



Zoning & Planning Committee Agenda

City of Newton In City Council

Monday, January 22, 2024

7:00 pm
Room 205

The Zoning and Planning Committee will hold this meeting as a hybrid meeting on Monday, January 22, 2024 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/82947568764> or call 1-646-558-8656 and use the following Meeting ID: 829 4756 8764.

Item Scheduled for Discussion:

#71-24 **Appointment of Councilor Albright to the Newton Affordable Housing Trust Fund**
PRESIDENT LAREDO appointing Councilor Susan Albright, 1075 Commonwealth Ave, Newton as a member of the Newton Affordable Housing Trust for a term of office to expire on December 31, 2025. (60 Days: 03/16/24)

Referred to Zoning & Planning & Finance Committees

#22-24 **CPC Recommendation to appropriate \$125,000 in CPA funding**
COMMUNITY PRESERVATION COMMITTEE recommending appropriation of \$125,500 in Community Preservation Act funding from the FY24 Historic Resource Reserve Funds to the control of the Planning & Development Department for a grant to the Second Church in Newton for the restoration.
Zoning & Planning Held 8-0 on 01/08/24

Chair's Note: *I anticipate beginning but not concluding the discussion on item #74-24 to allow the Law and Planning Departments time to respond in writing to questions Councilors may have, including those questions posed from me and the Vice-Chair, attached to this agenda. Councilors may also find it helpful to review the attached memorandum of January 4 from Mr. Temple to the Zoning Board of Appeals, also notified of this item.*

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 or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

#74-24 Discussion Regarding 40B Process Post 'Safe Harbor' Designation
COUNCILORS OLIVER, BAKER, AND WRIGHT requesting a discussion with the Law and Planning departments regarding the process going forward for 40B projects since meeting the 10% 'Safe Harbor' designation. The discussion should address the different parameters that can or will be used to accept, deny and modify projects and the criteria allowed to be used by ZBA or any other approving authority.

Chair's Note: Councilors may find it helpful to review the attached memorandum of January 19th from Chair Baker highlighting short-term rental ordinances in Chapters 20 and 30.

#23-24 Update on Short-term rental ordinance compliance and enforcement
COUNCILORS MALAKIE, WRIGHT, KELLEY, LAREDO, LIPOF, HUMPHREY, LUCAS, ALBRIGHT, DANBERG, AND OLIVER requesting an update on Short-term Rental ordinance compliance and enforcement, including data on registrations, complaints, investigations and fines issued; types of violations being found (e.g. non-owner occupied, room limits, annual time limits, other code violations like noise, health & safety, trash); ability to compare STRs registered with the city vs registered with the state vs listings on public platforms; ability to obtain listing information from STR companies; adequacy of resources or other obstacles to enforcement.

Zoning & Planning Held 8-0 on 01/08/24

#24-24 Request for discussion and possible ordinance amendments relative to aiding small businesses impacted by development
COUNCILORS ALBRIGHT AND KELLEY request the Planning Department with the assistance of the Economic Development Commission, research and develop mechanisms including ordinance changes or other means to assist local businesses impacted by development similar to the Somerville work. The goal of this docket item will be to help small commercial/retail/independent and locally-owned businesses remain in Newton as development occurs.

Zoning & Planning Held 8-0 on 01/08/24

Chair's Note: The Chair will entertain a motion to set a public hearing for Monday, February 26, 2024 regarding the following item.

#49-24 Discussion and possible adoption of an ordinance requiring electrification of all new construction and substantial renovations
HER HONOR THE MAYOR AND COUNCILORS ALBRIGHT, DANBERG, LEARY, HUMPHREY, KALIS, DOWNS, LIPOF, WRIGHT, MICLEY, BIXBY, AND GETZ requesting discussion and possible adoption of an Electrification Ordinance that would require all new construction and substantial renovations in Newton to be all-electric. This is in conjunction with the City's recent conditional approval by the State Department of Energy Resources (DOER) for participation in the Ten Communities Program.

**Respectfully Submitted,
R. Lisle Baker, Chair**

CITY COUNCIL

CITY OF NEWTON

DOCKET REQUEST FORM

DEADLINE NOTICE: Council Rules require items to be docketed with the Clerk of the Council NO LATER THAN 7:45 P.M. ON THE MONDAY PRIOR TO A FULL COUNCIL MEETING.

To: Clerk of the City Council

Date: December 11, 2023

From (Docketer): Mollie Hutchings, Community Preservation Program Manager

Address: Planning Department, Newton City Hall, 1000 Commonwealth Avenue Newton MA 02459

Phone: 617-796-1147

E-mail: mhutchings@newtonma.gov

Additional sponsors: Community Preservation Committee

1. Please docket the following item (it will be edited for length if necessary):

At its monthly meeting on Tuesday, November 14, 2023, the Community Preservation Committee recommended, with a vote of 7 to 1, that \$125,500 in Community Preservation Act funding be appropriated from the FY24 Historic Resource Reserve Funds to the control of the Planning & Development Department for a grant to the Second Church in Newton for the restoration.

2. The purpose and intended outcome of this item is:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Fact-finding & discussion | <input type="checkbox"/> Ordinance change |
| <input checked="" type="checkbox"/> Appropriation, transfer, | <input type="checkbox"/> Resolution |
| <input checked="" type="checkbox"/> Expenditure, or bond authorization | <input type="checkbox"/> License or renewal |
| <input type="checkbox"/> Special permit, site plan approval, | <input type="checkbox"/> Appointment confirmation |
| <input type="checkbox"/> Zone change (public hearing required) | <input type="checkbox"/> Other: _____ |

3. I recommend that this item be assigned to the following committees:

- | | | |
|---|---|--|
| <input type="checkbox"/> Programs & Services | <input checked="" type="checkbox"/> Finance | <input type="checkbox"/> Real Property |
| <input checked="" type="checkbox"/> Zoning & Planning | <input type="checkbox"/> Public Safety | <input type="checkbox"/> Special Committee |
| <input type="checkbox"/> Public Facilities | <input type="checkbox"/> Land Use | <input type="checkbox"/> No Opinion |

4. This item should be taken up in committee:

Immediately (Emergency only, please). Please state nature of emergency:

- As soon as possible, preferably within a month
- In due course, at discretion of Committee Chair
- When certain materials are made available, as noted in 7 & 8 on reverse
- Following public hearing

PLEASE FILL OUT BOTH SIDES

5. I estimate that consideration of this item will require approximately:

- One half hour or less
- More than one hour
- More than one meeting
- Up to one hour
- An entire meeting
- Extended deliberation by subcommittee

6. The following people should be notified and asked to attend deliberations on this item. (Please check those with whom you have already discussed the issue, especially relevant Department Heads):

City personnel

Citizens (include telephone numbers/email please)

Mollie Hutchings _____

Lara Foote -footepath7@gmail.com _____

Barney Heath _____

7. The following background materials and/or drafts should be obtained or prepared by the Clerk's office prior to scheduling this item for discussion:

8. I have or intend to provide additional materials and/or undertake the following research independently prior to scheduling the item for discussion. *

CPC Funding Recommendation includes a link to the full proposal on the City's website.

