



## Zoning & Planning Committee Agenda

### City of Newton In City Council

Wednesday, June 14, 2023

7:00 pm

City Council Chambers (Room 207)

The Zoning and Planning Committee will hold this meeting as a hybrid meeting on Wednesday, June 14, 2023 at 7:00 PM that the public may access in-person or virtually via Zoom. To attend this meeting via Zoom use this link: <https://newtonma-gov.zoom.us/j/88991170976> or call 1-646-558-8656 and use the following Meeting ID: 889 9117 0976.

#### Items Scheduled for Discussion:

##### *Public Hearing*

#94-23

**Discussion of the Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project and adoption of ordinance requiring electrification of all new construction and substantial renovations**  
COUNCILORS CROSSLEY, LIPOF, DOWNS, HUMPHREY, LAREDO, NORTON, MALAKIE, BOWMAN, DANBERG, WRIGHT, RYAN, LEARY, ALBRIGHT, GREENBERG, KELLEY, OLIVER, AND MARKIEWICZ requesting a discussion with the Sustainability Director on the requirements under the Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project, also known as the Ten Communities program, which would allow Newton to require electrification of all new building construction and substantial renovations, and to consider adopting such an ordinance.

**Zoning & Planning Held 8-0 on 05/22/23**

Respectfully Submitted,  
Deborah J. Crossley, Chair

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The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: [jfairley@newtonma.gov](mailto:jfairley@newtonma.gov) or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

## Memo on Final DOER Ten Communities Regulations

The State Department of Energy Resources released its “final” Ten Communities regulations on May 10, 2023. (I say “final” because under rules that are peculiar to DOER the regulations need legislative approval.) The regulations are detailed and have a number of provisions that are different from the draft regulations. Here’s DOER’s redlined version of the [regulations](#). (DOER’s redlining references changes from the draft version of the regulations).

Partly because of the way they’re organized, the regulations are confusing. I’ve reorganized them and extracted the most important points:

### Applications must include:

- Copy of home rule petition and date submitted and proof of local approval. (I’m unclear how we could have submitted a home rule petition without local approval....)
- **Copy of proposed ordinance** for participation in the Demonstration Project. If the City proposes an ordinance that is not the model rule, the application must include an explanation of differences and the reasons for any differences.
- An implementation plan, including:
  - If local approval of the community’s proposed ordinance has not been acquired, the community’s plan, including any associated timelines, for acquiring local approval of the proposed by-law or ordinance; **(Important—the ordinance doesn’t have to be approved by the City Council by September 1, 2023);**
  - If Local Approval of the community’s proposed by-law or ordinance has been acquired, timeline and effective dates of the by-law or ordinance’s provisions or requirements;
  - A demonstrated commitment to collaborate with the Department on data collection, reporting, and outreach/training;
  - Description of the current process for storing building permit data and certificates of occupancy;
  - Description of how the ordinance will affect the use of fossil fuels for commercial and industrial Process Load in buildings subject to the ordinance, including but not limited to, restaurants, dry cleaners, and manufacturing uses;
  - Description of exemption or waiver process from any requirements, if any, to be included in the ordinance.
  - Documentation sufficient to demonstrate that the applicant has achieved at least one of the three housing production eligibility thresholds set forth in 24.05.
    - **Prioritized Communities that do not meet one of the three housing production and eligibility thresholds set forth in 24.05(2) at the time of application may submit an application but must include an explanation of its current status and the applicant’s plan to meet such criteria on or before February 11, 2024. (Important—date is now February 11, 2024);**

- Prioritized Communities that do not meet one of the housing production and eligibility thresholds set forth in 24.05(2) at the time of application must provide updates at regular intervals, to be established by the Department, on its status and progress in meeting such criteria on or before February 11, 2024.

## Review Process

This section is important. Here's my summary of the important points:

- Since DOER will review/approve applications on a rolling basis, and since September 1, 2023 is the date for DOER approval, I recommend that we submit all of our documentation by July 15, 2023 or soon thereafter.
- HOWEVER... There are effectively two exceptions to this: (1) If a Prioritized Community does not have local approval of their proposed ordinance at the time of application, the community must provide the Department with a copy of the final ordinance once local approval is acquired. But our application must include a copy of the *proposed ordinance*. Final ordinances must be submitted to the Department not later than July 1, 2024, with extensions available on a case-by-case basis. Thus, we must submit our draft electrification ordinance with our application, even if the City Council has not yet approved it. (2) Also, we can get a conditional approval of our application if the housing eligibility requirements aren't met until February 11, 2024.

