



**Eugene City Council**

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www.eugene-or.gov

# EUGENE CITY COUNCIL AGENDA

November 21, 2022

**5:30 p.m. EUGENE CITY COUNCIL PUBLIC HEARING**

City Council meetings will continue to be held in hybrid in person and 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>

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**Meeting of November 21, 2022;  
Her Honor Mayor Lucy Vinis Presiding**

**Councilors**

Greg Evans, President  
Mike Clark  
Randy Groves  
Emily Semple

Matt Keating, Vice President  
Jennifer Yeh  
Alan Zelenka

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**5:30 p.m. EUGENE CITY COUNCIL PUBLIC HEARING**

- 1. PUBLIC HEARING: An Ordinance Extending the Term of Ordinance No. 19775 and Ordinance No. 20397 Granting to Comcast of Oregon II, Inc. a Franchise for Operation of a Cable Telecommunications System.**
- 2. PUBLIC HEARING: An Ordinance Concerning Interfering with a Peace Officer and Amending Section 4.907 of the Eugene Code, 1971.**
- 3. PUBLIC HEARING: An Ordinance Concerning Regulations for Commercial and Industrial Noise; Amending Section 6.750 of the Eugene Code, 1971; and Adding Section 6.752 to that Code.**
- 4. PUBLIC HEARING: An Ordinance Prohibiting Fossil Fuel Infrastructure in New Low-Rise Residential Buildings; and Adding Section 6.695 and 6.696 to the Eugene Code, 1971.**

The Eugene City Council welcomes your interest in these agenda items. This meeting location is wheelchair-accessible. For the hearing impaired, an interpreter can be provided with 48 hours' notice prior to the meeting. Spanish-language interpretation will also be provided with 48 hours' notice. To arrange for these services, contact the receptionist at 541-682-5010. City Council meetings are telecast live on Metro Television, Comcast channel 21, and rebroadcast later in the week.

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

# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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Public Hearing: An Ordinance Extending the Term of Ordinance No. 19775 and Ordinance No. 20397 Granting to Comcast of Oregon II, Inc. a Franchise for Operation of a Cable Telecommunications System.

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Meeting Date: November 21, 2022  
Department: Central Services  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 1  
Staff Contact: Pam Berrian  
Contact Telephone Numbers: 541-682-5590

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## ISSUE STATEMENT

The purpose of this agenda item is a public hearing regarding the adoption of the proposed ordinance extending Comcast's cable television franchise agreement until December 31, 2024. Without the extension, the franchise agreement will expire on December 31, 2022. This ordinance would only extend the term of the franchise; all other franchise terms and conditions would remain the same. Action on this Ordinance is scheduled for November 28, 2022.

## BACKGROUND

### The Franchise

The City of Eugene, the City of Springfield, and Lane County together granted Comcast of Oregon II, Inc. ("Comcast") separate but identical franchises for the operation of a cable communications system (*e.g.*, Eugene Ordinance No. 19775) to provide cable television services. In 2007, the three entities amended and renewed Comcast's franchise (*e.g.*, Eugene Ordinance No. 20397) through August 1, 2018.

### Franchise Extensions

The term of the franchise has since been extended several times, most recently by Ordinance No. 20660, adopted on October 11, 2021, which extended the franchise through December 31, 2022. In general, the extensions were needed for various reasons that affected negotiations, such as difficulties resolving a franchise fee review, which has since been resolved; the Federal Communications Commission (FCC) adopting in 2019 a final order and rules regarding cable regulation (FCC Cable Order) that is unfavorable to local government franchising authorities; and years-long multi-jurisdictional litigation, including the City of Eugene as a petitioner, challenging the FCC Cable Order, which concluded in February 2022, as well as Comcast staff transitions.

### Current Status

Eugene staff were optimistic that a renewed agreement would be reached by December 31, 2022. After the litigation concluded in June 2021, unfortunately, Comcast personnel assigned to this

November 21, 2022 Public Hearing – Item 1

franchise negotiation encountered medical absences over a period of several months (from April 2022 through September 2022) whereby no Comcast replacements were provided. All parties involved were unable to move forward on negotiations during this time period. Staff recommended, and Comcast agreed, a two-year extension to allow time for the parties to work on remaining issues, with a commitment that staff would make every attempt to conclude the renewal negotiations as soon as possible. Attachment A is the table of negotiation issues, many of which have been tentatively agreed upon. However, a major hurdle remains unresolved:

- Comcast proposed adding “competitive equity” language to the franchise. That language as proposed would apply to providers other than cable operators and would require the jurisdictions to either impose certain cable franchise obligations on those other providers or excuse Comcast from its franchise obligations. Eugene staff have been advised by their legal counsel that the City of Eugene does not have authority to impose such franchise obligations on those other providers under applicable federal, state, and local laws. Staff have informed Comcast of this and reviewed, discussed, and offered edits to the proposed language. Comcast rejected an initial set of edits, but further discussion is needed.

#### The Proposed Extension to December 31, 2024.

This proposed extension ordinance would only extend the term of the current franchise. All other franchise terms and conditions would remain the same, including Comcast’s obligation to pay franchise fees for use of the public rights of way, which is capped under federal law at five percent of gross revenues earned from providing cable television services within Eugene City limits. The fees collected from the cable franchise are allocated to the General Fund and are used for general purposes. There are no anticipated costs to the City of Eugene because of the extension.