(*Note to docketer: Please provide any additional materials beyond the foregoing to the Clerk's office by 2 p.m. on Friday before the upcoming Committee meeting when the item is scheduled to be discussed so that Councilors have a chance to review all relevant materials before a scheduled discussion.)

Please check the following:

- 9. I would like to discuss this item with the Chairman before any decision is made on how and when to proceed.
- 10. I would like the Clerk's office to contact me to confirm that this item has been docketed. My daytime phone number is:
- 11. I would like the Clerk's office to notify me when the Chairman has scheduled the item for discussion.

Thank you.

Mollie Hutchings
Signature of person docketing the item

[Please retain a copy for your own records]



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

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Barney S. Heath
Director

**Community Preservation Committee
Funding Recommendation for the
Second Church in Newton Preservation Project**

Date: December 11, 2023
From: Community Preservation Committee
To: The Honorable City Council
CC: The Honorable Mayor Ruthanne Fuller

PROJECT GOALS & ELIGIBILITY

The goal of this project is for the restoration of the roof and masonry at Second Church in Newton, located at 60 Highland Street. The capital improvements to the structure would include the replacement of the original copper roof above the main entrance and drainage system, restoration of stonework, rebuilding of lead weather caps at gables, and selective repointing to prevent further water infiltration and damage. This project is eligible for CPA funding for the restoration/rehabilitation of an historic resource as it is listed on the National Historic Register, and has received grant funding from the Massachusetts Historic Commission for this project with the support of the Newton Historical Commission.

RECOMMENDED FUNDING

At its monthly meeting on Tuesday, November 14, 2023, the Community Preservation Committee recommended, with a vote of 7 to 1, that \$125,500 in Community Preservation Act funding be appropriated from the FY24 Historic Resource Reserve Funds to the control of the Planning & Development Department for a grant to the Second Church in Newton for the restoration

Proposed CPA Funding Accounts for the Second Church in Newton			
Account Name	Account Number	Amount Currently Available in Account	Proposed Amount for Second Church in Newton
FY24 Historic Resource Reserve Funds	5810 3599	481,588.00	\$125.500
Total Project Funds			\$125,500

www.newtonma.gov/cpa

Lara Kritzer, Community Preservation Program Manager
lkritzer@newtonma.gov 617.796.1144

SPECIAL ISSUES CONSIDERED BY THE CPC

Repointing: It was a topic of conversation among the CPC whether repointing could be funded with CPA funds, or whether it would be considered a maintenance expense. It was determined that repointing, while needing to be done periodically on stone and brick buildings, was a major expense that occurred on a 20-40 year cycle, and not part of routine maintenance expenses.

Project Budget: The project meets the CPC’s guidelines for the funding of private projects through public-private partnerships as it provides slightly more than a 50% match to the CPA funds. It has already received a Massachusetts Preservation Project Fund award from the Massachusetts Historical Commission and received a letter of support from the Newton Historical Commission as part of that application process. The CPC’s recommendation also included a condition that all of the CPA funding for this project come from the City’s existing and future Historic Resource Reserve funds.

Sources of Funding	
Fundraising and endowment	\$85,100
MHC Massachusetts Preservation Project Fund Grant	\$50,000
FY24 Historic Resource Reserve – Total CPA Funding Request	\$125,500
Total Project Funding	\$260,000

Funding of Private/Religious Institutions: While the topic of using CPA funds for improvements on religious buildings was not discussed in detail at the November 14, 2023 meeting, the topic was raised as part of previous discussions of the Committee regarding other projects, including the recently completed Grace Church Tower Restoration. It was determined at that time agreed that these projects must be reviewed in the same manner that any historic resource project would be considered, based on the historic significance of the structure, its importance to the community, and the merits of its restoration process and plan.

Architectural and Historical Significance: The Second Church in Newton was designed by architects Allen & Collens in 1915, with a Tudor Revival addition built 1938 to accommodate the growing number of children enrolled in the weekday nursery school, which is still operating. Allen & Collens specialized in Gothic Revival churches, including the Emmanuel Episcopal Church in Back Bay. Outside of their Gothic Revival signature, they were the architects for Newton City Hall and War Memorial. The church is listed on the National Register of Historic Places as part of the Newton Multiple Resource Area (1908-1940) and occupies a very prominent part of the West Newton streetscape.

Community spaces & services: The proposal details the extensive public use of this property as a performance venue, particularly for the Newton Piano Summit and New Philharmonic Orchestra, nursery school, and community meeting place for Girl Scouts, support groups, and more. It has been noted in the discussion for previous projects on religious buildings, however, that many historic resources are not public buildings but provide a benefit to their neighborhood and community by contributing to the community’s architectural and historic landscape and character.

Project design & permitting: Plans for the masonry and roof restoration, designed by Building Conservation Inc. are attached to the proposal. As this project has already been awarded grant funding that needs to be used by the end of the fiscal year, the expectation is that the permitting process should be initiated as soon as possible.

ADDITIONAL RECOMMENDATIONS (funding conditions)

1. Recommended CPA funds should be appropriated within 1 month and the project should be completed within 1 year after the date of its approval by City Council, with the understanding that these deadlines

may be extended by submitting a written request to the CPC outlining the reason the extension is necessary and the proposed new deadline.

2. All funding for this project will be taken from the City's CPA Historic Resource Reserve accounts, using both its current balance of available funding and additional funding from FY24 as needed.
3. All CPA funding will be used solely for the restoration of the masonry, roof and copper drainage elements as public elements of the building which is visible from all surrounding public ways and park spaces. No funding can be used for the support of any religious activities, or for the restoration of any other elements of the building which are solely used for religious purposes.
4. The Applicant will be asked to update the CPC on the status of the project at regular intervals as requested. Periodic site visits to check the status of the restoration work may also be requested.
5. The CPC will hold 10% of the project's CPA funding until all restoration work is complete, at which time a final report and updated project budget must be submitted to the CPC for approval. The Applicant will be expected to present these materials at a public meeting of the CPC for their review and approval before the final funds are released.
6. The release of CPA funds will be governed by a grant agreement that includes but is not limited to the usual conditions for the phased release of CPA funds for historic resource projects, including a final report to the CPC and the return of unspent funds.
7. Any CPA funds appropriated but not used for the purposes stated herein should be returned to the Newton Community Preservation Fund.

KEY OUTCOMES: The successful outcomes of this project will be the restoration of the church, including a replaced copper roof, and the exterior restoration of the facades by repointing and replacing failed masonry elements to prevent water infiltration and damage in the future. The ultimate goal of this project is to have a building that can be viewed and accessed by the public.

