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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. _____

MEMORANDUM IN SUPPORT OF
PETITION FOR REVIEW OF
BALLOT TITLE (ORS 250.296)

NOT SUBJECT TO MANDATORY
ARBITRATION

FEE AUTHORITY: ORS 21.135

I. INTRODUCTION

Petitioners bring this action pursuant to ORS 250.296 to challenge the ballot title for a referendum on City of Eugene Council Ordinance No. 20681, signed into law on Feb. 7, 2023 (hereinafter, "Ordinance 20681" or "the Ordinance."). The Ordinance amends the Climate Recovery section of the City's Environmental and Health code to prohibit the use of fossil fuel infrastructure in certain newly constructed residential buildings. As discussed herein, the ballot title fails to describe the Ordinance sufficiently, concisely, or fairly, in violation of Oregon and Eugene law. Accordingly, Petitioners ask the Court to certify an alternative ballot title that is consistent with legal standards and that allows voters to cast an informed vote.

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1 **II. PETITIONERS**

2 Petitioner Aya Cockram is a Eugene elector who supported the Ordinance. Born
3 and raised in Eugene, Cockram is a mother of a small child who works for Fossil Free
4 Eugene to promote a stable climate and a clean future. Timothy Morris is a Eugene elector
5 who serves as the Executive Director of the Springfield-Eugene Tenant Association, which
6 seeks to protect the interests of individuals who often do not have a choice of places to
7 live. David de la Torre is a Eugene elector who serves as the Healthy Climate Programs
8 Director for Oregon Physicians for Social Responsibility, an organization of health
9 professionals and public health advocates working collaboratively with community
10 partners to educate and advocate for societal and policy change that protects human
11 health. All petitioners supported Ordinance 20681 and worked to ensure its passage.

12 **III. ORDINANCE 20681**

13 Ordinance 20681 amends the Environment and Health chapter of the Eugene City
14 Code (Chapter 6), adding a new subsection to the Climate Recovery code. The Climate
15 Recovery code, enacted in 2014 and amended in 2016, requires sharp reductions in the use
16 of fossil fuels by the City and all of its inhabitants. Specifically, it provides that “[b]y the
17 year 2030, all businesses, individuals and others living or working in the city collectively
18 shall reduce the total (not per capita) use of fossil fuels by 50% compared to 2010 usage.”
19 Eugene City Code 6.675(3). It also sets longer term targets, declaring that “[b]y the year
20 2100, total community greenhouse gas emissions shall be reduced to an amount that is no
21 more than the city of Eugene’s average share of a global atmospheric greenhouse gas level
22 of 350 ppm, which is estimated in 2016 to require an annual average emission reduction level of
23 7.6%.” *Id.* (emphasis added). The Climate Recovery code goes on to set benchmarks for
24 fossil fuel reductions annually and by particular year, and for reporting by the City

1 Manager.¹ A 2019 “gap analysis” by the City revealed that it was not on track to meet the
2 code targets, and made a number of recommendations of additional actions the City could
3 take in order to get on track.² The first recommendation on that list was to “limit or
4 prohibit new natural gas infrastructure.” *Id.*

5 The Climate Recovery code aligns with and amplifies similar policies enacted at the
6 state level. For example, in 2020, then-Governor Brown issued Executive Order 20-04,
7 which established a goal of reducing Oregon’s GHG emissions to at least 45% below 1990
8 levels by 2035 and at least 89% below 1990 emission levels by 2050.³ The City’s Climate
9 Recovery requirements also align with the goals of the United States federal government,
10 which has declared that “climate change is a defining national and global environmental
11 challenge of this time, threatening broad and potentially catastrophic impacts to the
12 human environment” and that “the United States faces a profound climate crisis and there
13 is little time left to avoid a dangerous—potentially catastrophic—climate trajectory.” 88
14 Fed. Reg. 1196, 1199 (Jan. 9, 2023). Under the Paris Agreement, the United States has
15 pledged to reduce greenhouse gas emissions by 50–52 percent below 2005 levels by 2030.⁴

16 Ordinance 20681 itself is relatively simple.⁵ Section 1 defines key terms, such as
17 “fossil fuel,” “fossil fuel infrastructure,” “low-rise residential building,” and “natural gas.”
18

19
20 ¹ A full copy of the Climate Recovery section of the City Code is attached as
Attachment A to this memorandum for the Court’s convenience.

