



Eugene City Council

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EUGENE CITY COUNCIL AGENDA

July 29, 2020

12:00 p.m. CITY COUNCIL WORK SESSION

Due to Governor Kate Brown's Stay Home, Save Lives Executive Order to combat the spread of Covid-19, this meeting will be held remotely using virtual meeting technology. Information about online or other options for access and participation will be available at <https://www.eugene-or.gov/3360/Webcasts-and-Meeting-Materials>

**Meeting of July 29, 2020;
Her Honor Mayor Lucy Vinis Presiding**

Councilors

Emily Semple, President
Mike Clark
Chris Pryor
Betty Taylor

Jennifer Yeh, Vice President
Greg Evans
Claire Syrett
Alan Zelenka

12:00 p.m. CITY COUNCIL WORK SESSION

- 1. POSSIBLE ACTION: City Manager Employment Agreement**
- 2. WORK SESSION: Northwest Natural Gas Franchise Agreement**
- 3. WORK SESSION and POSSIBLE ACTION: A Resolution Approving the Community Climate Action Plan 2.0**

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El consejo de la Ciudad de Eugene agradece su interés en estos asuntos de la agenda. El lugar de la reunión tiene acceso para sillas de ruedas. Se puede proveer a un intérprete para las personas con discapacidad auditiva si avisa con 48 horas de anticipación. También se puede proveer interpretación para español si avisa con 48 horas de anticipación. Para reservar estos servicios llame al 541-682-5010. Las reuniones del consejo de la ciudad se transmiten en vivo por Metro Television, Canal 21 de Comcast y son retransmitidas durante la semana.

For more information, contact the Council Coordinator at 541-682-5010
or visit us online at www.eugene-or.gov.

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Action: City Manager Employment Agreement

Meeting Date: July 29, 2020
Department: Central Services/CAO
www.eugene-or.gov

Agenda Item Number: 1
Staff Contact: Kathryn Brotherton
Contact Telephone Number: 541-682-8447

ISSUE STATEMENT

This action item is to approve the terms of the City Manager's employment agreement and to authorize the Council President to execute an employment agreement with Sarah Medary.

BACKGROUND

On June 15, 2020, the Council voted unanimously to appoint Sarah Medary as the City Manager and created a three-Councilor committee to negotiate the terms of Ms. Medary's employment agreement and return to Council before July 30, 2020, with a recommended employment agreement. The Council appointed Councilors Semple, Yeh, and Zelenka to the Council Committee.

The Council Committee met twice to discuss the terms of Ms. Medary's employment agreement. Both meetings, held via Zoom, were noticed as public meetings and recorded. At the first meeting the Council Committee considered 13 employment agreement provisions, ranging from base salary to the performance evaluation process, and agreed to proposed employment agreement terms that address each of the 13 provisions. In considering the terms of Ms. Medary's employment agreement the Council Committee reviewed the market data that was provided as an attachment to Council's June 15, 2020, AIS. The Council Committee discussed the compensation packages of city managers in comparable cities, the most comparable being the Salem City Manager who has a base salary of \$220,500 and \$13,230 in deferred compensation.

Following the Council Committee's first meeting, the term sheet setting forth the Council Committee proposed terms was provided to Ms. Medary for her consideration. In response, Ms. Medary requested a few changes to the terms. At the second meeting the Council Committee considered and approved Ms. Medary's requested changes. The Council Committee ended its second and final meeting by voting unanimously to recommend that Council approve a City Manager employment agreement with the 13 terms set out in Attachment A to this AIS.

Attachment B to this AIS is an employment agreement reflecting the 13 terms set out in Attachment A. In advance of this meeting Ms. Medary was provided the proposed employment agreement and has stated she will sign it.

PREVIOUS COUNCIL DIRECTION

November 13, 2019, Work Session: Process for Appointing a New City Manager

Council discussion of possible processes for filling the City Manager position vacated by Jon Ruiz. Council passed the following motion 7:1:

Move to wait and hold a work session, until shortly after the completion of the 2020 budget committee process to further discuss the City Manager appointment process, including the appointment of Sarah Medary to the City Manager position and schedule a work session as soon as possible to discuss the attributes for our further City Manager with HR.

January 27, 2020, Work Session: City Manager Attributes

Council discussion of the attributes they would like to see demonstrated by the City Manager Pro Tem, including a discussion of the four attributes identified during the 2007 City Manager recruitment process (fiscal responsibility, proven leadership, collaborative, and solutions oriented). No action was taken at this meeting.

June 15, 2020, Work Session and Action: Appointment of City Manager

Council voted unanimously to appoint Sarah Medary as the City Manager and directed the formation of a three-Councilor committee to negotiate the terms of Ms. Medary's employment agreement and return to council with a recommendation.

COUNCIL OPTIONS

Approve the Council Committee's recommended terms of Sarah Medary's employment agreement and authorize the Council President to execute the City Manager employment agreement set forth in Attachment B.

Revise one or more of the Council Committee's recommended terms of Sarah Medary's employment agreement and authorize the Council President to execute the City Manager employment agreement set forth in Attachment B with the revision made by Council.

MOTION OPTIONS

Move to approve the Council Committee's recommended terms of Sarah Medary's employment agreement and authorize the Council President to execute the City Manager employment agreement set forth in Attachment B.

Move to amend the Council Committee's recommended terms of Sarah Medary's employment agreement by [state revisions to recommended terms] and authorize the Council President to execute the City Manager employment agreement set forth in Attachment B with these revisions.

ATTACHMENTS

- A. Council Committee's Recommended City Manager Employment Agreement Terms
- B. Proposed City Manager Employment Agreement

FOR MORE INFORMATION

Staff Contact: Kathryn Brotherton
Telephone: 541-682-8447
Staff E-Mail: KBrotherton@eugene-or.gov

**City Manager Employment Agreement
Council Committee's Recommended Terms**

	Recommended by Council Committee
Base Salary	\$218,000
Deferred Comp. Contribution	\$15,000
Annual Leave	<p>Annual accruals in accordance with exempt managers, including 10 days of management vacation.</p> <p>Must use 120 vacation hours per year or it is lost.</p> <p>No cap on accrual amounts and authority to cash out all accrued vacation at separation.</p>
Medical/Dental/Vision Insurance	Same as all exempt employees.
PERS	Same as all exempt employees.
Membership and Professional Dues	Pay for professional dues, subscriptions and conferences for participation in national, regional, state, and local associations/organizations necessary and desirable for employee's professional participation, growth, and advancement, and for the good of the City.

