



Monday, April 12th, 2021

Eugene City Council
101 West 10th Avenue, 2nd Floor
Eugene, OR 97401

Re: Urgent Need for Action on Expanding Natural Gas Infrastructure in Eugene

Dear Mayor Lucy Vinis, Councilor Semple, Councilor Keating, Councilor Zelenka, Councilor Yeh, Councilor Clark, Councilor Evans, Councilor Syrett, and Councilor Groves,

Eugene has established itself as a municipal climate leader by codifying ambitious emission and fossil fuel reduction goals and continuing to explore novel pathways for achieving those goals. We appreciate the work that City Council has devoted to exploring the option of using the NW Natural franchise agreement as a mechanism for reducing emissions and fossil fuel use. We also appreciate Council’s continued refusal to accept a new franchise agreement that does not meaningfully advance the city’s climate policy.

But with three extensions, almost 2 years of negotiations, and NW Natural’s protracted refusal to agree to terms that would limit natural gas in the city, Eugene must look to other options for regulating natural gas. The lengthy negotiations with little movement from NW Natural have proven that the franchise agreement is not, as the Climate Action Plan 2.0 (CAP 2.0) had relied on it, a “tangible option” for closing the gap between the city’s Climate Recovery Ordinance (CRO) goals and business as usual.

Eugene has existing authority to take bold action to limit or prohibit new natural gas infrastructure outside of the agreement, and should immediately pursue regulatory pathways for halting the expansion of

natural gas infrastructure in Eugene. Limiting or prohibiting new natural gas infrastructure is a recommended action for closing Eugene’s CRO gap,¹ is discussed as a strategy in the CAP 2.0,² and should be prioritized.

Given the urgency of implementing lasting measures to reduce fossil fuels in Eugene, we propose the following roadmap for dealing with immediate and long-term risks of expanding natural gas infrastructure in our community:

(1) Enact a Moratorium on City Permits for New Gas Infrastructure and Connections

As it will undoubtedly take time to develop permanent, legally defensible regulations for limiting or prohibiting new gas infrastructure and connections, **the city should enact an immediate moratorium on expanding natural gas infrastructure and new gas connections** while doing so.

Cities commonly enact moratoriums to maintain the status quo while pursuing the lengthy process of developing permanent regulations, including prohibiting new fossil fuel infrastructure, particularly where health and safety concerns are involved.³ Pausing new service connections and maintaining the status quo while developing permanent regulations is within the city’s police power to regulate the public health, welfare, and safety.⁴ There is a legitimate local interest in preventing further risk of harm to the health and safety of Eugene residents from the presence of gas in our homes and streets,⁵ and avoiding locking in decades of fossil fuel use and emissions and stranding assets when Eugene finally does take the needed action. Additionally, the city is *expressly* authorized by the state to immediately halt continued expansion of natural gas infrastructure in its

¹ Recommendations for Additional Eugene Climate Actions to Meet Eugene’s Climate Recovery Ordinance Targets and Goals (“Gap Analysis”) at 2 (2020), <https://www.eugene-or.gov/DocumentCenter/View/46001/Recommendations-for-Add-Eugene-Climate-Actions-to-Mee-t-Eugen-es-CRO-Targets--Goals-Gap-Analysis>.

² City of Eugene, Eugene’s Community Climate Action Plan 2.0 (“CAP 2.0”), Appendix 7 at 1 (2020), https://www.eugene-or.gov/DocumentCenter/View/55835/CAP-20_Summer_2020_FINAL-w-appendices-compressed.

³ See, e.g., Aaron Kunkler, King County Council Approves Fossil Fuel Moratorium, Seattle Weekly (Jan. 28, 2019), <https://www.seattleweekly.com/news/king-county-council-approves-fossil-fuel-moratorium/>; Chris Brown, Vancouver City Council votes to continue temporary ban on bulk fossil fuel facilities, Clark County Today (July 21, 2020), <https://www.clarkcountytoday.com/news/vancouver-city-council-votes-to-continue-temporary-ban-on-bulk-fossil-fuel-facilities/>.

⁴ ORS 221.916(k), (m); *Asbland Drilling, Inc. v. Jackson County*, 168 Or. App. 624, 634, 4 P.3d 748, rev. den. 331 Or. 429, 26 P.3d 148 (2000) (“In general, where local governments have undertaken reasonably to regulate matters of local health, safety, and welfare, such regulation will be valid unless we determine that the local regulation conflicts with state law or is clearly intended to be preempted.”); *Oregon City v. Hartke*, 240 Or. 35, 400 P.2d 255, 263 (Or. 1965) (“[I]t is within the police power of [Oregon cities] to wholly exclude a particular [land] use if there is a rational basis for the exclusion.”).