21 ² Eugene CAP 2.0 – CRO Reduction Forecast Gaps Analysis, *available at*
22 [https://www.eugene-or.gov/DocumentCenter/View/46001/Recommendations-for-Add-](https://www.eugene-or.gov/DocumentCenter/View/46001/Recommendations-for-Add-Eugene-Climate-Actions-to-Meet-Eugenes-CRO-Targets--Goals-Gap-Analysis)
[Eugene-Climate-Actions-to-Meet-Eugenes-CRO-Targets--Goals-Gap-Analysis](https://www.eugene-or.gov/DocumentCenter/View/46001/Recommendations-for-Add-Eugene-Climate-Actions-to-Meet-Eugenes-CRO-Targets--Goals-Gap-Analysis)

23 ³ Office of the Governor, State of Oregon, Executive Order 20-04 (Mar. 10,
2020), https://www.oregon.gov/gov/Documents/executive_orders/eo_20-04.pdf.

24 ⁴ See UN Climate Change, *Nationally Determined Contributions Registry*,
25 [https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/United%20States%20NDC%20April%202021%202021%20Final.pdf)
[of%20America%20First/United%20States%20NDC%20April%202021%202021%20Final.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/United%20States%20NDC%20April%202021%202021%20Final.pdf).

26 ⁵ A full copy of Ordinance 20681 is attached as Attachment B to this
memorandum.

1 See Sec. 6.695. Section 2 prohibits the use of fossil fuel infrastructure in new construction
2 of certain residential low-rise buildings, and directs the City to deny applications for
3 permits that do not comply. See Sec. 6.696. Importantly, the prohibition does not apply to
4 existing buildings, buildings under construction, or buildings built in the future permitted
5 with applications filed before the Ordinance’s effective date. Instead, the prohibition on
6 fossil fuel infrastructure only applies to building permit applications submitted on or after
7 June 30, 2023.

8 The Ordinance passed the City Council on February 6, 2023, and was signed into
9 law by the Mayor the following day.

10 On February 9, 2023, a group of individuals filed a petition for a referendum on
11 Ordinance 20681. The City Recorder deemed the petition to be in proper form, and
12 submitted it to the City Attorney’s office. On February 14, the City Attorney filed a ballot
13 title with the City Recorder, which released a Notice of Ballot Title.⁶

14 The Ordinance is not currently in effect. Under Eugene law, when a City ordinance
15 is the subject of a properly filed petition for a referendum, the ordinance does not take
16 effect until voters approve the referendum and the mayor declares that the referendum
17 has passed, or a later date, if a later effective date is specified in the ordinance. Eugene
18 Code 2.971(4), 2.987.

19 IV. LEGAL STANDARDS

20 For local measures, state law requires the following in a ballot title:

- 21 (a) A caption of not more than 10 words which reasonably
22 identifies the subject of the measure;
- 23 (b) A question of not more than 20 words which plainly
24 phrases the chief purpose of the measure so that an
affirmative response to the question corresponds to an
affirmative vote on the measure; and

25
26 ⁶ The full Notice of Ballot Title is attached as Attachment C to this memorandum.

1 (c) A concise and impartial statement of not more than 175
2 words summarizing the measure and its major effect.

3 ORS 250.035(1); *see also* Eugene Code 2.961 (“All ballot titles for city measures must
4 comply with the requirements of ORS 250.035”). State law also provides for a challenge by
5 electors to a ballot title that is “insufficient, not concise or unfair.” ORS 250.296(1).
6 Review by the appropriate circuit court is the “first and final review.” ORS 250.296(3).

7 A ballot title is insufficient if it fails to describe any legal context necessary to
8 understand the chief purpose or major effect of the measure. *Reed v. Roberts*, 304 Or 649,
9 655, 748 P2d 542, 545 (1988). In revising ballot title language to convey a measure’s major
10 effect, courts may go beyond the words in the measure if necessary. *E.g., Dirks v. Myers*,
11 329 Or 608, 616, 993 P2d 808, 812 (2000); *Earls v. Myers*, 330 Or 171, 176, 999 P2d 1134
12 (2000). A ballot title is unfair, and not impartial, if it includes language that is politically
13 inflated, or that tends more to promote the passage or defeat of the measure than to
14 describe its substance accurately. *Fletchall v. Rosenblum*, 365 Or 98, 107-108, 442 P3d 193
15 (2019) (rejecting inclusion of the terms “nonpartisan, citizen” in describing
16 reapportionment committee, because the terms invoke “familiar and emotionally charged
17 themes” and otherwise provide little useful information); *see also Dirks v. Myers*, 329 Or at
18 618; *Earls v. Myers*, 330 Or at 176. In addition, a ballot title is insufficient if it identifies
19 some but not all effects of a measure. *See, e.g., Hopkins v. Rosenblum*, 366 Or 239, 244, 460
20 P3d 503 (2020) (caption was inaccurate and misleading when it stated that measure
21 applied to “owners” of guns, and not the other categories of persons subject to the
22 measure’s restrictions).