Merit Salary Increases	Eligible for consideration of a merit increase at time of annual performance evaluation (starting Sept. 2021).
COLA/MAP Salary Increases	At same time each year (Jan. 1) and at the same percentage given to non-rep employees. (Not eligible for non-rep CAP or RAP.)
Auto Allowance	\$5,980/year (\$230/bi-weekly)
Cellphone Allowance	\$780/year (\$30/bi-weekly)
Termination: Severance Pay	9 months total compensation (i.e., base salary, health insurance, PERS contribution, deferred compensation, auto allowance, and cell allowance), plus 1 month of total compensation for every 12 months served as the City Manager (i.e., after 1 full year of service, 10 months of severance) capped at 12 months of total severance.
Termination: Additional Provisions	In recognition of 25 years as a City of Eugene employee, if terminated without cause, City Manager separates in the status of a City retiree, ensuring continued access to health insurance through City's post-retirement health insurance plan, and other retiree benefits.
Performance Evaluation Process	Performance evaluation to occur in Sept. of every year with the evaluation process to be decided in Sept. 2020 and the first performance evaluation to occur in Sept. 2021.

EMPLOYMENT AGREEMENT

City Manager

BETWEEN: **City of Eugene** **(City)**

AND: Sarah Medary (Medary)

RECITALS:

- A.** The Charter of the City of Eugene (Charter) provides that the City Council shall appoint a City Manager and fix his/her compensation and conditions of employment and may remove him/her with or without cause at any time after six months tenure.
- B.** On June 15, 2020, the City Council voted unanimously to appoint Sarah Medary as the City Manager.
- C.** The City wishes to employ Medary as the City Manager, and Medary wishes to accept that position, on the terms set forth in this Agreement.

AGREEMENTS:

1. Duties.

- 1.1.** City agrees to employ Medary as City Manager beginning on the execution date of this Agreement, to perform the functions and duties of this position in accordance with Section 16 of the Charter, and to perform other legally permissible duties and functions as shall be assigned to her from time to time.
- 1.2.** Medary agrees to remain in the exclusive employ of the City during her tenure as City Manager. However, in recognition that certain outside speaking, writing, teaching, and consulting opportunities provide indirect benefits to the City and the community, Medary may accept limited speaking, writing, teaching and/or consulting opportunities with the understanding that such arrangements must neither constitute an interference with, nor a conflict of interest with, Medary's responsibilities under this Agreement.

2. Term.

- 2.1.** This Agreement shall begin when fully executed and remain in effect for an indefinite term. Medary understands and agrees that she serves at the pleasure of the City Council and may be removed from her position without notice and without cause after six months tenure, subject only to the provisions of paragraph 3 of this Agreement.

- 2.2. The City Council and Medary may agree to modify this Agreement at any time. Any modifications must be made in writing.

3. **Termination and Severance.**

- 3.1. Except as provided in paragraph 3.2, if Medary's employment is terminated by the City Council, Medary shall receive severance pay in the amount of nine-months' total compensation (*i.e.*, base salary, health insurance, PERS contribution, deferred compensation, auto allowance, and cell allowance) plus 1 month of total compensation for every 12 months Medary served as the City Manager (*i.e.*, after 1 full year of service as City Manager, Medary receives 10 months of severance), not to exceed a total of 12 months severance. If terminated, Medary shall separate employment from the City with retiree status and shall have access to all benefits and opportunities afforded retired City employees.
- 3.2. Medary shall receive no severance pay if her employment is terminated for committing a felony or a misdemeanor involving moral turpitude, or for conduct that constitutes a knowing and willful violation of law governing the conduct of public office or employees.

4. **Salary and Benefits.** For Medary's services as City Manager pursuant to this Agreement, the City agrees to provide Medary the following salary and benefits:

- 4.1. Annual base salary of \$218,000.
- 4.2. Market adjustment pay (MAP) increases will be given Medary at the same time each year and at the same percentage as given to the non-represented employee group. Medary is not eligible to receive the competency adjustment pay (CAP).
- 4.3. Transportation allowance of \$5,980 per year and smartphone allowance of \$780 per year.
- 4.4. A deferred compensation benefit of \$15,000 per year. The overall contribution between Medary and the City are not to exceed plan contribution limits as determined by the Internal Revenue Service (IRS).
- 4.5. Participation in the state's public employees retirement system ("PERS") as generally available to City's other exempt, managerial employees.

- 4.6. Insurance benefits, including medical, dental, vision, life and long-term disability insurance, and the City's employee assistance program, as generally available to City's other exempt managerial employees.
- 4.7. Sick leave and holiday leave benefits in accordance with City's policies and practices with as generally available to the City's other exempt, managerial employees.
- 4.8. Vacation accrual of 296 hours per year, with no maximum accrual amount. At time of separation from the City, Medary will be compensated for all accrued vacation in a lump sum.
- 4.9. Notwithstanding paragraph 4.8, Medary must use a minimum of 120 vacation hours per year (*i.e.*, 365-day period starting from the effective date of this Agreement). If Medary uses less than 120 hours vacation, the unused hours (of the 120 hours) are forfeited and do not carry over to the next year.
- 4.10. Professional dues, subscriptions and conferences for participation in national, regional, state, and local associations/organizations necessary and desirable for employee's professional participation, growth, and advancement, and for the good of the City.
- 4.11. For purposes of converting any annual dollar amount set forth in this Agreement to an hourly or bi-monthly amount, all conversions shall be rounded up or down to the nearest cent (*i.e.*, rounded to the nearest hundredth of a dollar).
- 5. **Performance Evaluation and Salary Increases.** Starting in September 2021 and continuing every September thereafter, the City Council shall review and evaluate Medary's performance. The eight City Councilors shall consider increasing Medary's compensation at the time of Medary's annual performance evaluation. In September 2020 the City Council and Medary shall establish a mutually agreed upon annual performance evaluation process. The City Council may conduct additional reviews of Medary's performance at any other time it deems appropriate.
- 6. **Indemnification.** The City shall defend and indemnify Medary against any tort, professional liability claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Medary's duties as City Manager, unless prohibited by law. The duties of City Manager do not include the commission of any criminal act or intentional tort. This indemnification shall include the cost of defense, provided that the City shall choose or approve legal representation for Medary and will retain control over the defense of the claim, including the sole power to compromise and

settle any claim or action and pay the amount of the settlement or judgment.

