



Council Business Meeting

June 6, 2023

Agenda Item	CEPAC Greenhouse Gas Emissions Recommendations	
From	Chad Woodward	Climate and Energy Analyst
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Item Type	Requested by Council <input type="checkbox"/> Update <input type="checkbox"/> Request for Direction <input type="checkbox"/> Presentation <input checked="" type="checkbox"/>	

SUMMARY

The Climate Environment Policy Advisory Committee (CEPAC) was requested to report back to Council and advise what it feels the next steps should be regarding the electrification ordinance proposed during the March 21, 2023 Council Business Meeting.

POLICIES, PLANS & GOALS SUPPORTED

- 2017 Ashland Climate and Energy Action Plan (CEAP) Goals
 - Overarching Goal 1: Reduce Community Greenhouse Gas (GHG) Emissions.
 - Buildings and Energy Goal 1: Reduce buildings GHG Emissions
 - Public Health, Safety & Security Goal 1. Protect public health from air pollution and climate impacts.

BACKGROUND AND ADDITIONAL INFORMATION

The Rogue Climate Action Team (RCAT), a youth-led team of Rogue Climate, presented a proposed electrification ordinance during public forum at the March 21, 2023 Council Business Meeting. In response Council gave direction for CEPAC to study the ordinance and report back its recommendations.

CEPAC has reviewed the proposed electrification ordinance and related matters. CEPAC’s review included the review of the proposed ordinance, the legal status of similar ordinances, and alternative mechanisms of achieving the ordinance goals.

CEPAC, at its May 24, 2023 meeting, passed the following motion by a 10-1 vote:

CEPAC recommends to City Council and the City Manager the following:

1. That they direct appropriate City Staff and City Attorney to review the document entitled “Ashland Electrification & Clean Air Policy: Proposal for Ashland CEPAC” as contained in the file “RCAT Proposal for CEPAC 5_22_23.pdf”,
2. That appropriate City Staff and City Attorney in collaboration with CEPAC draft;
 - a) an ordinance related to Electrification and Clean Air in new residential construction, and
 - b) a resolution to study further potential actions on electrification and air quality of new buildings and remodels of existing buildings
3. That appropriate City Staff in collaboration with CEPAC perform stakeholder engagement using the “Proposed engagement process” contained in the cited document as a basis.





Council Business Meeting

FISCAL IMPACTS

The CEPAC requests will require City departmental staff and City Attorney time and any associated project costs. Multiple city departments, including Electric and Community Development along with the City Attorney will need to be involved in developing and reviewing available research and draft documents related to the various ordinance and/or resolution options. The requested work is not currently included in the 2023–2025 BN anticipated departmental workloads and will need to be absorbed within available staff time and funding resources. Corresponding delays will likely be experienced in other anticipated or assigned staff work.

DISCUSSION QUESTIONS

How do the various options help the city achieve the CEAP Goals? Specifically:

- How do they help reduce overall (and building) GHG emissions?
- How do they help protect public health from air pollution and climate impacts?

If some form of limiting natural gas in new residential dwellings is passed, then what are the likely impacts to the cost of purchasing a new home or renting in a new residential building?

Does this recommendation disparately affect any subset of our community?

What are the practical implementation and legal implications of a drafted ordinance and/or resolutions?

SUGGESTED NEXT STEPS

While there are fiscal costs in terms of staff time resources, the City Council has mandated that the City address climate change and specifically look for options to reduce community GHG emissions, building emissions and protect its citizens health from air pollution. This recommendation from CEPAC targets all these CEAP goals.

The recommendations will allow the city to understand what options are legally viable and practically feasible in achieving CEAP goals. Input by relevant City Staff and the City Attorney is essential in determining those aspects of the proposed ordinance and resolution. Regarding legal viability there are several factors in play that the City Attorney will need to consider. These include legal precedent, franchise agreement language, and possible state preclusion concerns. In addition, it will enable City staff to develop recommendations that weigh related program needs, including potential expenditure and staffing, Electric utility impacts, ease of implementation, and timelines for implementing of the various options. The recommendations also call for outreach that is necessary to inform citizens and other stakeholders of the related issues, potential approaches and rationale behind any City Council decision.