Here are the actual provisions of the regulations (reorganized and somewhat edited):

The Department will review and approve applications from Prioritized Communities on a rolling basis.

The Department shall withhold approval of an application submitted by any Prioritized Community that does not, at the time of application, contain all application materials listed in 24.04(1), until such time as that community submits all materials listed in 24.04(1), or until September 1, 2023, as provided in 24.04(3)(d). Prioritized Communities may update and re-submit applications through September 1, 2023 based on Department feedback.

September 1, 2023 is the final deadline for Prioritized Communities to submit a complete application. If a Prioritized Community fails to submit a complete application by September 1, 2023, the community will not be considered for participation in the Demonstration Project.

The Department shall issue a conditional approval and withhold final approval of an application that does not, at the time of application, meet the housing production eligibility requirements set forth in 24.05(2), until such time as that community demonstrates compliance with such requirements, or until February 11, 2024, as described in 24.04(3)(g). February 11, 2024 is the final deadline to meet all eligibility requirements listed in 225 CMR 24.05. After such date, an

application of any Prioritized Community failing to meet the eligibility requirements shall be designated as incomplete and shall expire and be deemed void.

In the event the Department conditionally approves an application on this basis, the Department will provide written notice to such applicant, and proceed with review and approval of Prioritized Communities that meet all applicable requirements.

The Department will provide feedback on completeness of application materials and notify applicant if any requirements are not met, or if any clarifications are needed for approval.

If a Prioritized Community does not have local approval of their proposed ordinance at the time of application, the community shall provide the Department with a copy of the final ordinance once local approval is acquired. The Department reserves the right to revoke a community's Participating Community status if the final ordinance conflicts with the requirements of St. 2022, c. 179, § 84.

Final ordinances must be submitted to the Department not later than July 1, 2024. A community may request an extension of this deadline for good cause shown, which the Department will consider on a case-by-case basis.

### **Major Renovations**

The "final" version of the regulations also expand on the definition of major renovations. Here's the regulatory provision:

Major renovation is defined as **(a)** low-rise residential additions over 1,000 square feet and additions exceeding 100% of the conditioned floor area of the existing dwelling unit, **(b)** additions over 20,000 square feet and additions that exceed 100% of the conditioned floor areas of the existing building for all building use types except low-rise residential, **(c)** Level 3 Alterations as defined in the International Existing Building Code (IEBC 2021) (which exceed 50% of the existing conditioned floor area) exceeding 1,000 square feet for low rise residential, or exceeding 20,000 square feet for all other building uses, or **(d)** Change of use of over 1,000 square feet per International Energy Conservation Code (IECC 2021) Sections R505, or **(e)** change of use of over 20,000 square feet or change of use of 100% of the conditioned floor areas of the existing building for all building use types except low-rise residential, International Energy Conservation Code (IECC 2021) Sections C505.

## Thoughts on Waiver Provisions for the Ten Communities Program

### Introduction

This memo has two objectives: (1) to propose to ZAP a waiver provision for the electrification ordinance that will be acceptable to DOER for the purposes of participation in the State’s Ten Communities program; (2) to explain the reasoning behind the proposed waiver provision.

To begin with, several points of clarification:

- The proposed waiver would apply to residential and commercial major renovation projects, and not to new construction.
- Although the waiver provision would apply to both residential and commercial renovation projects, the discussion section below focuses on residential projects because, among other things, the commercial code is much more complicated.
- Although the proposed waiver provision uses the number “150%,” that is obviously arbitrary. If there were a “correct” number, that would make drafting a waiver provision much easier. The goal here is to pick a reasonable number, so that ISD’s implementation can involve an objective process—making sure that a box has been checked—rather than undertaking a difficult process to determine whether some subjective hardship-type standard has been met.

All of that said....