ATTACHMENTS

- Proposal:
<https://www.newtonma.gov/home/showpublisheddocument/113018/638338497352770000>

Additional information not attached to this recommendation, including petitions and letters of support, are available on the CPC's website at: <https://www.newtonma.gov/government/planning/community-preservation-program/proposals-projects/second-church-in-newton-preservation-and-accessibility-project>

Second Church in Newton Restoration Project Recommendation

Community Preservation Committee
Presentation to Zoning and Planning Committee
January 22, 2024



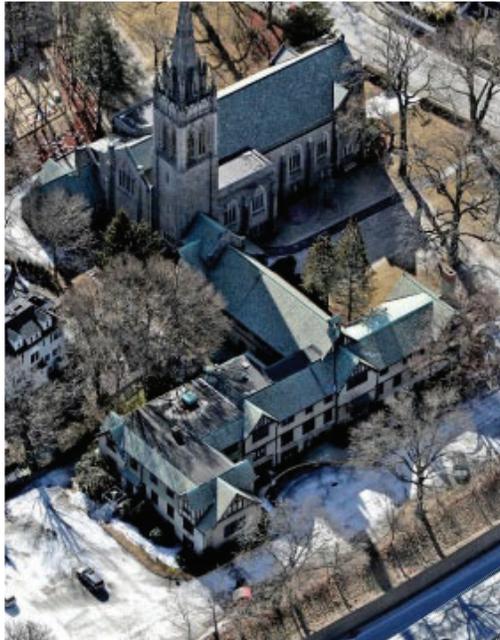
Project Overview

- ▶ The Second Church in Newton is a 1916 Gothic Revival stone structure by architects Allen & Collens, with a Tudor Revival annex built in 1938.
- ▶ Second Church is listed on the National Register of Historic Places
- ▶ The applicant is seeking to restore the exterior fabric to avoid the risk of costly structural problems in the future, and to achieve this “Sharing Space” goal as an asset to the City of Newton.

Scope of Work

- ▶ Work on this project includes the following preservation work. The specifications call for matching the original materials wherever possible.
 - ▶ Restoration of stonework, with selective repointing
 - ▶ Cleaning granite and limestone
 - ▶ Rebuilding header
 - ▶ Installing lead weather cap at gable
 - ▶ Deep repointing at limestone window headers and belt course at east elevation
 - ▶ Installation of copper drip edges in masonry at select locations
 - ▶ Replacement of the original 1915 copper roof over west church entrance

- ▶ The project is set to be completed by June 2024.



Project Funding Sources

Funding Sources	Amount
Requested CPA Funding	\$125,500
Massachusetts Historical Commission Preservation Projects Funds (Received)	\$50,000
Other Funds Raised	\$85,100
PROJECT TOTAL	\$260,600

Current Funding Recommendation

The current CPA funding request is for the FY24 Historic Resource funds needed to preserve and restore the masonry of the Second Church in Newton.

Recommended Sources of CPA Funding	
FY24 Historic Resource Reserve Funds	\$125,500



Questions & Discussion

► Thank you!





Ruthanne Fuller
Mayor

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Barney S. Heath
Director

MEMORANDUM

Date: January 4, 2024

TO: Zoning Board of Appeals Members
Barney Heath, Director of Planning & Development Department
Alissa Giuliani, City Solicitor

FROM: Jonah Temple, Deputy City Solicitor
Jennifer Caira, Deputy Director, Planning & Development Department
Lara Kritzer, Director of Housing and Community Development
Katie Whewell, Chief Planner for Current Planning

CC: Mayor Ruthanne Fuller
Jonathan Yeo, Chief Operating Officer
City Council Members

SUBJECT: Update on Chapter 40B Safe Harbor Status

The purpose of this memorandum is to update the Zoning Board of Appeals (“ZBA”) on the most recent calculation of the Chapter 40B statutory safe harbors, as of the filing of the Comprehensive Permit application at 78 Crafts Street on December 11, 2023. Safe harbor status is available to municipalities that have met either the *General Land Area Minimum*, achieved when housing units eligible for inclusion on the state’s Subsidized Housing Inventory (“SHI”) exist on sites comprising 1.5% or more of a municipality’s total land area; or the *Housing Unit Minimum*, achieved when a municipality’s SHI Eligible Housing units exceed 10% of its total housing units.

As an initial note of clarification, SHI Eligible Housing units are often referred to as “affordable units” (including in past versions of this memorandum); however, not all units on the City’s SHI are deed-restricted units affordable to households up to 80% of the Area Median Income (“AMI”). The Massachusetts Executive Office of Housing and Livable Communities (“EOHLC”) Chapter 40B Guidelines provide that if 25% of units in a rental development are affordable up to 80% AMI, or if 20% of units are affordable up to 50% AMI, then all units in the development—including the market rate units—are included on the SHI (e.g. Northland Charlemont, where 25% of the units are affordable at 80% AMI,

meaning all 370 units, including market rate units, are counted on the SHI). As a result, the City's SHI Eligible Housing includes both affordable units and market rate units. Therefore, while the City need only attain 10% SHI Eligible Housing units to reach the Housing Unit Minimum safe harbor, that does not represent the actual percentage of the City's affordable units. Currently, approximately 5.5% of the City's housing stock is actually deed-restricted housing affordable to households earning up to 80% AMI.

City staff previously calculated Newton's progress towards these safe harbors in August 2022. Those calculations were reported to the ZBA in a memorandum dated August 24, 2022. At that time, Newton's Land Area Minimum calculation equaled 1.35% and its Housing Unit Minimum calculation equaled 9.80%.

The August 2022 calculation utilized the 2010 Census data for year-round housing units as the 2020 data was not released until this year. This current calculation utilizes the year-round housing units from the 2020 Census and the recent approval of 370 units from the Northland Charlemont 40B by the ZBA this past October. The updated calculations show that Newton has yet to satisfy either safe harbor threshold: the Land Area Minimum calculation (with a 1.5% threshold) is **1.41%** and the Housing Unit Minimum calculation (with a 10% threshold) is **9.94%**.

Overview of the Chapter 40B Safe Harbors

A. Background

- Chapter 40B, also known as the Comprehensive Permit Law, is a state law enacted in 1969 to facilitate construction of affordable housing by removing obstacles and streamlining the permitting process for certain development projects. Under Chapter 40B, affordable housing is defined as a housing unit that is affordable to households with annual gross median incomes up to 80% of the AMI. The law provides that, in municipalities with an insufficient supply of affordable housing, a developer of a project that has a minimum percentage of affordable units may apply for a single Comprehensive Permit from the ZBA, rather than seeking separate approval from each local board with jurisdiction over the project. Chapter 40B also gives the ZBA authority to waive zoning and other local permitting requirements for such projects.
- Chapter 40B also allows municipalities to invoke various safe harbors if they are providing their fair share of affordable housing, which act as an exemption from the Chapter 40B framework. If and when the City creates enough affordable housing to meet a safe harbor, the provisions of the Chapter 40B law may be lifted, meaning a decision made by the ZBA concerning a comprehensive permit application—whether it is to deny the permit, approve the permit, or approve it with conditions—will be upheld on appeal as a matter of law.
- Achievement of a safe harbor, however, does not deprive the ZBA of the ability to grant additional comprehensive permits to developers seeking to construct housing. Even if the City has met a safe harbor, comprehensive permit applications may still be submitted to the ZBA and the ZBA must determine whether to invoke the safe harbor within 15 days after opening a public hearing. For example, there may be future 40B projects that the ZBA

determines do not necessitate the invocation of a safe harbor even if the City has reached one. Additionally, if the ZBA does invoke a safe harbor, a full public hearing will still proceed and the ZBA may ultimately issue a comprehensive permit.