REFERENCES & ATTACHMENTS

Ashland Electrification & Clean Air Policy: Proposal for Ashland CEPAC

Ashland CEPAC Options

Emissions-Based Concept Ordinance

CEPAC Proposed Ordinance Information Gathering Timeline

CEPAC Greenhouse Gas Emissions Recommendations Presentation

ASHLAND ELECTRIFICATION & CLEAN AIR POLICY:

PROPOSAL FOR ASHLAND CEPAC

Rogue Climate & Rogue Climate Action Team

Updated May 22, 2023

GOAL

RCAT's goal is to move forward impactful action on climate justice in Ashland by passing a policy that, in alignment with the goals set out by the [Climate and Energy Action Plan](#) (CEAP), improves indoor air quality and public health by reducing fossil fuel emissions in Ashland.

RCAT proposes that Ashland target new residential construction in this policy because, according to the Oregon Dept of Energy, residential and commercial buildings account for about [one-third of Oregon's greenhouse gas emissions](#), and direct use of fossil gas creates 14 percent of the state's GHG emissions. Gas appliances emit harmful air pollutants, including nitrogen oxides, carbon monoxide, and particulate matter that can cause asthma, heart conditions, hospitalizations, and other health conditions. Children who live in homes with gas stoves have a [42% increased risk of asthma](#), according to a study published in the International Journal of Epidemiology. Ashland has a responsibility to take action in alignment with the CEAP to improve public health and mitigate the impacts of climate change. A policy following one of the methods laid out in this document would be one critical step towards Ashland's climate goals.

SCOPE

The reach of the policy and which type of new construction will be targeted.

The Rogue Climate Action Team (RCAT) proposes moving forward with a policy that targets stopping new fossil fuel infrastructure in new residential construction first, with a commitment from the city to expand the ordinance to commercial and industrial new construction over time. The reason behind this is that urgent action is needed to match the scale of the climate crisis, and to meet the political moment following the 9th Circuit Court's decision on the Berkeley ordinance. There are more policy pathways available to approach residential new construction, and there are more comparable and feasible technologies that allow residential buildings to be built all-electric. Technologies for commercial and industrial are becoming more available, but are not as accessible at this time. While the focus will be on new residential construction at this moment, it is imperative that the City of Ashland commit to adding new commercial and industrial construction in the future.

RCAT proposes that CEPAC move forward with a proposal to Ashland City Council to pass:

1. An ordinance that stops new fossil fuel infrastructure in new residential construction as soon as possible
2. A resolution to add commercial and industrial new construction over time.

METHOD

The below section includes information from [Carra Sahler's policy overview](#) of the possible pathways Ashland can consider to move forward to meet the goal of stopping the expansion of fossil fuel infrastructure in new construction in Ashland. These options are ranked in order of preference by RCAT, and include some pros and cons of each route according to RCAT.

#1 An Emissions-Based Ordinance

“The City could adopt an ordinance that regulates building emissions. The ordinance would require a notice of construction if a building would emit or have the potential to emit (through the operation or installation of any appliance, equipment, or process) carbon dioxide, methane, nitrogen oxides, and nitrogen dioxide in the building envelope. The ordinance would set limits on each of the pollutants. The City could make the ordinance applicable to a specified kind of “covered building” (e.g. the City could limit the ordinance’s application to residential buildings). Failure to comply with the ordinance would result in revocation of the certificate of occupancy and potentially lead to penalties.

While this is not a “Berkeley style” ordinance, which was the subject of the CRA opinion, it is not entirely clear how broadly the CRA opinion should be read. [Some experts](#) argue that EPCA is directed at energy standards, not air emissions, so an emissions-based ordinance would not be preempted by EPCA. However, language in the CRA opinion might be read broadly to find EPCA preemption when an ordinance operates to prevent a building from using natural gas when gas service is otherwise available. If the City wishes to avoid any risk of EPCA preemption, the City could think creatively about how to dissuade new buildings from installing gas appliances without precluding them outright. We have some ideas about how to accomplish that goal.” - Carra Sahler, Green Energy Institute

RCAT's Pros of an Emissions-Based Ordinance:

- This policy possibility seems easier to understand and to message to the public, with a focus on public health.
- This has the potential to have a broad-based impact towards the goal of limiting the expansion of fossil fuel infrastructure in Ashland.
- There is a possibility of including retrofits and remodels in this policy.
- This policy would not be hindered by the existing franchise agreement.
- The creation of a fund to invest in electrification retrofits for low-income families or other climate justice initiatives could have a positive impact in Ashland.
- There is already an example ordinance that Ashland could use as a starting point.

