

March 18, 2022

Commissioner Patrick C. Woodcock
Director Maggie McCarey
Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114
Attn: Nina Mascarenas

Delivered Electronically

Re: Building Energy Code Straw Proposal – Updated Stretch Code & Specialized Opt-In Code

Dear Commissioner Woodcock and Director McCarey,

On behalf of the cities and towns of the Commonwealth, the Massachusetts Municipal Association is writing to offer comments on DOER's Building Energy Code Straw Proposal.

We strongly support the Commonwealth's commitment to achieve net zero emissions by 2050. As part of that commitment, we support the effort to update the stretch energy code utilized by the 299 municipalities that are designated as Green Communities, and the important statutory provision to develop a new specialized opt-in stretch energy code for those cities and towns that wish to implement even stronger policies.

We know from the popularity of the Green Communities program that climate change mitigation and adaptation are key priorities for cities and towns, and that communities across the state are targeting emissions reduction within the buildings sector and increased energy efficiency across municipal, residential, and commercial properties.

We are further informed of this by a comprehensive survey of Massachusetts communities that was conducted and published by researchers at the University of Massachusetts on November 4, 2021 – [*Climate Resilience: A Survey of Massachusetts Municipalities*](#), summarized [in this article published by the MMA](#), which highlights that a strong majority of cities and towns have already experienced impacts from climate change, and 90% of the respondents are incorporating climate policies and response in their planning and programming.

As the Attorney General confirmed in February, cities and towns that wish to adopt strict zoning rules and local building codes to eliminate greenhouse gas emissions in new construction and major renovations are preempted from doing so by the state building code and state law that gives the Department of Public Utilities authority over the regulation of natural gas sales and distribution.

An increasing number of cities and towns are actively seeking the authority to prohibit on-site fossil fuel combustion in new construction and major renovations, and we support providing municipalities with this option. It is time to remove barriers to local climate progress. We urgently need clear and unambiguous authority in the state building code for a true net-zero

stretch code option for municipalities. As such, we agree with municipal leaders who are asking for an opt-in net-zero stretch code that includes the following elements:

- The code should set forth a definition of net zero that conforms with generally accepted standards, as required by the statute;
- It should allow communities to require electrification, with any exemptions narrowly defined, fully justified, and subject to review as technology changes;
- It should set higher performance energy efficiency standards comparable to Passive House standards;
- It should apply to major renovations as well as new construction; and
- Any phase-in-period should be short and supported by clear and convincing evidence.

The omnibus climate law signed by the Governor last year requires DOER to promulgate a municipal opt-in specialized stretch energy code for newly constructed buildings that includes “net-zero building performance standards and a definition of net-zero building.”

However, the straw proposal does not include an actual definition of a net-zero building, but instead says that “Net Zero new construction is compatible ... with the Commonwealth’s net-zero emissions economy in 2050.” Failing to define what a net-zero building is and relating it to compatibility with a future economic state is a certain prescription for years of litigation and legal disputes that would stall progress and defeat the law’s requirement for a January 2023 implementation of the new specialized opt-in code.

We respectfully ask that DOER provide an actual definition of net zero buildings and the key features of net zero building performance, and to do so *prior* to the issuance of draft regulations. Although we understand that the straw proposal before us precedes formal draft regulations, the definition of net zero buildings is essential to everything that follows. The straw proposal process is designed to allow comment *before* the regulatory shot-clock begins, which generally results in limited changes between the draft and final promulgation stages.

Thank you for the opportunity to submit comments on the straw proposal. The MMA looks forward to commenting further when the draft regulations are released later this year. If you have any questions, or desire further information, please do not hesitate to have your office contact me or MMA Legislative Director Dave Koffman at dkoffman@mma.org at any time.

Sincerely,



Geoffrey C. Beckwith
Executive Director & CEO