



Zoning & Planning Committee Report

City of Newton In City Council

Monday, June 10, 2024

Present: Councilors Baker (Chair), Oliver, Albright, Wright, Krintzman, Getz, and Danberg

Absent: Councilor Kalis

Also Present: Councilors Farrell, Leary, Block, Lucas, Lobovits, Greenberg, and Malakie

Planning & Development Board Present: Amy Dain (Vice-Chair), Peter Doeringer, Jennifer Molinsky, Lee Breckenridge, Edward Dailey, and Barney Heath

Planning & Development Board Absent: Kevin McCormick, and Kelley Brown

City Staff: Andrew Lee, Senior Assistant City Solicitor; William Ferguson, Co-Director of Sustainability; Ann Berwick, Co-Director of Sustainability; Barney Heath, Director of Planning; Jennifer Caira, Deputy Director of Planning; Zachary LeMel, Chief of Long Range Planning; Olivia James, Community Engagement Specialist; Nora Masler, Planning Associate; and Jaclyn Norton, Committee Clerk

All agendas and reports, both past and present can be found at the following link: [Zoning & Planning Committee | City of Newton, MA \(newtonma.gov\)](https://www.newtonma.gov/zoning-planning)

For more information regarding this meeting, a video recording can be found at the following link: [Zoning and Planning Committee - June 10, 2024 \(youtube.com\)](https://www.youtube.com/watch?v=...)

- #76-24(3) Discussion and possible amendments to change how building height is measured**
ZONING & PLANNING COMMITTEE requesting discussion and possible amendments to Chapter 30, Zoning to require that building height is measured from original grade instead of finished grade.
- Action:** **Zoning & Planning Held 4-0-3 (Councilors Oliver, Wright and Baker Abstained)**

Note: Olivia James, Community Engagement Specialist, presented the attached presentation which provides a background of this provision within the ordinances. The attached presentation also provides examples of development that manipulated grade to maximize FAR (floor area ratio). The proposed ordinance would have an average grade calculated from the original (existing) grade or the proposed grade whichever is lower. This

keeps the average grade calculation the same but changes the starting point to have designs that fit better within the surrounding context. In looking at other municipalities with similar ordinances the Planning Department found that measuring from existing grade was common in more built out cities such as Newton. Regarding property values, no decrease in property values was seen by any municipality that passed a similar ordinance. In talking with architects and builders there was general support for the amendments along with requests for more research and concerns on steep sites.

The public hearing was opened.

Ellen Katz, 31 Williams Street, is a member of the Conservation Commission and described how the proposed amendment does not go far enough. She also advocated for the adoption of an earth moving ordinance.

Jay Walter, 83 Pembroke Street, supported the proposed amendment but had reservations that a full analysis had not been done to fully understand the implications. He also stated that the zoning code currently has piecemeal amendments.

Terry Sauro, 42 Cook Street, voices support for the proposed amendment.

Lisa Monihan, 1105 Washington Street, also advocated for an earth moving ordinance and stated how the proposed amendment is short-sighted. She noted that a holistic review of the zoning ordinance should be done instead.

Dan Powdermaker, 119 Lincoln Street, opposed the proposed amendment. He stated that the incremental changes thus far have not led to the intended consequences and that this would have unforeseen impacts on multi-family buildings.

Anthony Lee, 35 Village Circle, is opposed to the proposal stating that sometimes retaining walls can be beneficial.

Tim Feinstein, 49 Washburn Avenue, urged the council to do further analysis on this topic before adopting the proposed amendment.

Committee members voted 6-0-1 (Councilor Danberg Abstained) on a motion to close the public hearing from Councilor Albright. The Planning & Development Board voted 5-0-1 (Barney Heath Abstaining) on a motion to close the public hearing from Peter Doeringer.

Councilors asked how long other communities have had a similar measure and why there is a five-year lookback period. Zachary LeMel, Chief of Long Range Planning, stated that other communities have had similar measures for various lengths of time but multiple have adopted them within the last 10 years. Regarding the lookback provision, Andrew Lee, Senior Assistant

City Solicitor, stated that this was to prevent a developer from changing the grade and then later building a structure to have the new grade be the existing grade of the construction.