When clarity is achieved and negotiations completed, the proposed renewal franchise agreement will be brought to the City Council for action as an ordinance, with a likely term of 10 years.

#### **RELATED CITY POLICIES**

Eugene City Telecommunication Vision and Policies, adopted April 28, 1997, 6:0 by the Eugene City Council:

1. All City residents, businesses and public institutions shall have access to the full range of telecommunications services at reasonable, affordable rates.
2. The City shall receive fair compensation, including but not limited to full recovery of all its costs for the use of public rights of way and other City property by telecommunications providers.
3. The public must be protected from adverse safety consequences stemming from the installation, maintenance and operation of telecommunications facilities in the City.
4. Telecommunications facilities must be located, installed and maintained in a manner that minimizes visual impact, preserves views, and is consistent with City of Eugene adopted land use plans and policies.
5. Public inconvenience and disruption stemming from the installation, maintenance, and operation of telecommunications facilities shall be minimized and fully compensated.

6. The City shall ensure that telecommunications providers make use of the rights of way in as efficient a manner as possible.

Telecommunications Ordinance, Eugene Code 3.005, 3.400 to 3.430

Ordinance No. 20397, An Ordinance Granting Comcast of Oregon II, Inc., An Additional Term and Franchise Renewal For The Operation Of A Cable Communications System; Amending Ordinance 19775; Adopting A Severability Clause; And Providing an Effective Date.

### **COUNCIL OPTIONS**

This item is scheduled for public hearing only. Council action on the proposed ordinance to extend the franchise term is scheduled for November 28, 2022.

### **CITY MANAGER'S RECOMMENDATION**

No recommendation is provided at this time. A recommendation will be provided for the scheduled action on November 28, 2022.

### **SUGGESTED MOTION**

None at this time.

### **ATTACHMENTS**

- A. Table of Comcast Cable Renewal Negotiation Issues October 2022
- B. An Ordinance Extending the Term of Ordinance No. 19775 and Ordinance No. 20397 Granting to Comcast of Oregon II, Inc. a Franchise for Operation of a Cable Telecommunications System.

### **FOR MORE INFORMATION**

Staff Contact: Pam Berrian, Information Services Division

Telephone: 541-682-5590

Staff E-Mail: [PBerrian@eugene-or.gov](mailto:PBerrian@eugene-or.gov)

## ATTACHMENT A

<b>Section</b>	<b>Issue</b>	<b>Comcast Proposal</b>	<b>LFA Response</b>	<b>Status as of 7/18/18</b>
Section 3	Definition of gross revenues	MACC definition, adding late fee language (Metropolitan Area Cable Commission – muni coalition around Portland)	Stay with MACC definition originally proposed by Comcast	Add Comcast language stating late fees are prorated based on aggregate pro rata calculation
Section 5(1)	Channel capacity	Change capacity from 35 to 120 channels	OK	OK
Section 5(2)	Service to Institutions	Allow Comcast to elect to offset complimentary service against franchise fees	No basis upon which to agree; remove last two sentences of that paragraph	Grandfathering in existing buildings plus 3 additional new buildings per jurisdiction
Section 5(4)	Number of channels in HD	When channel is averaging 25 hours per week of programming, must be provided in HD (High Definition)	OK	OK
Section 5(4)(b)	Number of digital converters for public safety channel	Drop from 75 to 50	Keep 75 or same as last 10 years; agree to not increase despite anticipated growth in internal viewing locations.	60
Section 7(3)	Expansion of Service	Delete requirement for expansion plan	OK, but keep requirement for boundary maps.	OK
Section 7(4)	Extension of System	Delete	Keep all language after first sentence.	OK
Section 9(8)(a)	Forced relocates	Call for reimbursement of temporary removal of equipment	No basis upon which to agree; remove proposed new language (last sentence of subsection)	Remove language; perhaps insert language from Eugene code re forced relocates based on reasonable necessity
Section 10(4)	Cap on cost of fee review	Where Comcast underpays by 5% or more, Comcast pay only up to \$15,000 of fee review	No \$ cap, limited to 2 reviews per franchise term <sup>1</sup>	No threshold trigger; Comcast pays a total of \$45,000 fees per 10 year term

<sup>1</sup> The LFA (Local Franchise Authority) is not comfortable relying on a percentage of underpayment to justify Comcast's contribution to the cost of the audit. In the current franchise, the LFA agreed with Comcast's proposal to conduct only one per franchise term if Comcast paid for the review. The MACC franchise limits Comcast to paying \$15,000 per review, but allows a review to occur every two years. The LFA is proposing to limit the number of reviews to two per the franchise term, and proposes that Comcast pay for those two reviews. The LFA would consider capping each of those reviews at \$50,000.