23 A review of case law makes clear that crafting a fair and accurate ballot title is not
24 easy. The Oregon Supreme Court routinely finds that a ballot title suffers from a technical
25 mistake or fails to provide voters with sufficient clear and unbiased information about a
26 measure to allow voters to cast an informed vote. *See, e.g., Vandering v. Rosenblum*, 359 Or

1 1, 7, 371 P3d 1194 (2016); *McCann v. Rosenblum*; 354 Or 701, 707, 320 P3d 548 (2014). This
2 court should similarly closely review the City Attorney’s ballot title and revise it as
3 necessary to ensure that it meets the statutory standards.

4 V. ARGUMENT

5 As set forth below, all portions of the ballot title prepared by the City Attorney fall
6 short of the statutory standards and must be revised. First, the caption and question fail to
7 reasonably identify the subject and chief purpose of the measure by referring to “new . . .
8 buildings” without words necessary to clarify that the measure would apply only to
9 permits for new building *construction*, after the measure takes effect, of buildings that have
10 never before been used or occupied for any purpose, and not to existing buildings or
11 previously permitted new construction.

12 Second, the question and summary fail to reasonably identify the chief purpose and
13 major effect of the measure because they include misleading information about the
14 effective date of the measure that will misinform and confuse voters if the referendum
15 appears on the November ballot, well after the June 30 effective date noted in the
16 Ordinance.

17 Third, the summary is not “impartial” because it refers to fossil methane and
18 liquefied petroleum gas (for example, propane gas) regulated by the ordinance as “natural
19 gas,” a prejudicial and “politically inflated term” preferred by the gas industry that is
20 underinclusive and tends to mislead voters about the Measure’s applicability.

21 Finally, the summary fails to adequately describe the “major effect” of the measure
22 because it omits crucial legal context: specifically, that the Measure amends the City’s
23 Climate Recovery code. The summary fails to tell voters that city law requires the city and
24 all businesses, individuals, and others living or working in the city of Eugene to
25 collectively reduce the total use of fossil fuels by 50% (compared to 2010 usage) by the
26 year 2030. Eugene City Code 6.675. Indeed, the summary fails to so much as mention the

1 word “climate,” let alone accurately place the Ordinance in the context of the City’s
2 existing code.

3 **A. The Caption Does Not Comply with the Statutory Standards**

4 Pursuant to ORS 250.035(1)(a), the ballot title caption is a 10-word statement that
5 “reasonably identifies the subject of the measure.” A caption may fail to comply with
6 statutory requirements if it is “too vague and gives voters no clear picture of what is at
7 stake.” *Conroy v. Rosenblum*, 359 Or 601, 606, P3d 299 (2016).⁷ Here, the City prepared the
8 following caption:

9 **CAPTION: Prohibiting Fossil Fuel Infrastructure in New**
10 **Low-Rise Residential Buildings**

11 This caption falls short of the statutory standards because it is misleading as to the
12 Ordinance’s scope and applicability. Specifically, the caption fails to reasonably identify
13 the subject of the measure by referring to “new . . . buildings” without clarifying that the
14 measure would apply only to permits for new *construction*, after the measure takes effect,
15 of buildings that have never before been used or occupied. The Ordinance plainly does
16 not apply to recently constructed buildings that most voters would characterize as “new,”
17 nor does it apply to new buildings that will be constructed in the future if the permit
18 applications were submitted prior to the effective date of the Ordinance. Eugene City
19 Code 6.696(3).

20 Without this crucial context in the caption, a voter could reasonably be confused
21 about the subject of the Ordinance. Are buildings that are a few years old considered
22 “new” and subject to the fossil fuel prohibition? What about buildings for which
23 construction is underway, or for which permits have been sought but construction has not

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25 ⁷ Although *Conroy* involved a challenge to a state measure, rather than a local
26 measure, the requirements for a ballot title caption are identical for state and local
measures except for a slight difference in the word limit. Accordingly, this Court may look
to precedent involving ballot title challenges to state measures.

1 yet commenced? Voters might reasonably be alarmed about such a shifting of the goal
2 posts if the Ordinance applied retroactively. And a caption that pushes voters towards
3 voting a certain way, based on a misunderstanding of the legal effect of the referendum,
4 must be corrected. *See, e.g., Rasmussen v. Kroger*, 350 Or 271, 253 P3d 1037 (2011) (rejecting
5 use of “impermissibly loaded” language in Caption that could create false impression).