RCAT's Cons of an Emissions-Based Ordinance:

- RCAT & Rogue Climate would want to ensure that this policy would be equitable and a true climate justice solution. There is a concern that creating a fee to disincentivize developers from building with fossil fuels would just allow wealthy developers to bypass climate action, and not have as significant an impact.
- Similarly, we would want to ensure that the cost of the fee does not get passed down to residents, but is in fact carried by developers if they choose to build with fossil fuels.
- The Berkeley decision makes the impact of this policy less complete because of the potential need for the incentivization fee and subsequent fund, rather than just setting an emissions standard.

#2 The Local Building Code Amendment

“The City could pursue a local amendment [application](#) to the Building Code Division. The local amendment allows the state’s Building Code Division to approve or deny an ordinance or regulation covering “the same matters encompassed by the state building code but which provides different requirements.”⁶ Prior to submitting a local amendment application to the BCD, the City must hold a public hearing or meeting, complete a report summarizing the public response to the proposed amendment, and address fiscal and other impacts of the amendment. It must submit a copy of the proposed ordinance.⁷ In considering the local amendment, the director of the BCD must “encourage experimentation, innovation and cost effectiveness.”⁸ BCD may interpret the local amendment or add conditions to the approval.⁹ An ordinance submitted to the BCD would need to comply with the seven criteria set out in EPCA.” - Carra Sahler, Green Energy Institute

RCAT’s Pros of a Building Code Amendment:

- A building code amendment has the potential to have a broader impact, because Ashland could determine what it wants to include in the building Code.
- Because it would directly change the building code, it could be expansive and thorough in its impact.

RCAT’s Cons of a Building Code Amendment:

- While this policy could have a broad impact, it seems like a complicated process.
- A building code amendment still would have to comply with EPCA as related to the Berkeley decision, so the degree to which a building code amendment would be able to restrict fossil fuel-based appliances and false solutions like gas heat pumps is unknown.
- This has never been done in Oregon before, so the process and its possible outcome are unknown.

#3 A Prohibition on New Piping in Public Rights of Way

(RCAT is least interested in this policy)

*“The City could adopt an ordinance along the following lines: “The City of Ashland hereby resolves that **new** natural gas piping, fuel oil piping or other fossil fuel piping or conveyance systems will not be permitted in its rights of way.”*

The CRA opinion recognizes that cities have control over their rights of ways. Specifically, the Court states, “Our holding doesn’t touch on whether the City has any obligation to maintain or expand the availability of a utility’s delivery of gas to meters.”³ The court’s statement is consistent with Oregon state law, which authorizes a city to enact an ordinance to “exclude or eject” any public utility from its streets, highways, or other public property within the city. It is also consistent with the federal Natural Gas Act, which states that the Act does not apply to local distribution of natural gas, or to the facilities used for such distribution. The City will need to consider the language of its franchise agreement.” - Carra Sahler, Green Energy Institute

RCAT’s Pros:

- This is a simple policy that would stop expanding fossil fuel infrastructure in Ashland.

RCAT’s Cons:

- Given that this policy would only apply to new, previously undeveloped areas and most of Ashland’s new residential development would still be able to tap into existing gas lines, this policy does not match the scope of impact that RCAT would like to see.
- The franchise agreement could be a challenge for the legality of this policy.

ENGAGEMENT

The process by which CEPAC will approach stakeholder engagement to inform policy development.

Desired outcome:

> Impacted stakeholders have the chance to ask questions and share concerns related to a potential policy before it goes before the City Council for two work sessions and a vote.

> Move forward any needed stakeholder engagement in a timely manner.

Proposed engagement process:

1. Solidify a list of impacted stakeholders specific to residential new construction, including affordable housing advocates, developers, healthcare practitioners, and current Ashland residents.
2. CEPAC decides on a priority policy route.
3. Create a google form survey that is sent out to the list of stakeholders asking for their questions and concerns, with information about the policy included.
 - a. Chad, Jess and RCAT could make a draft to bring to CEPAC?
4. Rogue Climate and RCAT host an informational session about the policy.
5. CEPAC hosts one special meeting specifically for public testimony about the possible policy.
 - a. RCAT members will be able to participate and give public testimony
 - b. Hold space to answer questions
6. When the proposed policy goes to the City Council, there will be opportunity for public testimony at 2 readings.