## ATTACHMENT A

<b>Section</b>	<b>Issue</b>	<b>Comcast Proposal</b>	<b>LFA Response</b>	
Section 10(5)	PEG fees	Delete; duplicative language	OK	OK
Section 10(6)	Comcast to pay LFA's (Local Franchise Authority's) financial and legal fees	Delete	OK <sup>2</sup>	OK
Section 10(8)	Pass through charges	Delete	Keep calculation, revise last paragraph <sup>3</sup>	Retain only language that require Comcast to notify MPC of rates
Section 12	Customer Service	Delete Section 12, replace with Customer Service Addendum, which includes ability to close Eugene office	Retain Section 12, adopt revisions of Addendum specifying it is intended to complement but does not preempt Section 12. See attachment A. Eugene office to remain open during term of franchise.	Remove Addendum; retain Section 12; insert store language revised by Kristina/Springfield into the franchise
Section 13(1)(g)	Certification of annual report	Allow certification to be done by Comcast, not independent CPA	No, retain the independent review	OK to have Comcast do own in house certification
Section 16(2)(b)	Definition of fee review and audit	Comcast disagreed to proposed language stating a fee review is not an audit	LFA proposes to provide only for an "audit," (no distinction between fee review and audit) which will be allowed twice during term, with 3 year look back that will apply for all years preceding audit. Performance review language in the franchise is not	No distinction in audit v. fee review; limited to 2 per term;

<sup>2</sup> This assumes the determination of who pays for certain fees will be spelled out clearly in other sections of the franchise. For instance, Comcast would pay at least some portion of LCOG's fees, as it agreed to do in this review.

<sup>3</sup> FCC Form 1240 Instructions sets forth the method for annual updating of pass through rates. The language proposed by the LFA mirrors those instructions, spells out how the rate will be changed, and provides for notification to the commission. The last paragraph provides the remedy for challenging the pass through rate. The 5-year time for challenging the rate was based on the one-time "fee review" in the current franchise. It might make sense to require the LFA to challenge the rate at or before the next scheduled fee review.

## ATTACHMENT A

			changed.	
Section 16(2)(c)(iv)	Summary of FCC regs	Remove requirement to summarize new FCC regs in annual report.	OK	OK
Section 16(2)(d)	Comcast presentation to MPC	Allows Comcast to address MPC	OK to clarify Comcast's ability to comment before MPC	OK
<b>Miscellaneous</b>				
\$30,000 for HD upgrades Side Letter which is linked legally to adoption of renewal franchise Ord.		OK	Will not count toward 5% franchise fees	OK
\$50,000 to Springfield Library for closure of Springfield Customer Service site during the term. Side Letter		OK, provided \$25,000 of the \$50,000 for ARC project	Springfield staff will discuss this ARC project proposal with its city council at next opportunity. Will not count toward 5% franchise fees	\$75,000
Competitive Equity		Addendum requires equity for services not covered by the Cable Act and not appropriately covered by this franchise agreement	LFA does not accept the rationale for any such provision under current law. However, it potentially will accept that sort of addendum as revised in draft; see attachment B	Revised language developed by muni legal counsel. Not yet discussed or resolved.
Franchise Fee Offset Section 5(2)	Per the FCC 621 Cable Order, the value (at cost) of gratis services may be deducted by Comcast from the franchise fees due	Comcast has agreed that it will provide 120-day prior notice before deducting the net cost of gratis services to schools and government buildings		As of October 27, 2022, the parties are in agreement with a 120 day notice.



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE EXTENDING THE TERM OF ORDINANCE NO. 19775 AND ORDINANCE NO. 20397 GRANTING TO COMCAST OF OREGON II, INC. A FRANCHISE FOR OPERATION OF A CABLE TELECOMMUNICATIONS SYSTEM.**

**The City Council of the City of Eugene finds that:**

**A.** The federal Cable Act requires a franchise for the operation of cable telecommunications systems and provides for a formal or informal renewal process under the Cable Act.

**B.** The Cities of Eugene and Springfield, together with Lane County, granted a franchise to Comcast of Oregon II, Inc. (“Comcast”) for the operation of a cable communication system, and have designated the Metropolitan Policy Commission (MPC), acting as the cable commission, as the representative of the local franchising authorities in administration of the franchise.

**C.** The City of Eugene enacted Ordinance No. 19775 on May 13, 1991, granting the franchise.

**D.** The City of Eugene enacted Ordinance No. 20397 on October 22, 2007, amending and renewing the franchise through August 1, 2018.

**E.** The term of the franchise has since been extended several times, most recently by Ordinance No. 20660, adopted on October 11, 2021, which extended the franchise through December 31, 2022. In general, the extensions were needed for various reasons that affected negotiations, such as difficulties resolving a franchise fee review, which has since been resolved; the Federal Communications Commission (FCC) adopting in 2019 a final order and rules regarding cable regulation (FCC Cable Order) that is unfavorable to local government franchising authorities; and years-long multi-jurisdictional litigation, including the City of Eugene as a petitioner, challenging the FCC Cable Order, which concluded in February 2022.

**F.** The Cities of Eugene and Springfield, Lane County, and Comcast continued good faith negotiations under the Cable Act’s informal process to renew Comcast’s cable franchise. However, due to the number of remaining unresolved franchise issues and unavoidable delays in the negotiations schedule the past six months, those negotiations will not be completed in a timeframe that would allow the City of Eugene to adopt a franchise renewal by December 31, 2022.

**G.** The Cities of Springfield and Eugene, and Lane County have determined that it serves the public welfare to extend the term of the current franchise from December 31, 2022, up to and through December 31, 2024.

**NOW, THEREFORE,**

**THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:**

**Section 1.** The franchise granted to Comcast in Ordinance No. 19775 and Ordinance No. 20397 shall be extended up to and through December 31, 2024.

**Section 2.** The City of Eugene and Comcast agree that execution of this extension does not waive any rights that either party may have under the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. §§ 521 *et seq.*, or other provision of federal, state, or local law.

**Section 3.** Other than the duration of the franchise set forth herein, Ordinance No. 19775 and Ordinance No. 20397 shall continue in full force and effect.