6 This confusion can be resolved by amending the caption to reflect the fact that the
7 prohibition only applies prospectively to new building *construction*, not existing new
8 buildings, as follows:

9 **CAPTION: Prohibits Fossil Fuel Infrastructure in Certain**
10 **New Residential-Only Construction**

11 The substitution of the word “construction” for “buildings” conveys that the bill is
12 prospective in nature, and inapplicable to existing buildings. Moreover, the addition of
13 the word “certain” alerts voters to the fact that not all residential construction is subject to
14 the ban, with additional detail provided later in the ballot title. Finally, one of the most
15 important limitations on the reach of the proposal is that is *only* applies to certain
16 *residential* construction, a point which is clearly captured by the phrase “residential-only.”
17 This Court should adopt petitioners’ proposed alternative ballot caption.

18 **B. The Question Fails to Comply with the Statutory Standards**

19 Under ORS 250.035(1)(b), the ballot title must include a 20-word statement, framed
20 as a question, that “plainly phrases the chief purpose of the measure[.]” The “chief
21 purpose” means “the most significant” aims or ends “which a measure is designed to
22 bring about.” *Reed v. Roberts*, 304 Or 649, 654, 748 P2d 542, (1988). The chief purpose may
23 encompass the measure’s “legal context.” *Reed v. Roberts*, 304 Or 649, 654-655, 748 P2d
24 542(1988). In addition, the Supreme Court has stated that “to be of most help to the voter,
25 the question should build on, and be consistent with, the caption.” *Mabon v. Kiesling*, 317
26 Or 406, 413-414, 856 P2d 1023 (1993) (quoting *Baker v. Keisling*, 312 Or 385, 392, 822 P2d

1 1162 (1991)).

2 Here, the City Attorney proposed the following question:
3

4 **QUESTION: Shall City prohibit fossil fuel infrastructure**
5 **in new low-rise residential buildings starting June 30,**
6 **2023?**

7 Like the City Attorney’s caption, this question is neither sufficient nor fair, and
8 must therefore be revised. ORS 250.296(1). The Question mostly just repeats the Caption,
9 is well short of the 20-word statutory limit, and represents a missed opportunity to clarify
10 the scope and subject of the referendum.

11 First, as discussed immediately above, the Question fails to “plainly phrase” the
12 “chief purpose” of the measure because, as with the Caption, it refers to “new . . .
13 buildings” without words necessary to clarify that the measure would apply only to
14 permits for new building construction, after the measure takes effect. See Section V(A),
15 *supra*.

16 Second, the inclusion of the date —“starting June 30, 2023” — has the potential to be
17 deeply confusing to voters if they are voting on the Ordinance after that date. This
18 referendum likely will be placed on the ballot on November 7, 2023.⁸ Under the City
19 Code, the Ordinance will not take effect until that vote takes place. Eugene Code 2.971(4)
20 (“An ordinance for which a prospective referendum petition has been submitted to the city

21 ⁸ See Eugene Code 2.981(2)(b) (“An election on legislation referred to the
22 electors by petition shall be held on the next available election date as described in ORS
23 221.230(1) [May primary or November general election] or successor statutes that is not
24 sooner than the 90th day after the city recorder’s certification of the completed referendum
petition under section 2.979 of this code, unless the council calls an earlier or later special
election on the measure. The special election called by the council may not be held earlier
than 66 days after the city recorder’s certification of the completed petition.”).

25 If the Measure is, in fact, on the May 2023 ballot, prior to the effective date of the
26 Ordinance, then the inclusion of the effective date would not be misleading, but it is still
unnecessary. Word space is better spent describing “fossil fuel infrastructure” as
petitioners propose.

1 recorder does not take effect during the period of signature collection and signature
2 verification, and if petitioners collect the number of elector signatures required under
3 section 2.972 of this code, the ordinance shall not take effect except as provided in section
4 2.987 of this code."); Eugene Code 2.987 ("A measure which has been approved by a
5 majority of the electors who voted on the measure takes effect upon the mayor's
6 proclamation that the measure has passed, or at a later date, if specified in the measure.").
7 Assuming a November election, the Ordinance will not apply to building permits starting
8 on June 30, 2023, but only prospectively if the measure passes. Therefore, the reference to
9 June 30, 2023, in the Question is likely to confuse and mislead voters about the measure's
10 purpose and operation. Greater clarity about the effective date can be provided in the
11 Summary, as proposed below.