TIMELINE

1. May 24, 2023 CEPAC Meeting - CEPAC recommends that City Council and/or City Manager direct appropriate City Staff and City Attorney to study RCAT Electrification and Clean Indoor Air Ordinance options, and draft new ordinance related to Electrification and Indoor Air quality in New Residential Construction, and to draft resolution to study further potential actions on electrification and indoor air quality of new commercial and industrial building and remodels of existing buildings.
2. Jun 5 City Council Study Session or Jun 6 City Council meeting - City Council and/or City manager directs City Staff and City Attorney to study 3 options for Electrification and Clean Indoor Air presented by RCAT with CEPAC involvement, and to develop and ordinance for new Residential construction, and a resolution to further study the issue for new commercial and industrial construction, and remodels of existing buildings.
 - a. CEPAC CHAIR and RCAT representative(s) present at either Jun 5 City Council Study session or Jun 6 City Council meeting. CEPAC Chair to give a brief powerpoint presentation.
 - b. Bob Kaplan, CEPAC City Council liaison works to get CEPAC Chair and RCAT member on the Jun 5 or Jun 6 meeting agenda.
3. Jun 14 CEPAC Meeting - CEPAC recommends a process for stakeholder involvement.
4. Jul 12 CEPAC Meeting - City Staff/Attorney present to CEPAC draft of new Electrification and Clean Indoor Act ordinance and resolution.
5. Jul 13 (or earlier) - Aug 08 - Stakeholder involvement
6. Aug 09 - CEPAC meeting - Based upon stakeholder involvement and suggestions, final draft of Electrification and Clean Indoor Air Ordinance for New Residential Construction and Resolution for further study of new Commercial and industrial Construction, and remodel of existing structures, comes out of CEPAC and is sent to City Council.
7. Aug 15 or Sept 05, 1st reading of ordinance and resolution is read at City Council.
8. Second reading to follow approximately one month later.

May 11, 2023

Available Options for Ashland to Regulate Natural Gas

This is a very short summary of the options that may be available to the City of Ashland following [California Restaurant Ass'n v. City of Berkeley](#) (the “CRA opinion”). This information is provided in the spirit of assisting the City in understanding potential policy pathways and should not be considered, or relied upon, as legal advice.

I. Introduction about the CRA Opinion

The CRA opinion concluded that a federal law (the Energy Policy and Conservation Act or EPCA) precludes the City of Berkeley from prohibiting natural gas piping within buildings. According to the court, such a prohibition on gas piping prevents consumers from using the products covered under the statute, which include appliances like furnaces. Instead, if a state or local government wishes to regulate the energy use or energy efficiency of a covered product, it may do so in a building code if the code complies with the seven criteria listed in EPCA.¹

All indications are that the City of Berkeley will seek a rehearing of the decision, either from the original Ninth Circuit panel and/or en banc (a panel consisting of 10 judges and the chief judge). That process will take some time. A petition, if filed, would be submitted on or before May 31, 2023. The court has no time limit within which to grant or deny the permit. The court’s website indicates it may take a few months or longer. A quick review of current cases awaiting en banc review reflects a variety of timelines—from a few months to a few years—between the original panel opinion and the court’s order agreeing to review the case en banc.

II. Introduction to Options

If the City would prefer to act in the near term, rather than wait for a decision from the Ninth Circuit, I have set out three options below. A fourth option, focused on zoning solutions, is likely not a viable option upon further review and I do not discuss it here. Finally, in response to a question about system development charges, I provide general information about how a construction tax or fee on buildings using gas might operate.

In reviewing these options, the City should consider: (1) any obligations under its existing [franchise agreement](#) with Avista; (2) the state uniform building code, which prohibits the City from adopting any ordinance “relating to the same matters encompassed by the state building code but which provides different requirements;”² and (3) the Energy Policy and Conservation Act (EPCA) as interpreted by the Ninth Circuit in the CRA opinion.

¹ 54 U.S.C. § 6297(f)(1)-(3).

² ORS 455.040(1); OAR 918-001-0005(3).

Option One: A Prohibition on New Piping in Public Rights of Way

First, the City could adopt an ordinance along the following lines: “The City of Ashland hereby resolves that **new** natural gas piping, fuel oil piping or other fossil fuel piping or conveyance systems will not be permitted in its rights of way.”