**Passed by the City Council this**

\_\_\_\_\_ **day of November, 2022**

**Approved by the Mayor this**

\_\_\_\_\_ **day of November, 2022**

\_\_\_\_\_  
**City Recorder**

\_\_\_\_\_  
**Mayor**

# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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## Public Hearing: An Ordinance Concerning Interfering with a Peace Officer and Amending Section 4.907 of the Eugene Code, 1971.

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Meeting Date: November 21, 2022  
Department: CS/City Prosecutor's Office  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 2  
Staff Contact: Travis Smith  
Contact Telephone Number: 541-682-8402

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### ISSUE STATEMENT

Eugene City Code offense of Interfering with a Police Officer (EC 4.907) is substantively identical to the state statutory offense of Interfering with a Peace Officer (ORS 162.247). In 2021 HB 3164 significantly modified the elements of the offense. This public hearing is on a proposed ordinance to make the City's parallel offense consistent with state statute.

### BACKGROUND

Signed by Governor Brown in 2021, HB 3164 amends the state's crime of Interfering with a Peace Officer (ORS 162.247) to narrow the scope of conduct encompassed by the statute and to prohibit the arrest of a person for interfering with a peace officer for conduct that would constitute any other criminal offense. The City's crime of Interfering with a Police Officer (EC 4.709) is analogous to the pre-HB 3164 statutory version of the crime. While there are circumstances in which a City offense can differ from an analogous state offense (for example, the scope of the City's Bias Crime in the Second Degree includes a person's unhoused status, but the analogous state bias crime does not), a City offense cannot *conflict* with a state criminal statute. Because of the changes made by HB 3164, the City's offense of Interfering with a Police Officer arguably conflicts the state's analogous criminal statute, necessitating a change to the City Code to resolve the conflict.

Under current city code (EC 4.907) and ORS 162.247 *prior to* HB 3164, a person commits the crime of interfering with a peace officer if that person:

1. Refuses to obey a lawful order by the peace officer.

**OR**

2. If the person intentionally acts in a manner that prevents or attempts to prevent a peace officer from performing the lawful duties of the officer with regards to another person.

House Bill 3164, Attachment B to this AIS, narrowed the scope of prohibited conduct encompassed by the statute by limiting the criminality of "refusal to obey an order" to circumstances when an officer is performing duties regarding another person or conducting a criminal investigation, and the behavior prevents or attempts to prevent the performance of those lawful duties. HB 3164 also amended the statute to prohibit the arrest of a person interfering with a peace officer if the

conduct could constitute any other criminal offense. Attachment C to this AIS is Legislative Counsel's summary of HB 3164.

In according with the motion passed by the City Council on October 12, 2022, the proposed ordinance, Attachment A to this AIS, amends EC 4.907 consistent with the changes made by HB 3164.

**PREVIOUS COUNCIL DIRECTION**

On October 12, 2022, the Council held a work session regarding HB 3164 and passed the following motion:

Move to direct the City Manager to prepare an ordinance amending EC 4.907 consistent with HB 3164 and schedule a public hearing.

**COUNCIL OPTIONS**

This is a public hearing only and no action is required at this time. Deliberation and action are scheduled for Monday, November 28, 2022.

**ATTACHMENTS**

- A. An Ordinance Concerning Interfering with a Peace Officer and Amending Section 4.907 of the Eugene Code, 1971
- B. HB 3164
- C. Legislative Counsel Summary of HB 3164

**FOR MORE INFORMATION**

Staff Contact: Travis Smith, City Prosecutor  
Telephone: 541-682-8402  
Staff E-Mail: [TGSmith@eugene-or.gov](mailto:TGSmith@eugene-or.gov)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CONCERNING INTERFERING WITH A PEACE OFFICER AND AMENDING SECTION 4.907 OF THE EUGENE CODE, 1971.**

**THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:**

**Section 1.** Section 4.907 of the Eugene Code, 1971, is amended to provide as follows:

**EC 4.907 Interfering With a ~~[Police]~~ Peace Officer.**

**(1)** A person commits the crime of interfering with a ~~police~~ **peace** officer if the person, knowing that another person is a ~~[police]~~ **peace** officer, intentionally **or knowingly** acts in a manner that prevents, or attempts to prevent, ~~[a police]~~ **the peace** officer from performing the lawful duties of the ~~[police]~~ officer with regards to another person, or **a criminal investigation** ~~[the person refuses to obey a lawful order by the police officer].~~

**(2)** This section does not apply in situations in which the person is engaging ~~[in activity that would constitute resisting arrest under section 4.910 of this code, or in which the person is engaging]~~ in passive resistance.

**(3)** *A person may not be arrested or charged under this section if the person is arrested or charged for another offense based on the same conduct.*

**Section 2.** 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**  
\_\_\_\_ day of \_\_\_\_\_, 2022

**Approved by the Mayor this**  
\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
**City Recorder**

\_\_\_\_\_  
**Mayor**

81st OREGON LEGISLATIVE ASSEMBLY--2021 Regular Session

## Enrolled

# House Bill 3164

Sponsored by Representative KOTEK; Representatives ALONSO LEON, CAMPOS, DEXTER, FAHEY, KROPP, MCLAIN, NOBLE, NOSSE, PHAM, POWER, PRUSAK, REYNOLDS, SANCHEZ, SCHOUTEN, SOLLMAN, VALDERRAMA, WILDE, Senator FREDERICK (at the request of American Civil Liberties Union of Oregon)

CHAPTER .....