The Chair noted that there is a companion item to this that allows the Committee to make further amendments to this ordinance. Councilors echoed concerns heard during the public hearing regarding not conducting a proper analysis, unintended outcomes, how this affects lots that are not flat, and the effect on multifamily homes. Other Councilors noted that the proposed amendment is something that we can do now to prevent problems. A Councilor asked if this is making changes to lots with significant slopes. stated that these amendments only change the starting point for where building height is measured, and that the formula takes the topography of the site into account. Multiple Councilors and members of the Planning & Development Board requested more examples from the Planning Department along with a couple of examples of working through the formula for building height.

Councilors voted 4-0-3 (Councilors Oliver, Wright, and Baker Abstained) on a motion to hold from Councilor Albright. The Planning & Development Board voted 5-0-1 (Barney Heath Abstaining) on a motion to hold from Peter Doeringer.

#42-24 Request for Discussion and Ordinance to require energy use reporting
COUNCILORS ALBRIGHT, DANBERG, and LEARY on behalf of the Newton Citizens Commission on Energy (NCCE), requesting discussion and an ordinance that would require large property owners (campuses and large commercial buildings) to report energy use and associated greenhouse gas emissions annually to the city of Newton, to be used to encourage reductions in said energy use and greenhouse gas emissions in accordance and support of the goals set forth in the Newton Climate Action Plan.

Action: **Zoning & Planning Held 5-0-1 (Councilor Danberg Abstaining) (Councilor Krintzman Not Voting)**

Note: William Ferguson, Co-Director of Sustainability, noted that BERDO is the first action from the Climate Action Plan to reduce emissions. The City is also engaged in a case study with Dante Capasso to see what is entailed to have a building comply with the ordinance. This study is incomplete and is still being worked on. Mr. Ferguson also noted that he is working with Newton Wellesley Hospital to make sure that the unique needs of the Hospital are accounted for. He presented the attached slide which outlines a compliance pathway for a building.

Halina Brown from the Newton Citizen's Commission on Energy (NCCE) noted that NCCE has been working on this ordinance since 2021. She outlines how this ordinance is modeled after Boston's but adapted to fit the unique needs of Newton. In implementing this ordinance the City can utilize the knowledge learned from Boston and Cambridge to ensure a successful rollout. She also noted that regulations such as this will promote innovation and outlined the

preliminary findings from the case study on Mr. Capasso's property. NCCE supports the inclusion of residential buildings over 20,000 sf in the ordinance.

Greg Reibman, President of the Charles River Regional Chamber, raised concerns about the financial impact this ordinance can have on building owners and the economic competitiveness of Newton. Dante Capasso of 49 Lexington Street noted that this ordinance could have detrimental impacts on his business. These detrimental impacts include needing to potentially take out a loan to pay for retrofits to the building, raising rents significantly, and potential gut renovations needed for his building. Bill Norman has been involved with the BERDO ordinance in Boston for multiple years and noted difficulties that arise when using the portal to enter energy usage and emissions. Marcus de Castro, advocated for the City to allocate additional resources to the administration of this ordinance.

The public comment period was opened.

Lindsey Gulden, 19 Garland Road, is a trained climate scientist and supports the proposed ordinance with the inclusion of residential buildings over 20,000 sf. She stated that if this ordinance is not passed then everyone will suffer the worsening effects of climate change.

Diane Stathoplos, 71 Arlington Street, is a member of 350 Mass and also supports the ordinance with the inclusion of residential buildings over 20,000 sf.

Marcia Cooper, 170 Evelyn Road, is the president of Green Newton and supports the ordinance with the inclusion of residential buildings over 20,000 sf. She added that buildings that need to comply will save on energy costs which can help offset the costs to comply.

Betsy Harper, 19 Fairmont Avenue, is a member of the Green Newton Building Standards Committee and noted how building owners will have time to save for these upgrades and that a gut renovation is not needed to install a heat pump.

Lori Timmermann, 264 1st Street, Melrose, works for National Grid connecting people with resources under the Mass Save program. She works to help property owners decarbonize along with noting that Mass Save has 0% interest repayment options to help aid building owners in complying with the ordinance.

Carolyn Lattin, 277 Park Street, is a member of Mother's Out Front and noted how the City needs to do more to respond to climate change to protect future generations.

Philip Hanser, 40 Cedar Street, noted that the possibility of loans is being mentioned due to the significant opportunity costs available to building owners.

Kara Marshall, an employee of Eversource supports energy usage reporting for BERDO ordinances in Boston and Cambridge. She noted the ease of reporting this data including the

ability to set up automatic data sharing. Eversource will also work with building owners of apartment buildings to help get energy usage data from tenants.

