



From: Councilor Deborah J. Crossley, Chair of Zoning & Planning Committee

Re: Notice of Public Hearing on June 14, 2023

Date: May 25, 2023

Under the **“Ten Communities Act”**, the City of Newton is one of the ten communities selected by the MA Legislature to participate in a pilot program that would allow the City to require electrification of new construction and substantial renovations. To this end, Council has drafted an ordinance using the required model ordinance provided by the state Department of Energy Resources (DOER), but with certain proposed exemptions and a waiver provision, that will be taken into consideration.

On or before September 1, 2023, Newton must submit a final application and proposed ordinance to DOER for their approval. We intend to submit a draft much sooner, to have time to consider any modifications DOER may require. Council is not required actually to adopt the ordinance prior to the final submission.

The public hearing on June 14 is to hear from you on the proposed ordinance. On that date, there will be a presentation to further explain the process, the requirements and information as to where the City may have some latitude. The **hearing notice, proposed ordinance**, and a memo describing the **Ten Communities Program regulations** are attached below.

Therefore, we will leave the public hearing open until we hear from DOER, which we expect to be before the end of 2023. If we wish to remain in the pilot program, Council must adopt the DOER-approved ordinance no later than July 1, 2024.



City of Newton **Legal Notice**

Wednesday, June 14, 2023

A Public Hearing will be held on Wednesday, June 14, 2023, at 7:00PM in City Council Chambers (Room 207), Newton City Hall, 1000 Commonwealth Avenue, Newton, MA, before the THE ZONING & PLANNING COMMITTEE of the Newton City Council for the purpose of hearing the following petition at which time all parties interested in this item shall be heard. Notice will be published Wednesday, May 31, 2023, and Wednesday, June 7, 2023 in The Boston Herald, with a copy posted online and in a conspicuous place at Newton City Hall.

Please Note: This is a hybrid meeting that the public may access in-person or virtually via Zoom with the following link: <https://newtonma.gov.zoom.us/j/88991170976>, or call 1-646-558-8656 and use the Meeting ID: 889 9117 0976. The final agenda will be posted online on Friday, June 9, 2023 at: <https://www.newtonma.gov/government/city-clerk/city-council/friday-packet>. Please call the Clerk's Office at 617-796-1210 for more information.

Copies of the proposed changes and accompanying materials are available at the City Clerk's office or can be found online at <https://www.newtonma.gov/government/city-clerk/city-council/council-standing-committees/zoning-planning-committee>

#94-23 Discussion of the Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project and adoption of ordinance requiring electrification of all new construction and substantial renovations
COUNCILORS CROSSLEY, LIPOF, DOWNS, HUMPHREY, LAREDO, NORTON, MALAKIE, BOWMAN, DANBERG, WRIGHT, RYAN, LEARY, ALBRIGHT, GREENBERG, KELLEY, OLIVER, AND MARKIEWICZ requesting a discussion with the Sustainability Director on the requirements under the Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project, also known as the Ten Communities program, which would allow Newton to require electrification of all new building construction and substantial renovations, and to consider adopting such an ordinance.

Draft Newton Electrification Ordinance and Amendments to the Specialized Energy Code

Purpose

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

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

Definitions

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

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

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

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

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

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

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

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

Applicability

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

Exceptions

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

- A. Research Laboratories for Scientific or Medical Research;

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

Waivers

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

Application Requirements

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

Compliance

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

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

Effective Date

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

Amendments to the Specialized Energy Code

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

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

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

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

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

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

Memo on Final DOER Ten Communities Regulations

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

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

Applications must include:

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

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

Review Process

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

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

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

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

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

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

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

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

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

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

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

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

Major Renovations

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

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