B. SHI Eligibility

- The safe harbor calculations are not static and routinely fluctuate. Housing properties are routinely added and removed from the City’s list of SHI Eligible Housing units in accordance with EOHLC regulations and guidelines. EOHLC’s regulations and guidelines dictate when units first become eligible for inclusion on the SHI and thus can be counted in the City’s safe harbor calculations.
- For 40B projects approved by the ZBA, SHI eligibility begins on the date that the comprehensive permit is issued and filed with the City Clerk. Thereafter, 40B projects that have received approval lose SHI eligibility if a building permit is not issued within one year of receiving local permitting approval—though the project will regain eligibility after a building permit is issued. As an example, the Haywood House expansion received a comprehensive permit on July 26, 2018. At that time the project was SHI eligible and counted in the City’s safe harbor calculations. The project then lost eligibility and was removed from the calculations in July 2019 as a year had passed and the building permit was not yet issued. As a building permit was issued for the project in December 2020, it was once again SHI eligible and the now completed and occupied units are again part of the safe harbor calculations.
- For special permit projects approved by the City Council, SHI eligibility does not begin until the project receives approval from EOHLC. Under EOHLC regulations, affordable units created through the special permit process are called “Local Action Units” (“LAU”) and require approval by EOHLC, which is known as “LAU Approval.” The purpose of this approval process is for EOHLC to confirm that the Local Action Units are affordable, subject to a long-term affordability deed restriction, subject to a fair housing marketing plan, and subject to ongoing monitoring. In contrast, affordable units created by a Chapter 40B comprehensive permit and approved by the ZBA do not require EOHLC LAU Approval because those projects already have approval from a state subsidizing agency before applying for a comprehensive permit. As a result, comprehensive permit projects are immediately SHI eligible while special permit projects must wait until final LAU Approval before any units are SHI eligible. This means that projects such as Riverside that have been issued a special permit but have not yet been approved by EOHLC as Local Action Units, cannot be counted yet in the City’s safe harbor calculations. The standard practice for the City is to apply for LAU Approval (jointly with the project developer) sometime after commencement of construction but prior to completion and marketing of any units.
- Given the fluctuation of the number of the City’s SHI Eligible Housing units, it is important to understand that the City’s attainment of safe harbor status is based on the City’s calculation on the date that a comprehensive permit application is filed with the ZBA. The safe harbor calculations are made anew each time a comprehensive permit application is filed and are based on the current state of SHI Eligible Housing units at the time of the filing.

The City will again determine its safe harbor status when a future comprehensive permit application is filed, or when there is a change that would result in the City reaching one of the safe harbor thresholds. The City also updates its calculations on other occasions to provide the ZBA and the public with an update or when important information becomes available (e.g., upon receipt of new census data on the number of housing units in Newton).

C. The Housing Unit Minimum (10%) Safe Harbor

- The housing unit minimum safe harbor available to the City can be achieved when Newton’s SHI Eligible Housing units exceed 10% of its total housing units. The 10% calculation requires dividing the total number of housing units that are inventoried or eligible to be inventoried on the City’s SHI (the *numerator*) by the total number of year-round housing units in the City (the *denominator*). The total number of housing units used for this calculation is the number reported in the most recent federal (decennial) census.
- The Executive Office of Housing and Livable Communities (EOHLC) provided an updated SHI with the 2020 year-round housing units on June 29, 2023. According to the 2020 Census, Newton has 33,116 year-round housing units, an increase of 770 from the 2010 Census.

D. The General Land Area Minimum (1.5%) Safe Harbor

- The 1.5% calculation requires dividing the land area of affordable housing sites that are inventoried or eligible to be inventoried on the City’s SHI (the *numerator*) by the total developable land area in the City that is zoned for residential, commercial or industrial use (the *denominator*). In conducting this calculation, the City is required to follow the prescribed methodology and technical instructions that were enacted by EOHLC in 2018.
- In calculating the land area of affordable housing sites (*numerator*), only the proportion of each site that is occupied by SHI Eligible Housing units (including impervious and landscaped areas directly associated with such units) can be counted. For example, if 15% of all units in a development are affordable up to 80% AMI, such as Washington Place, the City can count 15% of the total acreage of the site (that is directly associated with the housing units) towards the numerator. For rental developments, if at least 25% of units are affordable up to 80% AMI or if at least 20% of units are affordable up to 50% AMI, then the entire acreage of the site directly associated with the housing will count towards the City’s 1.5% numerator.

Current Safe Harbor Calculations as of December 11, 2023

A. 10% Calculation

- The City’s current percentage of SHI Eligible Housing units equals 9.94%.

$$\text{New Calculation} = \frac{3,292 \text{ SHI Eligible Housing units}}{33,116 \text{ total housing units}} = 9.94\%$$

- The City currently has 2,879 housing units officially inventoried on the most recent SHI published by EOHLC. In accordance with EOHLC regulations, the City is also allowed to count units that are SHI “eligible” but that have not yet been officially inventoried on the SHI. Currently the City has approximately 416 additional eligible units not listed on the published SHI. As a result, the City currently has 3,292 SHI Eligible Housing units.
- The total year-round housing units has increased by 770 units from 32,346 in the 2010 Census to 33,116 in the 2020 Census, resulting in 9.94% of the City’s housing units being SHI eligible.
- Based on this calculation, the City needs approximately 20 additional SHI units to reach the 10% safe harbor.

B. 1.5% Calculation

- The City’s current land area percentage of SHI Eligible Housing equals 1.41%.¹

$$\text{New Calculation} = \frac{108.67 \text{ acres}}{7,713.99 \text{ acres}} = 1.41\%$$

- The City currently has 108.67 acres of SHI Eligible Housing units. A summary of which projects have been added and removed from this calculation in the last year is set forth in the next section. There has been no change to the City’s total land area of developable land since the last calculation. This is normally a static number, though it had previously been reduced by the taking and subsequent rezoning of Webster Woods in 2019.
- Based on this calculation, the City needs approximately 7 additional acres of SHI housing in order to reach the 1.5% safe harbor.

