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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF LANE

AYA COCKRAM, TIMOTHY MORRIS, and
DAVID DE LA TORRE,

Petitioners,

v.

KATHRYN BROTHERTON, Eugene City
Attorney,

Respondent.

Case No. _____

PETITION FOR REVIEW OF
BALLOT TITLE (ORS 250.296)

NOT SUBJECT TO MANDATORY
ARBITRATION

FEE AUTHORITY: ORS 21.135

NATURE OF ACTION

1.

This is a Petition to Review the Ballot Title prepared by the Eugene City Attorney, for a referendum on Eugene Council Ordinance No. 20681 prohibiting fossil fuel infrastructure in new low-rise residential buildings. This Petition for Review is brought pursuant to ORS 250.296.

PARTIES

2.

This action is brought by Petitioners, Aya Cockram, Timothy Morris, and David de la Torre. They are all electors living in the City of Eugene. They therefore have standing to file this Petition for Review. ORS 250.296(1). More specifically:

///

1 (a) Aya Cockram is a Eugene elector. Born and raised in Eugene, Cockram is a
2 mother of a small child who works for Fossil Free Eugene to promote a stable
3 climate and a clean future.

4 (b) Timothy Morris is a Eugene elector who serves as the Executive Director of the
5 Springfield-Eugene Tenant Association, which seeks to protect the interests of
6 individuals who often do not have a choice of places to live.

7 (c) David de la Torre is a Eugene elector who serves as the Healthy Climate
8 Programs Director for Oregon Physicians for Social Responsibility, an
9 organization of health professionals and public health advocates working
10 collaboratively with community partners to educate and advocate for societal
11 and policy change that protects human health.

12 3.

13 Respondent, Kathryn Brotherton, is the Eugene City Attorney who prepared the
14 ballot title for this city measure pursuant to ORS 250.285, Eugene City Code 2.973.

15 **FACTS**

16 4.

17 On February 9, 2023, Chief Petitioners Kris Donnelly, Erika Speilberg, and James D.
18 Ball filed a prospective petition for a local referendum on Eugene Ordinance No. 20681
19 with the Eugene City Recorder, the elections official for the City of Eugene. A true and
20 correct copy of Eugene Ordinance No. 20681 is attached as Exhibit A and incorporated by
21 this reference. A true and correct copy of the referendum petition, SEL 307, is attached as
22 Exhibit B and incorporated by this reference.

23 5.

24 On February 14, 2023, having determined that the prospective petition was legally
25 sufficient, Respondent City Attorney filed a Ballot Title for the prospective petition with
26 the Eugene City Recorder, and the City Recorder prepared a Notice of Ballot Title. A true

1 and correct copy of that Notice of Ballot Title is attached as Exhibit C to this petition and
2 incorporated by this reference.

3 6.

4 This petition for review is filed within seven business days after the ballot title was
5 filed with the Eugene City Recorder and is therefore timely pursuant to ORS 250.296(1)
6 and Eugene City Code 2.973; *see also* Ex. C (Notice of Ballot Title setting forth deadline of
7 “5 p.m. on Friday, February 24, 2023”).

8 7.

9 As set out more fully in Petitioners’ Memorandum in Support of this petition, the
10 ballot title is “insufficient, not concise, [and] unfair.” ORS 250.296(1). All sections of the
11 ballot title fail to comply with the requirements of ORS 250.035(1). For example:

12 (a) The summary does not accurately describe the “major effect” of the measure, as
13 required by ORS 250.035(1)(c), because it fails to tell voters that the Ordinance
14 amends the Climate Recovery section of the City Code or that other provisions
15 of the Climate Recovery section—which are not being referred to the voters—
16 require the city and all businesses, individuals, and others living or working in
17 the city of Eugene to collectively reduce the total use of fossil fuels by 50%
18 (compared to 2010 usage) by the year 2030. Eugene Code 6.675. That legal
19 landscape is crucial context for the measure’s prohibition on fossil fuel
20 infrastructure in certain new residential construction.

21 (b) The summary is not “impartial,” as required by ORS 250.035(1)(c). It refers to
22 the fossil methane gas and liquefied petroleum gas regulated by the ordinance
23 as “natural gas,” a prejudicial and “politically inflated term” created by the gas
24 industry that tends to promote the Measure’s defeat.

25 (c) The summary is not “concise,” as required by ORS 250.035(1)(c). In place of
26 essential context about the measure’s major effect, the ballot title summary

1 spends scarce words supplying an unnecessary, overly technical, and
2 confusingly-organized level of detail about the definition of “low-rise residential
3 building.”

4 (d) The caption and question fail to reasonably identify the subject and chief
5 purpose of the measure by referring to “new . . . buildings” without making
6 clear that the measure only applies to permits filed after the effective date of the
7 measure for entirely *new construction* of certain residential-only buildings. It is
8 thus misleading and insufficient.