Here’s the proposed waiver provision itself:

***The City will entertain waiver requests for Major Renovation Projects with respect to which an architect, engineer, or general contractor on the project certifies by affidavit that compliance with the requirements of the Ordinance will increase the costs of the project by 150%, compared to the costs of complying only with the requirements of the applicable (i.e., residential or commercial) specialized building code.***

### Discussion

#### *Applicable code provisions*

225 CMR 24.00 governs Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Projects. Under 225 CMR 24.02, “Major Renovation Project” means a level 3 alteration as defined in 225 CMR 22.00 and 23.00. This is also the definition of “major renovation project” in our current draft Electrification Ordinance.

To translate: “major renovations” refer to situations in which the work area exceeds 50 percent of the building area. “Additions” qualify as “major renovations” and refer to work exceeding 1,000 square feet or exceeding 100 percent of the existing conditioned floor area.

“Additions” over 1,000 square feet or that exceed 100 percent of the conditioned floor area (i.e., more than double the size of the house) and level 3 alterations/”major renovations” (over 50 percent of the home is renovated) must follow the specialized code. But “additions” under 1,000 square feet continue to follow Base Energy Code unless they double the size of house (hard to imagine).

#### *Application of code provisions and conclusion*

Applying these provisions, I’ll speculate (but I’m not a building professional, so I want to be clear that I’m speculating) that there would be limited circumstances in which the Ten Communities electrification requirements would impose substantial additional costs relative to the residential specialized code. That’s because the specialized code itself is quite stringent, meaning that an electrification requirement might not add substantial costs to a project. But the details matter, so here’s my further reasoning:

- Most home renovations, e.g., kitchen renovations, do not affect over 50 percent of the area of the house. In those circumstances, the Ten Communities program obviously would not apply and thus would not impose additional costs.
- Given the applicability and the stringency of the specialized code, for “major renovations” the electrification requirements may not substantially increase the costs of a project.
- The same is true for “additions” over 1,000 square feet and “additions” that more than double the size of a house. In those circumstances, once again, the specialized code would be applicable and the electrification requirements might not impose substantial additional costs.
- “Additions” under 1,000 square feet are required to follow only the base energy code (unless they double the size of the house which is an almost impossible scenario to imagine). Thus, in this circumstance the specialized code would not be applicable and the electrification requirements could in fact impose substantial additional costs relative to the base energy code.

Apart from all this, we should acknowledge that the specialized code, not to mention the Ten Communities requirements, represents challenges for all stakeholders, including the City itself. For that reason, I have a strong recommendation that Newton’s electrification ordinance not become effective any earlier than DOER requires for the purposes of participation in the Ten Communities Program.

## **Draft Newton Electrification Ordinance and Amendments to the Specialized Energy Code**

### **Purpose**

The City of Newton adopts this Ordinance in order to enable the City to participate in the State's Fossil Fuel-Free Demonstration Project, 225 CMR 24.00. The purpose of the Fossil Fuel-Free Demonstration Project is to restrict and prohibit new building construction and Major Renovation Projects that are not fossil fuel-free in ten communities in Massachusetts. The Ordinance will protect the health and welfare of the City's inhabitants and the environment by reducing greenhouse gases, which cause climate change, and by reducing other air pollutants.

The Ordinance requires new construction and Major Renovation Projects to use electricity instead of fossil fuels for heating and cooling systems and cooking and clothes drying appliances; and, for hot water, to use either electricity or thermal solar.

### **Definitions**

"Department" means The Massachusetts Department of Energy Resources, as established by MGL chapter 25A.

"Commissioner" means the Commissioner of Inspectional Services of the City of Newton, as established by Section 5-16 of the Ordinances of the City.

"Fossil Fuel-Free Demonstration Project" means the project codified by the entirety of 225 CMR 24.00, enabling ten communities designated by the Department to require new construction and Major Renovation Projects to be fossil-fuel free, notwithstanding MGL chapter 40A; MGL chapter 142, section 13; MGL chapter 164; or any other general or special law to the contrary.

"Hospitals or Medical Offices" means a facility licensed or approved by the Department of Public Health to provide health care, including clinics licensed as health care facilities and facilities that provide substance use disorder treatment

services, including outpatient withdrawal management, opioid treatment programs, office-based opioid treatment programs, acute treatment services (inpatient detoxification), and clinical stabilization services.