C. Summary of Current SHI Eligibility

- The following project has been approved since the last safe harbor calculations and is currently counted as SHI Eligible Housing:
 - > Northland Charlemont Comprehensive Permit (160 Charlemont St.) – 370 units (25% affordable)

¹ The final required step in calculating the area of each affordable housing site requires calculating the maximum number of residential units that would be permitted at that site under the Newton Zoning Ordinance. The land area devoted to affordable housing must then be further reduced if the total number of units on site is less than the maximum permitted. As this number varies based on the zoning district and building type (and will change if new zoning is adopted as part of Zoning Redesign), and would only further reduce the affordable housing acreage, this final step in the 1.5% calculation has not been undertaken. As the City nears the 1.5% safe harbor, staff will further refine the numerator by completing this calculation.

- The previously approved comprehensive permit for 292 units at Dunstan East does not currently count as SHI Eligible Housing, because it has been more than one year since it received approval from the ZBA and a building permit has not been issued for construction of the housing. It is anticipated that a building permit will be issued in the very near future, at which time the City will exceed the 10% housing minimum safe harbor.

Looking Forward

- Newton has made significant progress towards achieving the Housing Unit Minimum safe harbor based on the current calculation of 9.94%. Presently, Newton needs 20 more SHI eligible units to achieve safe harbor. There are three 40B applications currently before the ZBA: 198 units proposed at 528 Boylston Street, 16 units proposed at 41 Washington Street, and 307 units proposed at 78 Crafts Street. Additionally, Dunstan East has initiated a building permit application for 292 units.
- In the same vein, there is likely to be additional movement of the safe harbor calculations in both directions moving forward. As examples, the Armory project may lose SHI eligibility if a building permit is not issued in January and the Northland special permit project may achieve SHI eligibility for some or all of its units in the next year if LAU Approval and building permits are issued. SHI eligibility for other previously approved projects will also ebb and flow and new projects will also be approved.
- As an outlook summary, the most likely scenario is Newton will achieve the 10% safe harbor at some point in the next month. But as various projects gain or lose SHI eligibility, the City's calculation will fluctuate and at times may dip or crest depending on the date of the calculation. What this means for future development in Newton, and in particular for projects planning to seek a comprehensive permit, is that the ZBA's ability to invoke a safe harbor for any given project remains dependent on the City's exact calculation on the date that a comprehensive permit application is filed with the ZBA. City staff will remain transparent as to this calculation and will continue to provide additional updates.



To: Jennifer Caira, Deputy Director of Planning and Jonah Temple, Deputy City Solicitor
From: Councilor R. Lisle Baker, Chair; and Councilor John Oliver, Vice-Chair
Re: Docket #77-24 relating to G. L. c. 40B “safe harbor” status for Newton
Date: January 18, 2024

Memorandum

Colleagues:

The following item will be taken up at our next Zoning and Planning Committee meeting on the 22nd:

*#74-24 Discussion Regarding 40B Process Post 'Safe Harbor' Designation
COUNCILORS OLIVER, BAKER, AND WRIGHT requesting a discussion with the Law and Planning departments regarding the process going forward for 40B projects since meeting the 10% 'Safe Harbor' designation. The discussion should address the different parameters that can or will be used to accept, deny and modify projects and the criteria allowed to be used by ZBA or any other approving authority.*

We also understand that the Zoning Board of Appeals meets next on Wednesday the 24th. It would be helpful in your information response to this item to clarify the substance and procedure of what happens to c. 40B projects once the safe harbor is reached. In addition to the language of the docket item itself, other issues that it would be helpful to clarify include the following:

1. Now that Newton has been reached ‘safe harbor’, what is the mechanism by which a safe harbor status is declared? Is some official action required by a Newton official or public body? For example, does the Newton Zoning Board of Appeals (ZBA) declare safe harbor status in response to a specific comprehensive permit application, or otherwise? If the applicant disagrees, how is the matter determined?
2. What if the ZBA (or other official so empowered) does not declare safe harbor status?
3. If safe harbor status is successfully declared, what is the effect on subsequent comprehensive permit applications and the power of the ZBA in response to them?
4. Is there a window of time between filing a comprehensive permit application and safe harbor declaration that may affect whether an applicant is bound by safe harbor status? If so, how is it determined?
5. Once safe harbor is declared, is there a project size threshold or other aspect which would affect the power of the ZBA to respond to it?
6. Once safe harbor is reached, do regular zoning and other Newton ordinances apply to 40B projects?
7. If so, does that also mean application by and approval by other regulatory bodies, such as the City Council acting as a special permit granting authority, or does the ZBA act in place of these other bodies but act in their stead but with their applicable standards and rules?

This list of questions may be supplemented by others at our meeting, but we hope these are helpful.

Regards,
R. Lisle Baker, Chair
John Oliver, Vice-Chair

(b) In addition to the penalties for code and ordinance violations established by the Commonwealth of Massachusetts and City of Newton, the Licensing Board shall have the authority to issue the following penalties for violations of these regulations after notice of hearing and opportunity to be heard.

- (1) More than three (3) code violations not addressed within 30 days of inspection unless a correction plan is approved by the Inspectional Services Department or Fire Prevention Bureau as appropriate.....\$300 Fine
- (2) More vehicles stored on the premises than allowed on the premises by zoning on (3) or more occasions as recorded by the Inspectional Services Department\$300 Fine
- (3) More residents on the premises than allowed on two (2) or more occasions as recorded by the Inspectional Services Department.....\$300 Fine
- (4) If two (2) or more of the above fines are warranted in any 12-month period or if three (3) or more of the above fines are warranted in a 36-month period Denial of License Renewal.

Sec. 20-159. Reserved.

**Article IX
SHORT TERM RENTALS**

Sec. 20-160. Definitions.

The meaning of the terms used in this article shall be as follows:

- (a) *Commissioner*: The commissioner of inspectional services.
- (b) *Operator*: A person or persons offering a dwelling unit or bedroom for short-term rental in the City, who may be either the owner or the primary leaseholder of the dwelling unit with the written permission of the property owner and the condominium association if applicable.
- (c) *Occupancy*: The use or possession or the right to the use or possession of a room in a Short Term Rental normally used for sleeping and living purposes for a period of not more than 30 consecutive calendar days to one person or party, regardless of whether such use and possession is as a lessee, tenant, guest or licensee.
- (d) *Occupant or Guest*: A person who uses, possesses or has a right to use or possess a room in a Short Term Rental for rent under a lease, concession, permit, right of access, license or agreement.
- (e) *Short Term Rental*: The rental of one or more bedrooms (along with any associated living areas) within a dwelling unit on an overnight or short-term basis of less than 30 days to guests. The use is accessory to the primary residential use of the dwelling unit.

Any terms not expressly defined in this article shall have the meaning prescribed by Massachusetts General Laws Chapter 64G, Section 1.

Sec. 20-161. Requirements for Short Term Rentals

- (a) Compliance. No Residential Unit shall be offered as a Short Term Rental except in compliance with the provisions of this article.

