

MINUTES

Eugene Toxics Board
Fire Conference Room, Second Floor
Eugene Emergency Services Center
1705 West Second Avenue, Eugene, Oregon

July 17, 2014
3:30 p.m.

PRESENT: Christine Zeller-Powell, Chair; Wendy Cecil, Amber Everly, Rick Nicol, Lisa Arkin, Andree Phelps, members; Joann Eppli, Fire staff; Terri Harding, Lokyee Au, City of Eugene Planning Division

ABSENT: Randy Prince

INTRODUCTIONS/APPROVAL OF AGENDA

Ms. Zeller-Powell introduced herself as the new Chair of the Eugene Toxics Board and called the meeting to order. Those present introduced themselves.

There were no changes to the agenda.

PUBLIC COMMENTS

Ms. Zeller-Powell determined there was no one wishing to speak.

ENVISION EUGENE OVERVIEW

Ms. Eppli introduced Terri Harding, Senior Planner and Lokyee Au, Environmental Justice Intern with the City of Eugene Planning Division, to discuss the Envision Eugene process in planning development for the Clear Lake area and incorporation of an environmental justice component.

Ms. Harding explained that Envision Eugene was the City's comprehensive development plan and represented the community's collective vision for the future and growth management strategies to achieve that vision. She said cities in Oregon were required to have a land supply sufficient for 20 years of growth, and the City was looking for land to accommodate both housing and employment; the majority of growth was anticipated to occur within the current urban growth boundary (UGB). She used a map to illustrate the location of lands potentially available for future development and key transit corridors. Approximately 37,000 jobs would need to be accommodated over the next 20 years; over 3,000 would not fit inside the existing UGB and after examining a number of locations, expansion was expected towards the airport in the Clear Lake area. She said initial planning had considered the Clear Lake area for new residential development as well, but objections were raised about the proximity to industrial development. Ms. Harding added that planning the development for the Clear Lake includes an analysis of environmental justice impacts associated with residential and industrial growth as requested by the Eugene City Council. She said

subsequently the area was determined to be unsuitable for residential uses under State requirements and was no longer being considered for that type of development. The focus was now on what types of jobs were suitable.

Ms. Harding said current activities included gathering input, research and staff analysis. Once completed she expected a staff recommendation would be submitted to both Lane County and City of Eugene Planning Commissions, followed by decisions by the Lane County Board of Commissioners and Eugene City Council.

Mr. Nicol asked what types of jobs would be considered for the area. Ms. Harding replied that the Regional Economic Prosperity Plan focused on key industries that had been successful in the local economy, such as food manufacturing, wood products manufacturing, software, bio-medical, health and wellness and specialized (hi-tech) manufacturing.

Mr. Nicol commented that a majority of his company's fabrication was being relocated to Louisiana.

Ms. Harding said a draft environmental justice analysis paper was out for review by local agencies and would be issued for public review once it was refined. She said that presentations would also be made to a wide range of community groups, board and commissions. Other activities associated examination of the Clear Lake area included an inventory and analysis of wetlands and high level master planning with agency partners. She illustrated features of the study area on a map.

In response to a question by Ms. Zeller-Powell, Ms. Harding explained that the residential land was already inside the city limits, with a few exceptions, and most of the industrial corridor was outside the city limits. She said if the UGB was expanded, that did not automatically trigger annexation and the City's policy was to not force annexation, but encourage it on a voluntary basis.

Ms. Eppli asked that the environmental justice white paper be provided to Toxics Board members for review when it was completed.

Ms. Arkin asked when more detailed information about job types would be available. Ms. Harding said the public's input on what types of industries and jobs were desirable to attract was welcome. She said that City zoning regulations also included lists of uses that were allowed within specific zones. She said the planning process might identify some types of uses that might not be desirable in the proposed growth area.

Ms. Zeller-Powell asked what the impact would be on Golden Gardens Park if the UGB was moved to include it. Ms. Harding said the park could then be developed to urban standards; current plans for the park included development of a regional sports facility; that was not allowed by Lane County, but would be allowable if the park was within the UGB.

In response to a question from Ms. Cecil, Ms. Harding said the wetlands study would be completed soon and information was available on the Envision Eugene website.

Ms. Phelps asked if the City had a mitigation bank. Ms. Harding said it did, but was established for the West Eugene Wetlands plan and credits were almost exhausted. She said inclusion of the Clear Lake area would require the City to acquire additional land for the mitigation bank.

Ms. Arkin asked if hazardous substance reports data from the Eugene Toxics Right-to-Know Program were being used in the process and if so, how were the data used. Ms. Harding said data represented a unique and

exhaustive resource and Ms. Eppli was working with project staff to determine how the information could best be used to inform the planning process.

Ms. Eppli said the data had been used in other City planning projects, but expected it would be used more extensively in this process as the work to identify suitable industries and jobs commenced.

Ms. Harding said she would provide the Toxics Board with another update when draft recommendations had been developed.

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Ms. Eppli noted that at the top of page 3 the reference was changed from Mr. Gardner to Ms. Gardner.

