

# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



---

## Public Hearing: An Ordinance Extending the Sunset Date for the Downtown Public Safety Zone; Amending Sections 4.874, 4.876 and 4.878 of the Eugene Code, 1971; and Repealing Section 4.875 of that Code

---

Meeting Date: September 17, 2012  
Department: Eugene Police  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 2  
Staff Contact: Pete Kerns, Chief of Police  
Contact Telephone Number: 541-682-5102

---

### **ISSUE STATEMENT**

The Downtown Public Safety Zone is scheduled to sunset November 30, 2012. A public hearing will be held to consider an extension of the Downtown Public Safety Zone and to consider modifications to the program in response to community concern.

### **BACKGROUND**

The City Council adopted the Downtown Public Safety Zone (DPSZ) Ordinance No. 20419 in August 2008. Most recently, the City Council extended the ordinance until November 30, 2012. This public hearing is intended to solicit community input on a proposal to extend the Downtown Public Safety Zone and make modifications to the program.

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

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

### Data Available

Since the last council discussion about the Downtown Public Safety Zone, staff has implemented several measures to improve timely and thorough access to data for all new cases since March. Additionally, staff is working backwards to hand-tabulate this information prior to March 2012. Currently, this additional data is available for all cases from January 2012 through August 15, 2012.

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

**Information about Disposition**

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

**Information about Hearings & Advocacy**

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

**Information about People Receiving Notices**

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

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

One of the significant concerns raised in February involved the perception that there is insufficient due process for people receiving a 90-day exclusion. Currently, upon receiving a “notice to show cause” which explains the potential of being excluded from the Downtown Public Safety Zone, a person is given court appearance date and time within three to five business days. This serves as their first opportunity of due process. However, only 13 percent of the people cited take advantage of this opportunity by requesting a hearing and appearing at the hearing. The others either do not request a hearing, or fail to appear for the hearing that has been requested. This frequently results in the exclusion being upheld by the judge after review of the reports. The result of this is that many individuals are excluded without taking advantage of the first opportunity for due process. Another criticism of the 90-day exclusion is that it is issued as the result of an underlying charge, which is not adjudicated when the 90-day exclusion is imposed.

Another concern raised by the City Council is the low use of the advocacy program, established to help defendants who have received a notice to appear.

A work session was held on September 10. The council discussed several options, which are outlined below. Councilor Taylor asked about the number of notices issued involving marijuana violations. Of the 48 notices issued, 18 exclusively involved marijuana offenses. Of those, eight of the 18 were felony

drug charges, nine were misdemeanor charges and one was a violation.

### **RELATED CITY POLICIES**

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

### **COUNCIL OPTIONS**

There are several options the council may pursue. Outlined below are four options:

1. Extend the existing Downtown Public Safety Zone.
2. Retain or eliminate the 90 day exclusion.
3. Provide court-appointed attorneys for all people receiving a downtown public safety zone notice to appear.
4. Allow Downtown Public Safety Zone to sunset effective November 30, 2012.

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

No recommendation is proposed for this public hearing.

### **SUGGESTED MOTION**

No motion is proposed for the work session.

### **ATTACHMENTS**

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

### **FOR MORE INFORMATION**

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

Guidelines distributed to Eugene Police Officers

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

**MISSION/PURPOSE**

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

**CONDITIONS IN WHICH OFFICERS SHOULD CONSIDER THE DPSZ EXCLUSION**

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

**REPORT WRITING**

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

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

## ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE EXTENDING THE SUNSET DATE FOR THE DOWNTOWN PUBLIC SAFETY ZONE; AMENDING SECTIONS 4.874, 4.876 AND 4.878 OF THE EUGENE CODE, 1971; AND REPEALING SECTION 4.875 OF THAT CODE.**

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

On February 27, 2012, Ordinance No. 20488 was adopted providing that Sections 4.873, 4.874, 4.875, 4.876, 4.877, 4.878 and 4.879 of the Eugene Code, 1971 (the Downtown Public Safety Zone provisions), and the amendments made to Section 4.990 by Ordinance No. 20419, automatically sunset on November 30, 2012. The Council has determined that the November 30, 2012 sunset date of the Downtown Public Safety Zone provisions should be extended. In addition, amendments are being made to remove the 90-day exclusion provisions from the Code.

**THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:**

**Section 1.** Section 4.874 of the Eugene Code, 1971, is amended to provide as

follows:

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

~~[(1)]~~ The municipal court may exclude a person pursuant to subsections (1), (3), or (4) of section 4.876 for violation of any of the provisions in sections 4.110(2), 4.230, 4.240, 4.726, 4.729, 4.730, 4.731, 4.770, 4.780 and 4.782 of this code, and for violation of any of the provisions of ORS 163.160, ORS 163.165, ORS 163.175, ORS 163.185, ORS 163.190, ORS 163.275, ORS 163.355, ORS 163.365, ORS 163.375, ORS 163.385, ORS 163.395, ORS 163.405, ORS 163.408, ORS 163.411, ORS 163.415, ORS 163.425, ORS 163.427, ORS 163.435, ORS 163.575, ORS 164.345, ORS 164.354, ORS 164.365, ORS 166.065, ORS 166.155, ORS 166.165, ORS 167.012, ORS 167.017, ORS 167.262, ORS 167.808, ORS 471.475, ORS 475.840, ORS 475.846 through ORS 475.894, ORS 475.904, and ORS 475.906.]

