

# EUGENE CITY COUNCIL

## AGENDA ITEM SUMMARY



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### Work Session: Downtown Public Safety Zone

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Meeting Date: October 25, 2010  
Department: Eugene Police  
*www.eugene-or.gov*

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

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#### **ISSUE STATEMENT**

This work session provides an opportunity for the City Council to discuss recommendations from the Eugene Police Commission on the future of the Downtown Public Safety Zone (DPSZ) and the civil exclusion process. Police Chief Kerns and Judge Allen of the Eugene Municipal Court will provide additional information for the City Council regarding the exclusionary process. The ordinance creating the Downtown Public Safety Zone is scheduled to sunset on January 8, 2011.

#### **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 ordinance was established 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.

On August 9, 2010, the City Council approved Ordinance No. 20462 to maintain the exclusion process until the Police Commission could review the staff's activity report, hold a public comment session, and provide a recommendation to the City Council. Eugene Police Department (EPD) staff needed additional time to prepare the activity report and due to the extended time required by the Police Commission to process other policy work there was insufficient time to review the DPSZ activity report and receive public comment before sunset of the DPSZ ordinance. The extended sunset date of January 8, 2011, was requested to allow time to process any amendments to the DPSZ Ordinance if, after this or future work sessions and reviewing the Police Commission's recommendation, the council asks for amendments to the ordinance. In addition, council break occurs in December and the number of available meetings is typically somewhat limited.

Following council direction, a staff report of the activity recorded in the Downtown Public Safety Zone was provided to the Eugene Police Commission. This report is available at the following link ([DPSZ Activity Report](#)) and is available in hard copy for the council if desired. The Police Commission reviewed the report and held a public forum on September 1, 2010, to obtain public input regarding the effectiveness of this ordinance in reducing targeted incidents in the DPSZ. The council received the Police Commission's recommendation (See Attachment A) regarding continued enforcement of the ordinance on October 8, 2010.

Long-term, disorder-related issues downtown have been addressed for more than 20 years through special committees, task forces, Council Goals, City projects, private businesses, etc. Most recently the Downtown Safety Task Team prepared a list of recommendations they believed would improve downtown safety and make the downtown a more welcoming place. Inherent in their recommendations 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 provides a tool to offset the lack of jail sanctions and is a component in law enforcement and our community partner's efforts to improve downtown Eugene's disorder-related issues.

### **Public Comments and Police Commission Recommendation**

At the Police Commission's Public Forum on September 1, and the City Council's public hearing on July 29, 2010, speakers expressed both support and opposition to the use of a civil exclusion process. Those in favor primarily spoke of the need to make downtown safer, removing predators from the city's core and their view that the DPSZ was improving conditions downtown. The majority of those opposed spoke against all exclusionary zones, protection of First Amendment rights and fear that homeless individuals and youth may be unfairly targeted for exclusion. The Police Commission summarized the concerns they heard from the Public Forum and their reactions to the Downtown Public Safety Zone Activity Report in their October 8, 2010, memorandum to the City Council. Their recommendation to the council stated:

“Recommend to the Council continued enforcement of the Downtown Public Safety Zone Ordinance 20419, and that Council work with City departments and community members and stakeholders that may or may not include Police Commission and Human Rights Commission members, to resolve outstanding issues in the ordinance.”

The Police Commission went on to say in their memorandum:

“...However, as stated in the recommendation, there are still some outstanding issues in the ordinance for the council to resolve. Sexual offenses were not included in the original ordinance and were considered a significant category of offenses that should be included. There was great concern from members of the commission and the public about sexual predators, however, no predatory behavior is on the exclusion list. Several people stated offenses like statutory rape and sex abuse that occur in the zone should be added to the ordinance. Some additional municipal codes should also be added to tie to State statutes, especially for sexual assault.

“A second key issue is the disagreement over due process protections for individuals. Some people believe the ordinance circumvents due process by allowing officers to issue exclusion citations based solely on preponderance of evidence, and without requiring an attorney be provided for those who cannot afford one. This combines two issues, the authority of police officers and providing representation for individuals in a civil matter. These speakers discussed a chain of due process that is severed if an officer can sanction someone before they have their day in court before a judge (exclusion prior to conviction). In contrast, officers and other people stated that attention was focused in the design of this ordinance to provide due process protections and that it is a judge making the decision to exclude someone, not the officer. There appears to be confusion about how the ordinance works and this should be clearer before the council makes a determination on the future of the ordinance. A discussion of options to possibly mitigate aspects of the due process concerns should be explored with the Police Department and Municipal Court as part of a decision regarding the future of the DPSZ.

“In addition, the commission urges the council to consider greater support and funding to social service agencies to aid in the overall criminal justice system. Many offenders who are excluded from downtown by the DPSZ ordinance need additional help for alcohol and drug addiction, and that can only be remedied by having more services available to them to improve their way of life.”

### **Extension of the Downtown Public Safety Zone**

Over the past months, the Police Department has conferred with Municipal Court Judge Allen and the Court Administrator, as well as members of the public, to identify options to improve the DPSZ civil exclusion process. Judge Allen will be present with Chief Kerns for the October 25th work session and will be able to assist with questions about the due process protections for defendants, provide examples of other situations where non-criminal sanctions are enacted without legal representation and answer other questions the council may have about how the ordinance works.

The Police Department’s Activity Report for the first 20 months of the DPSZ ordinance provides data on the highlights of the exclusion program. Based on the findings of this report, the Police Department views a limited extension to the DPSZ for 18 months as a significant resource to maintain progress achieved in improving downtown Eugene’s livability and safety. Within 18 months, the police officers added in the FY11 budget will have completed training and the new Downtown Police Team should be established as a continuous, year-round assignment. When this team is in place, the department will have additional resources to resolve many of the crimes and violations occurring in the downtown core.

The department also proposes modifying the ordinance to address sexual violations and crimes. Discussions will continue with the Municipal Court, the City Prosecutor and community stakeholders to review available options to address concerns about due process protections and the complexity of the ordinance. The Activity Report discussed the role of chronic inebriates in two types of disruptive minor offenses: liquor violations and criminal trespass. These findings have already prompted Police Department research and efforts to explore other options to address law enforcement issues and additional community supports for individuals with chronic alcoholism.

### **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, Downtown and Police Initiatives. The Park Rules currently provide an option of exclusion from parks and playgrounds for certain offenders.

### **COUNCIL OPTIONS**

- A. Direct the City Manager to bring back for final action a revised ordinance to continue the Downtown Public Safety Zone, setting a sunset date of 18 months.
- B. Direct the City Manager to bring back for final action a revised ordinance to continue the Downtown Public Safety Zone and add sex offenses to the list of violations and crimes subject to exclusion.
- C. Direct the City Manager to bring back for final action a revised ordinance to continue the Downtown Public Safety Zone and address other concerns the council has identified.
- D. Allow Ordinance No. 20416 to expire on January 8, 2011, ending the Downtown Public Safety Zone.

### **CITY MANAGER'S RECOMMENDATION**

The City Manager recommends that the council choose Options A and B, directing him to bring back for final action a revised ordinance that would sunset in 18 months and would add sex offenses to the list of violations and crimes subject to exclusion.

### **SUGGESTED MOTION**

I move to direct the City Manager to bring back for final action a revision to the Downtown Public Safety Zone Ordinance that would add certain sex offenses to the list of violations and crimes subject to exclusion and set a sunset date for the Ordinance of 18 months.