- (b) Registration. Operators of any Short Term Rental located in the City of Newton must register with the City in accordance with Sec. 20-162 of this article.
- (c) No Outstanding Code Enforcement or Inactive Building Permits. Operators are prohibited from renting any Short Term Rental if the property is subject to an outstanding building, electrical, plumbing, mechanical, fire, health, housing, trash, noise or zoning code enforcement, including notices of violation, notices to cure, orders of abatement, cease and desist orders or correction notices, unpaid fines or if there are any inactive outstanding building permits for the property.
- (d) Three or More Violations in a Twelve Month Period. Should a property receive three or more violation notices within any twelve month period under this article, or of any municipal ordinance, state law, or building code, any residential unit within the property shall be ineligible to be used as a Short Term Rental for a period of six months from the third or subsequent violation.
- (e) Annual Certification. All Operators must file with the Inspectional Services Department a sworn certification attesting to continued compliance with the requirements of this article and all applicable public safety codes. Such certification shall be filed annually on the first business day of January.
- (f) Annual Notice to Abutters. The Operator must, within thirty (30) days after registration of a Short Term Rental, provide notice of such registration to all abutters, owners of land directly opposite any public or private street or way, and abutters to the abutters. Such notification shall include the contact information of the Operator and the local contact, the Operator's state registration number, and a reference to this article. This notice must thereafter be provided annually on the first business day of January to all abutters, owners of land directly opposite any public or private street or way, and abutters to the abutters. Failure to provide such notice shall constitute a violation of this ordinance.

Sec. 20-162. Registration Requirements.

Operators must register with the Inspectional Services Department prior to the occupancy of any Short Term Rental that commences after January 1, 2020 by submitting the following:

- (a) State Certificate. A copy of the State certificate of registration issued in accordance with Massachusetts General Laws Chapter 62C, Section 67.
- (b) Local Operator Affidavit. A completed sworn Local Operator Affidavit, in a form established by the Inspectional Services Department, that at minimum contains the following information:
 - 1) Contact information of Operator and Local Contact;
 - 2) Proof of Residence;
 - 3) Description of operation and number of rooms/units that will be rented;
 - 4) Confirmation that there is no outstanding code enforcement or outstanding building permits;
 - 5) Signature of Operator certifying that the Short Term Rental conforms to this article.
- (c) Smoke and Carbon Monoxide Certificate of Compliance. All Short Term Rentals must comply with the applicable smoke detector and carbon monoxide requirements for residential units set forth in Sec. 10-11 of these Ordinances and Massachusetts General Laws Chapter 148, Section 26E. Operators must schedule an inspection with the Fire Department and receive a Certificate of Compliance indicating that the property

meets the smoke detector and carbon monoxide requirements prior to the first occupancy commencing after January 1, 2020. Operators shall be responsible for the smoke detector inspection/permit fee to be paid directly to the Fire Department as set forth in Sec. 17-10 of these Ordinances.

- (d) House Rules. A copy of the House Rules required to be posted and distributed in accordance with Sec. 20-164 of this ordinance.
- (e) Registration Filing Fee. At the time of registration, Operators must pay a filing fee of \$100, an amount established by the City Council. All applicable inspection fees shall be paid directly to the inspecting department at the time of inspection.
- (f) Local Contact Information. When registering, an Operator must provide his or her name and contact information, and, in the event that the Operator is not present during the Short Term Rental, the name and contact information of an individual who is able to respond in person to any issues or emergencies that arise during the Short Term Rental within two (2) hours of being notified. Contact information must include a telephone number that is active 24 hours per day to short term rental occupants and public safety agencies. This phone number shall be included in the registration of the Short Term Rental unit at the time of registration. Failure of the local contact to respond within the stated period shall constitute a violation of this ordinance.
- (g) Proof of Residence. When registering a Short Term Rental, an Operator must provide evidence that he or she resides in the dwelling unit for a minimum of 9 out of 12 months during each calendar year, as demonstrated by at least two of the following: utility bill, voter registration, motor vehicle registration, deed, lease, driver's license or state-issued identification.
- (h) Permission of Owner. An Operator must certify at the time of registration that he or she is the owner of the Short Term Rental or as the lessee has permission from the owner to operate the Short Term Rental.

Sec. 20-163. Inspections.

- (a) The Inspectional Services Department, Health and Human Services Department, and Fire Department may conduct inspections of any Short Term Rental as may be required to ensure safety and compliance with all applicable ordinances and local, state, and federal codes, including but limited to the provisions of this article. All inspecting departments shall keep records of inspections and visits to the property throughout each year.

Sec. 20-164. Responsibilities of Operators.

- (a) General Responsibility. The Operator shall be responsible for the proper supervision, operation, and maintenance of the Short Term Rental in accordance with the requirements of this article and all other pertinent laws, regulations, and codes. The Operator shall also be responsible for the behavior and activity of guests that results in a violation of this ordinance. The appointment of an agent shall in no way relieve the Operator from responsibility for full compliance with the law.
- (b) No Nuisance. Short Terms Rentals shall not result in the disruption of the peace, tranquility, or safety of the immediate residential neighborhood through the production of noise, vibration, light, glare, trash, fumes, odors, traffic, parking congestion, or any other nuisance beyond that which normally occurs in the immediate residential area.
- (c) Compliance with City Ordinances and State and Local Laws. All Short Term Rentals shall comply with all applicable ordinances and local, state, and federal codes applying generally to residential properties in

the City, including but not limited to the City's Zoning Ordinance, Chapter 30 of the Revised Ordinances of the City.

- (d) Commercial Events Prohibited. A Short Term Rental property shall not be used for a commercial event during its occupancy as a Short Term Rental. Commercial events include luncheons, banquets, parties, weddings, meetings, charitable fundraising, commercial or advertising activities, or other gatherings for direct or indirect compensation.
- (e) Agreements with Occupants. Operators may not enter into any rental agreements that are inconsistent with the terms of this article.
- (f) Minors. No Short Term Rental shall be rented to any unemancipated person who is younger than eighteen (18) years of age.
- (g) Occupant Registries. The Operator of every Short Term Rental must maintain, in permanent form, a registry log of occupants. It must include the names and home addresses of occupants, occupant's license plate numbers if traveling by car, dates of stay, and the room assigned to each occupant. The registry log must be available for inspection by any City official upon request.
- (h) Fire Prevention Notice. Operators shall post in a visible place inside the short-term rental unit information regarding the location of any fire extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.
- (i) Notice of Registration. The Operator of every Short Term Rental shall post in a prominent place within the rental the house rules below as well as the certificate of registration with the City of Newton. The Operator shall clearly display the Newton Registration number in all advertisements or notices of the short term rental, including online advertisements.
- (j) House Rules. Operators shall institute house rules to prevent the Short Term Rental from being a cause of complaint to the Police Department or a cause of nuisance or annoyance to the neighbors or neighborhood.
 - 1) House rules must make occupants aware of the City's ordinances and the Operator's policies, which shall be in writing. At a minimum, house rules shall adequately address the following:
 - i. Noise control, including use of audio equipment that may disturb the peace
 - ii. Adherence to laws regarding disorderly behavior
 - iii. Proper garbage disposal
 - iv. Location of parking stalls on the property
 - v. Neighborhood parking regulations and restrictions
 - vi. Occupancy limits according to the City's Zoning Ordinance
 - vii. Any other provisions as may be required by City Officials.
 - 2) Operators shall ensure all occupants are aware of the house rules by distributing them prior to the date of occupancy and posting them in a visible place.

