

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Public Hearing: An Ordinance Concerning Downtown Public Safety Zones; Amending Ordinance No. 20419 to Extend the Sunset Date and Deadline for Providing a Recommendation Regarding Continued Enforcement of the Ordinance; and Providing an Immediate Effective Date

Meeting Date: July 26, 2010
Department: Eugene Police
www.eugene-or.gov

Agenda Item Number: 4
Staff Contact: Pete Kerns, Chief of Police
Contact Telephone Number: 541-682-5102

ISSUE STATEMENT

This is a public hearing concerning the extension of the sunset date and deadline for providing a recommendation regarding the Downtown Public Safety Zone Ordinance. The ordinance is scheduled to sunset on August 11, 2010. More time is needed to prepare and review the activity report, and to gather public input. An extension of the Police Commission's recommendation by 30 days, and the ordinance sunset date by 150 days, is requested to allow the Downtown Public Safety Zone Code provisions to remain in effect until a thorough activity report can be prepared and a determination made as to whether to continue civil exclusions from the downtown area.

BACKGROUND

Following several work sessions and a public hearing, the City Council adopted the Downtown Public Safety Zone (DPSZ) Ordinance No. 20419 on August 11, 2008. The effective date of the ordinance was September 13, 2008, with a sunset date of August 11, 2010. Subsequently, City staff developed the necessary procedures for the exclusion process and the first arraignment date of a DPSZ exclusion occurred six weeks later on October 31, 2008. In Ordinance No.20419, the council specified a process for review of the DPSZ effectiveness:

“Within two years from the effective date of the Ordinance: (1) the City Manager shall prepare a report of the activity recorded in the Downtown Public Safety Zone and provide that report to the Police Commission; and (2) the Police Commission shall review the report, obtain public input regarding the effectiveness of this Ordinance in reducing targeted incidents in the Downtown Public Safety Zone and provide a recommendation to the Council regarding continued enforcement of this Ordinance.”

Attachment A is a new ordinance that will be necessary to provide more time for the Police Commission to review the staff's activity report and provide a recommendation to the City Council. The Eugene Police Department (EPD) staff needed additional time to prepare the activity report and due to the extended time required to process other policy work there has been insufficient time to review the DPSZ activity report and receive public comment.

The council is being asked to extend the deadline for the Police Commission’s review of the DPSZ report and recommendation to the City Council by 30 days to October 13, 2010. Further, the council’s passage of the new ordinance (Attachment A) will extend the sunset date of the DPSZ Ordinance by 150 days to January 8, 2011. The date of the extension is suggested to allow time to process any amendments to the ordinance, if, after hearing the recommendation, the council asks for amendments. In addition, the council break occurs in December and the number of available meetings is typically somewhat limited.

Tasks	Current Timeline	Proposed Extension
Police Commission Review of Activity Report, Public Comment, and Recommendation to Council	September 13, 2010	October 13, 2010
DPSZ Ordinance No. 20419 Sunset Date	August 11, 2010	January 8, 2011

The civil exclusion process has been a small but important component in law enforcement’s efforts to improve downtown Eugene’s disorder-related issues. Law enforcement partners working together to improve downtown, hope the civil exclusion process will be a long-term element of the comprehensive strategies of the City’s Downtown Initiative. The council is asked to take action on the new ordinance on August 9, 2010, so the Downtown Public Safety Zone will continue without interruption.

RELATED CITY POLICIES

This topic relates to the Safe Community Vision: A community where people feel safe, valued, and welcome. In addition, the topic also relates to several of the City Council’s goals: the Homeless, Sustainability, and Downtown and Police Initiatives. The Park Rules currently provide an option of exclusion from parks and playgrounds for certain offenders.

COUNCIL OPTIONS

This is a public hearing only, so no action is necessary. At the time that the ordinance is brought back for council action, the council may:

1. Adopt the ordinance as presented;
2. Modify the ordinance and adopt it; or
3. Reject the ordinance

CITY MANAGER’S RECOMMENDATION

As this is a public hearing for this item, no recommendation is suggested at this time. A recommendation will be provided for City Council deliberations and action scheduled for August 9, 2010.