12 Third, the Question repeats but does not elaborate on the term "fossil fuel
13 infrastructure" that is used in the Caption. The additional word count available should be
14 used to provide voters with a more complete description of what that means. The
15 Ordinance defines "fossil fuel infrastructure" to include "piping" or other "conveyance
16 system within a building . . . that connects a source of supply to a fossil fuel-burning
17 appliance." It further defines fossil fuels to "include[] coal, petroleum or petroleum
18 products, and natural gas," and further defines "natural gas" to include "a natural gas,
19 liquified petroleum gas or mixture of these." Eugene City Code 6.695.

20 To address these shortcomings, Petitioners propose the following alternative:

21 **QUESTION: Shall City prohibit fossil fuel infrastructure**
22 **(including piping for petroleum, coal, fossil gas) in certain**
23 **new low-rise residential construction?**

24 This alternative builds upon the caption, clarifies that the measure applies to new
25 "construction," removes the potential for confusion about the effective date of the
26 Ordinance, and provides additional detail as to what "fossil fuel infrastructure" means. It

1 refers to “piping,” which is the most common infrastructure used to convey fossil fuels. It
2 also identifies all “fossil fuels” that may be impacted: petroleum or petroleum products,
3 coal, and gas, which can be either fossil methane or a liquified petroleum gas. Singling out
4 any one of those would render the Question underinclusive. *See, e.g. Fletchall v. Rosenblum,*
5 *supra; Terhune v. Myers*, 338 Or 554, 558-559, 112 P2d 1188 (2005) (term “ballot measure”
6 was underinclusive because measure applied to both initiative petitions and ballot
7 measures); *Tower v. Myers*, 341 Or 357, 362, 142 P3d 1040 (2005) (term “anyone” was
8 underinclusive when measure’s restrictions applied to “persons, companies or
9 organizations” receiving public employee payroll deducted money).

10 Notably, this alternative avoids using the term “natural gas,” which is really an
11 industry-preferred “brand name” —Eugene’s gas utility calls itself “NW Natural” —
12 intended to obscure the fact that “natural gas” is still predominantly a fossil fuel.
13 Moreover, the definition of “natural gas” in the Ordinance makes clear that it includes
14 more than what consumers often think of “natural gas” (the fuel often used for cooking
15 and heating, which is predominantly fossil methane), but also other liquified petroleum
16 gases like propane or butane. *See, e.g. Tauman v. Myers*, 343 Or 299, 302-04, 170 P3d 556
17 (2007) (using words in measure can impermissibly confuse voters where terms is used
18 differently than common understanding). Therefore, it would be inaccurate and
19 misleading to only use the branded term “natural gas.”⁹ Instead, petitioners propose the
20 phrase “fossil gas.” This alternative concisely conveys the essential character of the gases
21 subject to the Ordinance’s regulation.

22 The ballot title question and summary should also not use the term “natural gas”
23 because it is politically inflated, likely to prejudice voters. *See Earls v. Myers*, 330 Or 171,

24

25 ⁹ To the extent “natural gas” appears at all in the ballot title, which it should
26 not, it must be put in quotations, to signal to voters that the term is defined to include
more than just what is commonly thought of as “natural gas.” *Wolf v. Myers*, 343 Or 494,
501-02, 173 P3d 812 (2007).

1 176, 999 P2d 1134, 1136 (2000) (explaining that ballot title cannot incorporate “politically
2 inflated terms of phrases” and omitting phrase “freedom to choose”); *Mabon v. Myers*, 332
3 Or 633, 638 n.2, 33 P3d 988 (2001); *Fred Meyer, Inc v. Roberts*, 308 Or 169, 175 (1989)
4 (replacing the word “protect” as to certain activities with word “permit” in ballot title,
5 because it is “not neutral and might mislead voters[.]”). Studies have shown that people
6 often mistakenly believe that “natural” gas refers to a product that is benign or even
7 environmentally beneficial.¹⁰ But so-called “natural” gas is a fossil fuel (specifically, fossil
8 methane, a potent greenhouse gas) that causes profound environmental harm. Gas use in
9 buildings is one of the primary sources of greenhouse gas emissions in Eugene and the
10 state generally.¹¹ Moreover, fossil methane has been linked to serious health problems
11 when combusted in homes; one recent study estimated that “gas-burning stoves may be
12 linked to nearly 13 percent of childhood cases of asthma in the U.S.”¹²

13 In sum, the City Attorney’s question fails to meet the statutory standards. The
14 reference to June 30, 2023, is unnecessary and potentially extremely confusing, given the
15 significant possibility that voters will not be asked to vote on the referendum until
16 November 2023. The failure to make clear that the Ordinance applies to *new construction*,
17 and not just new buildings is also problematic. Finally, the proposed question fails to
18 provide voters with additional essential information about the proposal’s “chief purpose”
19 – namely the kinds of fuels regulated by the Ordinance. The alternative suggested by
20 Petitioners resolves all of these shortcomings, and this Court should adopt it.