7. **Bonding.** The City shall pay the full cost of any fidelity or other bonds required of Medary by law or ordinance.
8. **Notices.** Notices pursuant to this Agreement shall be given by deposit in the United States Mail, postage prepaid, addressed as follows:

City: Council President
City of Eugene
125 East 8th Avenue, 2nd Floor
Eugene, OR 97401

Employee: Sarah Medary
125 E. 8th Avenue, 2nd Floor
Eugene, OR 97401

Alternately, notices required by this Agreement may be personally served. Notice shall be deemed given as of the date of personal service or three business days after the date of deposit of such written notice in the United States Mail.

9. **Review by Independent Counsel.** Medary acknowledges that the City has advised her to have this Agreement reviewed by an attorney of her choice.
10. **Effective Date.** This Agreement shall become effective when signed by the Council President and Medary.
11. **Voluntary Agreement.** Medary acknowledges that she understands the terms of this Agreement and that she has entered into it voluntarily.
12. **Integration.** The terms of the parties' agreement are set forth completely in this written document. This Agreement supersedes all prior or contemporaneous oral and written agreements, understandings, and commitments. Medary acknowledges that she has not relied on any other representation or promises by the City, its agents, employees or representatives, except those contained in this Agreement.
13. **Severability of Provisions.** Any provision, or portion of any provision in this Agreement that is held unenforceable, void, or unconstitutional shall not affect the remainder of the terms of this Agreement or any portion thereof which shall be deemed severable and shall remain in full force and effect. In the event that a provision is held unenforceable, void, or unconstitutional, the Mayor and Medary shall discuss what changes, if any, should be made in response.

14. **Construction.** It is the intent of the parties that this Agreement and the appointment of Medary as the City Manager comply, in all aspects, with the provisions of the Charter and City Code. If any provision of this Agreement is capable of two constructions, only one of which complies with the Charter and City Code, the construction that complies with the Charter and City Code shall control. If any provision of the Agreement conflicts with the Charter or City Code, the Charter or City Code shall control and the conflicting provision of this Agreement shall be of no effect. All other provisions not in conflict with the Charter or City Code shall remain in full force and effect. Without limiting the foregoing, this Agreement will be governed by and interpreted in accordance with the laws of the State of Oregon.

CITY OF EUGENE, OREGON

By: _____
Emily Semple
President of the City Council

Sarah Medary

Date: _____

Date: _____

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Northwest Natural Gas Franchise Agreement

Meeting Date: July 29, 2020
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 2
Staff Contact: Ethan Nelson
Contact Telephone Number: 541-682-5245

ISSUE STATEMENT

The City Council adopted an ordinance extending the Northwest Natural Gas Right of Way Franchise Agreement (Franchise Agreement) until November 11, 2020, providing additional time for city staff to negotiate potential renewal terms with representatives of NW Natural Gas (NWNG). This work session will provide an overview of the process to date, current deal points, and the opportunity for the City Council to take action to provide specific direction to staff regarding the negotiations.

BACKGROUND

Franchise agreements between local governments and utilities govern the use of the public right-of-way to ensure safety, coordinated access, and the stability of public infrastructure. Typical franchise agreements outline the terms and fees under which utility companies can utilize the public right-of-way for their business. Fees are typically calculated on a percentage of the gross revenues generated by the utility company from customers within the franchise service area.

In October 1999, the City Council approved Ordinance 20170 (Attachment A) that:

- Increased the compensation rate from four percent to five percent of gross revenues;
- Granted a franchise term of 20 years with possible renegotiation every five years;
- Provided updated audit language and facility relocation and abandonment provisions;
- Added “favored cities” language, which requires NWNG to notify the City should they agree to pay any other city in Oregon a franchise fee that exceeds five percent of gross revenues.

Currently, the City receives \$1.4 million in General Fund revenues from this franchise annually. Revenue from NWNG franchise fees have been trending at this level over the past few years based on flat/declining NWNG rates in the area.

Franchise Negotiation Update

On April 8, 2020, the City Council adopted Ordinance 20627, which extended the term of the Franchise Agreement until November 11, 2020. In previous work sessions related to the Franchise Agreement and the Climate Action Plan, City Council discussed the concept of including a carbon reduction element into the Franchise Agreement as a means to implement the 2016 Climate Recovery Ordinance. Including a carbon reduction element into a utility franchise agreement is a

fairly novel concept, adding new issues to the negotiations discussions and requiring more time for due diligence.

Over the past eleven months, city staff have been working on this process including internal meetings, developing a team that includes consultants with expertise in utility regulation and carbon accounting/planning, holding several City Council Sounding Board (Councilors Semple, Syrett and Zelenka), meetings to inform and guide staff negotiations, holding joint negotiation meetings with NWNG, and sharing several rounds of proposals between the parties.