“Major Renovation Project” means (a) low-rise residential additions over 1,000 square feet and additions exceeding 100% of the conditioned floor area of the existing dwelling unit, (b) additions over 20,000 square feet and additions that exceed 100% of the conditioned floor areas of the existing building for all building use types except low-rise residential, (c) Level 3 Alterations as defined in the International Existing Building Code (IEBC 2021) (which exceed 50% of the existing conditioned floor area) exceeding 1,000 square feet for low-rise residential, or exceeding 20,000 square feet for all other building uses, or (d) Change of use of over 1,000 square feet per International Energy Conservation Code (IECC 2021) Sections R505, or (e) change of use of over 20,000 square feet or change of use of 100% of the conditioned floor areas of the existing building for all building use types except low-rise residential, International Energy Conservation Code (IECC 2021) Sections C505.

“Research Laboratories for Scientific or Medical Research” means a building in which a laboratory procedure or research activity occurs, and where the building has an average ventilation at full occupancy greater than 0.5 cfm/sf. Such buildings shall provide the ventilation design documentation described in 225 CMR 23.00, Section C103.2, at the time of building permitting.

“Specialized Energy Code” means the building code in 225 CMR 22.00 and 23.00; including Appendices RC and CC, which add residential and commercial appendices to the Massachusetts Stretch Energy Code.

### **Applicability**

The fossil fuel restriction applies to residential and commercial buildings located in the City that qualify as new construction or Major Renovation Projects, except as listed in the Section herein entitled “Exceptions.”

### **Exceptions**

The requirements of this Ordinance do not apply to any of the following:

- A. Research Laboratories for Scientific or Medical Research;



- B. Hospitals or Medical Offices;
- C. Freestanding outdoor cooking appliances that are not connected to the building's natural gas or propane infrastructure;
- D. Freestanding outdoor heating appliances that are not connected to the building's natural gas or propane infrastructure;
- E. Emergency generators;
- F. Appliances to produce potable or domestic hot water from centralized hot water systems in commercial buildings with a gross floor area of at least 10,000 square feet, provided that the architect, engineer, or general contractor on the project certifies by affidavit that no commercially available electric hot water heater exists that could meet the required hot water demand for less than 150% of installation costs, compared to a conventional fossil fuel hot water system.

### **Waivers**

The City will entertain waiver requests for Major Renovation Projects with respect to which an architect, engineer, or general contractor on the project certifies by affidavit that compliance with the requirements of the Ordinance will increase the costs of the project by 50%, compared to the costs of complying only with the requirements of the applicable (i.e., residential or commercial) specialized building code.

### **Application Requirements**

When applying for a building permit for new building construction or a Major Renovation Project the applicant must submit documents with the application that identify the heating and cooling and hot water systems and cooking and clothes drying appliances that will be installed and used in the building.

### **Compliance**

The Commissioner shall not issue any building permit for the construction of a new building or Major Renovation Project unless the applicant submits the documentation set forth in the Section herein entitled "Application Requirements." The Commissioner shall not issue a certificate of occupancy for any building subject to this Ordinance prior to inspection and confirmation that

the heating and cooling and hot water systems and cooking and clothes drying appliances installed in the building comply with the applicant's documents submitted pursuant to the Section herein entitled "Application Requirements."

**Effective Date**

This Ordinance shall apply to all building permits, special permits, and comprehensive permits issued **XXX** days after the approval by the Department of participation by the City in the Fossil Fuel Demonstration Project.

**Amendments to the Specialized Energy Code**

With adoption of the Fossil Fuel-Free Demonstration Project by the City, and upon approval by the Department, the following amendments to the Specialized Energy Code are adopted. These changes are enforceable by the Commissioner and will go into effect for any project seeking a permit after the effective date of this Ordinance.

a. Low-rise Residential Code (225 CMR 22 Appendix RC)

1. Sections RC102 and RC101 "Zero Energy Pathway" and "Mixed Fuel Pathway" shall not be permitted for use for new construction or Major Renovations.

b. Commercial and All Other (225 CMR 23 Appendix CC)

i. Sections CC103 and CC105 "Zero Energy Pathway" and "Mixed-Fuel Pathway" shall not be permitted for new construction or Major Renovations, with the following exceptions:

1. Research Laboratories for Scientific or Medical Research;
2. Hospitals or Medical Offices;
3. Buildings heated with Clean Biomass Heating Systems as defined in 225 CMR 23, as the only combustion equipment;
4. Multi-family buildings over 12,000 square feet with permit application filed prior to January 1, 2027 may utilize gas or propane for domestic water heating as the only combustion equipment.