



# *Town of Brookline*

## *Massachusetts*

**Department of Planning and  
Community Development**

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**Kara Brewton  
Director**

TO: Massachusetts Department of Energy Resources  
Green Communities Division  
100 Cambridge St., 9<sup>th</sup> Floor  
Boston, MA 02114  
via [Green.communitites@mass.gov](mailto:Green.communitites@mass.gov)

FROM: Kara Brewton, Department of Planning & Community Development

DATE: August 22, 2023

RE: 10 Community Fossil Fuel Free Demonstration Project

CC: Town Administrator Charles Carey, Select Board Members

Please accept this application of the Town of Brookline to participate in the State's Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project (the "Demonstration Project"), 225 CMR 24.00.

Attached to this memo is:

- A copy of the Town's home rule petition regarding electrification, proof of approval by the Town Meeting, and the date the petition was submitted to the General Court.
- A copy of the Town's proposed ordinance for participation in the Demonstration Project as voted by Town Meeting in Spring 2023 (subject to approval by DOER and the Attorney General). The proposed ordinance differs from the Model Rule in that it includes provisions for waivers with respect to financial feasibility. Additionally, the proposed ordinance makes a clear distinction between an individual unit versus a building with respect to renovation triggers.
- A letter of commitment from our Town Administrator on behalf of the Town.

### **Waivers**

The proposed By-Law includes a waiver process by the Building Commissioner in the event that compliance makes a project financially infeasible. Town Meeting decided to include a waiver process for more flexibility during this pilot phase. Without a waiver process, applicants would be forced to apply for a variance or consider legal action if there is some unforeseen circumstance that cannot be reasonably accommodated. We anticipate that waivers will be narrowed as the program moves forward during the pilot process.

A copy of that section is provided here for ease of reference:  
"Waivers

1) The Building Commissioner may grant a waiver from the requirements of this Section in the event that compliance with the provisions of this Section makes a project financially infeasible or impractical to implement. Compliance with this Section may be considered infeasible if, without limitation:

- (i) as a result of factors beyond the control of the proponent, the additional cost of the project over the long term, including any available subsidies, would make the project commercially unviable; or
- (ii) technological or other factors would make the project unsuitable for its intended purpose.

2) Waivers from compliance with this Section may be subject to reasonable conditions established by the Building Commissioner. Where possible, waivers shall be issued for specific portions of a project that are financially infeasible or impractical to implement under the requirements of this Section, rather than entire projects.

3) As may be requested by the Building Commissioner or established by guidelines, waiver requests shall be supported by a detailed cost comparison, including available rebates and credits. A waiver request may be made at any time and may be based upon submission of conceptual plans.

4) In considering a request for a waiver, the Building Commissioner may consider as a factor the requesting party's status as a non-profit or government-sponsored affordable housing entity.

5) The Building Commissioner's decision with respect to the granting of a waiver, the scope thereof, and any conditions imposed by a waiver, shall be appealable to the Select Board, or its designee, within thirty (30) days in accordance with policies established by the Select Board.

6) The Select Board may, prior to the Effective Date, issue, and may thereafter amend, guidance regarding the process for requesting and granting waivers, and describing reasonable conditions that may be placed on a waiver."

### **Distinguishing between Individual Units and Buildings for Renovations**

After bringing Warrant Article 15 to the Advisory Committee as part of this past Spring Town Meeting process, the Department of Planning & Community Development worked with the Building Commissioner and Town Counsel to make amendments that bring it closer in line with Brookline's previous Fossil Fuel Free Warrant Articles that gained wide support, while still closely following DOER's Model Rule. Most notably, the amendments ensure that an entire building, not an individual unit within a building, has to undergo greater than 50% renovation for the proposed By-Law to take effect. Without this provision, condominium associations might deny renovations of individual units, if each time an additional fossil-fuel free design needs to be accommodated in the shared areas of the property. Instead, Town Meeting voted for this distinction so that building systems would have to be upgraded when a majority of the building is renovated, not just the majority of an individual project of just one unit rehab.

### **Commercial and Industrial Process Loads**

According to the Massachusetts Department of Economic Research, the only companies that are listed in the manufacturing industry in Brookline are bakeries, importers of olive oil, restaurants and small food markets. Restaurants and other businesses that make food on-site often use natural gas. In the short-term,

most of these existing businesses would likely elect to replace gas cooking equipment while avoiding triggering the fossil fuel free provisions associated with significant renovations or will keep existing gas cooking equipment when making significant renovations. As noted above, a general waiver process is available based on financial feasibility, and we look forward to refining these processes if newly constructed restaurants are permitted during the pilot program with DOER.

To the best of our knowledge, seven businesses in Brookline are dry cleaners, and only a couple have on-site dry cleaning services that use natural gas. Similar to our restaurants, we anticipate most businesses will likely elect to replace equipment while avoiding renovation triggers or will keep the existing equipment in place when making significant renovations. We do not expect new construction of dry cleaning businesses.

While there is a possibility that we may see future manufacturing or commercial uses that use fossil fuels for process loads, we believe the types of businesses most likely to locate in Brookline would be exempted as a research lab, medical office, or hospital, as described in our proposed By-Law.

In general, the Town is primarily residential and we anticipate the By-Law will have minimal effect on the use of fossil fuels for process loads, and anticipate that the use of fossil fuels for these purposes will not make a significant contribution to the Town's overall greenhouse gas emissions.

### **Public participation/timelines**

As part of the Town Meeting process this past spring, the Town held many public hearings, including notice to the Chamber of Commerce and local merchant associations. The Building Commissioner was actively involved in these discussions, and did not think that the reporting requirements would require the hiring of additional staff. As the Building Commissioner moves forward in creating the waiver guidelines in partnership with DOER, we will continue to hold public hearings prior to Select Board adoption.

The proposed effective date of the By-Law is the latest of the following: 60 days after DOER approval of the Town's status as a Participating Community, the effective date established by MGL chapter 40 s.32, and January 1, 2024.

### **Data collection, reporting, outreach/training**

We are planning to hold significant local training opportunities for contractors, building inspectors, restaurant owners, and residents to help them comply not only with fossil fuel free provisions, but also the new stretch and specialized energy code rules. The Select Board has authorized \$20,000 in ARPA funds towards this effort. Additionally, the Select Board has authorized an additional \$195,000 in ARPA funding for a two-year energy coaching program so that consultants can assist both residents and businesses switch to fossil fuel-free systems. Once we get the approval from DOER regarding the proposed By-Law, we will schedule these workshops.