AN ACT

Relating to the application of the crime of interfering with a peace officer or parole and probation officer; creating new provisions; amending ORS 162.247; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 162.247 is amended to read:

162.247. (1) A person commits the crime of interfering with a peace officer or parole and probation officer if the person, knowing that another person is a peace officer or a parole and probation officer as defined in ORS 181A.355,[:]

[(a)] intentionally **or knowingly** acts in a manner that prevents, or attempts to prevent, [a] the peace officer or parole and probation officer from performing the lawful duties of the officer with regards to another person **or a criminal investigation**.[: or]

[(b)] *Refuses to obey a lawful order by the peace officer or parole and probation officer.*]

(2) Interfering with a peace officer or parole and probation officer is a Class A misdemeanor.

(3) This section does not apply in situations in which the person is engaging in[:]

[(a)] *Activity that would constitute resisting arrest under ORS 162.315; or*

[(b)] passive resistance.

**(4) A person may not be arrested or charged under this section if the person is arrested or charged for another offense based on the same conduct.**

**SECTION 2.** The amendments to ORS 162.247 by section 1 of this 2021 Act apply to conduct alleged to constitute an offense under ORS 162.247 occurring on or after the effective date of this 2021 Act.

**SECTION 3.** This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

**Passed by House April 26, 2021**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Tina Kotek, Speaker of House

**Passed by Senate June 2, 2021**

.....  
Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2021

**Approved:**

.....M,....., 2021

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2021

.....  
Shemia Fagan, Secretary of State

**HB 3164 A STAFF MEASURE SUMMARY**

Carrier: Sen. Prozanski

**Senate Committee On Judiciary and Ballot Measure 110  
Implementation**


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**Action Date:** 05/17/21  
**Action:** Do pass the A-Eng bill.  
**Vote:** 4-2-1-0  
**Yeas:** 4 - Dembrow, Gelser, Manning Jr, Prozanski  
**Nays:** 2 - Heard, Linthicum  
**Exc:** 1 - Thatcher  
**Fiscal:** Fiscal impact issued  
**Revenue:** No revenue impact  
**Prepared By:** Gillian Fischer, Counsel  
**Meeting Dates:** 5/12, 5/17

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**WHAT THE MEASURE DOES:**

Modifies the behavior constituting the crime of interfering with a peace officer. Provides that a person may not be arrested for or charged with interfering with a peace officer or parole and probation officer for conduct that would constitute any other criminal offense. Declares an emergency, effective on passage.

**ISSUES DISCUSSED:**

- Related Oregon Supreme Court decisions
- Intent of exempting noncriminal behavior encompassed by statute
- Law enforcement ability to enforce existing laws and violations
- Interference with First Amendment rights
- Statistics on charging offense of interfering with peace officer

**EFFECT OF AMENDMENT:**

No amendment.

**BACKGROUND:**

Under current law, a person commits the crime of interfering with a peace officer if that person refuses to obey a lawful order by the peace officer or parole and probation officer, unless the person is refusing to obey as an act of passive resistance.

The term "passive resistance" is not defined in statute. In 2017, the Oregon Supreme Court decided *State v. McNally*, 361 Or. 314, (2017) and created a definition that provides a framework for courts to determine when conduct is protected as passive resistance and excluded from criminal prosecution. The definition articulated by the McNally court of the term passive resistance includes any "noncooperation with a peace officer's lawful order that does not involve violence or active measures, whatever the motivation for the noncooperation and regardless of whether the noncooperation takes the form of acts, techniques, or methods commonly associated with civil rights or other organized protest."

House Bill 3164 A narrows the scope of conduct encompassed by the statute by limiting the criminality of a refusal to obey an order to circumstances when an officer is performing duties regarding another person or conducting a criminal investigation and the behavior prevents the performance of said duties. It also prohibits the arrest of a person for interfering with a peace officer for conduct that would constitute any other criminal offense.



# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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## Public Hearing: An Ordinance Concerning Regulations for Commercial and Industrial Noise; Amending Section 6.750 of the Eugene Code, 1971; and Adding Section 6.752 to that Code.

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Meeting Date: November 21, 2022  
Department: Planning and Development  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 3  
Staff Contact: Lydia Bishop  
Contact Telephone Number: 541-682-5482

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### ISSUE STATEMENT

This public hearing is an opportunity for the Eugene City Council to hear testimony regarding an ordinance proposed to regulate the impact of commercial and industrial noise in the form of vibrations and low frequency sound.

### BACKGROUND

In early 2021, code compliance staff began receiving complaints regarding noise described as vibrations and low frequency sounds. This noise was reported to occur early in the day, as early as 4:00 in the morning. Staff responded to the complaints and performed multiple sound readings in various areas. However, the existing Eugene Code (EC 6.750) which regulates noise does not have language to address the type of sounds that were the subject of the complaints. With no code authority, no enforcement action could take place. Staff, and the City Council, continued to receive complaints.

Eugene City Code (EC) 6.750 (Environmental Noise Disturbance-Specific Prohibitions) addresses industrial/commercial noise nuisances by regulating A-weighted decibels (Dba). The subject of the complaints is a vibration, or low frequency sound, that can be regulated in octave band frequency, as discussed further below. While this type of noise is less commonly included in municipal noise ordinances, the State of Oregon used to regulate this type of disturbance. However, the State ceased enforcement due to lack of resources (see Attachment A). In the May 23, 2022 work session on Chronic Toxic Polluters, former City Councilor Syrett made a motion to direct the City manager to schedule a public hearing on an ordinance to regulate vibrations. That ordinance is included as Attachment B.