⁵ See, e.g., Rocky Mountain Institute Gas Stoves: Health and Air Quality Impacts and Solutions (2020), <https://rmi.org/insight/gas-stoves-pollution-health>; UCLA, Effects of Residential Gas Appliances on Indoor and Outdoor Air Quality and Public Health in California (2020), <https://ucla.app.box.com/s/xyzt8jc1ixnetiv0269qc704wu0ihif7>.

streets, highways, and public property—ORS 221.420(2)(a) acknowledges city authority to “prescribe by ordinance *or otherwise*” to “exclude . . . any public utility” from its property.⁶

Eugene has already established a strong factual basis for regulating natural gas in its CAP 2.0 and other analyses. The city has acknowledged that it is not on track to satisfy its CRO fossil fuel reduction targets, and that considerable additional action is necessary to meet the goals.⁷ Building energy emissions, largely from natural gas, make up 32% of Eugene’s emissions and are expected to increase 12-fold by 2030 with current action and growth—the fastest-growing source of greenhouse gas emissions in the city.⁸ Through a combination of prohibiting new natural gas infrastructure and connections and limiting the installation of natural gas appliances, the city could reduce the gap to meeting its goals by 70%.⁹ Eugene simply cannot afford to continue to add *new* fossil fuel infrastructure to the mix, locking in years of continued fossil fuel use and related emissions, while simultaneously acknowledging this huge gap in its reduction efforts.

Beyond the urgent need to reduce fossil fuels in the community, the city also has a strong basis for enacting a moratorium due to the extreme and disproportionate health and safety risks associated with natural gas that our coalition has been emphasizing for months.¹⁰ Because of the rapidly growing evidence of the alarming health and safety risks of indoor gas usage, as well as the efforts of the natural gas industry (reminiscent of the tobacco industry) to hide, downplay, obfuscate, and deny these risks, a moratorium is certainly a justifiable step toward protecting the health and safety of Eugonians.¹¹ In addition, gas infrastructure poses a

⁶ ORS 221.420(2)(a).

⁷ See generally Gap Analysis, <https://www.eugene-or.gov/DocumentCenter/View/46001/Recommendations-for-Add-Eugene-Climate-Actions-to-Mee-t-Eugen-CRO-Targets--Goals-Gap-Analysis>.

⁸ CAP 2.0 at 28, https://eugene-or.gov/DocumentCenter/View/55835/CAP-20_Summer_2020_FINAL-w-appendices-compressed; Good Company, Eugene, Oregon Community Greenhouse Gas Inventory: Calendar Year 2019, at 3 (Dec. 2020), https://www.eugene-or.gov/DocumentCenter/View/59286/2019-Eugene-Community_GHG.

⁹ Gap Analysis at 5, <https://www.eugene-or.gov/DocumentCenter/View/46001/Recommendations-for-Add-Eugene-Climate-Actions-to-Mee-t-Eugen-CRO-Targets--Goals-Gap-Analysis> (sum relying on MMBTU reduction analysis for Action Numbers 1, 4, 6, 11, and 3, 5).

¹⁰ Letter from Fossil Free Eugene Coalition to City Council (Feb. 8, 2021), <https://docs.google.com/document/d/1V1nxRUqzdUw6uf8j93ZkBKxMtVEjqXkNI44KppNWANE/edit>.

¹¹ Weiwei Lin, Bert Brunekreef, & Ulrike Gehring, Meta-analysis of the effects of indoor nitrogen dioxide and gas cooking on asthma and wheeze in children, 42 International Journal of Epidemiology 1724, <https://academic.oup.com/ije/article/42/6/1724/737113> (children in homes with gas stoves have a 42% higher chance of having asthma symptoms); Brady Seals & Andee Krasner, RMI, Gas Stoves: Health and Air Quality Impacts and Solutions (2020), <https://rmi.org/insight/gas-stoves-pollution-health> (homes with gas stoves can have nitrogen dioxide concentrations that are 50–400% higher than homes with electric stoves); Noelle Cromble, Explosion reported in NW Portland; 8 injured, including 3 firefighters, The Oregonian (Oct. 19, 2016), https://www.oregonlive.com/portland/2016/10/portland_firefighters_respondi_3.html (example of leaks and explosions commonly associated with natural gas infrastructure).

serious threat to residents as we expect significant seismic events in our near future.¹² Firmly and immediately setting the standard for no continued expansion while the city develops more permanent regulations is especially important as the current franchise agreement with NW Natural is set to lapse in May, creating even more regulatory confusion beyond what has already been created from the protracted negotiations.