- (k) Egress and Access. Operators of short term rentals, classified as one-family or two-family dwellings for the building code, shall be responsible for ensuring that adequate egress is provided in accordance with the the appropriate section of Massachusetts State Building Code, 780 CMR.
- (l) Maintenance. The building and all parts thereof shall be kept in good general repair and properly maintained.
- (m) Burden of Proof and Cooperation. The burden of proof is placed on the Operator to demonstrate that they are operating within the limits of this article. Operators must cooperate with any enforcement or investigation proceedings under this article.
- (n) False Information. Submission of false information shall constitute a violation of this ordinance..

Sec. 20-165. Enforcement, Violations and Penalties.

- (a) Enforcement. The Inspectional Services Department and the Newton Police Department or their designees shall be responsible for enforcement of this ordinance, including any rule or regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.
- (b) Notice of violation. The Commissioner or designee shall issue a written notice of any violation of this article to the Operator. Said notice shall describe the prohibited condition and order that it be remedied within thirty (30) days of receipt of the notice.
- (c) Penalties. Any Operator who violates any provision of this ordinance shall be subject to suspension or termination of the certificate to operate a Short Term Rental and a fine of not more than three hundred dollars (\$300.00) for each violation. Each day a violation occurs shall be a separate offense. The Commissioner shall notify the Massachusetts Commissioner of the Department of Revenue of all such suspensions or terminations. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).
- (d) Violations of building, health, or fire code. Any action by the Commissioner to suspend, terminate or issue fines under this section shall not bar any other separate action by any other City Department for health, fire safety, building code or any other violations.
- (e) Failure to Register. Any person who offers or operates a Short Term Rental without first registering with the City shall be fined three hundred dollars (\$300.00) per violation per day. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation.

Sec. 20-166. Effective Date.

The provisions of this Article IX shall take effect on January 2, 2020.

Sec. 20-167. Severability.

The provisions of this article are severable. If any provision, paragraph, sentence, or clause, of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this article.

Sec. 20-168. Reserved.

- ii. If more than 1 parking stall is required for the home business, the total number of parking stalls required shall be reduced by 1 stall;
- j. In any dwelling which has an accessory apartment, there shall be no more than 1 home business which shall be located in the principal dwelling unit; and
- k. The City Council may grant a special permit for a home business involving any or all of the following:
 - i. A number of nonresident employees greater than that permitted under Sec. 6.7.5.B;
 - ii. The utilization for the purpose of the home business of more than 30 percent of the ground floor area of the dwelling unit;
 - iii. The presence of more than 3 customers, pupils, or patients for business or instruction at any one time, subject to the provision of a number of parking spaces sufficient to accommodate the associated activity;
 - iv. The use of a detached accessory building, exterior structure, or land outside the residence for the primary purpose of, or accessory to the home business; provided, however, that no home business shall be permitted in any detached accessory building which is used as an accessory apartment pursuant to the provisions of Sec. 6.7.1.C or Sec. 6.7.1.D; and
 - v. The waiver of the off-street parking requirement.
- 2. In Multi-Residence Districts. The City Council may grant a special permit for a home business in accordance with standards listed in Sec. 6.7.3

(Ord. No. 191, 01/17/77; Ord. No. S-260, 08/03/87; Ord. No. T-264, 03/01/93; Ord. No. B-2, 02-20-18)

6.7.4. Scientific Research and Development Activities

- A. **Defined.** Activities necessary in connection with scientific research or scientific development or

related production, accessory to activities permitted as a matter of right, so long as it is found that the proposed accessory use does not substantially derogate from the public good.

- B. **Standards.** Notwithstanding anything in this Sec. 6.7.4, no recombinant DNA research shall be permitted as an accessory use.

(Ord. No. R-238, 03/15/82)

6.7.5. Short-Term Rental

- A. **Purpose.** The purpose of this provision and its complementary provision of the general ordinances is to maintain the long term residential use and quiet enjoyment of Newton neighborhoods while providing opportunities for rental income under carefully controlled conditions consistent with the foregoing objectives.
- B. **Defined.** The rental of one or more bedrooms (along with any associated living areas) within a dwelling unit on an overnight or short-term basis of less than 30 days to guests. The use is accessory to the primary residential use of the dwelling unit.
- C. **Standards.**
 1. A resident seeking to operate a short-term rental must register with the City in accordance with Sec. 20-162 of the Revised Ordinances of the City of Newton.
 2. The short-term rental accessory use is permitted in any residential use, excluding associations of persons living together in a common dwelling, congregate living, elderly housing, lodging house, dorms, accessory apartments, and similar residential uses.
 3. There may be no signage associated with a short-term rental.
 4. The burden of proof is placed on the resident registered with the City as the operator of the short-term rental to demonstrate that the resident is operating within the limits of this section.
 5. The resident of the dwelling unit must occupy the dwelling unit for a minimum of 9 out of 12 months during each calendar year.

6. The maximum number of bedrooms on the site that can be rented to overnight or short-term guests is 3 and the maximum number of guests is 9.
7. Temporary During Leasing. Short-Term Rentals in multi-unit buildings with a minimum of 10 units in a business or mixed-use district may, by special permit, occupy residential units with short-term rentals for up to six months while units marketed as for rent are vacant. Units designated as affordable may not be used as short-term rentals. Temporary Short-Term Rentals must register with the City as per Sec. B.1 above.
8. The effective date for this section 6.7.5 is January 2, 2020.

(Ord. No. B-37, 09-03-19)

6.7.6. Watchman or Caretaker

- A. **Defined.** [Reserved]

6.7.7. Food Trucks

- A. **Intent.** Food Trucks are intended to advance the following:
 1. Bring variety to the availability of local food establishments;
 2. Add vibrancy and interest to the street life of a district;
 3. Encourage the advancement of new restaurants and food service businesses by serving as a form of business incubator for new restaurant ideas in a start-up phase; and
 4. Create food options and amenities for underserved locations in the City.
- B. **Food Trucks Defined.** Defined in City Ordinances Sec 20-88.
- C. **Rules for Food Trucks.**
 1. In the Public Use District, Food Trucks shall only locate on the public street 'Wells Avenue' according to City Ordinances Sec 20-88 and 20-92. Food Trucks are allowed on public land as part of a special event with a license from the Health Department.

2. A Food Truck shall not remain parked overnight.
3. A Food Truck is not required to provide parking.
4. A Food Truck must meet all of the requirements of City Ordinances sections 17-47 through 17-50.
5. A Food Truck operating as part of a special event or in a catering capacity for a private function is allowed in all districts.

