

To: Newton City Council
Cc: Mayor Fuller, Jonathan Yeo, Barney Heath, Josh Morse, Jen Caira, Jonah Temple, John Sisson, John Lojek, Anthony Ciccariello
From: Ann Berwick
Date: January 30, 2023

This memo is intended to explain (1) some of the details of the Ten Communities Program, and (2) the relationship between the Ten Communities Program and the Specialized Code (i.e., the more stringent, opt-in version of the Stretch Code).

Ten Communities Program

A number of cities and towns filed Home Rule Petitions with the Legislature over the last few years, seeking authority to require all new construction and substantial renovations to be all or mostly electric. Rather than acting on the Petitions, the Legislature passed a statute that provides the requested authority to the first ten communities that filed such Petitions. Newton is one of the first ten.

The Department of Energy Resources (DOER) has now published its [proposed regulations](#) and [model rule](#) on the Ten Communities Program. Communities that intend to participate must submit a letter of intent to DOER not later than September 1, 2023.

Notwithstanding being one of the first ten, Newton has to address the following issues in order to qualify to participate:

- **The City must meet the affordable housing requirements** specified in the applicable legislation. The City's Planning Department is optimistic that we will be able to do so well ahead of September 1, most likely by meeting the 10% housing affordability requirement under Chapter 40B of the Massachusetts General Laws.
- **If a Community determines that adoption of a local ordinance that differs from the Model Rule is necessary, the Community has to describe the differences and the rationale for the differences.** Newton's Home Rule Petition and DOER's Model Rule are indeed different.
 - The most significant difference is that Newton's Home Rule Petition covers only residential buildings and small non-residential buildings (i.e., less than 20,000 square feet, any portion of which is used for commercial, retail, office, professional, educational, or other non-residential purpose). By contrast, the Model Rule includes commercial buildings over 20,000 square feet. **It will certainly be impermissible to exclude large commercial buildings.**

- Additionally, Newton's Home Rule Petition allows the use of natural gas for cooking, which is not allowed by the Model Rule. On a webinar on January 26, DOER indicated that it **will not allow** communities to participate in the Program if they allow natural gas stoves in new construction or substantial renovations.

There are two other respects in which Newton's Home Rule Petition differs from DOER's Model Rule, but I think those are less problematic.

The first of these is that DOER's regulations do allow communities to propose exemptions, but they do not specify what exemptions may be acceptable. Newton's Home Rule Petition provides for a variety of exemptions, including freestanding outdoor heating and cooking appliances that are not connected to the building's natural gas or propane infrastructure, and back-up power. Newton's Home Rule Petition also exempts certain centralized domestic hot water systems in larger buildings.

I don't know for sure, but I doubt Newton's proposed exemptions will be a barrier to our participation in the Program.

The other difference between Newton's Home Rule Petition and the Model Rule is that, pursuant to the applicable State legislation, the Model Rule requires that communities include exemptions from fossil fuel free requirements for both laboratories and medical facilities. In that regard, the Newton Home Rule Petition exempts only Newton-Wellesley Hospital. Since the laboratories/medical facilities provisions are requirements of State legislation, the ordinance that Newton adopts will have to adopt these provisions.

Relationship between the Ten Communities Program and the Specialized Code

DOER "recommends" (DOER doesn't have statutory authority to impose this as a requirement) that the communities that want to participate in the Ten Communities Program adopt *both* the Specialized Code and the Model Rule. DOER says that the Model Rule "ensures appropriate integration" with the Specialized Code.

This makes sense for a number of reasons, including that the Specialized Code and the Model Rule need to be integrated because the Specialized Code specifies certain compliance pathways that allow the use of fossil fuels, in contrast to the Model Rule. One way to think about this is that the Model Rule provides a variant of the Specialized Code for communities that participate in the Ten Communities Program.

I am attaching a letter from Public Buildings Commissioner Josh Morse on the Specialized Code, addressing how, since 2018, new City buildings are designed to meet higher standards of construction and will meet the requirements of the Specialized Code."

In summary, my recommendation is that Newton adopt the Specialized Code and the Model Rule, with the exemptions specified in our Home Rule Petition.

What this means is that Newton's Ordinance:

- *will have to include large commercial buildings;*
- *will have to eliminate gas cooking as an option;*
- *will include the exemptions in Newton's Home Rule Petition, e.g., outdoor cooking and heating, back-up power, anticipating that they will meet with DOER's approval;*
- *will include the statutorily required exemptions for laboratories and medical facilities.*

It also means that Newton will have to adopt the Specialized Code as DOER "recommends."