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Nathan R. Rietmann
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March 8, 2011

Mayor Kitty Piercy
Eugene City Council Members
777 Pearl Street, Room 105
Eugene, Oregon 97401

Re: Proposed West Eugene EmX Expansion

Mayor Piercy and City Council Members:

My office represents Our Money Our Transit. As you are aware, Our Money Our Transit is an advocate for responsible and sustainable transit. However, it is my client's position that passenger demand fails to justify EmX expansion in the W11th corridor and that EmX expansion does not appear to be a logical transit choice in these times of rising fuel prices. My client supports the No Build option because EmX, which may work in the University area, is not scaled to a city the size of Eugene. In addition, it appears that single-minded pursuit of a 16-20 year-old transit plan has precluded other more sustainable options from being explored. Our Money Our Transit believes that Transit System Modification would meet the transportation needs of West Eugene without the array of adverse economic, social, and environmental impacts associated with EmX expansion.

On March 9, 2011, the City Council is scheduled to consider the formal adoption of a locally preferred alternative ("LPA") selecting the preferred route for EmX expansion. Upon review of the applicable law, it appears that City Council adoption of an LPA is legally problematic, may potentially give rise to litigation, and is certain to create substantial uncertainty moving forward. The purpose of this letter is to articulate the legal issues of concern and to respectfully encourage the City Council to refrain from formally adopting a preferred build route on March 9, 2011.

The legal problems associated with the City Council selecting an LPA arise from Section 41 of the Eugene City Charter. Under Section 41, the city is prohibited from entering into any agreement approving or facilitating construction of a throughway unless the route of the throughway is first approved by a majority of city voters. *See*, Section 41 §1. Under Section 41 §2, the City may develop "preliminary plans and specifications...for obtaining financial assistance" for a throughway without voter approval. However, Section 41 §1 makes clear that voter approval is required before the City is authorized to "enter into any agreement approving or facilitating construction" of

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a throughway. For ease of reference, the full text of Section 41 of the Eugene City Charter is attached hereto as Exhibit A.

Whether the public vote requirement of Section 41 is applicable to proposed plans for West Eugene EmX expansion depends on whether plans for EmX expansion involve the construction of a “throughway.” In this regard, Section 41 of the City Charter defines “throughway” by reference to ORS 374.010, which in turn defines “throughway” to mean:

... a highway or street especially designed for through traffic, over, from or to which owners or occupants of abutting land or other persons have no easement of access or only a limited easement of access, light, air, or view, by reason of the fact that their property abuts upon the throughway or for any other reason.

Based on the definition of “throughway” set forth in ORS 374.010, it is proper to conclude the EmX expansion proposals under consideration constitute “throughways.” This follows from the fact that the design concepts are for through traffic and serve to limit or eliminate easements of access to varying degrees. For example, the 13th Avenue Alternative involves Exclusive Transit Lanes on approximately 18% of the route, which provide no easement of access. Similarly, the 6th/7th Avenue Alternative involves 72% Business Access and Transit Lanes (“BAT”), which provide only a limited easement of access.

Once it is recognized that plans for EmX expansion involve authorization of a “throughway” within the meaning of ORS 374.010, it is apparent that Section 41 of the Eugene City Charter requires a public vote before the City may enter into a “any agreement approving or facilitating construction” of EmX expansion into West Eugene. While voter approval is not required for the City to develop “preliminary plans and specifications...for obtaining financial assistance,” it is evident that voter approval is needed to move such plans beyond a preliminary stage and that EmX expansion ultimately cannot move forward without voter approval.

In light of the foregoing analysis, it appears problematic for the City Council to unilaterally adopt an LPA designating a preferred build route at its meeting on March 9, 2011, or on any future date. While Section 41 §2 permits the City to adopt “preliminary plans and specifications...for obtaining financial assistance,” the formal designation of an LPA by the City Council to facilitate loan applications and environmental assessments does not appear to be “preliminary” in nature. Consequently, City Council designation of an LPA appears beyond the scope of what is permitted by Section 41 §2.

Moreover, even if the City Council may designate an LPA at this juncture consistent with Section 41 §2, it does not appear prudent for the City Council to do so in light of the fact that Section 41 §1 requires a public vote before the City may enter into

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“any agreement approving or facilitating construction.” Designation of an LPA by the City Council will cause substantial expenditures to be made on grant applications, environmental review assessments, and other planning processes. It does not appear fiscally responsible for the City Council to cause public resources to be spent on these planning processes when it is unknown whether voters will ultimately approve the build route selected by the City Council. It would appear far more financially prudent for the City Council to obtain voter approval of the build route before public resources are expended studying an LPA approved by the City Council. Otherwise, significant resources may be spent studying a build route that voters will ultimately decline to support at the ballot.

