re-offenders in the downtown core. Other services to support individuals in crisis like CAHOOTS and youth services are also critical to improving safety downtown.

A work session was held September 10, and a public hearing held on September 17, 2012. Testimony was received in support and opposition to the Downtown Public Safety Zone.

Analysis Available

Since the last council discussion about the Downtown Public Safety Zone, staff has implemented several measures to improve timely and thorough access to increased analysis for all new cases since March, including information from Municipal Courts about the disposition of the case. Additionally, staff has hand-tabulated this information back to January 1, 2012. Moving forward, these new reports will continue to be created and distributed to the City Council.

Eugene Downtown Public Safety Zone Analysis January 2012 through August 15, 2012

Information about Disposition

Total number of notices issued:	48
Number of notices withdrawn or never filed by EPD:	5
Number of notices dismissed:	15
Number of 90-day exclusions imposed:	22
Number of one-year exclusions imposed:	6

Information about Hearings & Advocacy

Number of hearings requested:	9
Number of those who request a hearing who appear for hearing:	7
Number of requests to meet advocate:	1

Information about People Receiving Notices

Number of people issued notices to appear:	42
Number who report no address:	25
Race (self-reported or officer-identified) - Caucasian:	37
Average number of police contacts per person:	63
Number who have violated DPSZ order:	11

During this period, there were 15 dismissals. Additionally, there were five notices that were withdrawn or never filed at the request of the Police Department because, upon review, the cases were deemed inconsistent with the new guidelines released by Operations Command (attached). Of the notices dismissed, five were dismissed due to judicial discretion, four were dismissed because the underlying charge was not eligible for the noticed exclusion, two were dismissed because the defendant was sentenced to prison and four were dismissed because the appropriate paperwork was not received in a timely manner by the Municipal Court.

One of the significant concerns raised is the low use of the advocacy program, established to help defendants who have received a notice to appear. To increase the advocacy afforded to defendants, staff recommend providing a court-appointed attorney upon request. The proposed ordinance reflects this recommendation. EPD issues approximately 100 DPSZ-related citations per year. Providing a court-appointed attorney to these defendants is estimated to cost approximately \$15,000 per year. This would increase defendants' access to advocacy, and is intended to address the concern of due process.

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

There are several options the council may pursue.

1. Approve the ordinance, which would extend the Downtown Public Safety Zone for two years, and provide court-appointed attorneys upon request.
2. Amend the ordinance.
3. Not approve the ordinance, which would result in the sunset of the Downtown Public Safety Zone to sunset effective November 30, 2012.

CITY MANAGER’S RECOMMENDATION

Approve the proposed ordinance, extending the Downtown Public Safety Zone for two years and provide court-appointed attorneys upon request.

SUGGESTED MOTION

I move to adopt Council Bill 5077, extending the sunset date for the Downtown Public Safety Zone, providing for court-appointed attorneys; and providing for an effective date.

ATTACHMENTS

- A. Guidelines for Use of Downtown Public Safety Zone
- B. Draft Ordinance

FOR MORE INFORMATION

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Staff E-Mail: sam.s.kamkar@ci.eugene.or.us

Guidelines distributed to Eugene Police Officers

**Subject: Guidelines for Application of the Downtown Public Safety
Zone Exclusions**

MISSION/PURPOSE

The purpose of the Downtown Public Safety Zone (DPSZ) and our application of the ordinance is to reduce crime and disorder, and the fear of crime downtown by excluding those individuals who engage in repeated and/or serious criminal behaviors in downtown.

CONDITIONS IN WHICH OFFICERS SHOULD CONSIDER THE DPSZ EXCLUSION

- 1) Persons who engage in repeated criminal behavior in the DPSZ area.
- 2) Persons with extensive and/or serious criminal histories unrelated to downtown, but who commit a serious or felony crime in the DPSZ area.
- 3) Persons who may not have any criminal history, but who engage in serious criminal acts such as; UDCS, Felony Assault, Rape, etc.

REPORT WRITING

Officers should review the ordinance prior to requesting a DPSZ exclusion. Any time a DPSZ exclusion is requested or recommended, the officer **must** include a preamble under the AI/ marginal heading. The preamble should include all pertinent facts as to why the requested exclusion is appropriate such as;

- 1) Type of crime.
- 2) Criminal history of the suspect (both inside and out of the DPSZ).
- 3) Special location or problems (chronic drug use in the parks, City sponsored event, or near a public school).
- 4) Gang affiliation.
- 5) Drug/alcohol abuse or mental health history.
- 6) Special status of victim or witness' (age or disability).
- 7) Special knowledge of suspect (threats to LE, sex offender, etc.)
- 8) Anything else that will aid the court in its decision

ORDINANCE NO. _____

AN ORDINANCE EXTENDING THE SUNSET DATE FOR THE DOWNTOWN PUBLIC SAFETY ZONE; AMENDING SECTIONS 4.875 AND 4.876 OF THE EUGENE CODE, 1971; PROVIDING FOR COURT-APPOINTED ATTORNEYS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

On February 27, 2012, Ordinance No. 20488 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 provisions), and the amendments made to Section 4.990 by Ordinance No. 20419, automatically sunset on November 30, 2012. The Council has determined that the November 30, 2012 sunset date of the Downtown Public Safety Zone provisions should be extended. In addition, amendments are being made to provide for court-appointed attorneys and to amend the time within which the show cause hearing must take place.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. 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 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.
- (hg) 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;
- (ih) A map showing boundaries of the downtown public safety zone; and
- (ji) A brief description of the reasons for which the court may grant a variance and the procedure for requesting a variance.

Section 2. Subsection (1) of Section 4.876 of the Eugene Code, 1971, is amended to provide as follows:

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]~~ **within** 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.

Section 3. The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein,

or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Section 4. At the request of a person who received a notice to show cause, the City shall appoint an attorney to represent the person at the show cause hearing described in Section 4.876 of the Eugene Code, 1971.

Section 5. 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 November 30, 2014. The City Recorder is requested to note this sunset date on appropriate City logs.

Section 6. Notwithstanding Section 5 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.

Section 7. Notwithstanding the effective date of ordinances as provided in the Eugene Charter of 2002, this Ordinance shall become effective on November 30, 2012.

Passed by the City Council this

_____ day of October, 2012.

Approved by the Mayor this

_____ day of October, 2012.

City Recorder

Mayor