Timeline of Negotiations:

- October 2019: City staff began meeting with NWNG representatives to understand each other's interests and process for the negotiations. NWNG expressed its strong desire to separate the traditional right-of-way franchise agreement aspects from the carbon emissions reduction aspects into two different agreements. The City expressed its willingness to have separate agreements but told NWNG that the two documents would have to be linked. The parties have since been referring to the agreements as the Franchise Agreement (FA) and the Carbon Reduction Agreement (CRA).
- December 12, 2019: City delivered its initial proposal, which consisted of a 2% increase to the franchise fee (for a total franchise fee of 7%)and an Environmental Benefits Contract stipulating that NWNG needed to reduce its emissions by 5% per year and if it failed to meet that reduction percentage, NWNG would pay an additional fee of up to 3% of its gross revenue in Eugene, which the City would use for carbon reduction actions.
- December 12, 2019: NWNG provided its first proposal, which proposed that the City of Eugene levy a fee on Eugene customers for the express purchase of buying offsets to neutralize the utility's local carbon emissions. NWNG's proposal also included reference to existing efforts including energy efficiency programs through the Energy Trust of Oregon (ETO), research in new heat pump technologies, renewable natural gas projects authorized by SB98 (2019), a power-to-gas pilot project, and pipeline methane reduction information.
- January 21, 2020: NWNG provided a counter proposal that agreed to a .94% franchise fee increase (total 5.94% franchise fee) and that the City would levy a 3% fee on NWNG customers and NWNG would manage and use the funds to invest in offsets, renewable energy, and energy efficiency.
- February 18, 2020: the City provided a counter proposal, requesting a 2% franchise fee increase (total 7% franchise fee) and 3% Carbon Reduction Fee on NWNG that the City would manage; also included an electrification pilot and targeted energy efficiency pilot.
- During the late winter and early spring, the negotiations slowed down due to external factors including:
 - The Legislature's Short Session ended in early March with no Cap and Trade bill, thereby eliminating the possibility of a statewide carbon reduction program.

- On March 10, Governor Brown issued EO 20-04, directing state agencies to prepare and implement actions to reduce carbon emissions and create a cap and reduce program. The outcome of this work will take 18-24 months to complete and will likely be litigated, further complicating the statewide regulatory environment for carbon reduction.
 - By mid-March, the COVID-19 pandemic was impacting Oregon, with an economy wide shut down by early April, signaling current and future economic impacts for our community.
 - Because of these state and economy-wide impacts, City Staff engaged our consultant team and the Sounding Board to revise the latest proposal to account for these impacts, while still moving forward with a carbon reduction efforts.
- May 14, 2020: Eugene delivered an updated proposal (updated from its Feb 18, 2020 version) that included a 1% increase to the franchise fee (total 6% franchise fee) that would be phased-in over two year period, a phased-in Carbon Reduction Fee (3%) that would be managed by the City with input from a Eugene Carbon Reduction Advisory Committee (with one position for a NWNG representative), retained the requirement of an electrification pilot and targeted energy efficiency, and requested the utility to voluntarily restrict new system expansion for residential and commercial construction.
 - July 7, 2020: NWNG responded by providing a broad counter proposal that included four different proposals and a response to the City's May 14, 2020 proposal. NWNG's response clarified that it would not agree to electrification pilots, and if Council took any future action to restrict or ban NWNG from system expansion, NWNG's carbon reduction obligations would be terminated.
The four proposals included: 1) the lowest cost approach of the City purchasing offsets for city-owned building emissions, 2) the City levying a 2.5% fee on customers that NWNG would manage and invest in offsets, 3) the City levying a 2.5% fee on customers that NWNG would manage with input from a customer advisory group and invest in offsets, renewables, and energy efficiency, and 4) the City levying a 4.5% fee on customers that NWNG would manage and invest in new renewable natural gas and offsets.
 - July 10-July 17, 2020: City staff met with the Sounding Board and the majority of Councilors individually to provide updates, share materials including NWNG's July 7, 2020 proposals, and answer questions.
 - July 17, 2020: City staff and NWNG met for a 3-hour negotiation session to discuss the outstanding proposals, and City staff sought clarity about NWNG's positions on each item in Eugene's May 14, 2020, proposal.
 - July 18, 2020: City staff sent an updated term sheet to NWNG based on the July 17 meeting and included additional concessions/offers intended to move the parties closer to agreement.

- July 21, 2020: NWNG responded to the July 18 term sheet. The parties agree on some of the fundamental items; however, it appears that the City and NWNG are at an impasse on the following critical aspects:
 -
 - NWNG does not agree to the City assessing a carbon reduction fee on NWNG, rather it wants the City to assess a fee on natural gas customers in Eugene, which would be collected by the company and NWNG agrees to put the fee on their bill. (This would require the City to pass a separate ordinance amending the Eugene Code to assess such a fee on natural gas customers.)
 - NWNG does not agree to the City's proposal for a 7-member Advisory Committee to make recommendations on the use of Carbon Reduction Fund revenue, with the allowance of NWNG to have 1 representative and that Council would appoint 2 customer representatives.
 - NWNG does not agree to the City's proposal to utilize CRF funds for an electrification pilot and NWNG prioritizes the use of CRF funds to purchase annual carbon offsets. The City prioritizes investments in energy efficiency and low-income assistance programs first, and support for renewable energy projects and offsets secondary. Lastly, the City would prefer to invest CRF funding on electrification projects as it is one of the most cost-effective measures to reduce carbon emissions in Eugene buildings.
 - NWNG does not agree to voluntarily limit natural gas infrastructure in any way.

Summary of Parties' Positions on Proposed Terms

Item	Parties in Agreement?	Eugene	NWNG
Length	X	10 year with reopener at year 3	10 year with reopener at year 3
Franchise Fee	X	5.5% of gross revenue year 1 and 2. 6% of gross revenue year 3-10	5.5% of gross revenue year 1 and 2. 6% of gross revenue year 3-10
Pilots Projects		Targeted Energy Efficiency (GeoTEE) and Electrification	N/A
System Expansion		Voluntary limitation on new service expansion for residential and commercial.	No voluntary limitations. Council efforts to ban or limit natural gas will terminate the CRA.
Carbon Reduction Agreement (CRA)		City agrees to a separate Franchise Agreement and CRA, provided they are linked, including provisions that provide in the event one agreement is terminated, the other will simultaneously terminate.	NWNG wishes to have a separate Franchise Agreement and CRA. NWNG would prefer that the Franchise Agreement continue in effect even if the CRA is terminated, but would accept simultaneous

			termination of both agreements, if the parties were to agree on all other terms in both agreements.
Carbon Reduction Fee (CRF)		City will assess a 2.5% fee on NWNG to fund carbon reduction investments, contingent on PUC approval (if required).	City will levy a 2.5% fee on NWNG customers to fund carbon reduction efforts and NWNG will put it on their bill. Contingent on PUC approval.
CRF-management	X	NWNG to collect and remit to the carbon reduction fee to the City for the City to manage.	NWNG to collect and remit to City, City to manage funding.
CRF-oversight		Council to establish an CRF Advisory Committee. 7 members appointed by Council. 1 slot for NWNG Representative and 2 slots for customer perspectives	Does not agree to Committee Structure.
CRF-use of funds		Prioritize investments in energy efficiency, focus on low income support, potential cost effective renewable natural gas projects, minimal purchase of offsets. Conceded on removing electrification pilots from use of funds, with the caveat that NWNG's termination clause not be tied to City using other funds to support electrification pilots.	Prioritize annual purchase of offsets, renewable natural gas investments, energy efficiency, and low income
CRF-low income programs		Requested NWNG to match any CRF investments in low-income programs with non-customer funds	NWNG does not agree to match CRF investments in low-income programs