Ms. Phelps asked for clarification of the last sentence in the first paragraph of Section III on Page 1. Ms. Eppli said the "he" referred to was the City Manager and the sentence would be changed to reflect that: "The FTE had been reduced to .85 FTE this year, and ~~he~~ *the City Manager* wanted to reduce the position to .5 FTE while continuing to meet the Charter Amendment requirements."

Ms. Zeller-Powell deemed the minutes accepted as amended, with Ms. Everly, Ms. Arkin, and Ms. Phelps abstaining.

STAFF REPORT

Ms. Eppli noted that Mr. Prince was unable to attend the meeting. She listed several memorandums she had distributed. She had received a response from the City Attorney to the questions posed by the Toxics Board regarding the minimum staff tasks necessary to meet the basic Charter Amendment requirements. The City Attorney had reviewed the Charter, taking into consideration the City Manager's direction, and reviewed the matrix of staff tasks in support of the Charter in order to determine if maintaining a list of reportable chemicals and identifying businesses that met the requirements for being included in the Toxics Program were defined in the Charter Amendment. The City Attorney concluded that maintaining the list of chemicals was not defined and that Ms. Eppli, as the City staff managing the program, could not go out and find businesses that met the requirements. That information had to come from other City staff, Toxics Board members, and citizens who notified Ms. Eppli that a business might be subject to the program.

Mr. Nicol felt that preventing staff from looking for subject businesses was a gap in the program. Ms. Eppli indicated that the Toxics Board had agreed there was a gap and it was unfair to businesses that were in the program when other businesses that met the requirements were not required to participate and share the cost burden.

Ms. Zeller-Powell clarified that identifying covered businesses was not required by the Charter, but that activity could be undertaken if there were sufficient resources.

Mr. Nicol said a map that showed which businesses were located within the city limits would be helpful.

In response to a question from Ms. Arkin, Ms. Eppli said the purpose of the City Attorney's opinion was to provide legal guidance for how the Toxics Board and staff could accomplish Charter-mandated minimum program requirements. The Toxics Board could invite the City Attorney to attend a future meeting to answer questions or submit its questions to the City Attorney through Ms. Eppli.

Following a discussion of the difficulties of identifying which properties were inside the city limits, Ms. Arkin suggested that the Planning Division be asked to provide the Toxics Board annually with an updated map showing the current city limits and the businesses within it. Ms. Eppli said she would draft such a request for review by the Toxics Board.

Ms. Arkin noted that Ms. Eppli's work plan would need to include requesting, at the direction of the Toxics Board, an annually updated map from the Planning Division.

Ms. Zeller-Powell asked if an internal process for identifying covered businesses had been developed. Ms. Eppli replied that she expected to have a process formalized in the next few weeks that is being implemented in coordination with other Fire Marshal's Office staff that would be able to help identify businesses. She felt the map would complement that effort.

Ms. Phelps clarified that the City Attorney's opinion did not affect Ms. Eppli's current work assignments, but would provide guidance in the event future budgetary constraints prompted a discussion of reducing the FTE allocated to manage the Toxics Program.

Ms. Phelps asked why new businesses were not informed of the Toxics Program, since it was in the Charter.

Ms. Cecil observed that the Charter Amendment did not include language requiring the Toxics Board or staff to identify businesses that were subject to the program.

Ms. Eppli said the process she was developing would help close that gap and noted the City Attorney's opinion applied to her, as city staff, but not the Toxics Board itself and stated that a task was not required unless specifically identified in the Charter.

Ms. Zeller-Powell pointed out that the City Manager had directed the Toxics Board to work towards a .5 FTE for Ms. Eppli, while the Charter required the City Manager to consult with the Toxics Board in order to jointly determine the appropriate support services to be provided to the Toxics Board by City employees for implementation of the program. The City Manager's direction was not an ultimatum, but should be considered by the Toxics Board.

Ms. Eppli said she had sent the Toxics Board a summary of website analytics data and asked members to let her know if any additional data was desired. She said the seventh three-year audit cycle of hazardous substance reports had begun July 1. She said hazardous substance reports were audited for accuracy and she would let the Toxics Board know if any concerns were identified.

Ms. Eppli asked Toxics Board members to verify that information on the updated Toxics Board roster was accurate. She reported she had received and confirmed information on the closure of Ideal Steel's facility on Cleveland Street.

ANNUAL TOXICS BOARD MEMBER ROLE OVERVIEW

Ms. Zeller-Powell reviewed the Updated Eugene Toxics Board Procedures distributed in her memorandum dated July 3, 2014. She noted that the new Item 3 established procedures for a Toxics Board member to participate in a meeting via conference call if unable to attend in person, as well as vote via email on an item that had been discussed at previous meetings if unable to participate in person or by conference call in the meeting at which a decision would be made on that item.