The CRA opinion recognizes that cities have control over their rights of ways. Specifically, the Court states, “Our holding doesn't touch on whether the City has any obligation to maintain or expand the availability of a utility's delivery of gas to meters.”³ The court’s statement is consistent with Oregon state law, which authorizes a city to enact an ordinance to “exclude or eject” any public utility from its streets, highways, or other public property within the city.⁴ It is also consistent with the federal Natural Gas Act, which states that the Act does not apply to local distribution of natural gas, or to the facilities used for such distribution.⁵ The City will need to consider the language of its franchise agreement.

Option Two: An Emissions-Based Ordinance

Second, the City could adopt an ordinance that regulates building emissions. The ordinance would require a notice of construction if a building would emit or have the potential to emit (through the operation or installation of any appliance, equipment, or process) carbon dioxide, methane, nitrogen oxides, and nitrogen dioxide in the building envelope. The ordinance would set limits on each of the pollutants. The City could make the ordinance applicable to a specified kind of “covered building” (e.g. the City could limit the ordinance’s application to residential buildings). Failure to comply with the ordinance would result in revocation of the certificate of occupancy and potentially lead to penalties.

While this is not a “Berkeley style” ordinance, which was the subject of the CRA opinion, it is not entirely clear how broadly the CRA opinion should be read. [Some experts](#) argue that EPCA is directed at energy standards, not air emissions, so an emissions-based ordinance would not be preempted by EPCA. However, language in the CRA opinion might be read broadly to find EPCA preemption when an ordinance operates to prevent a building from using natural gas when gas service is otherwise available. If the City wishes to avoid any risk of EPCA preemption, the City could think creatively about how to dissuade new buildings from installing gas appliances without precluding them outright. We have some ideas about how to accomplish that goal.

³ Cal. Rest. Ass’n v. City of Berkeley, Slip Op. 21-16278, at 22 (Apr. 17, 2023).

⁴ ORS 221.420.

⁵ 15 U.S.C. § 717(b).

Option Three: The Local Building Code Amendment

Third, the City could pursue a local amendment [application](#) to the Building Code Division. The local amendment allows the state’s Building Code Division to approve or deny an ordinance or regulation covering “the same matters encompassed by the state building code but which provides different requirements.”⁶ Prior to submitting a local amendment application to the BCD, the City must hold a public hearing or meeting, complete a report summarizing the public response to the proposed amendment, and address fiscal and other impacts of the amendment. It must submit a copy of the proposed ordinance.⁷ In considering the local amendment, the director of the BCD must “encourage experimentation, innovation and cost effectiveness.”⁸ BCD may interpret the local amendment or add conditions to the approval.⁹ An ordinance submitted to the BCD would need to comply with the seven criteria set out in EPCA.

Option Four: A Construction Fee or Tax

Fourth, a question arose at our meeting about the use of system development charges for buildings requiring gas system infrastructure. I offer as a solution the option of imposing construction taxes on the improvements to property that result in the construction of a new structure or an increase in square footage of an existing structure.¹⁰ The City is permitted to impose such a tax under state law.¹¹ Taxes imposed on residential construction “may not exceed one percent of the permit valuation for residential construction permits issued by the city or county.”¹² Construction taxes on nonresidential buildings are also subject to cost-based caps. Certain types of properties or buildings are exempt from taxation, including affordable housing, hospitals, schools, long-term care facilities, and agricultural buildings.

Construction tax revenues must be used for specific purposes. Residential construction tax revenues must be used to fund developer incentives, home ownership programs, and affordable housing programs and incentives.¹³ Fifty percent of commercial or industrial construction tax revenues must be used for housing-related programs, and the remaining revenues may be used as general funds.¹⁴ For example, the City here could use residential construction tax revenues to incentivize development of affordable, all-electric housing.

The statutory code governing construction taxes does not generally preempt municipalities from adopting variable tax rates for different subcategories of structures, so long as the total tax

⁶ ORS 455.040(1); OAR 918-0202-0370..

⁷ OAR 918-020-0370.

⁸ ORS 455.040(1).

⁹ OAR 918-020-0370(4).

¹⁰ ORS 320.192.

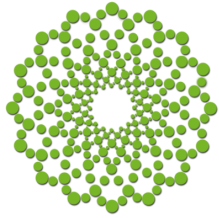
¹¹ *Id.*

¹² ORS 320.192(1)(b).

¹³ ORS 320.195(3).