PREVIOUS COUNCIL DISCUSSION AND DIRECTION

[November 14, 2018, Work Session](#)

This work session provided the City Council with information regarding the review process for the right of way Franchise Agreement with NWNG and discussed options for including CAP2.0 in the negotiations.

[January 30, 2019, Work Session](#)

Staff reviewed questions submitted by the Eugene Sustainability Commission to the City Council

regarding the regulation of natural gas in Eugene.

May 22, 2019, Work Session

Council held a work session as a follow-up to the previous work session about NWNG's Franchise Agreement with the City and Climate Action Plan 2.0 discussions; NWNG presented its Deep Decarbonization presentation to Council.

May 29, 2019, Work Session

Council directed the City Manager to schedule a public hearing on a possible one-year extension of the Franchise Agreement with NWNG.

July 22, 2019, Work Session

Council adopted an Ordinance Extending the Term of Ordinance No. 20170 for six months until May 11, 2020.

March 9, 2020 Public Hearing

Public hearing followed by Council discussion on proposed Ordinance to extend the Franchise Agreement with NWNG another six months.

April 8, 2020 Council Meeting

City Council adopted the Ordinance extending the Franchise Agreement until November 11, 2020.

COUNCIL OPTIONS AND POTENTIAL MOTIONS

The options and motions listed below take into account that, per Charter requirements, for an ordinance to be effective by November 11, 2020, the ordinance must be drafted and published by September 3, 2020, with a public hearing on September 21, 2020, and Council action on September 28, 2020.

1. The Council can allow for continued negotiations with NWNG by directing the City Manager to prepare an ordinance to extend for six months the November 11, 2020, expiration of the current Franchise Agreement and schedule a public hearing and action in September 2020. This option allows the parties to continue to negotiate for several more months to seek additional agreement on terms and conditions. If Council chooses this option, City staff will schedule a work session in early September 2020, to provide Council with additional information so that Council can determine whether mutually agreeable terms are likely to be reached and/or whether to cancel the public hearing scheduled for September 21, 2020.

Motion for Option 1: Move to direct the City Manager to prepare an ordinance and schedule a public hearing in September 2020, to extend Northwest Natural Gas's Franchise Agreement for 6 months and to schedule a work session in early September 2020 for an update on the negotiations.

2. If the Council finds the terms and conditions on which the parties currently agree, as well as NWNG's position on the other terms, to be sufficient and acceptable, the Council can direct the City Manager to prepare an ordinance and schedule a public hearing in September 2020, to

adopt a Franchise Agreement and a Carbon Reduction Agreement with those terms. If for some reason the City and NWNG are unable to prepare the two documents in time for a September public hearing, City staff could prepare and publish an extension ordinance that Council could discuss at an early September work session.

Motion for Option 2: Move to direct City Manager to prepare an ordinance and schedule a public hearing in September 2020, to adopt a Franchise Agreement and Carbon Reduction Agreement with Northwest Natural Gas consistent with the terms currently agreed to by NWNG. In the event the two agreements are not completed in time for the September public hearing, the City Manager is directed to prepare an ordinance and schedule a public hearing on a 6-month extension.

3. If the Council finds that the terms and conditions on which the parties currently agree, as well as NWNG's position on the other items, are not sufficient and acceptable, and that further negotiations would be unlikely to lead to mutually agreeable terms relating to carbon emissions reductions, the Council can direct the City Manager to cease negotiations with NWNG and allow the existing Franchise Agreement to expire on November 11, 2020. Council can decide later whether it wants to direct the City Manager to schedule a work session on potential regulatory action on natural gas and carbon emissions reductions. Council could also decide later to resume franchise agreement discussions with NWNG.

If Council elects to allow NWNG's franchise to expire, and NWNG continues to operate and provide services in Eugene, the City's general fund would essentially be held harmless because NWNG would be required, pursuant to EC 3.600 to 3.625, to pay the City's natural gas supplier tax, which is 5% of gross revenues. If the franchise expires, NWNG could no longer rely on that franchise for authorization to expand its system, including new hookups. Instead NWNG would have to apply for authorization from the City, through a revocable permit pursuant to EC 7.445, to install new equipment or facilities in the right-of-way, and each request would be processed and considered on a case-by-case basis. Additionally, without a valid franchise, NWNG would no longer be eligible for a "blanket permit," which allows it to regularly work in the right-of-way for recurring maintenance. Instead NWNG would have to apply for and obtain individual utility right-of-way permits before working in the right-of-way.

Motion for Option 3: Move to direct City Manager to cease franchise negotiations with Northwest Natural Gas.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends Option and Motion 1, holding a public hearing on an ordinance extending the current franchise for 6 months and returning to Council in early September with an update on the negotiations.

ATTACHMENTS

- A. NWNG Franchise Agreement (Ordinance 20170)

FOR MORE INFORMATION

Staff Contact: Ethan Nelson

Telephone: 541-682-5245

Staff E-Mail: Enelson@eugene-or.gov

1999-2019

ORDINANCE NO. 20120

AN ORDINANCE GRANTING TO NORTHWEST NATURAL GAS COMPANY, A CORPORATION, A TWENTY (20) YEAR NON-EXCLUSIVE RIGHT AND FRANCHISE TO LAY, MAINTAIN AND OPERATE FACILITIES IN THE PUBLIC WAY WITHIN THE CITY OF EUGENE, OREGON; PROVIDING FOR THE PAYMENT OF COMPENSATION TO THE CITY; AND REPEALING ORDINANCE NO. 18489, PASSED BY THE CITY COUNCIL AUGUST 27, 1979, AND APPROVED BY THE MAYOR SEPTEMBER 3, 1979.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. This Ordinance shall be known and may be cited as The Northwest Natural Gas Company Franchise Ordinance.