John Dundon, 71 Fordham Rd, supports adding residential buildings over 20,000 sf to the ordinance. He noted that much can change with technology until compliance is required along with the severity of climate change.

Cindy Calloway, 83 Grove Hill Avenue, is a member of Mother's Out Front and supports adding residential buildings over 20,000 sf to the ordinance.

Dan Ruben, 175 Auburn Street, is a member of Green Newton and noted how energy efficiency programs have significant rebates. He did note that this ordinance can cause a financial burden on property owners but that the benefits of this ordinance are of great significance.

Peter Barrer, 60 Endicott Street, noted support for the ordinance and stated how the world has a climate emergency problem.

Jonathan Kantar, 672 Chestnut Street, supports adding residential buildings over 20,000 sf to the ordinance. He stated that the technology will decrease in price as time goes on along with these improvements increasing the value of a property.

Amy Sangiolo, 389 Central Street, supports the proposed ordinance and acknowledges that it can have a financial impact on building owners. She advocated for the City to work with the State and Federal government to help secure more funding to aid building owners in making these upgrades.

Deb Crossley, 26 Circuit Avenue, noted the City's previous resolution to begin work on BERDO. She voiced support for the proposed ordinance including residential buildings along with working with the State and Federal government to secure more funding to aid building owners in complying.

The public comment period was closed.

Councilors asked if the City has enough resources to administer the ordinance and do we have a list of resources for people. Mr. Ferguson stated that the City is committed to adding a full-time employee to the sustainability team in FY26 and the City has consultants ready if needed. The City will also publish resources on the website in a place that is easy to find to aid building owners who need to comply with the ordinance. A Councilor also noted the less steep compliance requirements in the beginning that is in this ordinance compared to other communities that have adopted similar ordinances. Councilors voiced support for the proposed ordinance and stated that they wanted residential buildings over 20,000 sf added to the ordinance. There were questions from Councilors regarding the cost of complying with this

ordinance and if other buildings would have as much lead time as the case study before retrofits would need to be made.

Committee members voted 5-0-1 (Councilor Danberg Abstaining) (Councilor Krintzman Not Voting) on a motion to hold from Councilor Oliver.

#24-24(2) Requesting discussion and possible ordinance amendments relative to aiding small businesses impacted by development

ZONING & PLANNING COMMITTEE requesting amendments to Chapter 30, Zoning, to delete the “Fast Food Establishment” use contained in Section 6.4.14, require a special permit for any Restaurant use with a drive-thru component, add a new definition of “Business Incubator” and standards for such use, and define a “Place of Amusement” contained in Section 6.4.27, and allow such use either by right subject to listed standards or upon the granting of a special permit.

Action: **Zoning & Planning Held 6-0 (Councilor Krintzman Not Voting)**

Note: The Chair noting the late hour stated that the Committee would take this item up at the next meeting on Thursday, June 27th. Committee members voted 6-0 on a motion to hold from Councilor Oliver.

#239-24 Reappointment of Jason Korb to the Newton Affordable Housing Trust

HER HONOR THE MAYOR reappointing Jason Korb, 57 Warren Road, Newton as a full member of the Newton Affordable Housing Trust for a term of office set to expire on May 2, 2026. (60 Days: 08/02/2024)

Action: **Zoning & Planning Approved 6-0 (Councilor Krintzman Not Voting)**

Note: The Chair read into the record items #239-24 and #240-24. Councilors expressing no concerns voted 6-0 (Councilor Krintzman Not Voting) on a motion to approve from Councilor Albright.

#240-24 Reappointment of Debora Jackson to the Economic Development Commission

HER HONOR THE MAYOR reappointing Debora Jackson, 4 Pine Meadow Drive, Auburndale as a member of the Economic Development Commission for a term of office set to expire on May 14, 2027. (60 Days: 08/02/24)

Action: **Zoning & Planning Approved 6-0 (Councilor Krintzman Not Voting)**

Note: This item was discussed jointly with item #239-24. A written report can be found with item #239-24.

The meeting adjourned at 10:02 pm.