¹⁴ ORS 320.195(4).

imposed for any subcategory does not exceed any applicable statutory limits. For example, a municipality could establish a higher construction tax rate for new residential buildings that connect to the gas distribution system, or offer a partial or whole refund of construction taxes paid by an all-electric residential building.



Building Emissions Concept Ordinance

I. Introduction

This concept ordinance regulates building emissions. The ordinance would require a notice of construction if a building would emit or have the potential to emit (through the operation or installation of any appliance, equipment, or process) carbon dioxide, methane, and nitrogen oxides in a “covered building.” The ordinance would set limits on each of the pollutants. The City could make the ordinance applicable to a specified kind of “covered building” (e.g. the City could limit the ordinance’s application to residential buildings). Failure to comply with the ordinance would result in revocation of the certificate of occupancy and potentially lead to penalties. One optional addition to the ordinance would permit an owner to pay an emissions fee in lieu of meeting the building emissions limits. Details of such a fee would depend on how a local government seeks to consider and balance local administrative needs with desired benefits.

Bracketed and highlighted language either requires the addition of specific language applicable to the municipality or reflects optional language a municipality may select as appropriate.

II. Concept Ordinance Language

SECTION 1. City Municipal Code Title X Health [or similar title] is hereby amended as follows.

SECTION 2. Section X.XX.XX is hereby added to the City Municipal Code to read as follows:

Section X.XX.XX Definitions.

For the purposes of this chapter, the following definitions apply:

“*Building emissions*” means emissions of greenhouse gases, expressed in grams of carbon dioxide equivalent, and/or other air pollutants emitted by activities or processes involving the combustion of any fossil fuel or combination of fossil fuels, including natural gas, propane, and any petroleum-based fuel, in a covered building, including emissions generated through the operation of appliances or equipment used for space heating, water heating, or cooking in a covered building. Building emissions do not include:

1. Emissions from the combustion of wood or other biofuels in a solid fuel burning device regulated under chapter [code]; or
2. Emissions from any appliance or equipment that is designed for exclusive use outside of a building envelope, including but not limited to emergency generators and outdoor grills powered by propane or charcoal, provided that such appliance or equipment is not physically connected to a permanently installed fixture or permanently installed infrastructure designed for the distribution of any fossil fuel.

“Covered air pollutant or pollutants” means carbon dioxide, methane, or nitrogen oxides including nitric oxide and nitrogen dioxide.

“Covered building” means a residential dwelling that is [a permanent structure] constructed after [DATE].

“Potential to emit” means the maximum capacity of an appliance, equipment, or process, or a combination of appliances, equipment, and/or processes, to emit one or more covered air contaminants in a covered building.

“Residential dwelling” means a residence as defined by [code].

[“Permanent structure” means a structure, as defined by [code] which has been constructed and placed on a permanent foundation for the purpose of occupancy.]

SECTION 3. Section X.XX.XX is hereby added to the City Municipal Code to read as follows:

Section X.XX.XX Building emissions limits.

[Except as otherwise provided by Section X.XX.XX. Emissions Fee, a] A covered building that commences construction on or after [DATE] shall not emit or have the potential to emit, through the operation or installation of any appliance, equipment, or process, emissions of covered air pollutants that exceed any building emissions limits established in this section.

A. For building emissions of carbon dioxide, the following limits apply:¹

[choose one standard from options 1–3]

1. 40 grams CO₂ in any consecutive sixty minute period;
2. 910 grams CO₂ in any consecutive 24-hour period;

¹ CO₂ standards represent a 90% reduction in average residential building emissions, based on 10-year average emissions (2011–2020).

3. **332.15 kg CO₂ in any one-year period; or**
4. **25 kilograms CO₂ per million British thermal units of energy used in the building.²**

B. A covered building may not emit nor have the potential to emit more than 0.01 grams methane in any sixty-minute period.³

C. A covered building may not emit nor have the potential to emit more than 7.8 nanograms of nitrogen oxides (NO_x) per Joule, including any combination of emissions of nitric oxide (NO) and nitrogen dioxide (NO₂).⁴

D. For purposes of this chapter, building appliances, equipment or processes powered exclusively by electricity are deemed to have zero potential to emit and do not contribute to a covered building's emissions or potential to emit.

SECTION 4. Section X.XX.XX is hereby added to the City Municipal Code to read as follows:

Section X.XX.XX Reports.