Eugene should prohibit all city permits for new natural gas pipelines and connections, and then work with the Fossil Free Eugene coalition to chart a path forward for regulating natural gas outside of the franchise agreement. We believe there are adequate and defensible policy tools available to achieve our emissions reductions goals and to protect Eugeniens from the health & safety impacts of natural gas infrastructure & appliances.

(2) Pursue Mechanisms to Ban or Limit New Gas Infrastructure and Connections

The city has been investigating regulatory pathways for natural gas for some time, has already developed a robust factual basis that will be integral to the rulemaking process,¹³ and has acknowledged on several occasions that it believes it has the legal authority to limit or prohibit new natural gas infrastructure.¹⁴ Fossil Free Eugene agrees, and encourages the city to investigate the following as promising pathways for doing so:

a) Adopt an ordinance prohibiting new natural gas infrastructure based on authority over public rights-of-way

The City should not wait any longer to come to an agreement with NW Natural in order to utilize its broad authority over its public rights-of-way. Everything that the city has considered pursuing in negotiations with NW Natural, including carbon reduction requirements and a limit or prohibition on new infrastructure, should be implemented through ordinance rather than continuing to depend on the outcome of lengthy

¹² Dylan Darling, A glimpse of Eugene-Springfield after the Cascadia earthquake, The Register Guard (Jan. 28, 2019), <https://www.registerguard.com/news/20190128/glimpse-of-eugene-springfield-after-cascadia-earthquake> (Eugene Emergency Management Analyst describing damage to infrastructure that would be caused by the Cascadia earthquake); Brian Vinson and Thomas H. Miller, Pilot Project: Eugene-Springfield Earthquake Damage and Loss Estimate Final Report, Oregon Department of Geology and Mineral Industries (Jan. 1999), <https://www.oregongeology.org/pubs/ofr/O-00-02.pdf>.

¹³ See generally Gap Analysis, <https://www.eugene-or.gov/DocumentCenter/View/46001/Recommendations-for-Add-Eugene-Climate-Actions-to-Meet-Eugenes-CRO-Targets--Goals-Gap-Analysis>; CAP 2.0, https://eugene-or.gov/DocumentCenter/View/55835/CAP-20_Summer_2020_FINAL-w-appendices-compressed.

¹⁴ See, e.g., Eugene City Council, Eugene City Council Agenda (January 30, 2019), https://omnetwork.s3-us-west-2.amazonaws.com/sites/134/documents/agenda_packet_1-30-19_work_session_-_council_revised.pdf?HUIJLZcqi87uvlpSmRP.TdN_.NEsP801p (City staff analysis of whether particular pathways for regulating natural gas could be in a franchise agreement or pursued in regulation); Sustainability Commission Energy in Buildings Committee Meeting (March 8, 2021) (Eugene's Intergovernmental Relations Manager noting that city believes it has authority); Eugene City Council, Work Session (February 8, 2021) (City attorney addressing city authority over natural gas).

negotiations that have gotten the city nowhere closer to meeting its CRO goals.¹⁵ The City has already defended its broad legal authority¹⁶ to regulate in the ways pursued through the franchise negotiations and that defense applies equally to regulating through ordinance.

Eugene previously chose to pursue this path with regards to telecommunications services through adoption of Ordinance No. 20083, imposing an annual licensing fee and other regulatory requirements.¹⁷ In fact, the litigation that ensued definitively established that the city is not preempted from imposing by ordinance the same requirements that it would through a franchise agreement.¹⁸ Eugene was willing to defend the legal validity of an ordinance regulating telecommunications rather than negotiating individual franchise terms, and should do the same for natural gas.

It is an inefficient use of the city's resources and time to continue to rely on the negotiation process with NW Natural to utilize its broad authority over its rights-of-way. We encourage the city to pursue an ordinance governing NW Natural's use of Eugene's rights-of-way outside of the franchise negotiations that includes a prohibition on new natural gas infrastructure in the rights-of-way.¹⁹

b) Enact an ordinance prohibiting new gas connections and infrastructure based on authority over local health and safety standards.

¹⁵ ORS 221.420(a)-(c) (municipal authority can be exercised *either* by contract or “by ordinance or otherwise”); *see, e.g., Nw. Natural Gas Co. v. City of Gresham*, 359 Or 309, 346, 374 P.3d 829 (Or. 2016) (example of city using ordinance rather than agreement to adopt utility fees and regulations); *Rogue Valley Sewer Servs. v. City of Phx.*, 357 Or 437 (Or. 2015) (same).