The Town is fully committed to collaborating with DOER on data collection, reporting, and outreach/training. The Town uses Accela software for storing building permit data and certificates of occupancy. Accela software includes customizable fields for collecting information, and has a reporting feature that allows for easy extraction and analysis of relevant data.

The Town also sent an email to contractors that regularly file permits letting them know about the stretch code and specialized code changes and giving them a heads' up about potential fossil-fuel free additions as we move forward with the DOER pilot.

### **Storage of permit data and certificates of occupancy**

As noted above, the Town uses Accela software for storing building permit data and certificates of occupancy. Accela is a software platform used by governments around the country to collect and store data. Anyone with internet access can search for and view individual permit records online, and anyone can create an account to apply for a building permit through the Accela system. The Town's Information Technology Department also has a staff person that specializes in Accela for tasks such as developing permit templates, reviewing permits, and creating reports.

### **Housing production eligibility thresholds**

As of June 29, 2023, EOHLC calculated the percentage of units on the Subsidized Housing Inventory at 11.26%. As of August 9, 2023, we believe we are temporarily below the 10% Subsidized Housing Inventory threshold. Based on anticipated Certificates of Occupancy and Building Permit issuances, we believe we will be above the 10% threshold again, complying with 225 CMR 24.05(2) by the end of 2023.

Additionally, the Select Board voted on August 16, 2023 to submit zoning warrant articles to Special Town Meeting (scheduled for November and December 2023) that will allow multifamily housing by right through an overlay across many existing Multifamily districts as well as a special district along Harvard Street. These efforts will exceed the theoretical yield to meet the MBTA Communities Act requirements. Town Meeting will vote on these articles by December 2023, so that we can submit our compliance report to EOHLC before the end of the year, as required.

If you have any questions or need further information about any aspect of this application, please contact me at [kbrewton@brooklinema.gov](mailto:kbrewton@brooklinema.gov) or 617-730-2468.

Thank you for your consideration.

**SENATE . . . . . No. 2473**

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The Commonwealth of Massachusetts

PRESENTED BY:

*Cynthia Stone Creem*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act authorizing the town of Brookline to adopt and enforce local regulations restricting new fossil fuel infrastructure in certain construction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Cynthia Stone Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Tommy Vitolo</i>	<i>15th Norfolk</i>

**SENATE . . . . . No. 2473**

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By Ms. Creem, a petition (accompanied by bill, Senate, No. 2473) of Cynthia Stone Creem and Tommy Vitolo (by vote of the town) for legislation to authorize the town of Brookline to adopt and enforce local regulations restricting new fossil fuel infrastructure in certain construction. Municipalities and Regional Government. [Local approval received]

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The Commonwealth of Massachusetts

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In the One Hundred and Ninety-Second General Court  
(2021-2022)  
\_\_\_\_\_

An Act authorizing the town of Brookline to adopt and enforce local regulations restricting new fossil fuel infrastructure in certain construction.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Article 839 of the Town of Brookline's General By-laws, entitled  
2 "Prohibition on New Fossil Fuel Infrastructure in Certain Construction," is hereby ratified as  
3 adopted pursuant to Warrant Article 21 of the Town's Fall 2019 Special Town Meeting, and shall  
4 be in full force and effect as of the effective date of this act.

5 SECTION 2. Notwithstanding chapter 164 of the General Laws, section 13 of chapter  
6 142 of the General Laws, the State Building Code, or any other general or special law or  
7 regulation to the contrary, the town of Brookline is hereby authorized to adopt and further amend  
8 general or zoning by-laws that restrict new construction or major renovation projects that do not  
9 qualify as fossil-fuel-free, as defined in section 4 of this act.

10 SECTION 3. Notwithstanding section 7 of chapter 40A of the General laws, or any other  
11 general or special law or regulation to the contrary, the Building Commissioner of the town of

12 Brookline, or any designee thereof, shall be authorized to enforce restrictions on new  
13 construction and major renovation projects that do not qualify as fossil-fuel-free, as defined in  
14 section 4 of this act, including through the withholding of building permits.

15 SECTION 4. As used in this act, the term "fossil fuel-free" shall refer to construction or  
16 renovation that results in an entire building or an entire condominium unit that does not utilize  
17 coal, oil, natural gas or other fossil fuels in support of its operation.

18 SECTION 5. This act shall take effect upon its passage.

ARTICLE 21

SELECT BOARD'S SUPPLEMENTAL RECOMMENDATION

Article 21 is a petitioned article asking the Town to create a new by-law that would prohibit the installation of fossil fuel infrastructure in new buildings and gut/significant rehabilitation projects in Brookline. For these types of construction projects, installing gas or oil piping would be prohibited. This will have the effect of preventing the installation of new major appliances (e.g., boilers, furnaces, clothes dryers) or other systems that require on-site combustion of fossil fuels (e.g., natural gas or oil) for these types of projects. Specific exemptions are outlined in the By-Law, and construction project can also seek a waiver from a to-be-created Sustainability Review Board.

Specific exemptions in the By-Law include exemptions for piping required to fuel backup electrical generators, cooking and related appliances, centralized hot water systems in buildings with floor areas of at least 10,000 square feet (provided that the Engineer of Record certifies that no commercially available electric hot water heater exists), any building being constructed subject to a Waldo-Durgin Overlay District Special Permit, research laboratories for scientific or medical research or to medical offices regulated by the Massachusetts Department of Public Health as a health care facility, among other exemptions.

The Sustainability Review Board will be a three or more member Town Board established and appointed by the Select Board with expertise in affordable housing; commercial development; high-performance sustainable design; architecture; mechanical, electrical, and plumbing engineering; or other technical areas as determined by the Select Board.

The effective date will be the later of (1) January 1, 2021, (2) 5 months after written approval is received from the Attorney General's Office, or (3) the date upon which the Sustainability Review Board and its procedures have been established.

Significant consensus has been built between various boards, committees, commissions, community stakeholders and co-petitioners during the vetting of this Article. The Board appreciates the efforts of the petitioners and the Advisory Committee to craft language that can be supported by a wide range of stakeholders.

The Select Board unanimously voted FAVORABLE ACTION on the motion offered by the Advisory Committee.

ADVISORY COMMITTEE'S SUPPLEMENTAL RECOMMENDATION

SUMMARY:

Article 21 is intended to be a major step towards achieving Brookline's goal of reducing its carbon emissions to zero by 2050. It would, with limited exemptions, prohibit the installation of new fossil fuel pipe infrastructure (natural gas, propane, fuel oil) in new construction and so called "Significant Rehabilitations".

The Advisory Committee recommends FAVORABLE ACTION on Article 21 in the form presented on November 5, 2019.