A. Notice of Intent to Construct. If a covered building will emit or have the potential to emit, through the operation or installation of any appliance, equipment, or process, emissions of covered air pollutants that have the potential to exceed any building emissions limits established in this chapter, the owner of the covered building shall submit to the City a Notice of Intent to Construct a Covered Building. This Notice must be submitted prior to commencing construction of a covered building.

B. Construction Report. Within 30 days of construction completion, the owner of a covered building shall file with the City a report that includes the following information for the building:

1. **Address**

² See New York City Local Law No. 154, https://www1.nyc.gov/assets/buildings/local_laws/l197of2019.pdf.

³ Based on observed steady-state-off methane emissions from gas cooktops of 10 milligrams/hour and average steady-state-on methane emissions of 0.259 g/hour from an in-use gas burner, averaged across all burner sizes. Eric D. Lebel et al., *Methane and NO_x Emissions from Natural Gas Stoves, Cooktops, and Ovens in Residential Homes*, 56 Environ. Sci Technol. 2529–2539 (2022), <https://pubs.acs.org/doi/pdf/10.1021/acs.est.1c04707>.

⁴ Based on observed steady-state-on average emissions from gas cooktops of 7.8 nanograms NO₂ per Joule and 14 nanograms NO per Joule (collectively 21.7 nanograms NO_x per Joule). Eric D. Lebel et al., *Methane and NO_x Emissions from Natural Gas Stoves, Cooktops, and Ovens in Residential Homes*, 56 Environ. Sci Technol. 2529–2539 (2022), <https://pubs.acs.org/doi/pdf/10.1021/acs.est.1c04707>.

2. **Total square footage**
3. **A description of the building’s HVAC system, including the primary fuel type or power source for the system**
4. **A complete list of all appliances and equipment installed in the building that emit or have the potential to emit any covered air pollutant within the building envelope, including but not limited to appliances and equipment installed for cooking, space heating, water heating, and clothes drying, and any fireplace that is not a solid fuel burning device regulated under chapter [code].**
5. **A description of all non-electricity fuel inputs in the building**

[SECTION 5. Section X.XX.XXX is hereby added to the City Municipal Code to read as follows:

Section X.XX.XX. Emissions Fee.

Any owner may elect to pay an emissions fee in lieu of meeting the building emissions limits established in this chapter. [Details of emissions fee.]

SECTION 6. Section X.XX.XX is hereby added to the City Municipal Code to read as follows:

Section X.XX.XX. Penalties.

Any person violating the building emissions standards or failing to comply with the requirements of this chapter is subject to the general penalty provisions in chapter [code].

A building official may revoke a certificate of occupancy for a covered building that is not in compliance with the provisions and requirements of this chapter.⁵

SECTION 7. Section X.XX.XX is hereby added to the City Municipal Code to read as follows:

Section X.XX.XX. Severability.

The provisions of this chapter are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any word, definition, clause, section or provision of this chapter shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this chapter shall be in full force and effect and be value as

⁵ OAR § 918-480-0140(4) states: “A building official may revoke a certificate of occupancy or a temporary certificate of occupancy when the residential dwelling or townhouse is in violation of applicable law that poses a threat to health and safety. The revocation must be in writing and state the basis for the revocation of the certificate of occupancy.”

if such invalid portion thereof had not been incorporated herein. It is hereby declared to be the Council's express legislative intent that this chapter would have been adopted had such an unconstitutional or otherwise invalid provision not been included herein.