21 _____

22 ¹⁰ See, e.g., Karine Lacroix, et al., *Different names for “natural gas” influence public*
23 *perception of it*, Journal of Environmental Psychology, 77. DOI: 10.1016/j.jenvp.2021.101671.

24 ¹¹ See City of Eugene, Climate Action Plan 2.0 (Summer 2020) at 28, available at
25 [https://www.eugene-or.gov/DocumentCenter/View/55835/CAP-20_Summer_2020_FINAL-](https://www.eugene-or.gov/DocumentCenter/View/55835/CAP-20_Summer_2020_FINAL-w-appendices-compressed)
26 [w-appendices-compressed](https://www.eugene-or.gov/DocumentCenter/View/55835/CAP-20_Summer_2020_FINAL-w-appendices-compressed).

27 ¹² Dani Blum, *Gas Stoves Are Tied to Health Concerns. Here’s How to Lower Your*
28 *Risk*, New York Times (Jan. 11, 2023), available at
29 <https://www.nytimes.com/2023/01/11/well/live/gas-stoves-health-risks.html>.

1 C. The Summary Does Not Comply With the Statutory Standards

2 ORS 250.035(1)(c) requires that the ballot title contain a “concise and impartial
3 statement of not more than 175 words” which accurately summarizes the measure and its
4 “major effect.” The purpose of the summary is to provide voters with enough information
5 to understand “what will happen if the measure is approved” and the “breadth of its
6 impact.” *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989).

7 To that end, courts have required that the summary identify all significant
8 provisions or effects of a proposed measure, to the extent word space allows. *See, e.g.,*
9 *Cross v. Rosenblum*, 359 Or 136, 375 P3d 123 (2016) (summary was insufficient because it
10 failed to tell voters about the measure’s undisputed impact on access to abortion); *Blosser*
11 *v. Rosenblum*, 358 Or 312, 363 P3d 1280 (2015) (summary was insufficient because it failed
12 to describe the administrative challenge process). Moreover, a ballot title summary is
13 unfair if it includes language that tends more to promote the passage or defeat of the
14 measure than to describe the substance accurately, *Dirks v. Myers*, 329 Or 608, 616, 993 P2d
15 808 (2000), or includes “politically inflated terms or phrases,” even if such terms were used
16 in the measure itself. *Earls v. Myers*, 330 Or 171, 176, 999 P2d 1134 (2000).

17 The City Attorney prepared the following summary:

18 **Summary: If approved, measure would prohibit fossil fuel**
19 **infrastructure in new low-rise residential buildings. “New**
20 **low-rise residential buildings” are buildings never before**
21 **used or occupied for any purpose, with a height of no more**
22 **than three stories above grade, that include one or more**
23 **dwelling units, and where occupants are primarily**
24 **permanent in nature (30 days or more), including but not**
25 **limited to detached one- and two-family dwellings,**
26 **townhouses, manufactured dwellings, and multi-family**
 residential buildings. Fossil fuel infrastructure that would be
 prohibited if measure is approved includes natural gas
 pipng, fuel oil pipng, and other fossil fuel pipng or
 conveyance system within a building, that connects a source

1 **of supply to a fossil-fuel-burning appliance. Measure would**
2 **not prohibit fossil fuel infrastructure in new mixed**
3 **occupancy buildings that include a commercial use. If**
4 **approved, measure’s prohibition on fossil fuel infrastructure**
5 **in new low-rise residential buildings would apply to**
6 **building permit applications, including those necessary to**
7 **install a new manufactured dwelling, submitted on or after**
8 **June 30, 2023.**

9 This Summary falls short of the statutory standards and fails provide critical
10 context and explanation needed for an informed choice. The summary has several key
11 flaws.

12 First, the Summary is not concise. It recites a number of relatively insignificant
13 details on certain matters, while omitting key information entirely. For example, the
14 second sentence of the summary devotes over a third of the allowable word count to an
15 overly granular definition of the types of low-rise residential buildings that would be
16 impacted by the Ordinance. Making matters worse, the lengthy recitation of the
17 Ordinance’s definition of “low-rise residential building” is confusingly organized, with
18 parts of the definition appearing in the second and fourth sentences of the summary,
19 separated by the insertion of the definition of “fossil fuel infrastructure.” While the
20 applicability of the Ordinance is surely relevant, the purpose of the summary is to
21 summarize, not reprint verbatim details from the language of the Ordinance itself that will
22 be available to voters with a flip of the page. *See Carson v. Kroger*, 351 Or 508, 518 (2012)
23 (removing language that “provides no helpful information to voters”). Overall, there is
24 room to add much-needed substantive content within the word limit while improving
25 overall clarity.