*As of November 11, the petitioners were considering revisions to the article that have not been reviewed by the Advisory Committee. No recommendation should be inferred for any version submitted subsequent to the November 5, 2019 vote.*

BACKGROUND:

Article 21 is sponsored by a team of petitioners which include architects, lawyers, members of various advocacy groups including Mothers Out Front and the Greenspace Alliance plus three members of the Select Board.

The proposal is intended to support the Brookline Climate Action Plan which states the Town's intention to reducing its greenhouse emissions to zero by 2050. One strategy is to begin requiring the complete electrification of new buildings and buildings undergoing significant renovations. While the short term greenhouse emissions effects of this strategy is dependent on the fuels used to generate electricity, it is Massachusetts state policy to increase the percentage of electricity generated from renewable sources over time. Additionally, Brookline sponsors a community aggregation program in which the default choice has a higher percentage of renewable sources than the Eversource default. Plus Town electric customers can opt up to the Brookline Green Option which has 100% renewable source. Lastly, individual electricity consumers can make additional renewable investments on their own using strategies such as installation of onsite solar panels or participation in community solar.

The bylaw would prohibit installation of new fossil fuel piping in new buildings and "significant rehabilitation" of existing buildings. The original proposal had limited exemptions for (1) portable appliances for outdoor cooking and heating (ie., propane barbeque grills), (2) backup electrical generators and (3) the Waldo Durgin project (since that was the subject of a separate negotiation with the Town.) The original proposed effective date was June 1, 2020, but that has been revised to the later of:

1. January 1, 2021
2. 5 months after the Attorney General approves the bylaw

3. The date upon which the SRB is appointed by the Select Board and after a public hearing publishes its procedures and decision criteria.

The proposal does not affect existing piping, boilers, stoves or water heaters. However, in a covered project, the bylaw as originally proposed would prohibit new piping to accommodate relocating any existing appliances. For example, in a covered “gut” renovation project (called a “Significant Rehabilitation” in the bylaw) that includes a kitchen renovation, the homeowner would not be able to install pipes to relocate a gas stove to the other side of the room or to even move it a few inches.

Under the version of Article 21 adopted by the Advisory Committee and accepted by the petitioners, proposal, residential cooking appliances such as ranges, ovens and stovetops would not be covered even in a “gut” renovation, thus allowing renovated kitchens to continue to have gas appliances, no matter where in the kitchen the homeowner wishes to place them.

The petitioners, the Planning and Community Development Department plus various Town Boards and commissions have sponsored or participated in a number of “community feedback” sessions in addition to the normal vetting hearings that take place for Town Meeting warrant articles. As a result of the feedback prior to the Planning and Regulation Subcommittee’s public hearing, the petitioners added additional exemptions for (1) restaurant kitchens, (2) large central hot water systems (with an engineer’s statement) and (3) added a waiver process where it would be otherwise impractical or financially infeasible to go with all electric systems.

Additionally, with input from the Building Commissioner, they have attempted to clarify the definition of significant rehabilitation to generally correspond to a “Level 3” renovation as defined in the Building Code for commercial buildings. Exemptions proposed by others which the petitioners did not accept were (1) an exemption for all cooking, (2) a broad exemption for commercial buildings; (3) including only single family homes, and (4) including only new construction.

#### DISCUSSION:

Electrification of our infrastructure is one strategy to reduce and eventually eliminate our reliance on fossil fuels. Currently, fossil fuels (mainly natural gas in New England) are used to generate a percentage of our electricity, which percentage will decrease over time as more renewable generating sources come on line. No one on the Advisory Committee took issue with the need to reduce our carbon emissions and the electrification strategy. This report will now focus on the details of the proposed bylaw and the practical aspects of the proposal.

When the bylaw was originally submitted, the petitioners listed two exclusions; outdoor cooking and heating appliances and the Waldo-Durgin project. Waldo-Durgin was excluded because it was the subject of a Memorandum of Understanding with the Town

which specifically addressed how the approaches to energy efficiency are to be handled including involving the Town's Sustainability Program Administrator during the design phase.

Note that the bylaw only applies to new construction and so called gut renovations. No one is required to replace any existing gas appliances. Even in a gut renovation, a gas appliance can be replaced; but no new piping can be installed unless there is an exemption. But, in order for this to work, we need to have a sense of reality as to what can be replaced by electric appliances.

#### Heating and Cooling

In New England, space heating consumes the most energy in buildings. In Brookline, the predominant fuel source is natural gas and fuel oil. Many factors contribute to the amount of energy consumed including the efficiency of the heating appliance (furnace, boiler, heat pump, etc.) and how well the building envelope is insulated and sealed. This bylaw only addresses the fuel source, which is only one piece of the equation.

Typically, we think of electric heat as utilizing baseboard resistance heaters, which are cheap to install but very expensive to operate. The preferred electric heat sources now are either ground source or air source heat pumps. Heat pumps can be used for both air conditioning in summer and heating in winter. In winter, the refrigerant absorbs heat from the air outside (or the ground) and uses it to warm the space. Ground source heat pumps use heat drawn from geothermal wells to facilitate heat transfer. Generally, heat pumps are extremely efficient to operate (however as the temperature drops, heat pumps become less efficient and there is a point where they stop working though with today's heat pump they will work to as low as -25F degrees. The Planning and Regulation Subcommittee heard testimony that the industry is moving towards heat pumps as the preferred space heating and cooling technology and it works well for most applications.

Given the variety of commercial building types and their uses, blanket claims of practicality and financial feasibility of the technology for all uses are difficult to substantiate. The Planning and Regulation Subcommittee heard testimony that at least laboratories and certain types of medical offices have higher air circulation and replacement requirements, which heat pumps may not always be able to handle. We also need to balance the Town's critical financial need to be competitive with other communities with respect to promoting development of buildings devoted to medicine and science with its overall goal of reducing greenhouse emissions. The Town is in a unique position to leverage its close proximity to one of the world's great medical/science complexes.

The Advisory Committee therefore proposed, and the petitioner accepted, an exemption for such uses given the difficulty of quantifying the requirements to a degree sufficient to write into a bylaw in the timeframe of this Town Meeting. The failure to have a

lab/medical exemption could work to divert such development to other close-by communities.

#### Domestic Hot Water

For residential and smaller commercial uses, there are practical alternatives to a gas hot water heater. These include traditional resistance and the newer technology heat pump hot water heaters.

For large central hot water systems, there are currently no alternates to the traditional gas hot water heater. Many large buildings are moving away from central hot water to a distributed hot water system, (the water is heated just prior to the using fixture or for a floor or unit in a building.), For systems of this type, there are electric alternatives.