Respectfully Submitted,

R. Lisle Baker, Chair

Discussion and possible amendments to change how building height is measured

Docket #76-24(3)

Zoning and Planning Committee
June 10, 2024
Planning & Development

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Agenda

- Background (*how we got here*)
- Overview (*existing regulation and issues*)
- Analysis (*supporting research*)
- Examples (*recent projects*)
- Proposed Amendment
- Next steps
- Q&A

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Background

(how we got here)

Background

Before 2009

- Zoning Ordinance required special permit to change existing grade on site by more than 3 feet

2009

- City Council adopted ordinance to require special permit for retaining wall over four feet within setback

2011

- Update to FAR definition / gross floor area

April 2024

- City Council adopted new ordinance to require special permit for any retaining wall over four feet, regardless of location

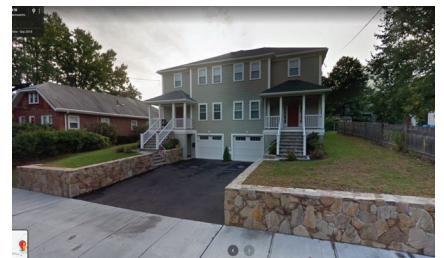
Overview

(existing regulation and issues)

Existing Regulation

Average grade calculated from the **proposed** (finished) grade to measure height

- Allows developers to manipulate grade to maximize FAR
- Enables designs that do not fit surrounding context



Proposed Regulation

Average grade calculated from the **original (existing) grade OR proposed grade, whichever is lower**, to measure height

- Average grade calculation remains the same, starting point changes
- Designs will fit better within surrounding context
- Developers continue to have option to seek special permit for a third story or additional FAR

Proposed Regulation

Sections of ordinance to address

- **1.5.4.E. Grade** definition does not specify whether it refers to original or finished grade
- **1.5.4.F. Grade Plane Average** uses finished grade elevations
- **1.5.5.D. Mass Below First Story** determined by finished grade

145 Pine Ridge Road

Before



After



Analysis
(supporting research)

Research conducted by staff

- 1) Review of neighboring municipal ordinances
- 2) Communication with neighboring municipalities
- 3) Discussions with architects and builders
- 4) Analysis of recent projects in Newton

Review of neighboring municipal ordinances

Watertown, Wellesley, Needham, Bedford, Brookline, Arlington, and Waltham:

- All use original grade to measure height
- Newton is outlier among more built-out communities

Communication with neighboring municipalities

- Using original grade addressed similar issues
 - Grade manipulation (Watertown)
 - “Mansionization” – Bedford
 - Teardowns – Bedford
- No municipality saw property values decrease

Discussions with architects and builders

- Generally support proposed amendments
- Expressed interest in more research
- Some concerns over impact on small and/or steeply sloped sites

Analysis of recent projects in Newton

- Projects selected from suggestions by ISD staff, architects, other Planning staff
- Found most projects would have by-right pathways identical to what was proposed or with minor modifications
- Projects that does not want to change the design could request a special permit

Examples
(recent projects)