Section 2. Definitions.

For the purpose of this Ordinance the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "City" is the City of Eugene, Oregon.
- (2) "Company" is Northwest Natural Gas Company, the grantee of rights under this Franchise.
- (3) "Council" is the City Council of the City of Eugene.
- (4) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (5) "Code" is the Eugene Code, 1971, including all amendments thereto.
- (6) "Public way" is any street, road, alley, right-of-way, pedestrian or bicycle easement or utility easement for public use that is controlled by City.
- (7) "GIS format" is the format of electronic information, as established by the City Engineer for incorporation into City's Geographic Information System (GIS).
- (8) "Facilities" includes gas mains, pipes, boxes, reducing and regulation stations, laterals, conduits and connections, including service connections, together with all of the necessary or useful appurtenances for the transmission and distribution of gas to City and its inhabitants and to other customers and territory beyond the limits of City.
- (9) "Gross revenues" means revenues earned by Company from operations within City, including but not limited to revenues from the sale and/or transportation of natural gas consumed within City and revenues earned from the use, rental or lease of operating facilities of Company other than residential-type space and water heating equipment, less the net writeoff of uncollectible accounts directly related to such revenues. Gross revenues shall not include:

- (a) Revenues paid directly by the United States of America or any of its agencies;
- (b) Proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks; or
- (c) Sales at wholesale by one utility to another when the utility purchasing the service is not the ultimate customer.

Section 3. Grant of Authority.

City hereby grants to Company the right and privilege to lay, maintain, and operate facilities in and under the public ways of City, subject to the terms of this Ordinance for a period of twenty years. This grant of authority shall not be exclusive, and City reserves the right to grant similar use of such public ways to any person or corporation at any time during the period of this Franchise.

Section 4. Compliance with Applicable Laws and Ordinances.

Company shall at all times during the period of this Franchise, be subject to all lawful exercise of the police power of City, and to such reasonable regulation as City shall hereinafter by resolution or ordinance provide.

Section 5. Conditions - Occupancy of Public Ways.

Company, subject to the prior approval of the City Manager or designee, and requirements of all applicable ordinances, regulations and adopted City policies, may make necessary excavations in public ways for the purpose of laying, operating and maintaining its mains, pipes and appurtenances. Company shall furnish and file with the City Engineer of City, which shall, to the extent technologically feasible, be in a data format prescribed by the City Engineer to allow integration into City's Geographic Information System (GIS), maps showing the location of all such mains, pipes, and appurtenances within City, both for its existing system and future plans for the system. The City Engineer may require such information, including (GIS) format, or other drawings, surveys and plans, as deemed necessary to conform to the requirements of the Code and related administrative rules. Company shall bring maps up to date annually or upon such shorter notice as the City Engineer may reasonably require.

City reserves the right to stop any work on a public way if the City Manager or designee determines that the work has a serious adverse effect on traffic flow or endangers public safety. The right to stop work is absolute and cannot be challenged by Company even if Company's work hours and/or traffic control plans have been previously approved by City.

Section 6. Removal and Restoration.

Whenever any of Company's facilities shall unnecessarily inconvenience the public or private property owners, City may require the removal or change of location of any such

facility. Any removal or relocation of facilities made for the convenience of the public shall be at Company's expense. Whenever Company excavates or in any manner disturbs or interferes with any public way within City, Company shall restore the same as required by the Code.

Section 7. City Free to Use Public Ways.

Nothing in this Ordinance shall be construed to prevent City from sewerage, grading, paving, repairing, altering, or doing any work that it finds necessary or desirable in or on any public way. Should City find it in the public interest to permanently or temporarily remove or change the location of any of Company's facilities, Company shall, upon request and reasonable notice from the Director of Public Works, do all necessary work at Company's sole cost and expense as promptly as the circumstances will reasonably permit. If Company fails so to do, City may cause such work to be done and Company shall pay all costs incurred by City in performing such work within thirty (30) days of the date City notifies Company of the cost thereof.

Section 8. Company to Defend and Hold City Harmless.

Company shall defend, indemnify and save harmless City, its employees, officers and agents, from any and all claims, damages, costs, liabilities, and expenses to which it or they may be subjected by reason of any act or neglect of Company, its agents or employees, or which may in any manner arise out of the construction, maintenance, operation or use of any property of Company in any public way.

Section 9. Default and Termination.

If Company fails to comply with or perform any of the requirements imposed on it by this Ordinance and City gives written notice specifying the nature of Company's default and demanding that such default be remedied within a reasonable time to be fixed in such notice, the rights and privileges granted by this Ordinance may be terminated and annulled by City if Company fails to remedy its default within the time specified.

Section 10. Franchise Fee.

As compensation to City for the franchise hereby granted, Company shall pay to City an amount equivalent to five percent (5%) of Company's gross revenues. If the Code in effect at the time the revenue is earned does not allow payment of a franchise fee or business privilege tax or combined franchise fee and business privilege tax in an amount of five percent of gross revenues or some greater amount, then the franchise fee shall be the maximum amount allowed by the Code; provided that, if the Code is amended thereafter to increase the allowable franchise fee, business privilege tax or combined franchise fee and business privilege tax, the increased rate, not to exceed five percent, shall be paid on all gross revenues earned after the effective date of the amendment. If Company agrees to pay any other city in Oregon a franchise fee that exceeds five percent of gross revenue, City may require Company to pay the same percentage of its gross

revenue to City, so long as the Code allows payment of the higher percentage. Payment shall be made within forty-five (45) days following the end of each quarter of each calendar year. Within forty-five (45) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last quarter for which compensation has been paid. Upon thirty days' written notice by either party to the other, the basis for calculation of the franchise fee, the definition of gross revenues and other terms of this franchise shall be subject to renegotiation and redetermination at the end of the first three-year period of the franchise term and again at the end of each five-year period thereafter during the franchise term. The principles governing the renegotiation shall include, but not necessarily be limited to, making the franchise consistent with federal, state and local law in effect at the time of the renegotiation.