9 (e) The question and summary are misleading because they include the June 30,
10 2023 effective date that will be inapplicable if, as expected, this measure is put
11 before the voters at the November 2023 general election.

12 8.

13 Petitioners seek the following alternative Ballot Title:

14 CAPTION: Prohibits Fossil Fuel Infrastructure in Certain New
15 Residential-Only Construction

16 QUESTION: Shall City prohibit fossil fuel infrastructure
17 (including piping for petroleum, coal, fossil gas) in certain new
18 low-rise residential construction?

19 SUMMARY: Eugene’s Climate Recovery code requires the
20 City and all businesses, individuals, and others living or
21 working in Eugene to collectively reduce the total use of fossil
22 fuels by 50% (compared to 2010 usage) by 2030.

23 In February 2023, the City Council enacted Ordinance 20631,
24 which is now before the voters for approval. If approved, this
25 Ordinance amends Eugene’s Climate Recovery code to prohibit
26 fossil fuel infrastructure in certain new low-rise residential
buildings.

“New low-rise residential buildings” are buildings never
before used or occupied for any purpose, less than three stories
high, and intended exclusively for permanent residential
housing. Measure’s prohibitions do not apply to new mixed
occupancy buildings that include a commercial use, or any
existing buildings.

1 “Fossil fuel infrastructure” includes piping for any fossil fuel—
2 including coal, petroleum, and fossil methane or petroleum
3 gas—that connects a source of supply to a fossil-fuel-burning
4 appliance.

5 If approved, Measure’s limited prohibition on fossil fuel
6 infrastructure would apply prospectively to building permit
7 applications submitted after the Measure becomes law.

8 **PRAYER FOR RELIEF**

9 9.

10 As relief, Petitioners request that the Court issue a judgment certifying a new Ballot
11 Title as set forth above, in order to comply with the requirements set out in ORS 250.035
12 and Eugene City Code 2.961.

13 Dated this 24th day of February, 2023.

14 BENNETT HARTMAN, LLP
15 *s/ Margaret S. Olney*
16 _____
17 Margaret S. Olney, OSB No. 881359
18 margaret@bennetthartman.com
19 Phone: (503) 227-4600
20 Of Attorneys for Petitioners

21 EARTHJUSTICE
22 *s/ Jan Hasselman*
23 _____
24 Jan Hasselman, WSBA No. 29107
25 (*Pro hac vice* pending)
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COUNCIL ORDINANCE NO. 20681

**AN ORDINANCE PROHIBITING FOSSIL FUEL INFRASTRUCTURE IN NEW
LOW-RISE RESIDENTIAL BUILDINGS; AND ADDING SECTIONS 6.695 AND
6.696 TO THE EUGENE CODE, 1971.**

ADOPTED: February 6, 2023

SIGNED: February 7, 2023

PASSED: 5:3

REJECTED:

OPPOSED: Clark, Evans, Groves

ABSENT:

EFFECTIVE: March 10, 2023



ORDINANCE NO. 20681

AN ORDINANCE PROHIBITING FOSSIL FUEL INFRASTRUCTURE IN NEW LOW-RISE RESIDENTIAL BUILDINGS; AND ADDING SECTIONS 6.695 AND 6.696 TO THE EUGENE CODE, 1971.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The following heading and Section 6.695 of the Eugene Code, 1971, are added to provide as follows:

Prohibition on Fossil Fuel Infrastructure

6.695 Prohibition on Fossil Fuel Infrastructure – Definitions.

For purposes of EC 6.696, the following words and phrases shall mean:

Fossil fuel. Any of a class of hydrocarbon-containing materials of biological origin occurring within Earth's crust that can be used as a source of energy. This includes coal, petroleum or petroleum products, and natural gas.

Fossil fuel Infrastructure. Natural gas piping, fuel oil piping, or other fossil fuel piping or conveyance system within a building, that connects a source of supply to a fossil-fuel-burning appliance.

Low-rise Residential Building. Any building that has a height of three stories above grade or less, that includes one or more dwelling units, and where occupants are primarily permanent in nature (30 days or more) including but not limited to detached one- and two-family dwellings, attached single family dwellings (townhouses), manufactured dwellings, and multi-family residential buildings. This does not include a mixed occupancy building, as defined by Oregon building code, that includes a commercial use.

Natural Gas. A natural gas, liquified petroleum gas or mixture of these.

Section 2. Section 6.696 of the Eugene Code, 1971, is added to provide as follows:

6.696 Prohibition on Fossil Fuel Infrastructure – Prohibition and Applicability

- (1) Fossil fuel infrastructure is prohibited in a low-rise residential building that has never before been used or occupied for any purpose.
- (2) The City shall deny an application for a permit, or suspend or revoke an issued permit, that does not comply with this section.
- (3) This section applies to building permit applications, including those necessary to install a new manufactured dwelling, submitted on or after June 30, 2023.