RCAT and CEPAC Electrification and Clean Indoor Air Ordinance Work to Date

- 1) RCAT Student Group, with support from Rogue Climate, and legal team at Green Energy Institute of Lewis and Clark Law School, Earthjustice, and Sierra Club draft Electrification Ordinance that seeks to ban new fossil fuel infrastructure in new residential, industrial, and commercial buildings in Ashland.
 - a. This Ordinance is based upon Eugene's proposed ordinance which is based upon Berkeley, CA ordinance.
- 2) Ashland City Council Directs CEPAC to Study the issue and report back to City Council
- 3) CEPAC directs CEPAC Members Sohl, Barth, and Walker, along with Council Liaison Kaplan, and Climate Analyst Woodward to gather further information regarding RCAT's proposal and background information.
- 4) US 9th District Court rules that Berkeley ordinance invalid (preempted by Energy Policy and Conservation Act of 1975 (EPCA))
- 5) Given 9th District decision, RCAT legal team advises that Ashland's best course of action is to make changes to, and not pursue passage of Ordinance in the original form, which had banned new fossil gas pipes connecting to new construction (very similar to Berkeley's).
- 6) Information gathering and sharing sessions occur on April 17, April 27, May 15, May 22 to study the issue. RCAT members, Rogue Climate staff, and RCAT legal support team provide information and insight.
- 7) RCAT suggests changes to original proposed ordinance as follows:
 - a. Suggest ordinance to initially include new residential construction only.
 - b. Suggest an accompanying resolution to further study a later ordinance regarding electrification and clean indoor air rules for new commercial and new industrial construction, and remodels of existing buildings.
- 8) RCAT and their support team present three options for an ordinance and resolution based upon realities of the 9th District court decision.
 - a. The support team highlights dual need for ordinance – health based clean air concerns and climate change greenhouse gas concerns.
 - b. Three options to replace the proposed ordinance provided:

- i. Emissions based approach – Currently law in New York City and New York State. RCAT and Support team suggest that an ordinance based in-part upon an emissions and indoor air quality standard is the best option.
 - ii. Local Building Code Amendment – This is in place in Washington State.
 - iii. Right-of Way ordinance banning new fossil fuel infrastructure in new right-of ways. Will need legal review of the franchise agreement with Avista.
- 9) Information ready to share with CEPAC during May 24 CEPAC meeting to determine next steps.

A red speech bubble graphic with a white outline, containing the text 'CEAP Goals'. The bubble has a tail pointing downwards and to the left.

CEAP Goals

CEAP Goal #1: REDUCE GREENHOUSE GAS EMISSIONS!

- For the Community: Reduce GHG emissions 8% per year on average, every year to 2050.
- *We are not meeting our goals!*

How are We
Doing?

POORLY!

1. Community “Natural” Gas Consumption Rose 10% from 2015 to 2020
2. Gas Meters in Ashland increased 5% from 2015 to 2020
 - 2015 - 6598 Residential + 807 Commercial = 7375 Gas Meters
 - 2020 – 6903 Residential + 842 Commercial = 7745 Gas Meters

Methane is the
SECOND Most
Important GHG

“Natural” Gas is composed primarily of methane, which is 80x more potent than CO₂.

Reducing the use of “natural” gas is important because:

- **It is a mechanism to reach our CEAP goals and reduce community greenhouse gas emissions.**
- **There are risks to public health when using “natural gas” in a house.**

Health Impacts of Methane Exposure

- **Up to a 40% increased risk of childhood asthma exacerbations, and**
- **Up to a 24% increased risk of new asthma.**

How did we get here?

1. The Rogue Climate Action Team (RCAT) youth bring Ordinance Proposal to City Council & Council Directs CEPAC to Study Ordinance.
2. US 9th District Court rules Berkeley Ordinance not in compliance with federal statute.
3. RCAT proposes change in ordinance to:
 - A) New Ordinance to include new *Residential* construction only
 - B) Resolution to further study options re: Commercial, Industrial, and substantial remodels

How did we get here?

4. RCAT and CEPAC have identified 3 alternative options for an ordinance applying to new residential construction:
 - Emissions based strategy
 - Local Amendment to the State Building Code
 - Apply Restrictions in New Rights-of-Way

What is the Ask of Council?

CEPAC (May 24, 2023) moves (10-1) to ask City Council to:

1. Direct City Staff (particularly Legal and planning) to work with CEPAC to bring an appropriate ordinance and resolution back to council ASAP
2. Direct that resources (hours) be given to such an effort
3. Direct CEPAC and RCAT to develop a stakeholder engagement plan.

Timeline

- Today... Council directs City Planning and Legal Resources to study ordinance and work with CEPAC to draft Ordinance/Resolution
- ASAP... CEPAC and RCAT start stakeholder engagement process planning
- July 12 - Staff and Working Group bring ordinance/resolution to CEPAC Meeting
- Late July, Early August - Formal stakeholder engagement
- Aug - CEPAC votes on final Ordinance/Resolution
- Aug 09 or Sept 05 Council Meeting – First reading of Ordinance.

Where Do
Ashland Emissions
Come From?

25% from Residential ,
Commercial, Industrial Energy
use:

- 13% Residential
- 11% Commercial
- 1% industrial