SUGGESTED MOTION

None at this time. A suggested motion will be provided at the time of City Council deliberations and actions, scheduled for August 9, 2010.

ATTACHMENTS

- A. Downtown Public Safety Zone Extension Ordinance
- B. Downtown Public Safety Zone Ordinance No. 20419

FOR MORE INFORMATION

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Staff E-Mail: cepdkrq@ci.eugene.or.us

ORDINANCE NO. 20419

AN ORDINANCE CONCERNING DOWNTOWN PUBLIC SAFETY ZONES; AND ADDING SECTIONS 4.873, 4.874, 4.875, 4.876, 4.877, 4.878, AND 4.879 TO THE EUGENE CODE, 1971; AND AMENDING SECTION 4.990 OF THAT CODE.

The City Council of the City of Eugene finds that:

A. There is a significantly higher incidence of certain criminal behaviors in the downtown area of the City of Eugene than in other areas of the city.

B. The criminal offenses committed by certain persons who frequent the downtown area create violence and disorder, contribute to the degradation of the downtown area and adversely affect the quality of life for the downtown area's residents, businesses and visitors.

C. Persons arrested or cited for certain criminal offenses in the downtown area frequently return to the downtown area and re-offend.

D. The City of Eugene has a compelling interest in restoring the quality of life and protecting the health, safety and welfare of citizens using the public ways in the downtown area and in allowing citizens to use facilities in the downtown area without interference arising from criminal activity.

E. Arrest and prosecution for criminal activity has not proven adequate to control the criminal activity in the downtown area.

F. The health, safety and welfare of the citizens of the City of Eugene are best served by temporary civil exclusion from the downtown area of persons arrested for certain offenses committed in the downtown area.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Sections 4.873, 4.874, 4.875, 4.876, 4.877, 4.878 and 4.979 are added to the Eugene Code, 1971, to provide:

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.

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 163.185, ORS 164.365, ORS 166.165, ORS 167.262, ORS 167.808, 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, 4.820, 4.822, 4.825, 4.882, 4.930, and 4.977, of this code, and for violation of any of the provisions of ORS 163.165, ORS 163.175, ORS 163.185, ORS 164.365, ORS 164.395, ORS 164.405, ORS 164.415, ORS 166.165, ORS 166.170, ORS 166.220, ORS 166.240, ORS 166.250, ORS 167.262, ORS 167.808, 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 ~~(3)~~(4)(a) - (f) of this section may only travel directly to and from the purposes enumerated in subsections ~~(3)~~(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.

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 be represented by an attorney, at the person's own expense, at the hearing.

- (g) 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;
- (h) A map showing boundaries of the downtown public safety zone; and
- (i) A brief description of the reasons for which the court may grant a variance and the procedure for requesting a variance.

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. The court may impose a temporary exclusion order, to be in effect only until the show cause hearing, if, based on a police report or an affidavit from a witness and after considering any response by the person, 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. 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.

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.

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.

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 2. Subsection (1) of Section 4.990 of the Eugene Code, 1971, is amended by adding the penalty for violation of Section 4.879 of this Code in numerical order to the penalty table to provide:

4.990 Penalties - Specific.

- (1) Violation of the following sections is punishable by fine or confinement in jail, or both, up to the amounts indicated opposite each. In addition, the court may order any treatment, related to the violation, deemed necessary for rehabilitation of the offender and the safety of the community.

Section
4.879

Penalty
500 fine or 30 days in jail, or both

Section 3. The City Recorder, at the request of, or with the concurrence 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. Within two years from the effective date of this Ordinance: (1) the City Manager shall prepare a report of the activity recorded in the Downtown Public Safety Zone and provide that report to the Police Commission; and (2) the Police Commission shall review the report, obtain public input regarding the effectiveness of this Ordinance in reducing targeted incidents in the Downtown Public Safety Zone and provide a recommendation to the Council regarding continued enforcement of this Ordinance.