Section 11. Reports by Company.

Company shall furnish to City with each quarterly payment of compensation a statement by an officer of Company showing the amount of gross revenues of Company for the quarter covered by the payment, computed on the basis set forth in Section 10, and the calculation of the payment for the quarter, including a description of and the amount for each exclusion from gross revenue, as allowed under Section 10. The books and records showing Company's gross revenues from the gas sales referred to in Section 10 shall always be open to inspection by City's Finance Officer, or by any other authorized representative of City for the purpose of ascertaining the amount payable to City under Section 10, or to verify any statement or report submitted by Company pursuant to the provisions of this Section. City, or its authorized representative, shall have the right to audit Company's books and records to verify that the franchise fee has been correctly calculated and paid by Company. Company shall reimburse City for the reasonable costs of such audit if the audit discloses that Company has paid 95% or less of the fee owing for the period of the audit.

Company shall, upon request, furnish to City a list of all customers within the corporate limits of City who have contracted with Company for transportation and delivery of natural gas separate from the purchase of natural gas. This report shall include the names of all such customers and the volume of gas which was transported by Company on behalf of each customer for the period covered by the report.

Section 12. Company to Pay All City Taxes and Fees.

Nothing contained in this franchise shall give Company any credit against any non-discriminatory business tax or ad valorem property tax now or hereafter levied against real or personal property within City, or against any local improvement assessment imposed on Company, or against any permit fees or inspection fees required by the construction codes or other ordinances of City which are or may hereafter be adopted.

Section 13. Valuation for Eminent Domain.

In the event City should desire to acquire the property of Company in City and

adjacent territory by purchase, condemnation, or otherwise, the price to be paid by City shall exclude the value of the franchise or other prerogatives of sovereignty granted by City and connected with property of Company in the City.

Section 14. Abandonment.

Company shall at all times maintain all of its facilities in a good state of repair, and shall subscribe to a utility notification and locate service. If Company ceases to make use of its facilities in the public way for the purposes authorized by this franchise ordinance for a continuous period of six months or more, with no intention of using those facilities in that location in the future, the facilities shall be deemed abandoned; no facilities shall be considered abandoned if they are reserved for future use. If facilities have been in the public way for more than one year without being used, they shall be presumed to be abandoned unless Company provides to City objective evidence of Company's intent to use the facilities within the next year. Company shall maintain records of all abandoned facilities and, upon receipt of a locate request, shall locate those facilities, labelling them as abandoned. Upon 60 days written notice to Company at the address indicated in its acceptance of this ordinance, City may require Company to remove abandoned facilities and restore the public way, at Company's sole cost and expense. If Company fails to remove the facilities and restore the public way within the 60-day period, City may, at its option and in its sole discretion, remove the facilities from the public way and require Company to pay for the full cost of removal and restoration of the public way. If Company removes the facilities from the public way but fails to restore the public way to its prior condition, City may complete the repairs and bill Company for the full cost thereof.

Section 15. Acceptance by Company.

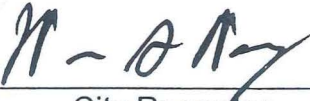
This Ordinance shall take effect thirty days after its adoption by the Council and approval by the Mayor, provided that prior to the expiration of those thirty days, Company files with City's Finance Officer its written acceptance of this Ordinance and the obligations it imposes. If no such acceptance is filed, this Ordinance shall become null and void.

Section 16. Repeal of Ordinance 18489.

From and after the effective date of this Ordinance, Ordinance 18489 of the City of Eugene, passed by the Council on August 27, 1979, and approved by the Mayor September 3, 1979, shall be, and the same is hereby repealed.

Passed by the City Council this

11th day of October, 1999



City Recorder

Approved by the Mayor this

11th day of October, 1999



Mayor

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Work Session: CAP2.0 Update

Meeting Date: July 29, 2020
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 3
Staff Contact: Chelsea Clinton
Contact Telephone Number: 541-682-5649

ISSUE STATEMENT

This work session builds on the content shared at the July 8 and July 15, 2020 CAP2.0 Update Work Sessions. The purpose of this work session is to discuss the CAP2.0 and to consider a resolution approving the Community Climate Action Plan 2.0.

BACKGROUND

The City's Climate Recovery Ordinance ([Ordinance No: 20567](#)) includes the following goals: 1) the City organization to be carbon neutral by 2020, 2) the City organization to reduce fossil fuel use by 50 percent by 2030 compared to 2010 levels, 3) community-wide reduction of fossil fuel use by 50 percent by 2030 compared to 2010 levels, and 4) reduce community-wide greenhouse gas emissions by 7.6 percent annually through 2100. The City's Internal Climate Action Plan and the CAP2.0 are the roadmaps to the reaching the CRO goals.

Climate Action Plan 2.0

The City formally began the CAP2.0 planning process in 2018. An initial draft plan was released in November 2018. This revised draft follows a similar format and includes significant revisions guided by the 12 themes that emerged from the [Mayor's CRO Ad Hoc Work Group](#) which met in the winter and spring of 2020. Examples of themes include adding more detail to the plan; adding stronger connections to housing, transportation, and consumption; adding more actions; prioritization of actions; and a clearer pathway to achieving the CRO goals. Changes to the document included added more detail to action descriptions adding focus sections on housing and transportation and consumption; adding a timeline; and adding a more data and information to show the pathway to the CRO. The revised CAP2.0 can be found here: <https://www.eugene-or.gov/4284/Draft-Climate-Action-Plan-20>.

The CAP2.0 document and planning process are a reflection of the values endorsed by the Eugene City Council with the adoption of the Climate Recovery Ordinance. They also reflect what our community continues to voice – the Climate Emergency is real and urgent and taking a business-as-usual approach is not enough. The CAP2.0 shifted our climate work in several important ways.

