



# Zoning & Planning Committee Report

## City of Newton In City Council

**Wednesday, June 14, 2023**

Present: Councilors Crossley (Chair), Albright, Danberg, Wright, Leary, Baker, and Ryan

Absent: Councilor Krintzman

Also Present: Councilors Malakie, Kelley, Gentile, Norton, Greenberg, and Humphrey

City Staff: Barney Heath, Director of Planning; Andrew Lee, Assistant City Solicitor; Ann Berwick, Co-Director of Sustainability; Jonathan Yeo, Chief Operating Officer; and Jaclyn Norton, Committee Clerk

For more information regarding this meeting, a video recording can be found at the following link: [Zoning & Planning Committee - June 14, 2023 \(newtv.org\)](https://www.newtv.org/Zoning-Planning-Committee-June-14-2023)

**#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.

**Action:**      **Zoning & Planning Held 7-0; Public Hearing Continued**

**Note:**      The Chair explained that the goal of tonight's meeting is to obtain a sense of the Committee on whether the draft ordinance, as proposed, should be submitted to DOER for preliminary review. She noted that the intent is to seek a preliminary review from DOER, particularly to see if they are inclined to approve exemptions and a waiver provision in our draft, but that otherwise our proposed ordinance follows their model ordinance. Our final submission is due to DOER September 1, but we are not required to pass the ordinance before then, so intend to leave the public hearing open and continue the hearing once DOER approval is given. DOER has modified the rules to give more time for communities to meet the housing affordability requirement in the Ten Communities program, which is extended to February

2024, by which time Newton will have submitted its MBTA Communities compliance plan, which is one way to satisfy that requirement.

Ann Berwick, Co-Director of Sustainability, reminded how the City previously submitted a Home Rule petition to the legislature, to allow us to require electrification of new construction and major renovations, as one of ten communities who did so. But the legislature instead of deciding on the home rule petitions, passed a bill creating the Ten Communities Program. Attached is a memo from Ms. Berwick outlining the deadlines for compliance with the affordable housing requirement, submission of the final application, and adopting the ordinance.

Communities that participate in the Ten Communities Program are required to adopt an ordinance that closely resembles the model rule from DOER. The proposed ordinance adds certain exemptions and a waiver provision that requires explicit approval from DOER. Ms. Berwick outlined the exemptions and waiver provision in the draft ordinance. (attached) The waiver provision applies only to major renovations, and was amended from a previous more subjective waiver, to one that defines a clear threshold, to allow for easier implementation by the Inspectional Services Department.

It was also noted that the language defining major renovations is taken from the MA building code, and repeated in the draft ordinance for ease of use.

The Public Hearing was opened.

Irwin Jungreis, 31 Norwood Ave, described that the electric grid currently generates a significant portion of electricity using fossil fuels. He also noted difficulties in having the grid rely on solely renewable energy and feels that that this ordinance would cause significant strain on the grid.

Anthony Trase, 34 Old England Rd, expressed concern that participation in this program would increase construction costs and that this program does not directly help people within the City of Newton. He also stated that the 50% increased cost threshold to qualify for the waiver was too high.

Peter Barrer, 60 Nahanton St, expressed support for the draft ordinance and participation in the Ten Communities program. Mr. Barrer stated that the cost of electrification is very small and that the waiver provision is to cover an unusual case. The Chair and Ms. Berwick clarified that the waiver provision would only apply to substantial renovations.

Dan Ruben, 175 Auburn St, and the Chairman of the Green Newton Building Standards Committee GNBSC, noted support for the ordinance and described how it is not a large stretch to adopt the proposed ordinance, over the Stretch and Specialized codes which have already

been put in place. He also described that the GNBSC has received little resistance to the many special permit projects they have consulted on, to being fully electric.

MaryLee Belleville, 136 Warren St, did not comment on the substance of the draft ordinance but rather that she believes the City needs to find a better way to promote engagement from residents.

Marcia Cooper, 170 Evelyn Road, and President of Green Newton, expressed support for sending the draft ordinance to DOER for a preliminary review, thanked the Council for its good work and urged moving forward with speed.

Doris Ann Sweet, 281 Lexington St, described the process of adding solar panels and heat pumps to her existing home and how the tax credits and rebates available helped finance the conversion process.

A Councilor echoed the concerns of those who were concerned about grid capacity. Ms. Berwick noted that ISO New England, who is the grid operator for newton England, is confident in the grid's ability to handle the increased demand. She emphasized both huge increases in efficiency of delivering heating and cooling via today's heat pump technologies, over fossil fuel equipment, and commitments to building off shore wind facilities that will dramatically increase the share of electricity that will be produced using renewable sources. She also described that participation in this program would help Newton be a model community for those looking at adopting a similar ordinance, and that there is already pending state legislation to include more communities in the program. In response to a Councilor's question, the Chair affirmed that no one is required to convert their existing home to electric and described the definition of substantial renovation in the draft ordinance which mirrors that in the MA Stretch Code. Regarding a question asked about amending the ordinance to provide an historic exemption in the ordinance, the Chair stated that the exemption for historic properties is part of the MA Building code and cannot be amended by the City. It requires that a renovation seeking a waiver provide evidence by the project architect or building professional, that Stretch code requirements would harm the exterior integrity of an historically significant structure. This would have to be proven to the local Historic commission. Heating and cooling systems normally do not affect the ability to preserve the building exterior.

Councilors expressed enthusiasm for the importance of pursuing electrification requirements, and unanimous support for including the draft ordinance in the application to DOER. Committee members voted 7-0 on a motion to hold the item and continue the public hearing from Councilor Leary.

The meeting adjourned at 8:58 pm.

**Respectfully Submitted,**  
**Deborah J. Crossley, Chair**

## 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.

## **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.