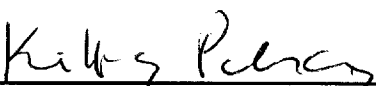
Section 5. Unless otherwise extended by the City Council, this Ordinance and the amendments authorized herein shall automatically sunset and be repealed August 11, 2010. The City Recorder is requested to note this sunset date on appropriate City logs.

Passed by the City Council this
11th day of August, 2008.

Approved by the Mayor this
13 day of August, 2008.



City Recorder



Mayor

ORDINANCE NO. _____

AN ORDINANCE CONCERNING DOWNTOWN PUBLIC SAFETY ZONES; AMENDING ORDINANCE NO. 20419 TO EXTEND THE SUNSET DATE AND DEADLINE FOR PROVIDING A RECOMMENDATION REGARDING CONTINUED ENFORCEMENT OF THE ORDINANCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

The City Council of the City of Eugene finds that:

A. On August 11, 2008, Ordinance No. 20419 was adopted adding provisions to the Eugene Code, 1971, to allow for temporary civil exclusions from the downtown area of persons arrested for certain offenses committed in the downtown area.

B. Section 4 of the Ordinance required that within two years from September 13, 2008 (the effective date of the Ordinance), the City Manager prepare a report of the activity recorded in the Downtown Public Safety Zone and provide that report to the Police Commission, whereupon, the Police Commission would review the report, obtain public input, and provide a recommendation to the City Council regarding continued enforcement of the Ordinance.

C. Section 5 of the Ordinance provided that the Ordinance automatically sunset on August 11, 2010, unless extended by the City Council.

D. More time is needed for preparation and review of the activity report, and to gather public input. It would be in the public interest to extend the Police Commission's recommendation deadline for 30 days and the Ordinance sunset date for 150 days to allow the Downtown Public Safety Zone Code provisions to remain in effect until a thorough activity report can be prepared for the City Council's consideration and a determination made as to whether to continue civil exclusions from the downtown area.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Section 4 of Ordinance No. 20419 is amended to read as follows:

“By October 13, 2010: (1) the City Manager shall prepare a report of the activity recorded in the Downtown Public Safety Zone and provide that report to the Police Commission; and (2) the Police Commission shall review the report, obtain public input regarding the effectiveness of this Ordinance in reducing targeted incidents in the Downtown Public Safety Zone and provide a recommendation to the Council regarding continued enforcement of this Ordinance.”

Section 2. Section 5 of Ordinance No. 20419 is amended to read as follows:

“Unless otherwise extended by the City Council, this Ordinance and the amendments authorized herein shall automatically sunset and be repealed January 8, 2011. The City Recorder is requested to note this sunset date on appropriate City logs.”

Section 3. Pursuant to the provisions of Section 32(2) of the Eugene Charter of 2002, with the affirmative vote of two-thirds of the members of the City Council, upon adoption by the Council and approval by the Mayor, or passage over the Mayor’s veto, this Ordinance shall become effective immediately. An immediate effective date is necessary to allow the Downtown Public Safety Zone Code provisions to remain in effect until a thorough activity report can be prepared for Council’s consideration.

Section 4. A copy of this Ordinance shall be appended to Ordinance No. 20419.

Passed by the City Council this

_____ day of _____, 2010.
2010.

Approved by the Mayor this

_____ day of _____,

City Recorder

Mayor



COUNCIL ORDINANCE NUMBER 20419

COUNCIL BILL NUMBER 4985

**AN ORDINANCE CONCERNING DOWNTOWN
PUBLIC SAFETY ZONES; AND ADDING
SECTIONS 4.873, 4.874, 4.875, 4.876, 4.877, 4.878,
AND 4.879 TO THE EUGENE CODE, 1971; AND
AMENDING SECTION 4.990 OF THAT CODE.**

ADOPTED: August 11, 2008

PASSED: 5/3

REJECTED:

OPPOSED: Bettman, Taylor, Zelenka

ABSENT:

**EFFECTIVE: September 13, 2008;
to sunset August 11, 2010.**