### **ATTACHMENTS**

- A. Police Commission Recommendations: Downtown Public Safety Zone Extension
- B. Downtown Public Safety Zone Ordinance No. 20462
- C. Downtown Public Safety Zone Ordinance No. 20419

### **FOR MORE INFORMATION**

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# Memorandum

City of Eugene  
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**Date:** October 4, 2010  
**To:** Mayor Piercy and City Council  
**From:** Members of the Eugene Police Commission  
**Subject:** Recommendation on the Downtown Public Safety Zone Ordinance No. 20419

This memorandum provides the Police Commission's recommendations regarding the continuation of the Downtown Public Safety Zone (DPSZ) Ordinance No. 20419. In the ordinance, City Council specified a process for the commission's review of the DPSZ effectiveness. This included receiving public input and discussing the DPSZ Activity Report presented by the Eugene Police Department. This link will take the reader to the [DPSZ Activity Report](#) on the Police Commission's web page.

The Police Commission received the Downtown Public Safety Zone Ordinance Activity Report from the Police Department on August 18, 2010. On September 1, the commission held a public forum at the Eugene Public Library. Following a short presentation about the findings in the Activity Report, a panel of downtown stakeholders commented on the ordinance and answered questions from the public. Approximately 50 members of the public attended the forum and had the opportunity to provide public comment. The public comment was almost equally divided between those who oppose and those who support the ordinance. (Please see Attachment A for minutes from the public forum.)

At their regular meeting on September 9, 2010, the Police Commission discussed input heard at the forum and the Department's Activity Report. After careful review, the following motion was made:

"Recommend to the council continued enforcement of the Downtown Public Safety Zone Ordinance 20419, and the council work with City departments and community members and stakeholders that may or may not include Police Commission and Human Rights Commission members to resolve outstanding issues in the ordinance." The motion passed 5-4, with members Ahlen, Alsup, Brown and Mueller dissenting.

## **Summary of Public and Commissioner Comments**

The following summary statements and themes include comments from some members of the public who spoke at the September 1, 2010, forum and some commissioners who support and/or oppose continuation of the exclusion zone. The minutes from the public forum provide additional comments and are provided in Attachment A. Statements supporting and opposing the continuation of the ordinance represent the beliefs expressed by individuals; they have not been corrected for accuracy if they do not correctly describe the DPSZ exclusion process or if they are not factual.

### **Comments In Support of Continuing the DPSZ Ordinance:**

- The ordinance has the ability to protect people and prevent victimization of vulnerable people, especially youth.
- The statistics in the Activity Report show a strong impact on criminal behavior in a short amount of time. Using the tools that we can enforce will create a better environment for our citizens.
- Exclusion is often preferable to incarceration, and has been applied very sensibly by the Police Department.
- The normal pre-conviction process set out in the exclusion ordinance allows people the opportunity to be heard before a judge, who then reviews the police report. If a hearing is requested, the officer who made the arrest will be there and the defendant will have an opportunity to challenge the temporary or 90-day exclusion. So there is due process, and it is not arbitrarily imposed upon arrest by the police officer, there is judicial review.
- The exclusion process is a part of a comprehensive strategy for Downtown. Accomplishing the goals cannot work without the exclusion zone.
- Beyond the statistics cited in the report, property owners see this as a lifeline from the City, showing that the city cares about Downtown Eugene.
- Some individuals noted a big difference since the exclusion zone began—they stated that hardcore predators are gone for a little while and this gives kids a chance.
- The exclusion zone is offered as a deterrent, because jail is an empty threat to people because of a lack of resources. They felt the exclusion zone shouldn't be dropped, although it might need to be adjusted. The lack of jail beds was noted as a reason why the exclusion zone was needed at this time because consequences are needed for people who offend.
- Individuals identifying themselves as members of the community, as well as business owners, stated they felt we owe it to our citizens and children to do something about our downtown.
- It's not the ordinance or a specific weapon that is the issue, but the ability for it to be implemented. When a recommendation is made, it should be done while considering victims of these crimes.
- It's a small price to pay for safety. The process is cheap, easy, works for some people, and is a good way to get people out of trouble. We need to make sure it's not duplicating any existing rules. The speaker concluded she was very pleased with the way it's been enforced.

However, as stated in the recommendation, there are still some outstanding issues in the ordinance for Council to resolve. Sexual offenses were not included in the original ordinance and were considered a significant category of offenses that should be included. There was great concern from members of the commission and the public about sexual predators, however, no predatory behavior is on the exclusion list. Several people stated offenses like statutory rape and sex abuse that occur in the zone should be added to the ordinance. Some additional municipal codes should also be added to tie to State statutes, especially for sexual assault.

A second key issue is the disagreement over due process protections for individuals. Some people believe the ordinance circumvents due process by allowing officers to issue exclusion citations based solely on preponderance of evidence, and without requiring an attorney be provided for those who cannot afford one. This combines two issues, the authority of police officers and providing representation for individuals in a civil matter. These speakers discussed a chain of due process that is severed if an officer can sanction someone before they have their day in court before a judge (exclusion prior to conviction). In contrast, officers and other people stated that attention was focused in the design of this ordinance to provide due process protections and that it is a judge making the decision to exclude someone, not the officer. There appears to be confusion about how the ordinance works and this should be clearer before the Council makes a determination on the future of the ordinance. A discussion of options to possibly mitigate aspects of the due process concerns should be explored with the Police Department and Municipal Court as part of a decision regarding the future of the DPSZ.

### **Comments Opposing Continuation of the Ordinance**

- The ordinance limits someone's right to travel freely in society and this is a fundamental right.
- There is no way to track how many people were cited in error and chose not to challenge their exclusion either because they didn't understand the process or believed they had no chance of being given a fair hearing in court. Some people have disabilities and little education and don't understand the exclusion order. Needs to be more of a fair application of ADA rules.
- Instead of having an exclusion zone, we should use our current judicial system.
- The ordinance is vague and abuses officer discretion.
- Concern was expressed that the Activity Report lacked data on the number of homeless people and concern with class issues.
- The idea of a sunset on the ordinance isn't unreasonable but needs to be extended to four years instead of two to really see results. Regular reviews and reports of the ordinance's impacts should be provided.
- Too much time and too many resources are being used on the exclusion zone.
- Questions about alcohol and drug violations mentioned in the activity report. It seemed to this individual that more exclusions were made from drug violations than from alcohol, but alcohol was discussed as one of the two main types of disruptive minor offenses.
- A belief by a speaker at the forum that many of the descriptions of behavior are overstated; the report says more than 60% of people excluded, reported themselves as homeless but this individual thought it was closer to 80%.
- Rather than exclude people in one neighborhood, several people and commissioners urged focus on the need for services: public bathrooms, very few garbage facilities, no non-denominational shelters are downtown. Crime happens all over the city and sectioning off one area downtown won't fix the problem.
- A speaker at the forum stated that Portland had the same type of exclusion ordinance, but was sued for profiling. (Note: Portland's two ordinances that were allowed to expire on October 1, 2007 were the Prostitution and Drug-Free Zones.)

In addition, the commission urges Council to consider greater support and funding to social service agencies to aid in the overall criminal justice system. Many offenders who are excluded from downtown by the DPSZ ordinance need additional help for alcohol and drug addiction, and that can only be remedied by having more services available to them to improve their way of life.

We hope that City Council will find this summary useful in its future discussion of the extension of the Downtown Public Safety Zone.