(4) This section shall in no way be construed as amending the state building code, as defined in ORS 455.010.

Section 3. 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.

Passed by the City Council this

6th day of February, 2023.



City Recorder

Approved by the Mayor this

7 day of February, 2023.



Mayor

FEB 09 2023
9:45 AM
CMO

SEL 370

rev. 01/22 ORS 250.045,
250.165, 250.265, 255.135

Prospective Petition

Local Initiative and Referendum

Warning Supplying false information on this form may result in conviction of a felony with a fine of up to \$125,000 and/or prison for up to 5 years. Each chief petitioner is required to provide, on the same form, their name, residence address, contact phone number and signature attesting that the information on the form is true and correct. Changes to the information provided for a chief petitioner or to the circulator pay status must be reported to the filing officer no later than the 10th day after a chief petitioner first has knowledge or should have had knowledge of the change. At least one original chief petitioner must remain throughout the petition process or the petition is void.

Petition Information		Type		
This filing is an	<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Amendment	<input type="checkbox"/> Initiative	<input checked="" type="checkbox"/> Referendum

Jurisdiction		Some Circulators may be Paid		
<input type="checkbox"/> County	<input checked="" type="checkbox"/> City	<input type="checkbox"/> District	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Title Subject or name you give your petition.
Referral of Eugene Ordinance No. 20681, adopted February 7, 2023

Petition Correspondence Select the method of receiving notices or other correspondence from the Filing Officer.

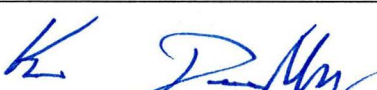
Correspondence Recipient
 Email Chief Petitioners | Mail Chief Petitioners |


Recipient Information


Name	Email Address
Anne Marie Lewis	aunemarie@funklewis.com

Chief Petitioner Information Only chief petitioner's residential city and state will appear on petition sheets.

→ By signing this document, I hereby state that all information on the form is true and correct and attest that no circulators will be compensated money or other valuable consideration on this petition based on the number of signatures obtained by the circulator.

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Signature	Date Signed
	2/8/23

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	2/8/23

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Signature	Date Signed
	2-8-23

NOTICE OF BALLOT TITLE

NOTICE is hereby given that a prospective referendum petition was filed with the Eugene City Recorder on February 9, 2023. After determining that the prospective petition was legally sufficient, the City Attorney prepared and delivered the following ballot title to the City Recorder on February 14, 2023:

Caption: Prohibiting Fossil Fuel Infrastructure in New Low-Rise Residential Buildings

Question: Shall City prohibit fossil fuel infrastructure in new low-rise residential buildings starting June 30, 2023?

Summary: If approved, measure would prohibit fossil fuel infrastructure in new low-rise residential buildings. “New low-rise residential buildings” are buildings never before used or occupied for any purpose, with a height of no more than three stories above grade, that include one or more dwelling units, and where occupants are primarily permanent in nature (30 days or more), including but not limited to detached one- and two-family dwellings, townhouses, manufactured dwellings, and multi-family residential buildings. Fossil fuel infrastructure that would be prohibited if measure is approved includes natural gas piping, fuel oil piping, and other fossil fuel piping or conveyance system within a building, that connects a source of supply to a fossil-fuel-burning appliance. Measure would not prohibit fossil fuel infrastructure in new mixed occupancy buildings that include a commercial use. If approved, measure’s prohibition on fossil fuel infrastructure in new low-rise residential buildings would apply to building permit applications, including those necessary to install a new manufactured dwelling, submitted on or after June 30, 2023.

No later than 5 p.m. on Friday, February 24, 2023, any elector may petition the Lane County Circuit Court requesting a different ballot title and stating why the ballot title prepared by the City Attorney is unsatisfactory. A copy of the full ballot title is available at the City Manager’s Office, 101 W. 10th Avenue, Eugene, Oregon 97401, and on the City’s website at www.eugene-or.gov/elections.

1 CERTIFICATE OF SERVICE

2 I hereby certify that I served the foregoing **PETITION FOR REVIEW OF BALLOT**

3 **TITLE:**

4 Kathryn Brotherton, OSB No. 981530
5 Eugene City Attorney's Office
6 101 W 10th Ave., Ste. 203
7 Eugene, OR 97401
8 Email: Kathryn.brotherton@ci.eugene.or.us
Of Attorneys for Respondent

9 by the following indicated method or methods:

- 10 X by **emailing** a copy thereof to the attorney(s) at the email address(s) shown
11 above, on the date set forth below.
- 12 by **electronic** means through the Court's Case Management/Electronic Case
13 File system, which will send automatic notification of filing to each person
listed.

14 Dated this 24th day of February, 2023.

15 BENNETT HARTMAN, LLP

16 s/ Margaret S. Olney

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