26 Second, the summary adopts preferred industry jargon—so-called “natural” gas—
without qualification or explanation (“Fossil fuel infrastructure that would be prohibited if
measure is approved includes natural gas piping”). As discussed above, the term “natural

1 gas” is misleading, underinclusive, and politically inflated. It has no place in the
2 summary of this ballot title. Instead, consistent with the Question, Petitioners propose
3 that the summary refer to “fossil methane or petroleum gas.” This would render the term
4 consistent with the definitions in the Ordinance, instead of industry’s preferred and falsely
5 benign-sounding term, “natural” gas. It makes clear the reach of the proposal to fossil
6 fuels, as well as the make-up of these gases. In short, it provides voters with accurate and
7 understandable information.

8 Third, the summary’s treatment of the effective date of the Ordinance is both
9 misleading and not concise. The last sentence of the summary devotes 35 words to the
10 effective date of the ordinance, which as discussed above, *see* Section V(A), *supra*, risks
11 confusing voters and influencing the way they vote. This sentence can be restructured to
12 address effective date more accurately and concisely, as proposed below.

13 Finally, and perhaps most importantly, the summary does not accurately describe
14 the “major effect” of the measure because it omits the crucial legal context in which the
15 Ordinance arises. *Reed v. Roberts*, 304 Or 649, 655, 748 P2d 542 (1988); *Rasmussen v. Kroger*,
16 350 Or 271, 277, 253 P3d 1037 (2011) (centering “legal context” in which measure would
17 apply); *see also Blosser v. Rosenblum*, 358 Or 312, 316 (2015) (ballot title summary opening
18 with explanation of existing law). As a review of ballot titles at both the state and local
19 level make clear, virtually all summaries provide this context.¹³ How can voters cast an
20 informed vote if they do not understand the status quo?

21 Here, the summary says nothing about the existing law that the Ordinance seeks to
22 amend. It fails to explain that the Ordinance amends the Climate Recovery section of the
23 City Code, or that another provision of the Climate Recovery section of the Code—which
24 was adopted in 2014 and is not being referred to the voters in this referendum—requires

25
26 ¹³ *See, e.g.* Oregon Secretary of State Initiative, Referendum and Referral Database,
available at https://egov.sos.state.or.us/elec/web_irr_search.search_form.

1 the city and all businesses, individuals, and others living or working in the city of Eugene
2 to collectively reduce the total use of fossil fuels by 50% (compared to 2010 usage) by the
3 year 2030. Eugene Code 6.675(1)–(3). Instead, the summary is silent on the City’s explicit
4 fossil fuel reduction goals and aggressive climate protection targets that were the clear
5 impetus for the Ordinance. Indeed, the word “climate” does not appear even a single time
6 in the entire ballot title. The omission is a grave one: without explaining the current state
7 of the law, the City’s climate goals, and the steps necessary to achieve them, the Ordinance
8 appears to hang in a vacuum, untethered to any context and potentially confusing or
9 misleading voters.

10 To address this deficiency, the summary must mention the Climate Recovery
11 section of the City Code of which the Ordinance is a part. There is more than enough
12 space within the word limit to contextualize the Ordinance in existing law.

13 The following alternative corrects the deficiencies identified above, stays within the
14 word limit, and meets the other statutory standards. Petitioners further urge the Court to
15 break it up in paragraphs, as proposed herein, to improve readability.

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

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

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

30 **“Fossil fuel infrastructure” includes piping for any fossil**
31 **fuel—including coal, petroleum, and fossil methane or**
32 **petroleum gas—that connects a source of supply to a fossil-**

1 fuel-burning appliance.

2 **If approved, Measure’s limited prohibition on fossil fuel**
3 **infrastructure would apply prospectively to building permit**
4 **applications submitted after the Measure becomes law.**

4 VI. CONCLUSION

5 Petitioners understand that crafting ballot titles, without public input and on a
6 short deadline, can be a challenging task. While Petitioners appreciate the City
7 Attorney’s efforts, the ballot title falls short of statutory requirements. Accordingly,
8 Petitioners ask the Court to certify an alternative ballot title as proposed by Petitioners.

9
10 Dated this 24th day of February, 2023.