1. **Data-Driven process.** From identifying the specific greenhouse gas emissions goal for 2030 (790,000 MT CO₂e) to measuring the impact of the climate action the community plans to take

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over the next 5-10 years, this was a data driven process. The revised document includes more data, including a detailed look at progress towards the CRO goals in different sectors.

2. **Mitigation and Resiliency Plan.** The CAP2.0 focuses on what actions the community can take to mitigate the impacts of climate change and resiliency actions that will help the community prepare for the impacts of climate change. The revised document includes more actions and more detailed descriptions of actions, including a triple bottom line analysis of every City of Eugene action.
3. **Community Engagement that grew capacity to address climate change.** The project engaged with stakeholders across the community in a variety of ways. The Eugene Climate Collaborative – a group of 12 organizations that have the ability to impact systems that can reduce GHGs and help the community prepare for the impacts for climate change – provided 44 actions to the plan. The Equity Panel – a group representing marginalized communities – provided an additional 44 recommendations. The Mayor’s CRO Ad Hoc Work Group created the project plan in 2017. The Work Group reconvened in 2020 to help guide revisions to the draft document and collect new ideas for potential actions. In addition, the Work Group provided input on what community engagement will look like as the City moves into implementation of the CAP2.0.

Triple Bottom Line Considerations

The CAP2.0 process included the convening of an Equity Panel. The panel came up with 42 recommendations included in the CAP2.0. The revised document also includes a triple bottom line (TBL) analysis of all City of Eugene actions, which was reviewed by a panel of community members.

PREVIOUS COUNCIL DIRECTION

[November 22, 2017, Work Session](#)

Council received updates on the Internal Climate Action Plan and the proposal for the Community Climate Action Plan, endorsed by the Mayor’s CRO Ad Hoc Work Group

[April 25, 2018, Work Session](#)

Council received CAP2.0 update; discussion on electric-vehicle-ready homes

[October 8, 2018, Work Session](#)

Update on CAP2.0 project

[November 14, 2018, Work Session](#)

Northwest Natural Gas Franchise work session and CAP discussion; council directed staff to develop a ‘gaps’ plan to address the projected shortfall between the CAP2.0 process and the goals identified in the CRO

[January 16, 2019, Work Session](#)

Home Energy Score Program work session; council agreed to include the HES program as an option in a more comprehensive CAP2.0 package for review later in the year

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[January 30, 2019, Work Session](#)

Work session on the regulation of natural gas as well as an update on CAP2.0 and presentation of 'gap' strategies

[February 11, 2019, Joint Work Session](#)

City Council and the Eugene Water & Electric Board held a joint work session to discuss topics related to climate and energy; received updates on the CAP2.0, electric vehicle planning efforts, and cap/trade policy

[May 22, 2019, Work Session](#)

Executives from Northwest Natural Gas presented to City Council and discussed their proposed Low Carbon Pathway

[June 17, 2019, Work Session](#)

CAP2.0 Equity Panel presented their recommendations; staff provided an update on CAP2.0 and council discussed 'gap' strategies

[October 16, 2019, Work Session](#)

CAP2.0 Update, discussion of the Transportation Fuels Gap Strategies, update on the Transportation System Plan, and presentation of the Electric Vehicle Strategy.

[October 28, 2019, Work Session](#)

CAP2.0 Update, discussion of the Energy Used in Buildings Gap Strategies, and an update on the Northwest Natural Franchise Agreement Process.

[November 18, 2019 Work Session](#)

Climate Action Plan 2.0 document review and consideration of additional strategies.

[May 27, 2020 Work Session](#)

Climate Recovery Ordinance implementation and Community Climate Action Plan 2.0 process update.

[June 17, 2020 Work Session](#)

CAP2.0 Update with a focus on the Mayor's Ad Hoc Work Group recommendations.

[July 8, 2020 Work Session](#)

CAP2.0 update focusing on changes in the revised document.

[July 15, 2020 Wok Session](#)

CAP2.0 update to continue to discuss the revised document.

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COUNCIL OPTIONS

1. Council could adopt a Resolution Approving the Community Climate Action Plan 2.0.
2. Council could make specific changes to the CAP 2.0 and approve it as revised.
3. Council could take no action.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends Option 1, adopt a Resolution Approving the Community Climate Action Plan 2.0

SUGGESTED MOTIONS

1. Move to adopt a Resolution Approving the Community Climate Action Plan 2.0.
2. Move to amend the Community Climate Action Plan 2.0 as follows [Council to identify specific changes].

ATTACHMENTS

- A. Resolution Approving the Community Climate Action Plan 2.0
 - Exhibit A: Eugene's Community Climate Action Plan 2.0

FOR MORE INFORMATION

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Staff E-Mail: cclinton@eugene-or.gov

RESOLUTION NO. _____**A RESOLUTION APPROVING THE COMMUNITY CLIMATE ACTION PLAN 2.0****The City Council of the City of Eugene finds that:**

A. On July 28, 2014, the Eugene City Council adopted Ordinance No. 20540, also known as Eugene's Climate Recovery Ordinance. The original Climate Recovery Ordinance codified the following three goals into section 6.675 of the Eugene Code, 1971:

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; and
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.

B. On July 27, 2016, the City Council adopted Ordinance No. 20567, which amended section 6.675 of the Eugene Code to add a fourth climate recovery goal; namely that by the year 2100, total community greenhouse gas emissions will 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%.

C. Eugene's Community Climate Action Plan 2.0 (CAP2.0) was created to align the community's climate action with the climate recovery goals adopted by City Council.

D. The CAP2.0 planning process involved significant community outreach, input, and collaboration; including the convening of the Eugene Climate Collaborative Partners, the CAP2.0 Equity Panel and the Mayor's Climate Recovery Ordinance Ad Hoc Work Group.

E. The City Council has reviewed and considered the Community Climate Action Plan 2.0 (CAP2.0) document attached as Exhibit A to this Resolution.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EUGENE, a Municipal Corporation of the State of Oregon, as follows:

Section 1. Based on the above findings which are adopted, the Community Climate Action Plan 2.0 (CAP2.0) attached as Exhibit A to this Resolution is approved.

Section 2. This Resolution shall become effective immediately upon its approval.

The foregoing Resolution adopted the 29th day of July, 2020.

City Recorder