Ms. Eppli explained that the new procedures were prompted by not being updated since 1997, and a situation that arose a few years ago when she had a short timeline in which to present the Toxics Board's fee recommendation to the City Council coupled with a developing trend of not having a quorum of the Toxics Board present at meetings due to Toxics Board position vacancies and absenteeism issues. She emphasized that the new Item 3 procedure should not be perceived as an option for not attending Toxics Board meetings and a vote via email could only be done when the Toxics Board member had been involved in previous discussion of the topic.

Ms. Arkin asked why Item 7 now indicated that Toxics Board members should submit materials through the City Fire Marshal's Office staff ten days in advance of a meeting. Ms. Eppli replied that receiving the materials ten days in advance allowed time to include the materials in the meeting packet. If materials were brought to the meeting instead of being submitted in advance, then the Toxics Board member should provide ten copies. Materials received in advance would be added to the agenda by staff; materials brought to the meeting could be added to the agenda at the request of a Toxics Board member during agenda review.

Ms. Phelps asked if the phrase "as a whole" in Item 8 meant questions for the City Attorney had to be presented with the agreement of the entire Toxics Board. Ms. Eppli said the intent was that any questions would be presented on behalf of the Toxics Board, with the consent of a majority of Toxics Board members.

Members discussed whether that meant there had to be a formal vote and concurred that a question should be presented when a majority of the Toxics Board agreed with the question. Ms. Eppli said she wanted to clarify that questions needed to be submitted by the Toxics Board and not individual Board members.

Ms. Phelps suggested the following language modifications "~~Only~~ the Toxics Board ~~as a whole~~ may submit questions to the City Attorney through the City Fire Marshal's Office staff *by a majority vote*."

Regarding Item 3, Ms. Arkin said she had served on a number of board and commissions and had never seen procedures that allowed a member to submit a vote prior to a question being called for discussion.

Ms. Cecil noted that Item 3 specified that a topic had to have been previously discussed by the Toxics Board and a member submitting a vote by email had to have been involved in those prior discussions.

Ms. Arkin said she was uncomfortable with the concept because there was always an opportunity for additional discussion before a vote and it was possible that discussion could provide new information that could influence how members voted.

Ms. Zeller-Powell said the issue had been researched by staff and determined to be allowable.

Ms. Eppli said the email vote would only be allowed under very specific circumstances. She explained that in the case of the fee recommendation to the City Council, the Toxics Board had discussed the topic for several months and it was required to have a quorum of the Toxics Board for the meeting at which a final decision would be made in order to forward the Toxics Board's recommendation to the City Council in a timely manner. She said email votes would be part of the public record.

Ms. Cecil suggested clarifying the extreme circumstances under which an email vote would be allowed.

Ms. Arkin stated she was opposed to the new procedure as a vote should be on a specific motion, not a proposal. She could support the procedure only if the question on the table at the meeting was the same as that voted on by the absentee member.

Ms. Eppli liked the suggestion to clarify extreme circumstances.

Ms. Arkin said there should be a specific motion on which a member was casting an email vote.

Ms. Cecil recommended defining the circumstances in which a member's vote was necessary to achieve a quorum and there was a Charter imposed deadline for action on a topic. She also suggested requiring the email vote to be on a specific motion and if the motion was amended at the meeting, the email vote would no longer be valid.

Ms. Eppli said she would rewrite the procedures with the suggested changes for adoption at the next Toxics Board meeting.

Ms. Eppli referred to the handout entitled *Annual Toxics Board Member Role Overview*. At the suggestion of a previous Toxics Board member she had summarized information in the Charter in order to develop an annual refresher for Toxics Board members at the beginning of each year on the purpose of the Toxics Program, Toxics Board and responsibilities of its members. She briefly reviewed the document and highlighted the importance of a commitment to board membership. She would also provide members with an overview of Roberts Rules of Order.

TOXICS PROGRAM GAP/IMPACT ANALYSIS WORK SESSION

Ms. Zeller-Powell deferred this item to the next meeting.

In response to a question from Mr. Nicol, Ms. Eppli explained that she had been asked by the City Council and City Manager to consider five options for managing the Toxics Program in the future. Those options ranged from maintaining the program to current standards and identifying additional funding in order to have a full-time staff person to, at the other end of the spectrum, eliminating the program. A previous member had observed that opinions about the program varied from businesses that felt reporting was burdensome and a financial strain, to advocates that felt the program provided valuable information not available anywhere else. He suggested a report that identified the pros and cons from both the industry and advocacy sides, as well as neutral information. She said the purpose of the agenda item was to review the information to date and develop a combined recommendation from the Toxics Board on how the program should move forward. She said that work and recommendations should be completed by the end of the year, and will be included in the Toxics Board's 2014 Annual Report.

SCHEDULE NEXT MEETING/FUTURE AGENDA ITEMS

Ms. Eppli said future agenda items included discussions with representatives of Willamette Valley Company and Thermo Fischer Scientific.

Ms. Cecil said she could provide information to address Thermo Fischer Scientific's item.

Ms. Zeller-Powell announced that the next meeting would be held on September 11, 2014, at 3:30 p.m.

The meeting adjourned at 5:05 p.m.

(Recorded by Lynn Taylor)