The proposed ordinance would adopt portions of the State of Oregon Department of Environmental Quality Noise Control Regulations for Industry and Commerce (OAR 340-035-0035). The State code was written to address these vibrations and low frequency sounds by changing the type and location of measurements. The State adopted an octave band frequency, which splits the audible spectrum into smaller segments, allowing for identification of different noise levels across

individual frequencies. Staff have consulted with a sound engineer who has indicated that the proposed ordinance will address the vibrations and low frequency sounds that have generated the complaints received by staff and Council.

If this ordinance is adopted, the next step for the Building and Permit Services Division will be to acquire appropriate equipment, train staff, and determine to what extent a consultant will be necessary to successfully respond to complaints. If a violation of the proposed code is confirmed, compliance staff would utilize the administrative civil penalty process as codified at EC 2.018 to enforce the code.

### **PREVIOUS COUNCIL DIRECTION**

[May 23, 2022 Work Session](#)

While there was not a Council meeting specific to this item, at the work session on Addressing Chronic Toxic Polluters, council passed the following motion:

Move to direct the City Manager to prepare an ordinance regulating the impact of vibrations as chronic pollution within our existing noise ordinance and bring back for public hearing before Council's winter break.

The proposed ordinance included as Attachment B, is a response to this motion.

### **COUNCIL OPTIONS**

No action is required at this time. Options will be provided when this item is scheduled for action.

### **CITY MANAGER'S RECOMMENDATION**

This item is scheduled for public hearing only. Following the public hearing and the City's receipt of any testimony, the City Manager will make a recommendation to be included in the Council's materials when this item is scheduled for action.

### **ATTACHMENTS**

- A. DEQ Internal Management Directive
- B. An Ordinance Concerning Regulations for Commercial and Industrial Noise; Amending Section 6.750 of the Eugene Code, 1971; and Adding Section 6.752 to that Code

### **FOR MORE INFORMATION**

Staff Contact: Lydia Bishop  
Telephone: 541-682-5482  
Staff E-Mail: [Lbishop@eugene-or.gov](mailto:Lbishop@eugene-or.gov)



State of Oregon  
Department of  
Environmental  
Quality

# Internal Management Directive

Subject: Staff Guidance on Noise Control Issues	IMD Number: AQ.00.010
Effective Date: July 2003	Pages: 2
Revision Date: March 31, 2006 (format only)	
Approval:	

## Intent / Purpose / Statement of Need:

This guidance provides information on DEQ's former Noise Control Program and how staff should respond to noise inquiries and complaints.

## Authority:

## Applicability:

## Background:

Oregon was one of the first states to adopt noise control regulations for airports, industry, racetracks, and motor vehicles. The regulations establish standards, provide exception and variance procedures, and provide enforcement. DEQ program responsibilities included technical assistance, education and public awareness, responding to complaints, and carrying out enforcement activities. The statute gives the Environmental Quality Commission (EQC) authority to withdraw enforcement of the state regulations in jurisdictions that have adopted noise regulations that meet or exceed the state regulations. The EQC has never exercised this authority. In the 1970s and 1980s, DEQ participated in the local comprehensive land use plan development process to ensure noise issues were addressed and that local plans acknowledged the state regulations. A number of local governments have adopted their own noise control standards, or have adopted DEQ's regulations by reference.

**Program Termination:** The DEQ, upon Legislative approval, terminated the Noise Control Program in July 1991 as an agency cost-savings measure due to reduction in General Fund support. Upon termination, DEQ took the necessary steps to inform local governments and the public, and provided guidance on how the statutes and rules would continue to apply. Additionally, DEQ provided local governments training on developing local noise ordinances and enforcement strategies.

## Internal Contact:

## Policy:



**Enforcement of State Noise Regulations:** Although DEQ's Noise Control Program has been terminated, the noise statutes and administrative rules remain in force. Regulated noise sources are legally responsible for complying with the state noise laws. The noise statutes are in ORS Chapter 467 and administrative rules in OAR 340 Division 35.

- Enforcement now falls under the responsibility of local governments, and in some cases, other agencies. Options available to local governments and the public include:
- Local governments may enact and enforce the State standards, or may adopt their own standards and enforcement, as long as the standards are consistent with or exceed the State standards.
- In some cases, a private citizen or local government may bring a nuisance suit through private legal counsel or local district attorney's office.
- A local government may submit evidence of a state noise violation to the local district attorney's office, and enforcement would be at the discretion of that office.
- The Energy Facility Siting Council (EFSC), under the Department of Energy, is authorized to approve the siting of large energy facilities in the State. EFSC staff review applications to ensure that proposed facilities meet the State noise regulations. Smaller energy facilities that are exempt from EFSC's authority may be subject to county noise regulations, and must also comply with the State regulations.

**Staff Response to Noise Related Inquiries:** There is no longer a state noise program and funding for DEQ to respond to complaints, provide advice, or interpret the State noise regulations. DEQ must ensure that its resources are only spent on programs approved by the Legislature. Staff response to noise related inquiries need to be limited to the following:

- Explain that the noise program was terminated and that DEQ has no authority or resource to work on noise issues or respond to noise complaints.
- Citizen inquiries should be directed to the affected local government planning department or agency.
- If the caller has further concerns, express your regret in not being able to assist under the circumstances, and if necessary, offer to have your manager contact the individual.

## ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CONCERNING REGULATIONS FOR COMMERCIAL AND INDUSTRIAL NOISE; AMENDING SECTION 6.750 OF THE EUGENE CODE, 1971; AND ADDING SECTION 6.752 TO THAT CODE.**

**THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:**

**Section 1.** Subsection (g) of Section 6.750 of the Eugene Code, 1971 is deleted and subsections (h) and (i) are re-lettered to (g) and (h), respectively, to provide as follows:

**6.750 Environmental Noise Disturbance – Specific Prohibitions.**

Unless exempted by section 6.755 of this code, the following acts are declared to be noise disturbances, as that term is defined in section 4.080 of this code – however this enumeration shall not be deemed an exclusive list of the violations of this section, nor shall the recitation of specific prohibitions below be deemed the exclusive and entire listing of unlawful noise disturbances for each subcategory.

\*\*\*\*\*

~~(g) Commercial and industrial noise. Operating any equipment and conducting activities so as to create any noise which would cause the maximum noise level to exceed a one-hour equivalent sound pressure level of 60 dBA at any point on the property line of an affected residential property zoned R-1, R-2, R-3 or R-4.~~

~~(hg)~~ Steam whistles, sirens, and other aural warning devices. Operating or permitting the operation of a steam whistle, siren, or other aural warning device except where necessary to provide a warning of fire or danger.

~~(ih)~~ Other. Any sound source exceeding the standards set out in section 9.2530(20) of this code and not otherwise exempt therefrom.

**Section 2.** Section 6.752 of the Eugene Code, 1971 is added to provide as follows:

**6.752 Commercial and Industrial Noise.**

**(1) For purposes of this section, the following words and phrases mean:**

***Impulse Sound.* Either a single pressure peak or a single burst (multiple pressure peaks) for a duration of less than one second as measured on a peak unweighted sound pressure measuring instrument or “C” weighted, slow response instrument and specified by dB and dBC respectively.**

***Noise Level.* Weighted sound pressure level measured by use of a metering characteristic with an “A” frequency weighting network and reported as dBA.**

**Noise Sensitive Building.** *A building on a noise sensitive property that is used as a residence, school, church, hospital, or public library.*

**Noise Sensitive Property.** *Property located within the Eugene city limits that is zoned for residential use, schools, churches, hospitals or public libraries.*

**Octave Band Sound Pressure Level.** *The sound pressure level for the sound being measured within the specified octave band. The reference pressure is 20 micropascals (20 micronewtons per square meter).*

**One-Third Octave Band Sound Pressure Level.** *The sound pressure level for the sound being measured within the specified one-third octave band at the preferred frequencies. The reference pressure is 20 micropascals (20 micronewtons per square meter).*

**Person.** *An agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property or the supervision of an activity on the property that produces noise.*

**Preferred Frequencies.** *Those mean frequencies in Hertz preferred for acoustical measurements which for this purpose shall consist of the following set of values: 20, 25, 31.5, 40, 50, 63, 80, 100, 125, 160, 200, 250, 315, 400, 500, 630, 800, 1000, 1250, 1600, 2000, 2500, 3150, 4000, 5000, 6300, 8000, 10,000, 12,500.*

**Sound Pressure Level (SPL).** *20 times the logarithm to the base 10 of the ratio of the root-mean-square pressure of the sound to the reference pressure. SPL is given in decibels (dB). The reference pressure is 20 micropascals (20 micronewtons per square meter).*

**(2) Impulse Sound.** *No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if an impulsive sound is emitted in air by that source which exceeds the following sound pressure levels, as measured at an appropriate measurement point, as specified in subsection (4) of this section:*

**(a) Blasting.** *98 dBC, slow response, between the hours of 7 a.m. and 10 p.m. and 93 dBC, slow response, between the hours of 10 p.m. and 7 a.m.*

**(b) All Other Impulse Sounds.** *100 dB, peak response, between the hours of 7 a.m. and 10 p.m. and 80 dB, peak response, between the hours of 10 p.m. and 7 a.m.*

**(3) Octave Bands.**

**(a) No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median octave band sound pressure level which, as measured at an appropriate measurement point, specified in subsection (4) of this section, exceeds applicable levels specified in Table EC 6.752(5).**

<b>Table EC 6.752(3)</b>		
<b>Commercial and Industrial Noise</b>		
<b>Median Octave Band Standards / Allowable Octave Band Sound Pressure Levels</b>		
<b>Octave Band Frequency (Hz)</b>	<b>7:00 a.m. - 10:00 p.m.</b>	<b>10:00 p.m. - 7:00 a.m.</b>
31.5	68	65
63	65	62
125	61	56
250	55	50
500	52	46
1000	49	43
2000	46	40
4000	43	37
8000	40	34

**(b) One-third Octave Band.** No person owning or controlling an industrial or commercial noise source shall cause or permit the operation of that noise source if such operation generates a median one-third octave band sound pressure level which, as measured at an appropriate measurement point specified in subsection (4) of this section, and in a one-third octave band at a preferred frequency, exceeds the arithmetic average of the median sound pressure levels of the two adjacent one-third octave bands by:

1. 5 dB for such one-third octave band with a center frequency from 500 Hertz to 10,000 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band;
2. 8 dB for such one-third octave band with a center frequency from 160 Hertz to 400 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band; or
3. 15 dB for such one-third octave band with a center frequency from 25 Hertz to 125 Hertz, inclusive. Provided: Such one-third octave band sound pressure level exceeds the sound pressure level of each adjacent one-third octave band.