The proposed bylaw does not mandate moving away from a central hot water system, and it implicitly recognizes the lack of alternatives. However, if an alternative becomes available, there is an exemption in the proposal if the alternative is more than 150% of the capital or operating cost of a conventional gas water heater as certified by an engineer. While at first glance a 150% cost differential seems high, remember that the requirement is only in effect for new construction or a “significant rehabilitation,” where hot water will be a very small fraction of the total project cost.

#### Cooking

Cooking is where residents have the most interaction with natural gas. The bylaw, as originally submitted would have prohibited new fossil fuel infrastructure for cooking appliances.

There are two electric alternatives to the traditional gas range and stove top; the standard resistance electric range and the induction electric stove top. While resistance stoves work, they deliver a different, less controllable cooking experience. Induction stoves deliver a controlled cooking experience similar to natural gas but require cookware to be made of a magnetic based material such as cast iron or magnetic stainless steel. Aluminum or copper cookware does not work.

The subcommittee received an email and heard testimony from Dr. Jeffrey Macklis, Professor of Stem Cell and Regenerative Biology, Harvard University, and Professor of Neurology [Neuroscience], Harvard Medical School. Dr. Macklis researched induction stoves when he was considering purchasing one.

“In brief, I found that the EU regulations and analyses show that a single burner on is reasonably safe for an adult user if the pan is of “appropriate”-correct size (completely covering the burner) and is perfectly centered with precision, but that this safety disappears for a pregnant abdomen with fetal head (developing brain) closer than 1 foot away, or a small child whose head (developing brain) would get closer than 1 foot away from the front of a burner. The EU agencies all point out that pregnancy and small children position developing brains directly at the least safe position– adjacent to the cooktop and at its level. That is because the main

risk is within a foot or so (30 cm) of a burner, and electromagnetic field strength from the induction cooktop is limited by EU/Swiss/now US recommendation to approximately 6 uT (microTesla). While essentially all modern residential cooktops meet this standard for a single burner on with an optimally sized pot/pan that is perfectly centered, they fail under “real world” scenarios. Unfortunately exposure with a differently sized pot/pan or one that is not optimally centered is often found to be ~5X higher (>30 uT!) than the regulatory agencies use as their acceptable limit! This even exceeds adult “occupational limits” set by the agencies. If more than one burner is on (e.g. for a normal meal or worst at a Thanksgiving dinner), the leakage around centered or uncentered pans is additive, though some will be further away than others.”

Dr. Jesse Gray, disagreed with Dr. Macklis’s assertions as follows:

“The concern raised here is a hypothetical one, since induction cooktops have been in widespread global use for decades without any demonstrated adverse health effects. No health or consumer protection authorities have banned induction cooktops for health or any other reasons, and there isn’t a single peer-reviewed epidemiological study implicating induction cooking in any negative health impact. The petitioners brought this proposed by-law forward for climate reasons, not health reasons. However, in considering health, the competing technologies must be weighed against each other, since all technology has risks, and people are going to cook with one technology or another. As it stands, there is more substantial evidence about the dangers of gas cooking than there is about induction cooking. Gas cooking kills about 8,000 people every year in the United States due to fire. There are also well-documented health impacts from combustion byproducts of gas cooking, including asthma, that should be weighed against any hypothetical health impacts of induction cooking. These impacts of gas cooking are supported by numerous peer-reviewed epidemiological studies, unlike the speculative induction concerns.”

Given (1) the competing health arguments, (2) the strong feelings by some about gas as a cooking energy source and (3) the unintended effect of prohibiting even small relocations of gas appliances in some kitchen renovations, the Advisory Committee was not prepared to support a complete ban of gas cooking appliances in projects subject to the bylaw at this time, and the petitioner accepted a cooking appliance exemption that includes residential properties.

#### Unsafe or Dangerous Condition Exemption

As originally submitted, the bylaw would not have permitted the repair of unsafe or dangerous existing gas infrastructure. An exemption has been added and agreed to by the petitioners.

#### Waivers and Appeals

This is a new area with developing technology and an all-electric infrastructure may not be practical or financially feasible in all situations not explicitly exempted by the bylaw. The Advisory Committee proposal creates a waiver and appeal process for these situations.

The Planning and Regulation Subcommittee heard concerns from the Economic Development Advisory Board, with respect to commercial development, the Housing Advisory Board with respect to affordable housing and the Brookline Housing Authority with respect to their properties. For affordable housing in particular, capital funds may be limited to make investing in systems with lower operating costs in the long run difficult.

For all these Boards, a robust and effective waiver and appeal process is an essential component in coming to support the bylaw. The proposal establishes a “Sustainability Review Board” (SRB) to hear and decide waivers and appeals. The bylaw specifies that members shall possess areas of expertise with regards to affordable housing, commercial development, high-performance sustainable design, architecture, and mechanical, electrical, and plumbing engineering plus other technical areas as determined by the Select Board. The bylaw sets a general standard of review but requires the SRB to adopt procedural requirements with regard to filing waivers and appeals and criteria to evaluate projects. And one of the prongs for the effective date of the bylaw is the establishment of SRB and adopting procedures and criteria of review.

#### Other Municipal Ordinances

The movement surrounding mandating fossil fuel free infrastructures by municipal ordinance is a new one with the first such ordinance being passed in Berkley, CA on July 16, 2019. To the best of our knowledge, in the United States, only three other municipalities, all located in California, have passed similar ordinances since then. Other municipalities are considering this kind of legislation. All enacted ordinances, to date, cover only new construction and have various exemptions. They are summarized in the chart below:

City	Ord. Name	Summary	Exemptions	Commercial Buildings?
Brookline, MA (Proposed)	Article 21	Bans new fossil fuel infrastructure in all new construction and “Significant Rehabilitation(s).”	1. All cooking appliances 2. Backup generators 3. Outdoor cooking and heating 4. Large central hot water heaters 5. Waldo Durgin 6. Labs and certain medical offices 7. Repair unsafe conditions 8. Waivers if “financially infeasible or impractical”	Yes
Berkley CA	Ordinance No. 7.672–N.S.	The Berkley ordinance prohibits natural gas in <b>new</b> buildings. The ordinance is being rolled out gradually as the California Energy Commission (CEC) models different types of all-electric buildings. Currently, the ordinance bans installation of natural gas lines in low-rise residential buildings. As the CEC completes its modeling, the ordinance will expand to include additional building types.	Exemptions possible when a developer can demonstrate that all-electric isn't "physically feasible". There is also a general "public interest exemption" for cases where gas might be in the public interest to install vs. electric.	Eventually