11 Ruane Road

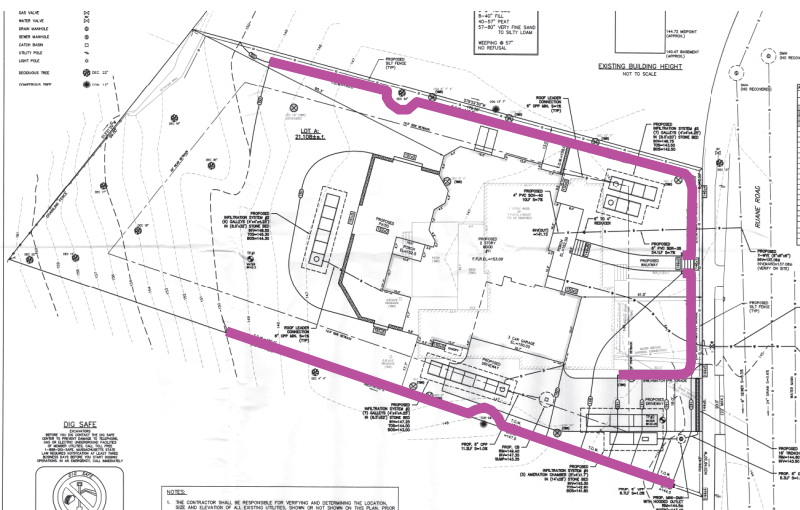
Original



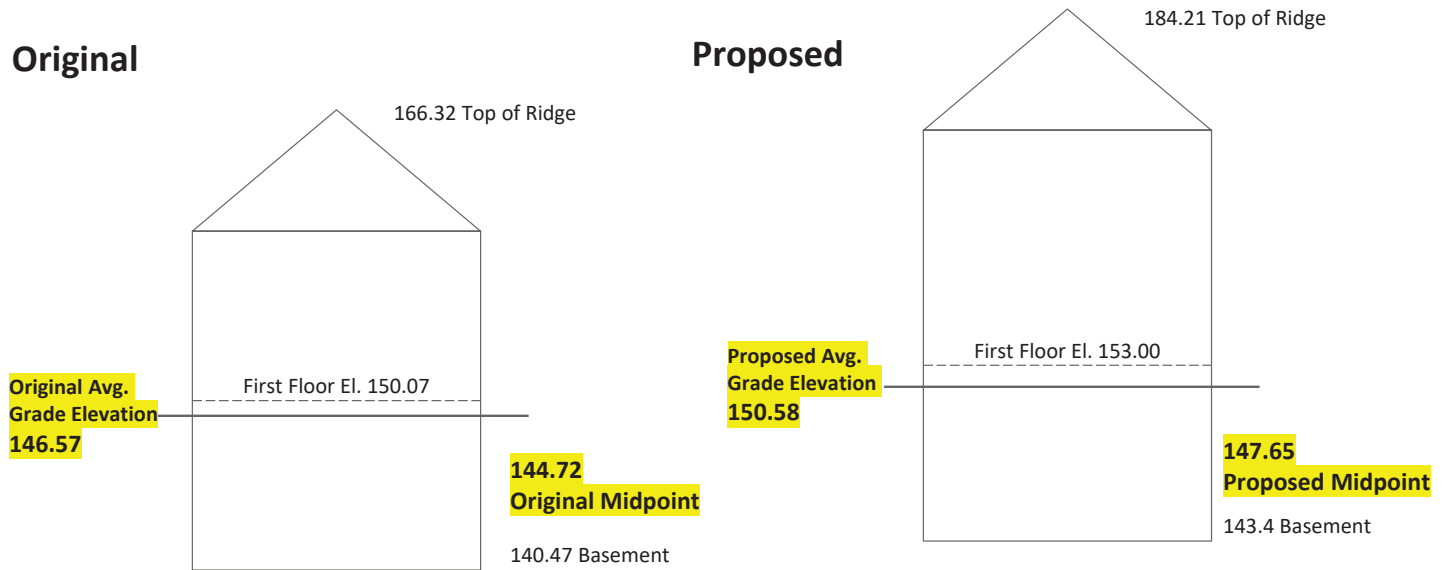
Proposed



11 Ruane Road



11 Ruane Road



12-14 Princeton St



145 Pine Ridge Road

Original



Proposed



Proposed
Amendment

Existing Ordinance

Sec. 1.5.4. Height

E. Grade. In cases where the walls of the building are more than five (5) feet from the nearest street line, the grade shall mean the mean elevation of the ground adjoining said wall; and in all other cases, the mean elevation of the nearest sidewalk.

F. Grade Plane Average. A horizontal reference plane for a building as a whole representing the average of finished grade elevations around the perimeter of a building, as determined by the length-weighted mean formula below. All walls of length greater than 6 feet shall be included in segments of consistent grade or slope.

$$\Sigma = (e1 + e2) / 2 \times L$$

Where:

- Σ sums the weighted average grades of all segments;
- Segments less than 6 feet in length are not included as separate segments;
- e1 and e2 are the elevations of the finished ground level at the respective ends of each segment, determined as the lowest point at each end of the segment within 6 feet of the foundation or the lot line, whichever is closer;
- L is the corresponding horizontal length of the segment; and
- P is total horizontal length of all segments.

Existing Ordinance

Sec. 1.5.5. Floor Area

D. Mass Below First Floor. For the purposes of calculating gross floor area, any cellar, crawl space, basement, or other enclosed area lying directly below a first story in a residential structure.