**(c)** This section shall not apply to audible discrete tones having a one-third octave band sound pressure level 10 dB or more below the allowable sound pressure levels specified in Table EC 6.752(5) for the octave band which contains such one-third octave band.

**(4) Measurement.**

**(a)** In the application of this code section, the city will use sound measurement procedures that conform to those procedures set forth in Sound Measurement Procedures Manual (NPCS-1), or to such other procedures administratively adopted by the city manager.

**(b) Unless otherwise specified, the appropriate measurement point shall be the point on the noise sensitive property set out in 1. or 2., below, whichever is further from the noise source:**

**1. 25 feet (7.6 meters) toward the noise source from that point on the noise sensitive building that is nearest to the noise source; or**

**2. That point on the noise sensitive property line that is nearest to the noise source.**

**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**

**Approved by the Mayor this**

\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
**City Recorder**

\_\_\_\_\_  
**Mayor**



# EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



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## Public Hearing: An Ordinance Prohibiting Fossil Fuel Infrastructure in New Low-Rise Residential Buildings; and Adding Section 6.695 and 6.696 to the Eugene Code, 1971.

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Meeting Date: November 21, 2022  
Department: Planning and Development  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 4  
Staff Contact: Lydia Bishop  
Contact Telephone Number: 541-682-5482

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### ISSUE STATEMENT

The purpose of this public hearing is for the Eugene City Council to hear public testimony on a proposed ordinance to prohibit fossil fuel infrastructure in new low-rise residential buildings. Low-rise residential buildings include single-family dwellings, duplexes, triplexes, quadraplexes, cottage clusters and any residential structure that is three-stories or less.

### BACKGROUND

On November 17, 2021, the City Council received an update on the Climate Action Plan (CAP) 2.0. Regulation of natural gas is one of the strategies specified in the CAP 2.0, and at that meeting, Council provided direction regarding fossil fuel infrastructure, specifically to explore code changes that would require newly constructed buildings to be electric-only. In response, staff reviewed local and State building code and determined that requiring electric-only buildings may be achieved through a local code amendment by adding language to Eugene Code Chapter 6. Staff concluded that prohibiting natural gas and other fossil fuel infrastructure from new buildings is not preempted and would not necessitate a local amendment to the State building code.

On April 13, 2022, staff presented the information about amending Chapter 6 to prohibit fossil fuel infrastructure during a Council work session. Council had a robust discussion regarding the code process and raised several questions regarding greenhouse gas emission reduction and related legislation. The Council requested that staff research these and other questions subsequently sent to staff and requested that information be provided at a follow-up work session in the summer of 2022.

Staff researched these questions raised and returned to present the information at a work session scheduled for July 25, 2022. Council discussed a fossil fuel prohibition and the related questions. The discussion wasn't complete at the July 25, 2022 work session, so Council moved to continue the discussion at the July 27, 2022 work session. At the end of these two work sessions, Council directed the City Manager to prepare an ordinance to prohibit natural gas and other fossil fuel infrastructure from low-rise residential buildings. This ordinance is attached to this Agenda Item Summary as Attachment A.

**PREVIOUS COUNCIL DIRECTION**

[November 17, 2021 Work Session](#)

City Council was provided an update to the Climate Action Plan (CAP 2.0), and at that work session, Council passed the following motion:

Direct City Manager to schedule a work session to discuss changes to City code that would require all newly constructed commercial and residential and industrial buildings be electric-only beginning January 1, 2023.

[April 13, 2022 Work Session](#)

City Council held a work session to discuss providing a code path for all new buildings to be electric-only. At that meeting, Council passed the following motion:

Direct the City Manager to schedule the next work session on this topic before July 31, 2022 to answer the questions brought forth in this work session and other questions submitted by Councilors.

[July 25, 2022 Work Session](#) and [July 27, 2022 Work Session](#)

Starting on July 25, 2022 and continuing into the July 27, 2022 work session, the Council discussed details of prohibiting natural gas and other fossil fuel infrastructure. This included a discussion of an infeasibility waiver for equipment and businesses that would not be able to function without the use of fossil fuel. This discussion was held during two full work sessions, and resulted in the following motion which passed 5:3:

Direct the City Manager to draft an ordinance prohibiting natural gas and other fossil fuel infrastructure in all new low-rise residential buildings for which permits are submitted after June 30, 2023 and schedule a public hearing on the ordinance in the fall.

**COUNCIL OPTIONS**

No action is required at this time. Options will be provided when this item is scheduled for action.

**CITY MANAGER'S RECOMMENDATION**

This item is scheduled for public hearing only. Following the public hearing and the City's receipt of any testimony, the City Manager will make a recommendation to be included in the Council's materials when this item is scheduled for action.

**ATTACHMENTS**

- A. An Ordinance Prohibiting Fossil Fuel Infrastructure in New Low-Rise Residential Buildings; and Adding Section 6.695 and 6.696 to the Eugene Code, 1971.

**FOR MORE INFORMATION**

Staff Contact: Lydia Bishop

Telephone: 541-682-5482

Staff E-Mail: [LBishop@Eugene-or.gov](mailto:LBishop@Eugene-or.gov)

ORDINANCE NO. \_\_\_\_\_

**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**

\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
**City Recorder**

**Approved by the Mayor this**

\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
**Mayor**