City	Ord. Name	Summary	Exemptions	Commercial Buildings?
San Luis Obispo, CA	Clean Energy Choice Program	The Clean Energy Choice Program "encourages" all-electric <b>new</b> buildings. "Unlike some cities that are banning natural gas entirely, the Clean Energy Choice Program will provide options to people who want to develop new buildings with natural gas. New projects wishing to use natural gas will be required to build more efficient and higher performing buildings and offset gas use by performing retrofits on existing buildings or by paying an in-lieu fee that will be used for the same purpose.	Commercial kitchens are exempt. Various exemptions for "public health and safety" (e.g. hospitals) and an exemption for manufacturing that requires gas (see page 39 of ordinance for full list). The Clean Energy Choice Program also includes a "Public Interest Exemption", which allows the permitting authority to exempt projects should unexpected or unintended effects of the program arise.	Yes
Windsor, CA	Ordinance Adopting All-Electric Reach Code	All-electric requirement for <b>new</b> single-family homes, detached accessory dwelling units, and multi-family buildings up to three stories (also referred to as "low-rise residential")		No
San Jose, CA	Building Reach Code for New Construction	The passed ordinance will ban natural gas in the construction of <b>new</b> accessory dwelling units, new single family homes and new low rise and multifamily buildings.		Yes

City	Ord. Name	Summary	Exemptions	Commercial Buildings?
Menlo Park, CA	Ordinance No. 1057	Heating systems in all <b>new</b> homes and buildings in the city must run on electricity, and all new commercial, office and industrial buildings, as well as high-rise residences, must rely entirely on electricity. Although new one- and two-story homes will be allowed to have natural gas stoves, they must be built “electric ready” with the proper wiring to enable all-electric operation in the future.	Life sciences buildings and public emergency operations centers (e.g. fire stations) need to apply for an exemption, but are eligible. For single family and three stories or less multifamily: Natural gas can still be used for stoves, fireplaces or other appliances if desired (but prewiring for electric appliances is required where natural gas appliances are used.). Nonresidential kitchens, such as for-profit restaurants and cafeterias, may appeal under certain conditions to an appointed body designated by the City Council if they want to use natural gas stoves. The advisory body’s decision can be appealed to City Council.	Yes

What renovations should be covered in addition to new construction?

Other than the Brookline bylaw, all of the bylaws referenced in the chart above cover only new construction. With new construction, the entire project can be planned and designed to maximize energy conservation and take into account the design requirements of all electric systems. Renovations present a set of complications since an all electric system will need to be retrofitted into an existing building envelope which was, in all likelihood, designed around a fossil fuel infrastructure. This only begins to make sense if all the walls are open which would be the case in a so called “gut” renovation. The Advisory Committee worked with the Building Commissioner and other staff in coming up with a legal definition that is understandable, relatively easy to enforce and, hopefully,

minimizes the unintended consequence of creating a trigger where walls are not open to the degree necessary to perform a deep energy efficiency retrofit.

For buildings subject to the commercial building code (residential buildings with 3 or more families plus commercial buildings), there is already a well-defined trigger called a Level 3 renovation when triggered, requires a high degree of code compliance. Building professionals plus the Town Building Department are familiar with this trigger and it is easily computed. For those properties, it makes sense to incorporate a Level 3 renovation into the definition of “Significant Rehabilitation.”

In the residential building code, there is no parallel concept to a Level 3 commercial renovation. Our intent is to use the existing definition of Gross Floor Ratio in the zoning bylaw as the denominator to compute the percentage to define a “Significant Rehabilitation.” Since we do not want to have an inadvertent trigger, we are opting to set the trigger percentage to a very high 75%. As we gain experience with the bylaw and gather data on how it is working, the percentage trigger can be adjusted at a future Town Meeting, if appropriate.

#### Legal issues

In Massachusetts, municipal ordinances cannot supersede the state building code which covers plumbing and other aspects of the building envelope and components. This proposed bylaw is constructed in way that attempts not to supersede the code but it is breaking new ground. As such, according to Associate Town Counsel Jonathan Simpson, there is no history or case law that directly speaks to the legal analysis of whether this bylaw is preempted. However, Mr. Simpson has cautioned that there could be several statutes that may preempt what this bylaw is attempting to do. The Office of the Attorney General (OAG), which reviews bylaws passed at Town Meeting, will not issue preliminary opinions, so the only way to know for sure whether OAG will approve a By-Law such as this, is to pass it at Town Meeting and submit it for OAG review. Even if we receive a rejection from the OAG, we will have gained some clarity as to how to approach this issue in the future. Note that even if the Attorney General approves the bylaw, it would still be subject to challenge by other parties.

#### Effective Date

As noted above, sufficient lead time for homeowners and developers has been provided to adjust their plans to comply with this bylaw.

#### RECOMMENDATION:

By a vote of 21-4 with four abstentions, the Advisory Committee recommends FAVORABLE ACTION on Article 21 as follows:

Voted: That the Town amend the General By-Laws by adopting a new article 8.39 entitled “Prohibition on New Fossil Fuel Infrastructure in Major Construction” as set forth below.

### 8.39.1 Purpose

This By-Law is adopted by the Town of Brookline, under its home rule powers and its police powers under Massachusetts General Laws, Chapter 40, Sections 21 (clauses 1, 18) and 21D, and Chapter 43B, Section 13, to protect the health and welfare of the inhabitants of the town from air pollution, including that which is causing climate change and thereby threatens the Town and its inhabitants.

### 8.39.2 Definitions

“New Building” is defined as a new building or new accessory building (a building devoted exclusively to a use accessory to the principal use of the lot) that is associated with a valid building permit application on or after the Effective Date.

“On-Site Fossil Fuel Infrastructure” is defined as fuel gas or fuel oil piping that is in a building, in connection with a building, or otherwise within the property lines of premises, extending from a supply tank or from the point of delivery behind a gas meter (customer-side of gas meter).

“Significant Rehabilitation” is defined as a renovation project associated with a valid building permit application on or after the Effective Date of this article that:

- (1) For existing structures regulated by the current edition of the Massachusetts State Building Code 780 CMR 51.00, Massachusetts Residential Code, includes the reconfiguration of space and/or building systems, in which the Work Area, not including any added space, is more than 75% of the Gross Floor Area as defined in the Brookline Zoning By-Law;
- (2) For existing structures regulated by the current edition of the Massachusetts State Building Code 780 CMR 34, the Massachusetts State Basic/Commercial Code, includes the reconfiguration of space and/or building systems, in which the Work Area, not including any added space, is more than 50% of the building floor area prior to the project, as defined by the Massachusetts Building Code.