#### ATTACHMENTS:

- A. September 1, 2010 Public Forum Minutes
- B. Downtown Public Safety Zone Ordinance No. 20419
- C. Police Commission Draft Minutes, pages 1-8 – September 9, 2010

**EUGENE POLICE COMMISSION  
DOWNTOWN PUBLIC SAFETY ZONE ORDINANCE – PUBLIC FORUM MINUTES**

Wednesday, September 01, 2010  
Eugene Public Library

**Panelist Responses to Two Questions:**

- 1. What do you feel have been the effects of the downtown exclusion zone?**
- 2. What changes would you like to see the City Council make to the ordinance?**

**Officer Bremer, EPD:** He explained the effects of the ordinance, which he said have taken time to be seen. In his work patrolling downtown, he sees a mix of people who come to downtown in transit, to work, for recreation, for school, to shop, to have access to homeless services, street youth who have no place to go and are homeless/street youth who have a place to go but like to hang out at night, young adults, and other adults who fit those categories. It's a big mix of people, with different activity. As a downtown patrol officer, it takes time to build trust with people. His observation of the exclusion zone is that it's one tool in a more comprehensive strategy the City of Eugene is doing in order to make downtown a safer place. People who have been excluded are victimizing people who are vulnerable: youth and homeless people. He gave an example of one person excluded who was beating homeless people, and taking their possessions. That person is now off the street and out of downtown. There is a high victimization of vulnerable people. Perpetrators have also been victims. This ordinance has the benefit of protecting people and preventing victimization. It is not merely an ordinance enacted to benefit downtown businesses.

**Andy Vobora, Director of Marketing & Communication, Lane Transit District:** There are approximately 10,000 interactions a day of people moving through LTD. The effort in developing a new LTD station was established to create a safer atmosphere and LTD has a long history of working with EPD toward downtown safety. LTD has their own exclusion ordinance #36 governing situations for their stations, which was worked on with the City of Eugene. LTD needs to work in tandem with the City because once a person is excluded from the LTD property they could stand on the sidewalk and have the same behaviors. 59% of exclusions made by LTD were also excluded by the downtown exclusion zone. **Rick Bailor, Security Manager, LTD:** Security officers have noticed people preying on youth around the area, and it's quite noticeable when they're excluded from the zone. Excluding these perpetrators is one less problem to worry about.

**Linda Hamilton, Chair of the Eugene Human Rights Commission:** She has a concern for safety of the community and young people being victimized. She sees an officer's role is to protect both. She wants to make sure a resolution is made that youth aren't victimized. She's interested in the value of all people. She wants this to be a safe community, free of unpleasant behavior for businesses in downtown. She is often concerned about having her own kids come into the downtown area. However, she also believes in due process, and people excluded are not always done so fairly. The homeless are part of our community and if we don't deal with them, they will go elsewhere. She wants to see if this causes an impact to downtown. She wants to look more into due process and judges excluding people from the area.

**Dave Hauser, President, Eugene Chamber of Commerce:** He commented that the City's Annual Community Surveys show our community is interested in public safety. He said Terry Smith's statistics (the Police Department Report on the DPSZ) was good to see. He was part of a community group in 2009 that looked at strategies for downtown safety. The group included business representatives, youth advocates, and overall a broad cross-section of interested parties. The group was tasked with giving recommendations to the City on how to make people safer downtown. Four categories of concern were identified: lack of accountability for actions, illegal and unpleasant behavior, lack of cohesive and coordinated planning, and aspects of physical space and environment. He worked with council with a series of short-term strategies that were broad-based



(social services, ban on liquor, adding police officers). Those effects won't be seen until 2012 because of the time it takes to train downtown patrol officers. He thinks this is an important tool, but just one of many tools needed to achieve the community's goals downtown. He believes with or without the exclusion zone, we need to aggressively pursue these other strategies to achieve the desired effect. However, accomplishing the goals cannot work without the exclusion zone.

The state of affairs of our criminal justice system is a huge impact. He said that Eugene may not be unique but the state of our criminal justice system is unique. The lack of sanctions has caused an increase in chronic offenders downtown. One goal of the exclusion zone is an alternative to incarceration. He thinks we must look at the exclusion zone based on goals and objectives, which the ordinance has done. Beyond the statistics cited in the report, property owners see this as a lifeline from the City, showing that the city cares about Downtown Eugene. The data in the activity report suggests that the ordinance has been applied very sensibly by EPD. Concerning changes: he hopes the ordinance is re-enacted following this sunset. He hopes this is not the only solution but a tool. He hopes to see regular reviews and reports of the ordinance's impacts. The idea of a sunset on the ordinance isn't unreasonable but needs to be extended to four years instead of two to really see results.

**Claire Syrett, Southern District Field Organizer, ACLU:** Claire read an issue statement from the ACLU (please see complete statement attached). To summarize, the ACLU's main objection to the exclusion zone is a matter of policy; they oppose exclusion prior to conviction. Serious sanctions should not be imposed without due process. They oppose limiting someone's right to travel freely in society. This is a fundamental right. Certain due processes must happen as not to hurt the innocent. People deserve proper hearings. Proponents of this ordinance focus on its effectiveness, but they should not lose sight of the fundamental rights under the Bill of Rights to protect all. The ACLU believes we can have exclusion orders that uphold due process orders. However, instead of having an exclusion zone, we should use our current judicial system. The District Attorney can already request an exclusion. The current ordinance circumvents due process by not allowing an attorney to be provided. Without access to a lawyer, people don't know how their rights can be protected, and some do not understand exclusion orders. Some have disabilities and little education. One of the City's Municipal Court judges avoids giving exclusion orders to people with mental disabilities. Street level justice allows officers to cite people without due process. Just because it's popular doesn't make it right. The ACLU will continue to oppose this as long as people are banned from public areas and are not given due process.

**Public Comment Period:**

**Carol berg Caldwell:** She read a prepared statement about the exclusion zone and its impact on youth, as well as her experience sitting in on court proceedings. She said despite the concern about sexual predators, no predatory behavior is on the exclusion list. Even young people playing hacky sack can be fined. She believes too much time and too many resources are being used on the exclusion zone. She spoke against the exclusion zone and criminal trespass citations, which gives proxy to EPD for citing on trespass instead of going through a more extensive process. She warned that taxpayers pick up a large part of this. Police could issue more warnings, less citations. She said social cleansing belongs at the doors of people working in the shadows. We hold dear the values of justice, freedom, equality. This is just a tab for taxpayers to pay.

**Mary Salinas:** She spoke as a spokesperson for the homeless. Experiencing homeless for 12 years, she said homeless people have no rights and the ways in which homeless people are hurt are horrific. This exclusion zone doesn't bother her too much. She thinks the power of the zone will flatten out somewhat once the worst of the offenders are taken out of there. Children are developing their personalities in a sensitive manner. After they are homeless for a while, she believes damage sets in that cannot be recovered. She said we have to think with compassion for the children on the streets. The simplest thing to do is to bring homeless people in. The larger problem is alcoholism. A very large number of homeless people are alcoholics. She wants to give disability checks to people who are homeless.

**Walt Hunt:** Homeless people need a lot of help. He supports the exclusion zone because it's the right thing to do. If he had committed a crime downtown and was looking at jail or just staying away from the area downtown, he would choose to stay away or be told to stay away from that place. It seems a lot harsher to be locked up than to be kept out of an area. It also seems to be a lot cheaper to be enforcing safety laws, and tell people they've worn out their welcome downtown. After so many times of assaults or drunken disorder, so many times being caught in an alley shooting heroin, enough is enough. There is more to it though. All other reasons would have to be dealt with. He works downtown, and two years ago he started noticing an increase in violent activity and drunken disorder. He doesn't have his own security team. He was assaulted twice near his business by a person who had 80 charges against him. Had that person been excluded he wouldn't have been attacked. He thinks if there's a problem the way the ordinance is written, let's change that, but keep it.