¹⁶ Eugene City Council, Amended Agenda (Feb. 8, 2021), https://ompnetwork.s3-us-west-2.amazonaws.com/sites/134/documents/amended_agenda_packet_2-8-21_work_session_-_post.pdf?ptbZinVeTZ32MRdEgRAn.KD2sFrzz6Kn#pdfjs.action=download (summarizing city's position on legal authority throughout NW Natural negotiations); Eugene City Council, Eugene City Council Agenda (January 30, 2019), https://ompnetwork.s3-us-west-2.amazonaws.com/sites/134/documents/agenda_packet_1-30-19_work_session_-_council_revised.pdf?HUjLZcqi87uvlpSmRP.TdN..NEsP801p.

¹⁷ City of Eugene Ordinance No. 20083 (Apr. 28, 1997), <https://www.eugene-or.gov/DocumentCenter/View/2064/Ordinance-20083-Concerning-Telecommunications?bidId=>.

¹⁸ *AT&T Communications*, 35 P.3d at 1041 (Or. App. 2001) (“The companies do not explain—and we do not understand—why the city is authorized to regulate telecommunications service providers through individual franchise agreements, but it is not authorized to accomplish similar regulation of the same telecommunications service providers through the adoption of a uniform ordinance.”).

¹⁹ *See* CAP 2.0, Appendix 7, at 3, https://eugene-or.gov/DocumentCenter/View/55835/CAP-20_Summer_2020_FINAL-w-appendices-compressed (“The City could take action to regulate or prohibit new natural gas connections (residential, commercial, or industrial). Possible pathways to accomplishing this goal may include . . . prohibiting new infrastructure in the right-of-way.”).

Eugene also has the legal authority to limit and/or ban natural gas outside of its rights-of-way and should investigate and develop a specific mechanism²⁰ for doing so.

Eugene's Charter grants the city the maximum authority allowable under state and federal law to regulate its local affairs,²¹ and Oregon's home rule authority and preemption doctrine likewise leave ample room for local regulation.²² Oregon law recognizes that cities possess authority to enact "minimum health, sanitation and safety standards for governing the use of structures for housing," and specifically carves this authority out of otherwise preempted subjects.²³ In recognition of this authority, Eugene's building code authorizes regulations that "provide reasonable safeguards for health, safety, welfare, comfort and security" of residents.²⁴ Similarly, the overall purpose of Eugene's land use code is "to protect and promote the health, safety, and general welfare of the public and to preserve and enhance the economic, social, and environmental qualities of the community."²⁵

Considering the threat of gas leaks and explosions, strong evidence of indoor and outdoor air pollution caused by natural gas infrastructure and appliances, and low income residents shouldering the worst impacts, Eugene has ample justification for using its authority over the health and safety of Eugeniens to halt the expansion of this toxic substance in our community.

Eugene should investigate these sources of authority over local affairs as pathways for prohibiting or limiting expansion of new natural gas infrastructure on health and safety grounds and to close the gap on meeting the CRO goals.

Conclusion

With franchise agreement negotiations proving unrealistic for protecting the community against natural gas and meeting the city's climate goals, it is time to pursue alternative pathways. We ask the city to immediately adopt a moratorium on new gas infrastructure until Eugene can adopt more permanent regulations, and to investigate and develop mechanisms outside of the franchise agreement for limiting and prohibiting new natural gas infrastructure. These actions are essential to meeting the city's climate goals and protecting the health and safety of our community. We look forward to working closely with you to develop a moratorium on new fossil fuel infrastructure as well as permanent policy and code.

²⁰ See Sustainability Commission Energy in Buildings Committee March 8, 2021 meeting (Eugene's Intergovernmental Relations Manager noting that city staff has not been directed to investigate mechanisms for limiting or prohibiting new gas infrastructure outside of the franchise agreement).

²¹ Eugene Charter Ch. II, § 4(2), (3).

²² *Rogue Valley Sewer Services*, 357 Or. at 454 (presumption against preemption in civil matters); *Thunderbird Mobile Club v. City of Wilsonville*, 234 Or. App. 457, 474, *rev. den.*, 348 Or. 524 (2010) (local governments may adopt more stringent regulations than the state); *City of La Grande v. Public Employees Retirement Bd.*, 281 Or. 137, 148 (1978) (local law only preempted if done expressly or if it would be impossible to comply with both the local and state law).

²³ See, e.g., ORS 455.020(4).

²⁴ Eugene Code 8.010(4).

²⁵ Eugene Code 9.0020.

Sincerely,

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Patricia Hine, 350 Eugene
Priscilla Calleros, The Environmental Center
Philip Barnhart, former Oregon State Representative
Rachel Dedes, Students Cooperative Association
Rachel Golden, Sierra Club
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