“Sustainability Review Board” (SRB) is defined as a Town Board established and appointed by the Select Board whose members shall, to the extent possible, possess areas of expertise with regards to affordable housing, commercial development, high-performance sustainable design, architecture, and mechanical, electrical, and plumbing engineering and other technical areas as determined by the Select Board. The SRB shall have at least three members with three year staggered terms. The mission charge of the SRB shall be set by the Select Board. The mission charge shall be broad enough to perform the requirements of Sections 8.39.5 and 8.39.6.

“Work Area” is defined as the portions of a building affected by renovations for the reconfiguration of space and/or building systems, as indicated in the drawings associated with a building permit application. Areas consisting of only repairs, refinishing, and/or incidental work are excluded from the Work Area.

### 8.39.3 Applicability

The requirements of this article shall apply to all permit applications for New Buildings and Significant Rehabilitations proposed to be located in whole or in part within the Town as follows.

- A. The requirements of this article shall not apply to utility service piping connecting the grid to a meter, or to a gas meter itself.
- B. The requirements of this article shall not apply to piping required to fuel backup electrical generators.
- C. The requirements of this article shall not apply to piping required for cooking appliances and related appliances.
- D. The requirements of this article shall not apply to the use of portable propane appliances for outdoor cooking and heating.
- E. The requirements of this article shall not apply to the piping required to produce potable or domestic hot water from centralized hot water systems in buildings with floor areas of at least 10,000 square feet, provided that the Engineer of Record certifies that no commercially available electric hot water heater exists that could meet the required hot water demand for less than 150% of installation or operational costs, compared to a conventional fossil-fuel hot water system.
- F. So long as new fossil fuel piping is not installed, the requirements of this article shall not apply to the extension or modification of heating systems via HVAC system modification, or modification of radiator, steam, or hot water piping.
- G. The requirements of this article shall not apply to any building being constructed subject to a Waldo-Durgin Overlay District Special Permit, as described in Section 5.06.4.k of the Zoning By-Law.
- H. The requirements of this article shall not apply to research laboratories for scientific or medical research or to medical offices regulated by the Massachusetts Department of Public Health as a health care facility.
- I. The requirements of this Article shall not apply to repairs of any existing portions of a fuel piping system deemed unsafe or dangerous by the Plumbing and Gas Fitting Inspector.

#### 8.39.4 Effective Date and Enforcement

Upon the Effective Date, no permits shall be issued by the Town for the construction of New Buildings or Significant Rehabilitations that include the installation of new On-Site Fossil Fuel Infrastructure, except as otherwise provided in Sections 8.39.3, 8.39.5, and 8.39.6. As used herein, "Effective Date" shall be the later of (1) January 1, 2021, (2) 5 months after written approval of Article 8.39 is received from the Attorney General's

Office, or (3) the date upon which the SRB has been appointed and, after a public hearing, has adopted procedural requirements with regard to filing waivers and appeals and criteria to evaluate projects under Sections 8.39.5 and 8.39.6.

#### 8.39.5 Waivers

A waiver from Article 8.39 may be sought from the SRB on the grounds of financial infeasibility supported by a detailed cost comparison, inclusive of available rebates and credits, or impracticality of implementation. A waiver request may be made at any time and may be based upon submission of conceptual plans. The SRB shall apply its criteria to evaluate whether particular portions of a project are financially infeasible or impractical to implement under the requirements of Section 8.39 and shall issue waivers narrowly for those portions, where appropriate, rather than for an entire project. Particular consideration for waivers will be given to projects sponsored by the Brookline Housing Authority (BHA), given the BHA's limited sources of capital funds.

#### 8.39.6 Appeals

An appeal may be sought from the SRB following a denial of a building permit on the grounds that Article 8.39 is not applicable to a project pursuant to Section 8.39.3. Any appeal shall be supported by detailed information documenting the basis of the appeal.

~~POV~~  
~~207-3-6~~  
211-3-6

# FORM 1

Town: Brookline

“Pursuant to G.L. c. 40, § 32, I hereby request approval of the enclosed amendments to our town by-laws. G.L. c. 40, § 32, specifies that this request must be made within thirty (30) days after final adjournment of Town Meeting. The mandatory forms are included.”

1.) Town Meeting (*check one*): NOTE: If “Other” is selected, please specify (i), (ii), or (iii)

Annual

i.) Authorized by Charter

Special

ii.) Authorized by Special Act

Other (*specify*)

iii.) Authorized by By-Law

2.) Date Town Meeting First Convened: May 23, 2023

3.) Date(s) of Adjourned Sessions: May 24, 31, June 1, 6, 7, 8

4.) Identify Warrant Article(s) Submitted:

Does any by-law submitted in this packet derive from a local option statute or a special act?

No

Yes (*if yes please submit Form 6*)

a.) Zoning 14, 16

Does any by-law submitted in this packet, create or amend a by-law adopted under G.L. c. 40R (smart growth zoning by-law)?

No

Yes (*if yes please submit Form 6*)

b.) Historical District: \_\_\_\_\_

c.) General 11, 12, 13, 15, 20, 21

d.) Charter Amendment (proposed amendments to an existing charter pursuant to G.L. c. 43B, § 10) \_\_\_\_\_

5.) Identify Zoning/Historical Maps Relating to Warrant Articles: \_\_\_\_\_

# FORM 1

6.) Town Counsel contact information:

Attorney: Jonathan Simpson  
Firm: Town Counsel  
Mailing Address: 333 Washington St  
City Brookline State MA Zip Code 02445  
Phone Number 6177302190 Fax Number \_\_\_\_\_  
Email: jsimpson@brooklinema.gov

7.) Town Clerk contact information:

Name (Print): Ben Kaufman  
Signature: \_\_\_\_\_  
Mailing Address: 333 Washington St  
City Brookline State MA Zip Code 02445  
Phone Number 6177302010 Fax Number \_\_\_\_\_  
Email: bkaufman@brooklinema.gov  
Work Schedule: M-Th 8-5, F 8-12:30

8.) Planning Board member contact information:

Name (Print): Kara Brewton--Planning Director  
Mailing Address: 333 Washington St  
City Brookline State MA Zip Code 02445  
Phone Number 6177302130 Fax Number \_\_\_\_\_  
Email: kbrewton@brooklinema.gov  
Work Schedule: Monday-Friday, hours vary

PLEASE ELECTRONICALLY FILE YOUR BY-LAW SUBMISSION PACKAGE AT:

**BYLAWS@STATE.MA.US**

# FORM 2

Town: Brookline

Date Town Meeting Convened: May 23, 2023

## Form 2 - Town Meeting Action

Please provide the following:

**Submission #1, EXISTING BY-LAW.**

**One (1)** certified copy of the **entire main section** of the existing by-law within which each proposed amendment occurs. This requirement is very important because without the **full text** of the entire main section of the existing by-law being amended we will be unable to ascertain the full meaning of the proposed changes in context. By-law amendments include even minor technical changes in current by-laws, amendments to tables showing uses permitted in different zoning districts, and amendments which re-codify, reorganize or renumber existing by-laws previously approved by the Attorney General.