**Tim Mueller:** He asked questions about alcohol and drug violations mentioned in the activity report. It seemed to him more exclusions were made from drug violations than from alcohol. Terry Smith answered: the average number of charges per person in the exclusion zone is 2.9, and it is fairly uncommon for drugs to be the sole reason for exclusion; something else occurred. The most frequent way in which drugs are discovered is a result of another enforcement or action. When a person is searched prior to being lodged, drugs may then be discovered and an additional charge is made.

Mr. Mueller asked another question: Is 16% of the exclusions from marijuana effective? Terry Smith answered: many of these are felonies because of the proximity to a school, or for dealing. Lt. Mozan answered: marijuana is easy to typecast into one category. However, having less than an ounce is just a violation. But bringing it near a school becomes a felony (Network Charter School is within 1,000 feet, near where offenses were). Similarly, if someone is dealing, it's a different offense and more serious. Looking at that offense, you don't usually see the same violation level. Those crimes are categorized as serious crimes in courts. Other cases involve heroin, and high scheduled drugs (meth, delivery of scheduled narcotics). Mr. Muller said he was impressed by Carol's poem describing her observations sitting in court for a number of sessions, and regular exclusion zones being thrown out by the judge.

Mr. Muller asked what cases weren't approved by a judge, and why? Lt. Mozan answered: one thing important as a police manager is that we must be efficient that we take our procedures seriously and communicate with one another. When an exclusion order did not stand up, it was a show cause for violation in court. A person can appear in court and get a hearing set for due process. In a show cause hearing, if the court hasn't received all documentation (like the citation), the judge won't issue an exclusion order without sufficient data. That occurred in about seven cases. Lt. Mozan suggested a change in the ordinance to add a safeguard for adequate data transfer. He said administrative failing shouldn't cause that to happen. He does not believe there is any over-zealous enforcement. He said the report's profile downtown shows that during the summer, six officers were assigned to self-initiated activity and provided with data from businesses and stakeholders on certain criminal activity. The officers are very thoughtful about enforcing the law with exclusion to chronic offenders, repeat offenders, and people who prey on people. Ofc. Bremer mentioned an arrest he made on a person for menacing and animal abuse. The appropriate charge was made to Circuit Court, and among the charges was menacing, which is one of the offenses, and an exclusion order was made based on that conviction. A failure is that the ordinance only spells out municipal codes tied to specific offenses, not State statutes.

**Linda Tucker:** She is a security officer contracted by LTD. She thanked the ACLU for their perspective of due process. Every day she works with Ofc. Bremer and other downtown officers. She said most of the kids downtown are great. Jail is a laughable joke here in Eugene because people know they won't stay long. The exclusion zone is offered as a deterrent, because jail is a joke to people because of a lack of resources. She said we've offered this exclusion zone, and it shouldn't be dropped. It might need to be adjusted, but not dropped. She said we need consequences for people who offend. Kids downtown see that there are no consequences for adults committing crime, so why should they do the right thing? That needs to be taken into account. The

exclusion zone should include some of the younger crowd. Youth that hangs out downtown would benefit from knowing there are consequences for committing crimes. The ordinance gives the officers a tool to help prevent people from committing crime: if excluded, they won't have access to services they use: can't use the library, buses any longer. Jail isn't the answer; the exclusion zone is.

**Janet Brown:** She works downtown and her understanding is that the ordinance doesn't target a certain class of people. She asked Officer Bremer about behaviors downtown. He answered that the ones he sees are Assault, dealing drugs, disorderly conduct and a significant number of underage girls having sex with older men. He added that Marijuana and Ecstasy are the predominate drugs with alcohol. She observed a correlation between specific behavior of harassment, assault, and drug offenses with under-age kids—a significant amount of underage girls seem to be having sex with adult males. Teenage prostitution occurs downtown. She believes one thing discussed and needs to be added to the ordinance is sex offenses like statutory rape and sex abuse that occur in zone. In the activity report, only one juvenile was excluded in 2008, so this isn't targeting youth. She didn't hear any mention of the class of people. She reiterated that it's only behaviors; stating that needs to be recognized.

She asked another question: if the exclusion zone goes away, how would repeat offenders be dealt with? Lt. Mozan answered: we've pledged to put officers in downtown as a permanent presence (although not fully until 2012 because of time for training and the selection process). We don't currently have enough staff to do that right now, just during Spring through Fall. Without this ordinance, downtown officers will be reduced to just two, which is a reduced footprint of enforcement services. Also the number of offenders that were sanctioned will come back to downtown. Then in 2012, those new officers being trained right now will have to be reinvent the wheel to restore Downtown to a level that is manageable.

**Melissa Mona:** She shares in full the concerns in the prepared statement from the ACLU. She has deep concern as a private citizen for the lack of due process and civil rights problems in the ordinance. She would hate to see the City, with good intentions, create situations with costly litigation. She agrees there is a way to create an exclusion zone concept but we're not there yet. She is concerned with the lack of data in the report on the number of homeless people. She's also concerned with class issues. There was no data on people alleged or perceived to have a disability—those people have protections. There has been an understanding on part of the judges to look more carefully at people with mental illness. She thinks there needs to be more of a fair application of ADA rules. She was also troubled by location of the forum—in the heart of the exclusion zone. Anyone affected who wanted to come share their feelings would have had to go through a complex process to get a waiver to do so. The very people she's concerned about can't be heard.

**Ofc. Bremer** asked to respond to the issue of due process. He stated it is a course of due process that occurs in the normal course of someone being arrested. As an example, for a subject arrested in any part of town, pre-trial services can make decisions for an exclusion from a certain geographical area or exclude who that person can contact. That is all prior to even going before a judge and allowing this accused defendant to be released from the jail prior to a hearing. Post-conviction has possible conditions or restrictions placed on probationers/parolees that may ban them from a certain area or access – this is very similar to the exclusion zone in downtown. He stated the Exclusion Ordinance is similar to a bench probation. The normal pre-conviction process allows people the opportunity to be heard before a judge who then reviews the police report. If a hearing is requested, the officer who made the arrest will be there and the defendant will have an opportunity to challenge the temporary or 90-day exclusion. So there is due process, and it is not arbitrarily imposed upon arrest by the police officer, there is judicial review.

**Kimberly Gladden:** She's a downtown resident, and has lived in the core for 10 years. She is on the streets every day, and walks several times around downtown. Over the years she has seen a progression of kids getting chased from the Whiteaker area, the University area, and are all pushed to downtown. This creates territory fights. She has seen kids who sit at the bus station who often come back behind her residence with alcohol,

older predators, prostitutes, and are the same people over and over again. She has had people threaten to kill her or vandalize her property but the kids know the downtown officers and they know their schedule so they commit during off times. The young girls need to be protected, but she doesn't understand why the police unions have not pressured OLCC to ban malt liquor beverages from the entire state as a substance that causes problems. The kids she offers to help don't want it. She has noticed a big difference since the exclusion zone began—hardcore predators are gone for a little while and this gives kids a chance. Network Charter School kids are preyed on by criminals and aren't being protected.

**Shirley Mitchell:** She is a security guard downtown. She brought a visual for everybody in the room to see: a poster board with pictures of offenders and evidence from crimes (needles, guns, prostitution, etc.) that she has witnessed downtown. She emphasized all of these crimes are under the exclusion order and occur downtown. She concluded that security guards deal with this daily.