(Ord. No. A-120, 12/04/17)

6.7.8. Accessory Shared-Parking

- A. **Defined.** Accessory Shared-Parking is the use of accessory parking stalls, authorized under the Accessory Shared-Parking Pilot for shared use in off-peak times. Accessory Shared-Parking is an allowed accessory use only when the owner or operator of the parking stalls has been approved as a participant in the Pilot and the stalls so identified and approved are utilized in strict accordance with the requirements, terms, and conditions of the Pilot to be issued by the Director of Planning and Development.
- B. **Accessory-Shared Parking Pilot.** The Accessory Shared-Parking Pilot is intended to optimize existing parking resources in village centers by making underutilized private parking available to the public in select commercial areas.
- C. **Standards.**
 1. The Pilot will be administered by the Director of Planning and Development, in consultation with the Commissioner of Inspectional Services. The Director of Planning and Development shall prepare and issue rules/guidelines, not inconsistent with the provisions of this Chapter, that clarify the criteria and requirements for participation in the Pilot and set forth the terms and conditions that will apply to approved participants. A copy of these guidelines shall be posted on the City website.
 2. Participation in the Pilot shall be limited to accessory parking located in a Business, Mixed Use, or Manufacturing District or a non-residential use property abutting or across a public way from a Business, Mixed Use, or Manufacturing District. Accessory parking to residential uses are not



Ruthanne Fuller
Mayor

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January 8, 2024

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Honorable City Councilors:

I respectfully submit this docket item to the Honorable Council requesting the approval of an Electrification Ordinance in conjunction with the City's recent conditional approval by the State Department of Energy Resources (DOER) for participation in the Ten Communities Program. The Electrification Ordinance requires all new construction and substantial renovations in Newton to be all-electric.

DOER's approval is conditioned on (1) Newton's meeting (by February 2024) one of the housing affordability programs requirements specified in the Ten Communities Program, and on (2) approval by the City of the proposed electrification ordinance.

We expect to soon officially meet the housing affordability requirement with a state approval of the new zoning ordinance changes passed by the City Council in December, which we believe is in compliance with the MBTA Communities Law.

DOER has now fully approved the seven communities of Acton, Aquinnah, Brookline, Cambridge, Concord, Lincoln and Lexington to participate in the Ten Communities Program. Arlington, along with Newton, has received conditional approval.

Electrification of buildings is critical to meeting Newton's goal of achieving carbon neutrality by 2050. In Newton, more than 60% of our greenhouse gas emissions come from our homes, apartments, and commercial buildings. So, the way we heat and cool these buildings, heat our water, cook our food, and keep the lights on matters a great deal as we work to "Use Less and Green the Rest," as the City says in our Climate Action Plan.

By using cleaner and greener electricity, increasingly generated with renewable sources (solar and wind), we can reduce greenhouse gas emissions caused by fossil fuels, the major contributor to climate change.

Attached is a memo from Co-Director of Sustainability Ann Berwick and Planning & Development Director Barney Heath with additional details. Thank you for your consideration of this matter.

Sincerely,

Mayor Ruthanne Fuller



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
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Barney Heath
Director

MEMORANDUM

TO: Mayor Ruthanne Fuller
Jonathan Yeo, Chief Operating Officer

FROM: Barney Heath, Director, Department of Planning and Development
Ann Berwick, Co-Director of Sustainability

DATE: January 5, 2024

RE: Docket Request—Electrification Ordinance for Ten Communities Program

CC: Andrew Lee, Associate City Solicitor
Carol Moore, City Clerk
Cassidy Flynn, Deputy City Clerk
Bill Ferguson, Co-Director of Sustainability
Anthony Ciccariello, Director, Inspectional Services Department

The Planning Department and Climate and Sustainability team respectfully request that you docket the attached proposed Electrification Ordinance. The State Department of Energy Resources (DOER) has conditionally approved the City's application to participate in the State's Ten Communities Program. In doing so, DOER approved the City's proposed Electrification Ordinance as attached, but it remains to be approved by the City Council.

DOER's approval is conditioned on (1) Newton's meeting (by February 2024) one of the housing affordability programs requirements specified in the Ten Communities Program, and on (2) approval by the City of the proposed electrification ordinance as specified in the form attached.

We expect to meet the housing affordability requirement by the State's approving the new zoning ordinance changes passed by the City Council in December, which we believe is in compliance with the MBTA Communities Law.

The other requirement is that the City Council approve the attached proposed Electrification Ordinance, which is what we are addressing in this memo.

The proposed Electrification Ordinance has a lengthy background.... With the unanimous approval of the City Council, the City submitted a "home rule petition" to the State Legislature in 2022 requesting

authority to require all new construction and substantial renovations to be all-electric. The City Council's approval followed several hearings before both the Public Facilities and the Zoning and Planning Committees. #49-24

The Legislature never acted on this petition, or on similar petitions from some other communities; instead, the Legislature passed a law saying that the first ten communities to file such home rule petitions would be allowed to enact an electrification requirement, and that any such requirement would have to comply with certain DOER specifications.

Newton is one of the first ten. DOER has now fully approved Acton, Aquinnah, Brookline, Cambridge, Concord, Lincoln and Lexington to participate in the Program. Along with Newton, Arlington has received conditional approval.

We note that Newton included in its proposed Electrification Ordinance several provisions that were not included in DOER's Model Electrification Ordinance. These provisions include, among others, exceptions for freestanding outdoor heating and cooking appliances that are not connected to the building's natural gas or propane infrastructure, emergency generators, and certain appliances to produce potable or domestic hot water from centralized hot water systems in large commercial buildings.

The proposed Ordinance also provides for waivers 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% or more, compared to the costs of complying only with the requirements of the applicable (i.e., residential or commercial) specialized building code." This waiver provision was specifically requested by Newton's Department of Inspectional Services.

Electrification of buildings is critical to meeting Newton's goal of achieving carbon neutrality by 2050. In Newton, more than 60% of our greenhouse gas emissions come from our homes, apartments, and commercial buildings. So, the way we heat and cool these buildings, heat our water, cook our food, and keep the lights on matters a great deal as we work to "Use Less and Green the Rest," as the City says in its Climate Action Plan.

By using cleaner and greener electricity, increasingly generated with renewable sources (solar and wind), we can reduce greenhouse gas emissions caused by fossil fuels, the major contributor to climate change.

Finally, in light of recent changes in the building and energy codes which have required a challenging period of readjustment by all those affected, and in consultation with the City's Department of Inspectional Services, we suggest that the proposed Ordinance go into effect no earlier than September 1, 2024, and possibly on January 1, 2025.

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 the costs of complying only with the requirements of the applicable (i.e., residential or commercial) specialized building code.
- G. Fossil fuels for process loads for manufacturing, industrial, and commercial purposes.

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% or more, 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.