

## RESPONSE TO TESTIMONY SUBMITTED BY EUGENE SUSTAINABILITY COMMISSION

**“RANT”** best describes the testimony submitted by members of the Sustainability Commission (see below).

As if delivering the final order in a quasi-judicial decision, the testimony concludes:

*“In summary, the Sustainability Commission finds the Council’s recent decision on zoning to be illegal, anti-democratic and unjust.”*

Let’s set things straight from the beginning:

- It is not “illegal” to protect the future stability of the small houses and yards that families of modest means call “home.”
- It is not “anti-democratic” for elected officials to vote in favor of representing the interests of the majority of citizens, rather than some self-anointed “sustainability” elite.
- It is not “unjust” to ensure the continued livability of affordable, close-in neighborhoods loved by the residents.

The testimony – submitted on official Eugene Sustainability Commission letterhead, contained 1,290 words, at least eighteen assertions and *zero facts* or citations to law to back up a single assertion.

Here’s a recap of the claims:

### Illegal

- “the October 21 Council-adopted directive to staff likely violates State Land Use laws concerning land designation, Needed Housing, and others”
- “violate[s] several Federal regulations related to fair housing and others.”
- “likely result in legal action against the City”
- “[City Council] will hear much more from DLCD and the courts.”
- “we do expect the City to comply with the law”

Not a single statute or other regulation is cited, nor is there any concrete explanation of how the council decision is illegal.

My land use attorney, Bill Kabeiseman, who has also taught land use law at the University of Oregon, reviewed such claims and confirmed they were baseless in a statement that has been provided to the City Council.

Ed Moore, DLCD, has confirmed that the directive is not illegal, and that it could be implemented lawfully.

### Anti-democratic

- “clearly undemocratic”
- “no input by Eugene citizens”
- “undermines that entire democratic, community-based approach”

- “any individual, providing that he or she happens to own their home, can veto changes affecting not only their property, but also their neighbor’s”
- “all adjacent property owners have to approve a zoning change”
- “many citizens participating in the Envision Eugene process said they’d like to live in a neighborhood where they could easily walk to the store, ride a bike to the park, take the bus downtown, and drive when they needed to--if only such neighborhoods existed”

The testimony makes the false claim that the council decision, if implemented, would give property owners a “veto” over zone changes by adjacent property owners. This misrepresents the text of the decision, which simply allows the owner of a *subject* property to choose not to have his or her own property rezoned by the City.

There has been enormous citizen input seeking to protect the livability of single-family neighborhoods, a vision shared almost universally – with the exception of some of the “planning elite” – and also enshrined as an Envision Eugene pillar.

The staff, Planning Commission and now, the Sustainability Commission, have ignored the public input and the commitment in the Envision Eugene “livability” pillar. Thus, citizens were forced to take their case directly to their elected officials. That’s as “democratic” as it gets.

Sustainability Commission members’ real “beef” appears to be that the council’s decision knocked the commissioners off their pedestal and responded to the electorate’s wishes.

The process for introducing and voting on the motion complied with council’s adopted procedures. In the past councilors on the losing side have themselves introduced last-minute motions at a work session or the morning of.

### **Unjust**

- “most disturbing is the social inequity implicit in the measure”
- “exacerbate[s] the problem of inequality”
- “make[s] it impossible to distribute affordable housing equitably throughout our City”
- “conflict[s] with the ... Fair Housing Plan, and numerous other prior Council decisions.”

No facts at all are provided to support these claims. The truth is that the radical redevelopment strategy embodied in the South Willamette Special Area Zone would have replaced affordable single-family homes with expensive row houses and apartments. The *real* injustice is the forced rezoning of a working class neighborhood, reminiscent of the disastrous “urban renewal” programs in the 1960s that destroyed entire neighborhood communities in order to “improve” the city.

### **Will cause sprawl**

- “there simply is not enough buildable land if you exempt all R-1 property”
- “will result in the need to expand the residential Urban Growth Boundary (UGB)”

No facts at all are provided to support these claims. The staff’s March 2015 recommendation to council and staff comments on the record state unequivocally that the SW-SAZ is not a factor in providing housing capacity to comply with statutory requirements.