**Jeremy Star:** As a citizen of Eugene, he spoke in support of the exclusion zone. He was very impressed by the statistics in the activity report on the effect of the zone. He had no idea that it had such a dramatic impact in a short period of time. He grew up in Eugene, and used to walk downtown to the bus station. Back then the downtown area was vibrant. Today it's toxic. He thinks we need to find a medium. We should use the tools that we can enforce to create a better environment for our citizens. He said he would never allow his grandchildren to take the bus to the downtown library alone; it's not an option. The exclusion zone is not an end-all, cure-all, but it is a tool. As a community person and business person, he thinks we owe it to our citizens and children to do something about our downtown. We have talked about it for years, and tried things that haven't worked. The statistics speak very much in favor of the ordinance.

**John Brown:** He spoke as a citizen, not representing any board or commission. He has some knowledge about what's going on. He was a former Police Commissioner for 8 years and member of Downtown commissions and boards. It's not the ordinance or a specific weapon that is the issue, but the ability for it to be implemented. He has a lot of trust in EPD, and also understands the ACLU's concerns. But he's been fighting this fight for many years. He added that one of the mentally ill people referenced tonight is a heroin dealer and sex offender. He'll continually be matrixed out of jail. So who has the better right—the offender or the girl he is sexually offending? When you get repeat offenders with mental health issues continuing to pollute the environment and commit spousal abuse and crime, the damage cannot be fixed. We matrix 5-6,000 people and release them downtown every year. He said he has to pay for each security agency, but still isn't getting protection. When a recommendation is made, he thinks it should be done while considering victims of these crimes.

**Mary Leighton:** She is the Principal of the Network Charter School. She said that she is at the proud center of a 1,000 foot circle (referring to crimes occurring within 1,000 feet of a school). She really appreciated the thoroughness of the report and its comprehensiveness. Two things occurred to her: the exclusion is like a time out. When her grandson does something bad, he has a time out to think about his behavior. Time out is a time-honored behavior management strategy. You just don't get to be someplace when a certain behavior is expected and you don't behave. In life you get better about doing things where you don't get caught and impact other people than yourself. At a minimum, the exclusion zone is a hassle and expense, but it makes people leave a space until they learn the rules of behavior for that space. She sees the Downtown Eugene, Inc. people and the Red Hats often, and they know everyone around. How they operate is they have a long list of things before they even give an exclusion. It's a small price to pay for safety. The process is cheap, easy, works for some people, and in her experience is a good way to get people out of trouble. She is happy to support this. She just wants to make sure it's not duplicating any existing rules, but very pleased with the way it's been enforced.

**Lauren Regan:** She is an attorney in Eugene, and runs the Civil Liberties Defense Center. She added to what the ACLU said, that the ordinance is vague and abuses officer discretion. In her opinion many of the descriptions of

behavior have been overstated. She said that the report says over 60% of people excluded reported themselves as homeless but she thinks it is much more, closer to 80%. She added that the exclusion system is confusing and when victims offend they can't show up because they have to work or don't understand the process.

Rather than exclude people in one neighborhood, she urged focus on the need for services. Downtown has no public bathrooms and very few garbage facilities. No non-denominational shelters are downtown. Most people don't choose to be homeless, they are there because they are mentally ill. When living on the street, your life is public. Portland had the same type of exclusion ordinance, but was sued for profiling. Excluding people from downtown pushes activity to other areas. Rather than exclude from one area, enforce the law as it's written. If enforcement isn't working, refer people to other services. The problem in court appearances is that it punishes the victims as well. What is the real cause of our problems?

**William Moskal:** He is a Vietnam vet. After being at the forum, he is more in favor of the exclusion zone. He said EPD needs this tool. He lives in the Buckley House and it gives him a safe place. He sees what kids have to deal with, and young kids are being taken advantage of. He said kids should be in school and that he knows most of the police officers and security people. He concluded this ordinance is good.

**Claire Syrett from the ACLU made a final comment:** She said that we have heard a lot about crimes tonight and she believes these crimes aren't unique to Downtown. Crime happens all over the city. Sectioning off one area downtown won't fix the problem. People can be held accountable for those crimes with the system we have in place so people aren't denied due process while dealing with criminal elements. If you think your public safety system is failing, then step up and do something to support the jail and public services, instead of taking a short cut and using the exclusion ordinance.

*Minutes Recorded by Randi Zimmer, Police Commission Staff*

**EMAIL CORRESPONDENCE RECEIVED AT THE POLICE COMMISSION OFFICE:**

1. Prepared Statement from Claire Syrett, ACLU

Exclusion Zone Talking Points  
Police Commission Forum  
September 1, 2010

As a matter of policy the ACLU opposes programs like the one currently in place for downtown Eugene that allow pre-conviction exclusion of someone accused of a crime.

Excluding a person from our public places – our commons – is a serious sanction that should not be imposed without due process of law. When we speak about excluding someone under these zones we are talking about limiting someone's right to travel and associate freely in our society.

To us, this right is a fundamental right. And before our government removes or limits that right by using an exclusion order, it must ensure that certain due process protections happen so that we do not end up punishing the innocent. These protections include: arrest and filing of criminal charges, the right to counsel, the right to a judge or jury, a judicial hearing and judicial oversight.

While the proponents of the exclusion zone focus on how effective and necessary this ordinance is we shouldn't lose sight of what we are giving up to use this tool - including fundamental rights guaranteed by our Bill of Rights and a process that upholds those rights – rights which protect all of us in this room and in the businesses and schools downtown - not just those people who might be the targets of this ordinance.

I want to be clear: the ACLU believes that we can have exclusion orders that uphold these due process principles. Instead of an ordinance, we can use the current judicial system. Under our system, if a person is suspected of one of the crimes included in the exclusion ordinance, they can be arrested or cited and then must appear before a judge. At that time, if the person is going to remain or be released from custody before going to trial, the District Attorney can request the judge to issue an exclusion order as part of the release conditions. And if the person pleads guilty or goes to trial and is found guilty then at the time of sentencing, the judge can order the person excluded as part of the sentence.

The current exclusion program also circumvents due process by allowing exclusion based solely on a preponderance of evidence in a civil process that does not require an attorney be provided for those who cannot afford one. In spite of the efforts by our municipal court judges to provide a fair process they cannot represent or advise the people who come before them.

Without access to a lawyer, many people do not fully understand how quickly they need to act, and what they must do to protect their rights to challenge an exclusion order. Many of the people who receive these orders might not be as well equipped as all of us to understand what the exclusion order says, what it means and how to access and understand the system to defend themselves. Some have little or no education, some have serious disabilities or mental health hurdles that have nothing to do with any criminal activity. In fact at least one of our municipal court judges has stated she avoids imposing exclusion on those with mental health issues because they cannot fully understand the sanction or its implications.

Lastly there is no way to track how many people were cited in error and chose not to challenge their exclusion either because they didn't understand the process or believed they had no chance of being given a fair hearing in court. This is another link in the chain of due process that is severed when we allow the use of this kind of street level justice where an officer can cite someone and essentially sanction them before they have had their day in court.

It may be that a majority of Eugene residents are content to allow this program to continue given the support it has received from downtown businesses. But the fact that it popular does not make it right. The ACLU will continue to oppose this exclusion program and others like it on the principle that a free society does not banish people from the public square without due process of law. The downtown public safety zone does not provide adequate due process and should be abandoned.

2. Email received to alert commission of future correspondence to be received:

**From:** Connie Bennett [mailto:connie@silvamgmt.com]

**Sent:** Wednesday, September 01, 2010 10:33 AM

**To:** ZIMMER Randi M

**Subject:** testimony for DPSZ

I am looking for an address that our downtown building owners and tenants can use to send written support for the DPSZ. I realize the public forum is tonight and have given building owners and tenants notice, but also wanted to provide them with a way that they could send written support for the ordinance.