Our Money Our Transit is committed to protecting and preserving the public’s legal right to vote on the build route associated with potential EmX expansion. For the reasons stated herein, Our Money Our Transit respectfully asks the City Council to refrain from designating an LPA on March 9, 2011, unless the LPA consists solely of a No-Build option that does not require voter approval under Section 41 of the City Charter. To the extent the City Council seeks to further explore West Eugene EmX expansion, my client respectfully urges the council to develop a process through which it will solicit additional input from interested residents, business, and property owners, and thereafter, submit the question of the City’s locally preferred alternative to a public vote.

While my schedule will not permit me to attend the City Council’s March 9, 2011 meeting in-person, I am happy to discuss my client’s position regarding this matter with the City Attorney in advance of the meeting if that would be deemed helpful or appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nathan R. Rietmann', with a long horizontal flourish extending to the right.

Nathan R. Rietmann

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Eugene Charter

Section 36. Nomination. Nomination of a candidate for an elective city office shall be by petition, in a manner prescribed by ordinance.

Chapter IX

Public Improvements

Section 37. Procedure. The procedure for making, altering, vacating, or abandoning a public improvement shall be governed by general ordinance or, to the extent not so governed, by the applicable general laws of the state, except that if a remonstrance is filed against improvement or repair of a street or alley and is signed by the owners of a majority of the parcels that would be assessed for the repair or improvement, no contract for the improvement or repairs may be let until the city council reconsiders the necessity of the improvement or repair. If, after the reconsideration, two-thirds of all councilors vote for the improvement or repair, contracts for the improvement or repair may be let as if no remonstrance had been filed.

Section 38. Assessments. The procedure for levying, collecting, and enforcing the payment of special assessments for public improvements or other services to be charged against real property shall be governed by general ordinance.

Section 39. Amendments. The general ordinances mentioned in Sections 37 and 38 of this charter may be amended only by the affirmative vote of two-thirds of the members of the city council. Such an amendment may not take effect for six months after the council adopts it and may not apply to an improvement authorized by the council before the effective date of the amendment.

Section 40. Liens. The docket of city liens is a public writing, and the original or a certified copy of any matter authorized to be entered in the docket shall have the force and effect of a judgment. When the council has authorized an improvement, and an assessment for it is entered in the city's lien docket, the assessment becomes a lien against the property so assessed. The lien has priority over all other liens and encumbrances upon the property and may be enforced in the manner authorized by the city council.

Section 41. Freeways.

(1) No freeway or throughway, as defined by ORS 374.010 or 377.710(12), may be constructed by the city, nor may the city enter into any agreement approving or facilitating construction of such a freeway or throughway, unless the route of the freeway or throughway is first approved by a majority of the voting electors of the city in a city election conducted in accordance with law and unless the agreement is entered into within a time specified by the measure submitted to the voters for their approval.

(2) The city may, however, without such prior approval, prepare preliminary

Eugene Charter

plans and specifications and statements of impact, including plans, specifications, and statements of impact necessary for obtaining financial assistance for the freeway or throughway, all of which shall be available to the public at the city hall prior to the election on the route of the freeway or throughway.

(3) Prior to the election, a map and a description of the proposed route and of intersections of other thoroughfares therewith and a notice of the election, shall be published once a week for four consecutive weeks in the newspaper with the largest general circulation published in the city.

Section 42. Skinner's Butte Park. The property commonly know as the "Butte Property," with boundaries as described in a charter amendment adopted by the voters of the city April 5, 1915, is hereby dedicated to the public forever as a public park.

Chapter X

Public Utilities

Section 43. Franchises.

(1) The city council may grant a franchise or amendment thereto only by ordinance. Before adopting any such ordinance the council shall publish notice of its intention to do so in a manner authorized by Section 28 of this charter. Any applicant for such a franchise shall pay in advance the expenses of publishing the notice. Any franchise granted by the council shall assure adequate service to city residents and shall require the franchisee to pay the city adequate compensation in the form of a percentage of the gross income from the franchise, or in an alternative form acceptable to the council, in amounts sufficient to cover present value and future development of the franchise.

(2) In the acquisition by the city of any public utility the price to be paid by the city shall exclude the value of any franchise granted by the city and connected with the utility. All ordinances granting franchises shall do so subject to the provisions of this section.

(3) The council may not grant an exclusive citywide franchise to haul solid waste.

Section 44. Eugene Water & Electric Board - Functions - Membership.

(1) The power of the city to generate, collect, and distribute electricity, steam, and other kinds of physical energy is hereby vested in the Eugene Water & Electric Board (the Board).

The Board is further authorized to provide advanced telecommunications capability and associated services including, but not limited to, voice, video, data, internet and telecommunications services. Nothing in the previous sentence divests the City Council of any authority, including but not limited to (a) providing the same or similar types of services, or (b)