11
12 BENNETT HARTMAN, LLP

13 *s/ Margaret S. Olney*

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16 Phone: (503) 227-4600

17 Of Attorneys for Petitioners

18 EARTHJUSTICE

19 *s/ Jan Hasselman*

20 Jan Hasselman, WSBA No. 29107

21 (*Pro hac vice* pending)

22 Molly Tack-Hooper, OSB No. 212147

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26 Of Attorneys for Petitioners

Climate Recovery

6.675 Climate Recovery – Climate Action Goals.

The city shall carry out the requirements of sections [6.680](#) through [6.690](#) of this code in order to achieve the following goals.

- (1) By the year 2020, all city-owned facilities and city operations shall be carbon neutral, either by reducing greenhouse gas emissions to zero, or, if necessary, by funding of verifiable local greenhouse gas reduction projects and programs or the purchase of verifiable carbon offsets for any remaining greenhouse gas emissions.
- (2) By the year 2030, the city organization shall reduce its use of fossil fuels by 50% compared to 2010 usage.
- (3) By the year 2030, all businesses, individuals and others living or working in the city collectively shall reduce the total (not per capita) use of fossil fuels by 50% compared to 2010 usage.
- (4) By the year 2100, total community greenhouse gas emissions shall be reduced to an amount that is no more than the city of Eugene’s average share of a global atmospheric greenhouse gas level of 350 ppm, which is estimated in 2016 to require an annual average emission reduction level of 7.6%.

(Section 6.675 added by Ordinance No. 20540, enacted July 28, 2014, effective August 29, 2014; and amended by Ordinance No. 20567, enacted July 27, 2016, effective August 28, 2016.)

6.680 Climate Recovery – Assessment.

Within six months of August 29, 2014, the city manager or the manager’s designee shall complete an assessment of current efforts to reach the climate action goals. The assessment shall include a review and analysis of the following.

- (1) Trends in current energy use for the community and for city operations and facilities; and
- (2) Progress in implementing the community climate and energy action plan and the internal climate action plan.

(Section 6.680 added by Ordinance No. 20540, enacted July 28, 2014, effective August 29, 2014.)

6.685 Climate Recovery – Targets & Benchmarks.

To reach the climate action goals, the city council adopts the targets and benchmarks contained in subsection [\(1\)](#) of this section, and the city will take other actions that the council determines are necessary, for achieving the targets, benchmarks and other climate action goals.

(1) *Targets and benchmarks.*

Goal	Target (in GHGs)	Benchmark
Carbon neutral operations	60% reduction from 2010 levels by 2020	<u>Annual</u> : 15% reduction per year <u>5 year</u> : 60% reduction by 2020
Reduce fossil fuels 50%	50% reduction from 2010 levels by 2030.	<u>Annual</u> : 2.5% reduction per year <u>By 2020</u> : 25% reduction from 2010 <u>By 2025</u> : 38% reduction from 2010 <u>By 2030</u> : 50% reduction from 2010

(2) The city manager shall adopt administrative rules pursuant to section [2.019](#) of this code that establish a specified baseline amount and appropriate greenhouse gas inventory methodology.

(3) When the city manager prepares options for council consideration pursuant to this section, including options for meeting the goals, the manager shall include a triple bottom line assessment of the options including a cost-benefit analysis.

(Section 6.685 added by Ordinance No. 20540, enacted July 28, 2014, effective August 29, 2014; and amended by Ordinance No. 20567, enacted July 27, 2016, effective August 28, 2016.)

6.690 Climate Recovery – Reporting.

Following council adoption of the numerical targets and benchmarks, the city manager shall report to the city council on progress in reaching adopted climate action goals as follows:

(1) Provide a progress report every two years.

(2) Provide a comprehensive report every five years that includes an assessment of greenhouse gas emission reductions to date and the status in reaching the established targets and benchmarks. If the five-year comprehensive report indicates that the city is not reaching the adopted targets and benchmarks, the city manager or the manager’s designee shall:

(a) Conduct an analysis of possible actions to get back on track to achieve the next adopted benchmark, together with a triple bottom line analysis of those options.

(b) Develop for council consideration potential revisions to the plan that reflect the necessary actions to achieve the next adopted benchmark.

(3) Update the community climate and energy action plan and the internal climate action plan every five years, which shall be based on the updated greenhouse gas inventory.

(Section 6.690 added by Ordinance No. 20540, enacted July 28, 2014, effective August 29, 2014.)

The Eugene Code is current through Ordinance 20679, passed November 30, 2022.

Disclaimer: The city recorder's office has the official version of the Eugene Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.eugene-or.gov](http://www.eugene-or.gov)

[Code Publishing Company](#)



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



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 **MEMORANDUM IN SUPPORT OF**
3 **PETITION FOR REVIEW OF BALLOT TITLE AND EXPLANATORY STATEMENT:**

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.

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