Thank you for your assistance.

Connie Bennett, Property Manager

***DRAFT MINUTES***

Eugene Police Commission  
McNutt Room—Eugene City Hall—777 Pearl Street  
Eugene, Oregon

September 9, 2010  
5:30 p.m.

PRESENT: Tamara Miller, Chair; Juan Carlos Valle, Vice Chair; John Ahlen, Joe Alsup, George Brown, Mike Clark, Jim Garner, Tim Mueller, Marilyn Nelson, members; Police Chief Pete Kerns; Randi Zimmer, Linda Phelps, Lt. Doug Mozan, EPD staff; Police Auditor Mark Gissiner.

Ms. Miller called the meeting of the Eugene Police Commission to order.

**I. AGENDA MATERIAL REVIEW AND MINUTES APPROVAL**

Ms. Zimmer reviewed the agenda attachments, which included two sets of commendations and Internal Affairs case summaries for July-August; a news release about the commission vacancy; and Police Auditor Mark Gissiner's annual report. She deferred consideration of the July 8, 2010, minutes to the October 2010 meeting.

**II. PUBLIC FORUM**

Mr. Valle reviewed the rules for the Public Forum.

**Deborah Frisch** complained about the work of a minutes recorder, shared a personal experience related to the events of September 11, 2010, and complained about the failure of Congress to enact legislation providing benefits to those injured that day.

**Mary Salinas** shared a story about a man who attempted to evade the police and averred the police had set a police dog upon him while he was handcuffed. She asked why the "good cops" did nothing about the "bad cops." She also spoke out against child pornography, terming it genocide.

**Claire Syrett** of the American Civil Liberties Union (ACLU) reiterated the ACLU's objection to the City's Downtown Public Safety Zone (DPSZ) ordinance. She said such sanctions required proper due process and suggested there were sufficient processes in place already for repeat offenders that provided due process. It would eliminate the confusing and separate process required by the DPSZ ordinance. She asked the commission to recommend to the council that the zone be allowed to expire.

**Majeska Seese Green** questioned why the recent forum on the DPSZ had not been recorded. She did not think it was respectful of speakers' comments, no matter how well the summary was written. Referring to the Agenda Item Summary for the DPSZ, she expressed concern at the staff recommendation, which was for the first or second option rather than the more neutral third option. She did not think staff should support a position before the commission discussed the issue and did not believe the commission's staff should be representing Eugene Police Department (EPD) positions.

**Frank Switzer** discussed the impact of the DPSZ on his downtown business, the Bean Buzz. He expressed concern that the exclusion zone had caused him to lose business. He believed there was a concerted campaign by Lane Transit District (LTD), the EPD, and the Eugene Area Chamber of Commerce to remove people from downtown and that they were using the zone inappropriately to do so. Mr. Switzer noted the recent public forum on the DPSZ and said that since he was probably going to be in litigation against LTD he had chosen not to speak at the forum, so the DPSZ was also impacting his First Amendment rights. He recommended that the City discard the DPSZ and instead bring together the neighborhood groups and social service agencies that served the populations the ordinance was attempting to address and deal with issues involved from a social services point of view rather than an enforcement point of view. Mr. Switzer observed that the issue of mental health was not even discussed in the staff report, and it was an important aspect of the issues surrounding the exclusion zone.

Mr. Valle closed the Public Forum.

### **III. COMMENTS FROM CHAIR AND ITEMS FROM COMMISSIONERS**

Ms. Miller welcomed new Police Commissioner Jim Garner and thanked Civilian Review Board (CRB) liaison Tim Laue for attending in Bernadette Conover's place.

Mr. Valle also welcomed Mr. Garner and encouraged him to attend a future EPD Citizens Police Academy.

Ms. Nelson welcomed Mr. Garner and reported that during the commission's recess she had participated in interviews for the new Police Commissioner and had been involved in the planning effort for the recent DPSZ forum.

Mr. Alsup welcomed Mr. Garner. He reported on his participation in the bicycle ride held to honor late former Mayor Ruth Bascom, which he had found moving.

Mr. Brown reported that he had attended the DPSZ forum and found it informative and worthwhile. He also welcomed Mr. Garner.

Mr. Mueller had attended the DPSZ forum and reported he had been surprised when a participant pointed out the forum was being held inside the DPSZ and those who had been excluded from the zone could not attend to comment. That had not occurred to him when the forum was being planned, which made him question what else the commission had missed.

Mr. Clark also welcomed Mr. Garner. In response to Ms. Seese Green's comments, he said that City Council Agenda Item Summaries were done in the same format and included a staff recommendation prepared by the staff person in charge of the area in question. He thought it was appropriate that staff made such professional recommendations.

Mr. Garner thanked the commissioners he had worked with to this point. He noted his attendance at the DPSZ forum and Use of Force Committee meetings. He said those meetings had raised many issues he had not previously considered and he was open to the coming discussion.

Mr. Ahlen asked if the DPSZ forum had been recorded.

Mr. Laue regretted Ms. Nelson's departure from the commission.

Ms. Zimmer announced the upcoming Neighborhood Summit on October 2 from 8 a.m. to 2 p.m. at South Eugene High School. She encouraged commissioners to attend. The Prevention Convention was scheduled for October 15 at Sheldon High School from 1 p.m. to 5 p.m. She also noted the commission had a vacancy and applications could be found on the City's Web site. Ms. Zimmer also announced the departure of policy analyst Ellwood Cushman, who was leaving the City after 38 years of service.



Speaking to Ms. Seese Green's concerns, Ms. Zimmer noted the full range of the staff recommendation was reflected in the suggested motions continued onto the last page of the Agenda Item Summary.

Ms. Zimmer noted that Ms. Conover and Mr. Travis were excused from the meeting.

#### **IV. DOWNTOWN PUBLIC SAFETY EXCLUSION ZONE ORDINANCE**

Ms. Miller reported that the statistical report on the DPSZ zone was posted on the Police Commission's Web site.

Ms. Phelps reported on the results of the City's institution of the DPSZ ordinance, noting the department had collected 20 months of data. She first clarified that the statistical report mentioned by Ms. Miller was an activity report rather than an in-depth analysis of the DPSZ. She briefly noted the geographic scope of the DPSZ and reported the DPSZ was an alternative to incarceration and an attempt to displace chronic violators from the downtown to improve safety and the perception of safety in the downtown core.

In sum, Ms. Phelps reported that 96 exclusions were requested by the department and the courts approved 93 percent of those requests. The average exclusion involved three violations. Judges granted seven variances to individuals with a need to enter the DPSZ. Liquor violations and criminal trespass, two significantly disruptive minor offenses, far exceeded other violations. Ms. Phelps reported that there were 4,180 total charges involved in the exclusions issued; 377 were felonies and 2,872 were misdemeanors. Of the misdemeanor charges, 856 were for criminal trespass and 810 were for liquor violations or driving under the influence. A small group of chronic, multiple offenders who self-reported as homeless, contributed significantly to the crime occurring downtown. Enforcement downtown had displaced some criminal activity to nearby downtown neighborhoods, such as the West University Neighborhood. The EPD was working with the Oregon Liquor Control Commission (OLCC) and local merchants on a voluntary ban on malt liquor sales in that area.

Ms. Phelps shared information on the demographics of those who committed offenses in the DPSZ and the larger downtown area. She noted that of the 94 people subject to exclusion, 59 had 734 charges against them in the previous 46 months; 35 had no prior criminal offenses.