Further, there is likely enough commercially zoned land along transit corridors that could be redeveloped to provide multi-family capacity in the thousands of dwellings.

### **Will harm the climate**

- “conflict[s] with the Climate Recovery Ordinance.”
- “make[s] it more difficult, if not impossible to carry out [the Climate Recovery Ordinance]”

No facts at all are provided to support these claims. Further, it speaks volumes that the Sustainability Commission, of all people, hasn't looked at the carbon footprint of redevelopment of existing homes. Demolition and construction of high-end replacement housing have an enormous cost in terms of wasted resources and pollutants.

### **Disrupts transportation planning**

- “make[s] it more difficult, if not impossible to carry out [the Transportation System Plan]”

No facts at all are provided to support this claim. Kurt Yeiter, who is managing the TSP process, said directly that this claim was not true at all.

### **Disrupts *all* future planning**

- “undermines ... all future planning and development throughout the City.

No facts at all are provided to support this claim. The truth is that the SW-SAZ process was a failure and that the burden is on the city staff and commissions to take some time to conduct serious self-examination as to why they failed to correct the process and/or alert council to the fundamental flaws in how the community was not being effectively engaged.

Pouring “gas on the fire,” as the Sustainability Commission members have done by making extreme claims that aren't true at all will simply make the problem worse.

The council majority has done a commendable job in taking action to avoid the much larger "train wreck" that would have occurred if the current planning process had continued on its inevitable collision course.



## Memorandum

Date: October 26, 2015  
To: Mayor and City Council  
From: Sustainability Commission  
Subject: South Willamette Special Area Zone

The Sustainability Commission is extremely concerned about the precipitous decision made on October 21, 2015, regarding land use and zoning changes. The Council passed a sweeping directive to City staff with no opportunity for public comment or for anyone, including the Council, to fully understand the directive's full implications.

In particular, Council voted to require that any future plan--not only in the South Willamette Special Area Zone, but anywhere in the City-- "does not change the plan designation or rezone any property currently zoned R-1 or immediately adjacent to a property zoned R-1, unless none of the adjacent properties have an existing single-family home or duplex and the owner agrees to the rezoning." This measure is not simply a response to South Eugene citizens' very real concerns for their property and quality of life. It is instead a radical assault on the City's Planning process that is probably illegal, certainly undemocratic, and grossly unjust.

As far as the measure's legality, Councilor Zelenka, Mia Nelson, and the Oregon Department of Land Conservation and Development (DLCDC) have described how the October 21 Council-adopted directive to staff likely violates State Land Use laws concerning land designation, Needed Housing, and others. This directive may also violate several Federal regulations related to fair housing and others. The October 21 directive will likely result in legal action against the City if it is not rescinded. If the measure remains in effect, you will hear much more from DLCDC and the courts. We on the Sustainability Commission are not experts on land use law--but we do expect the City to comply with the law.

Even if it were legal, the directive is clearly undemocratic and was enacted with no input by Eugene citizens. Eugene's citizens, staff, and leaders have spent thousands of hours over the past five years discussing, studying, and negotiating to arrive at Envision Eugene--our shared vision for the City's future. A key component of Envision Eugene, the Transportation System Plan, and of the Climate and Energy Action Plan, is the concept of increasing density along select transit corridors. This idea makes sense for economic, social and environmental reasons, and many citizens participating in the Envision Eugene process said they'd like to live in a neighborhood where they could easily walk to the store, ride a bike to the park, take the bus downtown, and drive when they needed to--if only such neighborhoods existed. It has been acknowledged all along that we cannot achieve viable 20-Minute Neighborhoods without some zoning changes to bring people, destinations and transportation options closer together.