Note: if the Town's by-laws are available on the Internet, you may direct us to the website location rather than including a copy of the existing by-law being amended.

Existing by-law(s) may be found online at: <https://www.brooklinema.gov/310/General-By-Laws>

**Submission #2, TOWN MEETING ACTION.**

**One (1)** certified copy of the main motion, or amended main motion voted by town meeting, **with the date, article number, name of Town and votes thereon.** Because not all seals will show up when scanned and emailed, we request that you certify with "A true copy attest" language and your signature. Also, please include a copy of each floor amendment **favorably** acted upon by Town Meeting. We do not need copies of floor amendments that were unfavorably acted upon by Town Meeting.

**Submission #3, FINAL VERSION OF BY-LAW AS AMENDED.**

**One (1)** certified copy of the by-law (Submission #1) **as amended** by town meeting (Submission #2).

For any vote requiring a **simple majority** it will be sufficient to certify that the moderator declared that the motion carried. Where the vote was unanimous, it will be sufficient to certify that the moderator declared that the motion carried unanimously.

For any vote requiring **more than a simple majority** and where the vote was **not unanimous an actual vote count** must be taken. Zoning by-laws and historic district by-laws require a two-thirds vote.

However, if the town has either **(a) by vote of this town meeting**, or **(b) in a previously adopted general by-law**, voted that a counted vote need not be taken and that the Moderator may **declare** that a 2/3ds vote has been achieved, then such declaration of the Moderator will be sufficient [see G.L. c. 39, § 15] (*select below*):

If by (a), then please **attach** a certified copy of the Town Meeting action from this Town Meeting showing the vote to dispense with a counted vote.

If by (b), then please provide the following:

The date on which it was adopted by town meeting:

Date: \_\_\_\_\_

The date it was approved by the Attorney General's Office:

Date: \_\_\_\_\_



# *Town of Brookline*

## *Massachusetts*

Ben Kaufman, Town Clerk

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043

### **ARTICLE 15 – SUBMISSION #2**

June 8, 2023

To Whom It May Concern:

I, Ben Kaufman, Town Clerk of the Town of Brookline, duly qualified and acting as such and having custody of the records, hereby certify that the following actions were taken under Article #15 at the Annual Town Meeting called for Tuesday, May 23, 2023 at 7:00 P.M., adjourned to Wednesday, May 24, Wednesday, May 31, Thursday, June 1, Tuesday, June 6, Wednesday, June 7, and dissolved on Thursday, June 8 at 5:00 P.M.

### **ARTICLE 15**

#### **VOTED:**

1) To amend Article 5.9 to document votes previously taken by Town Meeting regarding adoption of the Specialized Energy Code and Stretch Code as well as to clarify and incorporate state regulation references, as follows:

1. Change the title of Article 5.9 from “Stretch Energy Code” to “Energy Codes”
2. Amend 5.9 as follows, **with additions underlined and deletions in strikeout**:

“Section 5.9.1 Stretch Energy Code and Municipal Opt-in Specialized Energy Code .

1. Purpose: The purpose of this by-law and related state regulations ~~780 CMR 120.AA-225 CMR 22 and 23~~ is to provide a more energy efficient alternative to the base energy code applicable to the relevant sections of the building code for both new construction and existing buildings.

b. Authority: Through Town Meeting action, the Town of Brookline has adopted the Stretch Energy Code and Specialized Energy Code, and both are incorporated by reference into the Town of Brookline General By-Laws Article 5.9. These codes are enforceable by the Building Commissioner or their designated Building Inspector(s).

c. Definitions:

**Combustion equipment.** Any equipment or appliance used for space heating, service water heating, cooking, clothes drying and/or lighting that can use fuel gas, fuel oil or solid fuel and that is not a clean biomass heating system.

**Fossil Fuel-free.** An entire building that does not, in support of its operation after construction, utilize coal, oil, natural gas, other fuel hydrocarbons, including synthetic equivalents, or other fossil fuels.

**Major Renovation.** An alteration requiring a building permit, to a building in existence on the date of an application, and that includes the reconfiguration of space in which the Work Area is more than 50% of the aggregate area of the building, prior to the project.

**Work Area.** The aggregate area of those portions of a building affected by alterations for the reconfiguration of space as indicated in the drawings associated with a building permit application. Excluded from the calculation of Work Area are those portions of a building where only repairs, refinishing or incidental work occur or where work not initially intended by the applicant is specifically required by an inspector from the Building Department pursuant to the applicable building code.

**Specialized Energy Code** – Codified by the entirety of 225 CMR 22 and 23 including Appendices RC and CC, the Specialized Energy Code adds residential and commercial appendices to the Massachusetts Stretch Energy Code, based on amendments to the respective net-zero appendices of the International Energy Conservation Code (IECC) to incorporate the energy efficiency of the Stretch energy code and further reduce the climate impacts of buildings built to this code, with the goal of achieving net-zero greenhouse gas emissions from the buildings sector no later than 2050.

**Stretch Energy Code** - Codified by the combination of 225 CMR 22 and 23, not including Appendices RC and CC, the Stretch Energy Code is a comprehensive set of amendments to the International Energy Conservation Code (IECC) seeking to achieve lifecycle cost-effective energy efficiency in accordance with the Green Communities Act of 2008, as well as to reduce the climate impacts of buildings built to this code.

Section 5.9.2 Definitions

- a) ~~International Energy Conservation Code (IECC) 2009—The International Energy Conservation Code (IECC) is a building code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency. Commencing July 1, 2010, the baseline energy conservation requirements of the MA State Building Code will default to IECC 2009 and MA amendments.~~
- b) ~~Stretch Energy Code—Codified by the Board of Building Regulations and Standards as 780 CMR Appendix 120 AA, the Stretch Energy Code is the International Energy Conservation Code (IECC) 2009 as may be amended from time to time.~~

#### ~~Section 5.9.3 Applicability~~

~~This code applies to residential and commercial buildings. Buildings not included in this scope shall comply with 780 CMR 13, 34, 61, or 93, as applicable.~~

#### ~~Section 5.9.4 Authority~~

~~The Town of Brookline hereby adopts 780 CMR 120 AA in order to ensure that construction within its boundaries is designed and built above the energy efficiency requirements of 780 CMR Appendix 120 AA and mandates adherence to said Appendix as may be amended from time to time.~~

#### ~~Section 5.9.5 Stretch Code~~

~~The Stretch Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 120 AA, including any amendments or modifications, is herein incorporated by reference into the Town of Brookline General Bylaws, Article 5.9. The Stretch Code is enforceable by the Building Commissioner or their designated Building Inspector(s).”~~

2) To amend Article 5.9 of the Town of Brookline General By-Laws by **adding** the following language for the purpose of restricting and prohibiting new building construction and Major Renovation projects that are not Fossil-Fuel Free, pursuant to the entirety of 225 CMR 24 Fossil Free Building Construction and Renovation Demonstration Project, which latest version is on file with the Town Clerk. This amendment shall only take effect if approved by the Massachusetts Department of Energy Resources (MA DOER) as a Participating Community pursuant to 225 CMR 24.