1. Standards. The lesser of 50 percent of the floor area of mass below first story OR: ((X/Y) floor area of mass below first story) Where:

- X = Sum of the width of those sections of exposed walls below the first story having an exterior height ≥ 4 feet as measured from existing or proposed grade, whichever is lower, to the top of the subfloor of the first story.
- Y = Perimeter of exterior walls below first story

Proposed Amendment

(See memo)

Proposed Amendment (Clean)

1.5.4. Height

E. Original Grade. The grade of the lot before any regrading, demolition, development, or redevelopment begins based on the following standards:

1. If a lot,

- a. Has an existing building that is to be demolished or modified, the original grade of the lot shall be the grade that existed prior to any activity that caused a change in position or location of soil, sand, rock, gravel, or similar earth material, which changes the grade of the lot, that occurred after September 1, 2024 and within five (5) years of the date of application for the building permit for such demolition or modification of the existing building; or
- b. Has no existing building on the property, the natural grade of the property, prior to any activity that causes a change in position or location of soil, sand, rock, gravel, or similar earth material, which changes the grade of the lot, shall be considered the original grade; or
- c. Is a new subdivision, notwithstanding anything to the contrary contained in the City of Newton Zoning Ordinance, the original grade shall mean the approved and recorded grade.

2. The original grade shall be certified by a registered Massachusetts licensed professional land surveyor and shown on a certified plot plan to be verified by the Building Inspector prior to commencement of work on the property with all elevations in Newton City base.

Proposed Amendment (Clean)

F. Grade Plane Average. A horizontal reference plane for a building as a whole representing **the average of original or proposed grade, whichever is lower,** elevations around the perimeter of a building, as determined by the length-weighted mean formula below. All walls of length six (6) feet or greater shall be included in segments of consistent grade or slope.

1. In cases where the walls of the building are more than five (5) feet from the nearest street line, the grade shall refer to the mean elevation of the ground adjoining said wall; and in all other cases, the mean elevation of the nearest sidewalk.

$$\Sigma = (e1 + e2) / 2 \times L \times P$$

Where:

- Σ sums the weighted average grades of all segments;
- Segments less than 6 feet in length are not included as separate segments;
- e1 and e2 are the elevations of the finished ground level at the respective ends of each segment, determined as the lowest point at each end of the segment within 6 feet of the foundation or the lot line, whichever is closer;
- L is the corresponding horizontal length of the segment; and
- P is total horizontal length of all segments

Proposed Amendment (Clean)

1.5.5. Floor Area

D. Mass Below First Story. For the purposes of calculating gross floor area, any cellar, crawl space, basement, or other enclosed area lying directly below a first story in a residential structure.

1. **Standards.** The lesser of 50 percent of the floor area of mass below first story OR:

((X/Y) floor area of mass below first story)

Where:

- X = Sum of the width of those sections of exposed walls below the first story having an exterior height ≥ 4 feet **as measured from original or proposed grade, whichever is lower,** to the top of the subfloor of the first story.
- Y = Perimeter of exterior walls below first story

Next Steps

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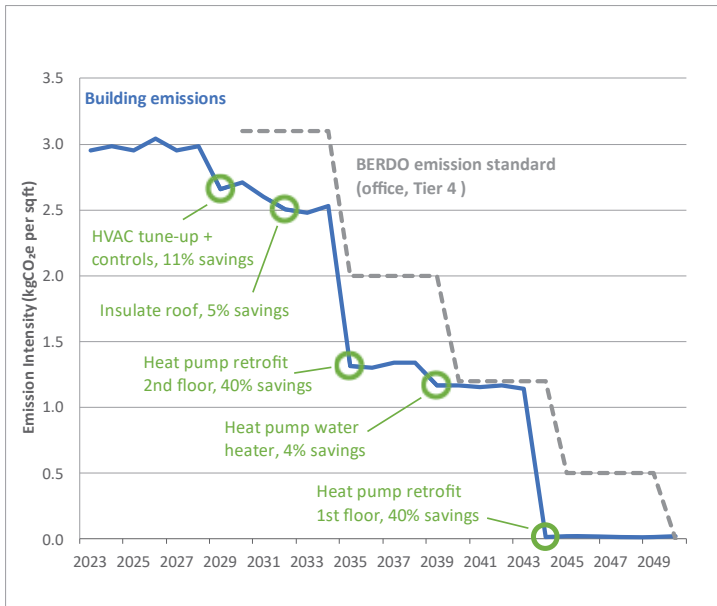
Public Hearing

- Opens tonight
- Suggestions from ZAP and public to be incorporated into proposed amendments
- Proposed effective date January 2025

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Q&A

Compliance Pathway Example



Building profile:

- 30,000 sq. ft. office building
- Built 1980, 2-story
- Natural gas use
 - Space heating (95%)
 - Water heating (5%)
- New roof needed by 2032
- Separate heating systems for 1st and 2nd floors