The measure adopted on October 21 undermines that entire democratic, community-based approach. Under that measure, any individual, providing that he or she happens to own their home, can veto

changes affecting not only their property, but also their neighbor's. For example, if all surrounding neighbors supported a row house or condominium project as an asset to their neighborhood, one adjacent homeowner could veto it. The requirement that all adjacent property owners have to approve a zoning change is likely to be judged illegal and transfers zoning decisions from the City to one individual property owner.

The City's Planning Department staff could not possibly implement Envision Eugene on a parcel-by-parcel basis, meeting personally with every R-1 property owner to gain approval, only to start over if an agreeable homeowner moves and the new homeowner decides to veto the zoning change.

Instead, Planning Department staff would have to seek out those rare parcels of land that have no adjacent R-1 lands to try to implement Envision Eugene--and there simply is not enough buildable land if you exempt all R-1 property. The October 21 directive as it now stands will result in the need to expand the residential Urban Growth Boundary (UGB). The community has said, loud and clear, that it does not want to expand the UGB for residential purposes, does not want to pay to extend City services to remote expansion areas on farm and forest land, and does not want to increase our use of fossil fuels. The actions of a few individual homeowners -- or even the threat of such actions--could result in these very outcomes.

Perhaps most disturbing is the social inequity implicit in the measure. Since one homeowner could veto re-zoning for multi-family housing nearby, those areas of town that consist mostly of single-family homes which also have higher incomes and fewer minorities, could block multi-family housing anywhere in their neighborhood. Renters, in contrast, would have no power to prevent re-zoning for yet another multi-family housing project nearby, even if it did increase traffic, reduce open space, block solar access, or in other ways reduce the neighborhood's livability. Eugene already has significant concentrations of low-income, minority and special needs residents, especially in central-west Eugene. This policy could exacerbate the problem of inequality, and make it impossible to distribute affordable housing equitably throughout our City.

In summary, the Sustainability Commission finds the Council's recent decision on zoning to be illegal, anti-democratic and unjust. We urge you to step back, take the time to address the concerns about the South Willamette Area Plan, and allow the community to re-claim its vision for the future.

Eugene's residents, staff and leaders have invested their significant time, energy, passion, and hope for the future in crafting the concepts embodied in Envision Eugene. On October 21, Council adopted a motion that was distributed to Councilors by e-mail only at 5 PM the preceding evening, was never made public, and was never reviewed by staff. To adopt a far-reaching motion on such short notice with no opportunity to explore its implications is irresponsible and is counter to the City's longstanding history of public engagement in Council decision-making.

The October 21 presentation on the Willamette Street Special Area Zone demonstrated staff's efforts to address many of the concerns identified in the measure. The Planning Commission studied this proposed plan extensively and made further modifications before adopting it unanimously. Nonetheless, the Sustainability Commission believes it is entirely appropriate for City Council to delay a public hearing in order to further consider citizens' concerns about livability and other issues. City Councilors' comments

during the October 21 work session indicated that there could have been unanimous approval for this course of action. Instead, a divided Council overturned the work of staff and the Planning Commission and adopted a motion that undermines plans not only for South Willamette, but also for all future planning and development throughout the City. This decision also has implications that conflict with the Climate Recovery Ordinance, the Fair Housing Plan, and numerous other prior Council decisions.

Faced with a future of climate change, economic challenges, and social inequity, Eugene has developed the pillars of Envision Eugene, including the key concepts of increasing density along transit corridors, creating walkable 20-Minute Neighborhoods, providing new types of housing to meet changing needs, and reducing fossil fuel use. Council has also adopted a Climate Recovery Ordinance, and will soon consider the Transportation System Plan, both of which depend on these same concepts. The motion adopted on October 21 could make it more difficult, if not impossible to carry out any of these previously adopted plans. The Sustainability Commission requests that Council rescind this ill-advised action, and instead simply postpone the decision on potential re-zoning in the South Willamette Special Area Zone in order to listen to residents' concerns, clarify what is and is not in the plan, consider modifying the plan, adjusting the boundaries of the area, and other measures that would allow us to find common ground and move ahead toward building a sustainable future for Eugene.