#### “Section 5.9.2 Fossil Fuel-Free Demonstration

1. Purpose: The purpose of this by-law and related state regulations 225 CMR 24, also referred to as the Fossil Fuel-Free Demonstration, is to restrict and prohibit new building construction and Major Renovation projects that are not fossil fuel-free.

b. Authority: Through Town Meeting action, the Town of Brookline has adopted the Fossil Fuel Free-Demonstration. Upon approval by the Department of Energy Resources (DOER), amendments to the Specialized Energy Code are adopted as listed in Section 5.9.2 (f) below. These changes are enforceable by the Building Commissioner or their designated Building Inspector(s) and will go into effect for any project seeking a permit after the effective date.

c. Applicability: This restriction applies to residential and commercial buildings that qualify as new construction and/or Major Renovations. This restriction shall not apply to research laboratories for scientific or medical research, hospitals and medical offices regulated by the department of public health as a health care facility as defined in 225 CMR 24.

d. Definition of Fossil Fuel-Free Demonstration: Codified by the entirety of 225 CMR 24, the Fossil Fuel-Free Demonstration.

e. The effective date of this Section 5.9.2 is the latest of the following: (1) sixty days following approval by DOER of the necessary changes to the Specialized Energy Code and the Town's status as a Participating Community; (2) the effective date established by M.G.L. c. 40, s. 32; and (3) January 1, 2024.

f. Amendments to the Specialized Energy Code as part of the Fossil Fuel-Free Demonstration are as follows:

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

Sections RC102 and RC101 "Zero Energy Pathway" and "Mixed Fuel Pathway" shall not be permitted for use for new construction, and Major Renovations shall not install any new Combustion Equipment.

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

Sections CC103 and CC105 "Zero Energy Pathway" and "Mixed-Fuel Pathway" shall not be permitted for new construction, and Major Renovations shall not install any new Combustion Equipment, with the following exceptions:

1. Research laboratories for scientific or medical research,
2. Hospitals regulated by the department of public health as a health care facility,
3. Medical offices regulated by the department of public health as a health care facility, and
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."

g. Waivers

- 1) The Building Commissioner may grant a waiver from the requirements of this Section in the event that compliance with the provisions of this Section makes a project financially

infeasible or impractical to implement. Compliance with this Section may be considered infeasible if, without limitation:

- (i) as a result of factors beyond the control of the proponent, the additional cost of the project over the long term, including any available subsidies, would make the project commercially unviable; or
  - (ii) technological or other factors would make the project unsuitable for its intended purpose.
- 2) Waivers from compliance with this Section may be subject to reasonable conditions established by the Building Commissioner. Where possible, waivers shall be issued for specific portions of a project that are financially infeasible or impractical to implement under the requirements of this Section, rather than entire projects.
  - 3) As may be requested by the Building Commissioner or established by guidelines, waiver requests shall be supported by a detailed cost comparison, including available rebates and credits. A waiver request may be made at any time and may be based upon submission of conceptual plans.
  - 4) In considering a request for a waiver, the Building Commissioner may consider as a factor the requesting party's status as a non-profit or government-sponsored affordable housing entity.
  - 5) The Building Commissioner's decision with respect to the granting of a waiver, the scope thereof, and any conditions imposed by a waiver, shall be appealable to the Select Board, or its designee, within thirty (30) days in accordance with policies established by the Select Board.
  - 6) The Select Board may, prior to the Effective Date, issue, and may thereafter amend, guidance regarding the process for requesting and granting waivers, and describing reasonable conditions that may be placed on a waiver.

**Approved:**    AYE: 222                      NO: 11                      ABSTAINED: 7

(Seal)

A TRUE COPY  
ATTEST:

  
Ben Kaufman  
Town Clerk



# TOWN OF BROOKLINE MASSACHUSETTS

## SELECT BOARD

BERNARD GREENE, CHAIR  
JOHN VANSKOYOC, VICE CHAIR  
MIRIAM ASCHKENASY  
MICHAEL SANDMAN  
PAUL WARREN

CHARLES CAREY  
TOWN ADMINISTRATOR

333 WASHINGTON STREET  
BROOKLINE, MASSACHUSETTS 02445

(617) 730-2200  
FAX: (617) 730-2054

[www.BrooklineMA.gov](http://www.BrooklineMA.gov)

August 23, 2023

### **BY ELECTRONIC MAIL**

Massachusetts Department of Energy Resources  
Green Communities Division  
100 Cambridge Street, 9th Floor  
Boston, MA 02114  
[green.communities@mass.gov](mailto:green.communities@mass.gov)

Dear Green Communities Division:

I am Brookline's Town Administrator, and I write to underscore the importance the Town attaches to participating in the Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project (the "Demonstration Project") as detailed at 225 CMR 24.00. Brookline's Select Board voted unanimously and Town Meeting voted overwhelmingly to participate in the Demonstration Project.

Brookline has adopted a Town Meeting Resolution that states a goal of eliminating fossil fuel use by 2040. To that end, Brookline attempted to adopt building codes with similar provisions to those allowed in the Demonstration Project, but was legally unable to do so until now. In recent years, we have designed and are now finishing construction of a new fossil fuel free school building near Washington Square, and have continued using the most rigid appropriate fossil fuel free design standards in plans for another school building in Brookline Village and a series of fire station renovations.

Our Building Commissioner and Director of Planning & Community Development are already committed to collaborating with the Massachusetts Department of Energy Resources on data collection, reporting, and outreach/training related to the project. This outreach and training includes the Select Board authorizing \$215,000 of American Rescue Plan Act funds to be spent on these efforts. The Town of Brookline is committed to collaboration to ensure widespread success of the Demonstration Project and looks forward to working with you to achieve that success locally and (eventually) statewide.

Respectfully,

Charles Carey  
Town Administrator