**(21)** The municipal court may exclude a person pursuant to subsection ~~[(5)]~~ **(1)** of section 4.876 of this code for violation of any of the provisions in sections 4.080, 4.115, 4.190, 4.230, 4.240, 4.685, 4.705, 4.707, 4.725, 4.726, 4.728, 4.729, 4.730, 4.731, 4.755, 4.760, 4.770, 4.780, 4.782, 4.806, 4.807, 4.808, 4.809, 4.822, 4.882, 4.887, 4.888, 4.930, and 4.977, of this code, and for violation of any of the provisions of ORS 163.160, ORS 163.165, ORS 163.175, ORS 163.185, ORS 163.190, ORS 163.195, ORS 163.275, ORS 163.355, ORS 163.365, ORS 163.375, ORS 163.385, ORS 163.395, ORS 163.405, ORS 163.408, ORS 163.411, ORS 163.415, ORS 163.425, ORS

163.427, ORS 163.435, ORS 163.465, ORS 163.575, ORS 164.043, ORS 164.045, ORS 164.055, ORS 164.125, ORS 164.245, ORS 164.255, ORS 164.265, ORS 164.272, ORS 164.345, ORS 164.354, ORS 164.365, ORS 164.395, ORS 164.405, ORS 164.415, ORS 166.025, ORS 166.065, ORS 166.115, ORS 166.155, ORS 166.165, ORS 166.170, ORS 166.220, ORS 166.240, ORS 166.250, ORS 167.012, ORS 167.017, 167.262, ORS 167.808, ORS 471.430, ORS 475.840, ORS 475.846 – ORS 475.894, ORS 475.904, and ORS 475.906. In addition, persons who attempt, as defined in section 4.015 of this code or ORS 161.405, to commit offenses listed in this section are subject to exclusion pursuant to section 4.876 of this code.

- (32)** 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)] **1** of this section and the person committed the offense while in the downtown public safety zone.
- (43)** 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.
- (54)** While in the downtown public safety zone, a person who is otherwise excluded but enters the zone pursuant to subsections [(4)]**(3)**(a) - (f) of this section may only travel directly to and from the purposes enumerated in subsections [(4)]**(3)**(a) - (f) of this section.
- (65)** If an excluded person is in the downtown public safety zone in violation of the exclusion during the exclusion period, that person is subject to immediate arrest for violation of downtown public safety zone restrictions pursuant to section 4.879 of this code.

**Section 2.** Section 4.875 of the Eugene Code, 1971, is repealed.

~~**[4.875 Downtown Public Safety Zone - Issuance of Notice to Show Cause.** When a peace officer arrests a person or issues a citation for any of the offenses enumerated in subsection (1) of section 4.874 of this code, the officer shall also issue to the person being arrested or cited a notice to show cause. The notice shall require the person to appear at municipal court at a designated time within three (3) to five (5) business days, at which time the court will set a date and time for the hearing for the person to~~

show cause why the person should not be excluded from the downtown public safety zone. The notice shall contain:

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

**Section 3.** Section 4.876 of the Eugene Code, 1971, is amended to provide as

follows:

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

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

safety zone for a period of ninety (90) calendar days effective at 12:01 a.m. the next day.

- ~~(4)~~ If the person does not appear at the show cause hearing, and, based on a police report or an affidavit from a witness, the court finds by a preponderance of the evidence that the person committed an offense enumerated in subsection (1) of section 4.874 of this code while in the downtown public safety zone, the court may enter an order of exclusion as described in subsection (1) of this section.]
- (51)** Upon receipt of a copy of the conviction for an offense enumerated in subsection [(2)] **(1)** 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)] **(1)** 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.
- (62)** A person subject to an exclusion order under subsection (1)[, (3), (4) or (5)] of this section may apply for a variance pursuant to section 4.878 of this code.
- ~~[(7)]~~ An exclusion ordered by the court pursuant to subsections (1), (3) or (4) of this section shall terminate upon acquittal, dismissal of charges, or failure to prosecute.]

**Section 4.** Subsections (2) and (4) of Section 4.878 of the Eugene Code, 1971, are amended to provide as follows:

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

- (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)] **(1)** 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.

**(4) Definitions.**

- (a) Arrest. As used in this section and sections 4.874[, 4.875,] and 4.877, of this code, "arrest" includes taking a person under 18 years of age into custody as defined in ORS 419C.080(1)(a).
- (b) Essential Needs. As used in this section, "essential needs" means food, physical care and medical attention for both physical and mental conditions.
- (c) Travel. As used in this section and section 4.874 of this code, "travel" means the movement on foot or within or upon a vehicle within the downtown public safety zone from one point to another without delay other than to obey traffic control devices.

**Section 5.** The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

**Section 6.** The sunset date of Sections 4.873, 4.874, 4.875, 4.876, 4.877, 4.878 and 4.879 of the Eugene Code, 1971, and the amendments made to Section 4.990 by Ordinance No. 20419, is hereby extended to \_\_\_\_\_, 20\_\_\_. The City Recorder is requested to note this sunset date on appropriate City logs.

**Section 7.** Notwithstanding Section 6 of this Ordinance, any enforcement actions commenced to enforce the downtown public safety zone provisions prior to the sunset date may continue to be pursued, and the provisions related to such enforcement actions shall remain in effect with respect to those actions.

**Passed by the City Council this**

\_\_\_\_\_ day of October, 2012.

**Approved by the Mayor this**

\_\_\_\_\_ day of October, 2012.

---

**City Recorder**

---

**Mayor**