Ms. Phelps emphasized that the issues involved were not just police issues, but were social issues and included addiction and mental health issues not being addressed in the community. She said that was significant in regard to who was offending downtown and what resources they had available to them.

Ms. Miller solicited commission questions and comments.

Mr. Valle questioned how staff would analyze the data in the future given changing circumstances, such as the increase in officers serving downtown. Ms. Phelps agreed that things did not remain constant. She believed staff would be able to track patterns and noted that new officers would not be on the street until 2012, so the EPD would have three years of comparable data to review in terms of staffing levels.

Mr. Mueller asked if the DPSZ ordinance or the increased police staffing downtown was responsible for the safer feeling downtown. Lt. Mozan believed no single thing led to the safer feeling. He said EPD's increased presence downtown led to increased enforcement but officers also had the DPSZ as a tool, which allowed them to remove a core group of chronic offenders from downtown. The EPD had also spread officers out on different watches. Lt. Mozan also emphasized the importance of increased communication between downtown stakeholders, including police officers and security personnel, and said stakeholders compared notes on trends and issues, which led to improved outcomes. Lt. Mozan suggested the question to consider was what would happen if staffing was reduced and the ordinance eliminated.

Although he believed improvements to the ordinance could be made, Mr. Clark said he had seen a real difference in downtown as result of the City's extra efforts. At Mr. Clark's request, Sgt. Fitzpatrick provided an example of a typical case that led to exclusion.

Ms. Miller observed that the statistics indicated that adults over 24 years of age represented 71 percent of those excluded, although people often complained about the youth downtown.

Ms. Miller reported a civil lawsuit had been filed regarding the constitutionality of the ordinance and expressed disappointment no one asked a question about the ordinance's constitutionality at the DPSZ forum while the City Attorney was present.

Speaking to the issue of funding social services and jail beds, Ms. Miller acknowledged a lack of funding for services in general. She reviewed some comparative data for Portland, Salem, Eugene, and Multnomah County related to those jurisdictions' expenditures for public safety and social services that demonstrated Eugene's lack of officers, district attorneys, and jail beds. She did not know how other communities were able to fund their services to a greater degree than Eugene-Springfield. Ms. Miller recalled Ms. Syrett's comments at the forum that those concerned about public services should vote for public service funding measures. She agreed with those comments, but said in the meantime, the City must find other ways to deal with crime in the community.

Mr. Mueller said the list of stakeholders appeared to lack representation from social service agencies and he was curious as to why they were not considered stakeholders. Lt. Mozan said they were considered stakeholders. He pointed out there were different interests in downtown and the list referred to by Mr. Mueller included security stakeholders. There was also a Downtown Safety Committee that included several human services agency representatives.

Mr. Mueller preferred that people be put into treatment as needed rather than be incarcerated, suggesting that it could be done at less cost. He pointed out the large number of alcohol-related offenses and suggested that rather than displacing them into other neighborhoods, people be put into treatment so they could change their ways and have a better life. He said research indicated people who had encounters with law enforcement had reduced participation in democracy because they felt abused and overwhelmed by authority figures. He said that was not a good thing for society and recommended the commission look beyond "its corner of the world" and consider the "bigger picture." Although kicking people who needed help out of downtown might help the businesses of Mr. Clark and Mr. Brown, Mr. Mueller did not think it was the best thing for the community. He wanted to look more carefully at the bigger issues rather than merely accept that "things are better this summer."

Responding to a question from Mr. Laue, Ms. Phelps said a key difference between the DPSZ and the City's former exclusion zone was that the former ordinance gave officers more discretion. In the case of the DPSZ, City staff worked with Municipal Court to develop an ordinance that included show cause hearings. Officers could not grant exclusions on their own, although she acknowledged there were questions about how the temporary five-day exclusion worked. She said 90-day exclusions and one-year exclusions could only be imposed by a judge. That included a show-cause hearing and the individual must appear in court. It was a civil process, so no representation was involved.

Mr. Laue asked if Eugene continued to have a prostitution-free zone. Chief Kerns clarified that the City had a prostitution-free ordinance but no identified zone, which was determined by the number of arrests in a given area. Mr. Laue asked about existing court tests for similar ordinances and zones. He suggested that such a zone might be legal but was not necessarily constitutional, as laws were passed by legislative bodies and constitutionality was determined by the courts.

Speaking to earlier comments about funding levels for social services and jail beds, Mr. Laue noted that Lane County had one of the lowest property tax bases in Oregon and lacked funding for basic county responsibilities, which led to the current crisis conditions in corrections and social services.

Mr. Laue said he heard that the DPSZ was an effective tool in an area where problems had grown to crisis proportions. He suggested that the logical question was whether DPSZ would be an effective tool if adopted citywide, and if adopted citywide, would the DPSZ be constitutional. He recommended the commission focus on the issues raised by the ACLU related to the 13<sup>th</sup> Amendment and due process. While he agreed that there were

predatory individuals in downtown who made victims of unsupervised youth, there was the larger question of whether the City could, without due process, determine where people could or could not be.

Mr. Valle, an organizer of the forum, said his focus had been not on the location of the forum but the balance on the panel, but he appreciated Mr. Mueller's remarks about the location.

Speaking to the crime categories on page 8 of the report, Mr. Valle asked for specific examples of disorderly/harassment crimes. Lt. Mozan emphasized the department's focus on criminal behavior and indicated the most frequent offense involved in disorderly conduct was fighting. Physical harassment was generally when one was subjected to unwanted physical contact and was also a result of fights. Mr. Valle hoped the department's focus was on crime and not behavior. Lt. Mozan said that the police could not issue an exclusion order in the absence of a crime. If an individual committed a crime that fell within the list of excluded violations, that person was eligible for the exclusion process.

Mr. Valle averred that he had heard that the EPD was "de-policing" and asked if the zone could be a way for officers to "over police" the area in question. Lt. Mozan said the department was not talking about "de-policing" when it added staff to downtown. He defined "de-policing" as when officers chose not to take action based on a preconceived notion; in this case, the EPD deployed officers downtown to make downtown safer, address quality of life issues, and enforce the law. The courts had indicated to the EPD that the ordinance was used in a judicious and focused manner toward only the chronic and most predatory offenders in the core. Not everyone who received a ticket for an offense downtown received an exclusion order; only a few were handed out in comparison to the hundreds of arrests made by downtown officers.

Mr. Valle asked if officers received training on the DPSZ ordinance. Lt. Mozan said yes. Sgt. Fitzpatrick described the training the officers received and noted the department's consultation with legal counsel to ensure that officers were acting legally.

Mr. Alsup shared Mr. Laue's concerns about due process. He did not think the system was working for those being victimized because of the inability of the County to hold people in the jail. Low-level criminals were out of the jail in hours and there was no accountability. At-risk youth were in danger, and he thought those factors needed to be considered.

Speaking to the ACLU's recommendations, Mr. Alsup expressed interest as to how that those suggestions could be implemented. He asked if the City could track those with multiple offenses so after a certain number of offenses a judge could exclude them from downtown without the need for such an ordinance, or did such a system constitute double-jeopardy. He would support such a system if it could be put into place.

Mr. Alsup doubted the constitutionality of a DPSZ if imposed community-wide.

Sgt. Fitzpatrick agreed with Mr. Alsup that the system was failing victims. He said it was not uncommon for an officer to deal with the same person one day as a suspect, one day as a witness, and one day as a victim. He also pointed out that in some cases a police officer was the only adult a youth could turn to.

Sgt. Fitzpatrick recommended that the ordinance be modified to include sex offenses.

Ms. Nelson termed the forum location unfortunate but pointed out that those who had been excluded from downtown could speak on the DPSZ at a City Council meeting. While she agreed that funding for social services and addiction treatment was inadequate, people had the right to drink if they chose. However, they did not have the right to violate the law. Such violations were why people were excluded.

Ms. Nelson said the data indicated many of those excluded from downtown were frequent offenders with long criminal records. Ms. Nelson found the DPSZ useful in reducing crime through removing such individuals from the area. She believed the DPSZ, in combination with social services, was necessary to increase public safety downtown.

Ms. Nelson supported Sgt. Fitzgerald's recommendation to add sex offenses to the ordinance.

Ms. Nelson continued to have questions around the issue of due process and looked forward to court challenges to the ordinance as a means to answer some of the commission's questions. However, given that the City lacked the ability to hold people before trial, there would be more failure to appear violations if the DPSZ did not exist. On balance, she thought the DPSZ was worth having in place.

Mr. Ahlen suggested the commission's discussion of the ordinance was an opportunity to communicate to the council that the City needed to find a way to fund more jail beds. He termed the DPSZ a temporary "fix" until that could occur.

Mr. Brown said the City Council had recently had a chance to devote more resources to public safety or to social service and a council majority chose to devote more money to public safety, which he found unfortunate. He hoped the council did a better job of allocating resources in the future.

Responding to a question from Mr. Brown about the core group of offenders, Lt. Mozan said the exclusion had a time window and when the time expired some offenders returned to the downtown. Some returned within the exclusion period and were charged with a criminal violation. Many were offending elsewhere. He referred the commission to page 9 of the report, which indicated that ten percent of all crime was taking place in a ten-block area of downtown.

Mr. Brown commended increased communication with the stakeholders but pointed out that could occur without the exclusion zone. He did not support the ordinance and questioned whether the zone had been effective given that crime had only gone down in two categories and those excluded were free to commit crimes in other parts of the community. He thought the ordinance's provisions were unclear and believed it violated the United States Constitution. He said the City already had laws in place, and needed more resources to make the system work. He did not think the ordinance improved anything.

Mr. Clark suggested the commission was making assumptions about due process that might not be accurate. He asked how long an officer could hold someone following arrest. Chief Kerns said that a person must be arraigned within 24 hours but their movements could be restricted within that time period. He said it required the same evidence for a judge to exclude someone as it required for the officer to exclude someone. Lt. Mozan clarified that judges, not officers, excluded people from downtown.

Mr. Clark believed that the DPSZ had resulted in the desired results. He also agreed with adding sex offenses to the list of offenses for which one could be excluded. While he understood the concerns expressed regarding the lack of legal counsel at hearings, he pointed out that people could also complain to the Police Auditor about that issue without a lawyer present, and to date no one had.

Mr. Mueller objected to the ordinance. He suggested that a homeless alcoholic person who was usually in a haze most of the time would be unable to stand in front of a judge and understand the proceedings without a lawyer. He did not see how someone could get due process in such a situation.

Mr. Mueller regretted the commission lacked information about the exclusion zone passed in Portland and subsequently discarded. He suggested Eugene could face similar challenges to its zone.

Mr. Mueller said if the commission was to recommend the continuation of the DPSZ to the council, he supported the addition of sex offenses and the elimination of public urination as reasons for exclusion. He called for more bathrooms in downtown.

Mr. Mueller said that the mentally ill do not know what was going on and a mentally ill person should not receive an exclusion order. He noted that two people were excluded for marijuana possession and he thought that ridiculous, and called for the deletion of possession as a reason for exclusion.

Ms. Zimmer reviewed the options developed in coloration by herself and Ms. Phelps. She anticipated the commission would assemble a list of outstanding issues to forward to the council.

Ms. Nelson, seconded by Ms. Miller, moved Option B, to recommend to the council continued enforcement of the Downtown Public Safety Zone Ordinance 20419, and the council work with City departments to resolve outstanding issues in the ordinance.

Mr. Valle offered as a friendly amendment, accepted by Ms. Nelson and Ms. Miller, that the motion be revised to read “. . .City departments and community members and stakeholders that may or may not include Police Commission and Human Rights Commission members to resolve outstanding issues in the ordinance” so that the motion then read:

Ms. Nelson, seconded by Ms. Miller, moved Option B, to recommend to the council continued enforcement of the Downtown Public Safety Zone Ordinance 20419, and the council work with City departments and community members and stakeholders that may or may not include Police Commission and Human Rights Commission members to resolve outstanding issues in the ordinance.

Ms. Miller solicited comment on the motion.

Mr. Valle endorsed a multi-pronged approach that included partnerships with non-profit organizations and businesses that could bring additional resources to downtown. He wanted to ensure the council saw all the commission’s suggestions for revisions to the ordinance and for complementary efforts to help improve conditions downtown. He suggested the department find new ways to redirect the efforts of existing police substations toward assisting downtown.

Mr. Mueller likened those who were being excluded from downtown to his children, and said when they had done something wrong or needed help, he had helped them and they learned from the experience. He suggested the City should take a similar approach and rather than focus on enforcement funding, do more to help people recover so they could do the right thing.

Mr. Clark believed the City was trying to help people downtown. He said when it comes to helping people, Eugene spent more money per capita doing so than many other cities of comparable size. He thought that was commendable and the City should do more, but he still supported the exclusion zone as a tool.

Responding to a question from Mr. Clark about use of the phrase “resolving outstanding issues,” Ms. Zimmer suggested that the commission could identify and forward ordinance revisions to the council.

Mr. Garner indicated support for the motion.

Mr. Ahlen maintained that Eugene and Springfield attempted to push criminals into each other’s communities and into surrounding communities. He said no one discussed that explicitly. He did not want to push the boundaries for people’s rights due to the City’s budget condition. He suggested the commission would prefer a funded jail to the zone, and he thought that was what the commission should communicate to the council. He did not support the motion because he preferred to see changes to the ordinance before further enforcement occurred.

Ms. Miller recalled that at the public forum the commission heard the zone was an effective tool because it excluded those who wanted to be downtown because it provided them with a ready supply of victims and a customer base for drug sales. In regard to the constitutionality of the ordinance, Ms. Miller pointed out that those excluded received a hearing before a judge for their citation. She did not think the commission could determine the constitutionality of the ordinance as that was a job for the courts.

The motion passed, 5:4; Mr. Ahlen, Mr. Alsup, Mr. Brown, and Mr. Mueller voting no.

Ms. Miller called for a brief break.

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**COUNCIL ORDINANCE NUMBER 20462**

**COUNCIL BILL NUMBER 5033**

**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.**

**ADOPTED: August 9, 2010**

**SIGNED: August 11, 2010**

**PASSED: 6/2**

**REJECTED:**

**OPPOSED:**

**ABSENT:**

**EFFECTIVE:  
effective immediately**

**ORDINANCE NO. 20462**

**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**

9<sup>th</sup> day of August, 2010.

**Approved by the Mayor this**

11 day of August, 2010.

Sandra J. Stubbs  
Deputy City Recorder

Kitty Percy  
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.**

## 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 7<sup>th</sup> Avenue, then south along, and including, the east sidewalk of Lawrence Street, then east along, and including, the south sidewalk of 8<sup>th</sup> 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 8<sup>th</sup> Avenue, then north along, and including, the west sidewalk of Oak Street to the south sidewalk of 7<sup>th</sup> 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**  
**11<sup>th</sup> day of August, 2008.**

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

  
\_\_\_\_\_  
City Recorder

  
\_\_\_\_\_  
Mayor