



Smart Growth & Regional Collaboration

Friday, February 10, 2023

Commissioner Patrick Woodcock
Director Margaret McCarey
Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

RE: Comments on the Draft Regulation for a Municipal Fossil Fuel Free Building Demonstration Program

Dear Commissioner Woodcock and Director McCarey:

Thank you for the opportunity to comment on the draft regulations for the Municipal Fossil Fuel Free Building Demonstration Program. The Metropolitan Area Planning Council (MAPC) is the Regional Planning Agency serving the people who live and work in the 101 cities and towns of Greater Boston. We are committed to smart growth, sustainability, regional collaboration, and advancing equity. **We are writing to share comments on the economic, racial, and geographic diversity of the communities in the pilot program, the need for ongoing affordable housing requirements in the proposed rule, and the need for standardized definitions and implementation.**

Housing and climate are two of the greatest challenges facing the Commonwealth, and failing to address them disproportionately harms low- and moderate-income households and communities of color. We therefore believe that urgent action to address the Commonwealth's climate and affordable housing priorities must be closely linked and are not in opposition to one another. Requirements and incentives to build new fossil fuel free affordable housing need to be a priority of the Administration.

MAPC recognizes that the language in Chapter 179 of the Acts of 2022, An Act Driving Clean Energy and Offshore Wind, constrained how this pilot program could be designed. MAPC appreciates the clear and straightforward guidance provided by this proposal. We commend the Department of Energy Resources (DOER) for including detailed selection criteria for subsequent communities that may participate in the demonstration as space becomes available, particularly the prioritization of diversity for future participating communities. We also appreciate the criterion that subsequent communities that participate comply with Section 3A of Chapter 40A or make similar commitments if 3A is not applicable. Given that at least one community that DOER has initially deemed as eligible may choose to not participate in the near future, MAPC recommends that Substitute Community applications be approved as withdrawal letters are received, rather than waiting until March 1, 2024 as currently proposed in the draft regulation.

MAPC remains concerned that the program as proposed will lack diversity by prioritizing the ten communities that had filed home rule petitions at the time the legislation passed. These communities have relatively similar demographic and economic characteristics as well as relatively similar building types and typologies. On the whole they represent wealthier communities with small BIPOC populations, and they are all concentrated in the eastern half of the state. While this group of communities has been bold in advancing their home rule petitions, demonstration program findings from this group will not yield representative data on the program's successes and potential challenges. In order to ensure equitable outcomes, it is imperative for the pilot to yield representative data on the impacts of a fossil fuel ban on affordable housing and other development in various types of communities, including those with substantial multi-family housing and a significant number of BIPOC households. Such data would be especially valuable as DOER prepares for its next update to the Specialized Code in 2025.

MAPC notes that the statute does not specify whether a home rule petition filed the previous legislative session will allow a community to be eligible to participate in the pilot or if a new home rule process will be required. We urge DOER to consider whether you have flexibility to interpret eligibility based on home rule petitions filed this session, which could allow for a more diverse grouping of communities to participate.

MAPC also has concerns about the lack of ongoing affordable housing provisions in the proposed demonstration program. The draft regulation includes the affordable housing provisions required by the legislation for initial qualification into the program. While many of the proposed ten communities in the draft regulation met the 10% housing affordability threshold at the end of 2020, they may not meet that bar over time, particularly when the 2020 U.S. Census numbers are used to recalculate compliance across Massachusetts. This may lead to a reduced sample of affordable housing and a diminished incentive for those communities to facilitate affordable housing production over time. Since the legislation only specifies the requirements for entry into the demonstration for the first ten communities, we urge DOER to use its implementation authority to require ongoing progress in affordable housing production for participating communities. We encourage this particularly for communities that qualify via meeting the 10% threshold in 2020 or via the Safe Harbor status with a valid Housing Production Plan (HPP). Participating communities should continue to meet those qualifications as a condition of ongoing participation in the pilot.

MAPC also encourages DOER to standardize the definition of "fossil fuel free" as much as possible in the program. Standardization and predictability across the participating communities will make the program data easier to interpret, provide clearer guidance to developers seeking to build in these communities, and help to ensure that differing rules across communities do not inhibit more development. We appreciate that the proposed regulation encourages communities to utilize DOER's proposed Model Bylaw and to provide an explanation and rationale for any differences. MAPC recommends that DOER add additional detail to this section of the proposed rule and ask that communities explain how any proposed differences to DOER's Model Bylaw are not intended to prohibit or make development in their town more difficult, particularly development of multi-family, mixed-income, and affordable housing.

Enforcement will be critical to ensure that new construction and major renovations are built to fossil fuel free standards in the ten demonstration communities. This will require ample training and local and state oversight. We encourage the state to invest in these resources from the outset. MAPC witnessed first-hand the benefits of DOER's utilization of a third-party contractor with local expertise in building codes and inspections to support communities during the Stretch Code adoption process, particularly in the initial years of the Green Communities program. The training that DOER

and Mass Save provide for building contractors on a regular basis also offers a solid model on which to build robust training and enforcement practices for this pilot program.

As DOER works to update the Green Communities program and develop its Climate Leaders program concept, MAPC recommends that the new program tier complement the demonstration program. While no more than ten applications can be approved for participation in the demonstration program, select provisions and materials developed could be leveraged into an updated program model that expands the program beyond municipal energy efficiency to community-wide greenhouse gas emissions reductions. Requirements within the demonstration could take on a voluntary status in Green Communities, for example. Communities could be encouraged or required to include benefits for compliance with fossil fuel free new construction and major renovations, such as financial incentives, streamlined permitting, zoning review, or inspectional services, and reduced or eliminated permitting fees, particularly for new construction that includes affordable housing.

MAPC hopes that data from the demonstration program, as well as information from numerous jurisdictions beyond Massachusetts, will be sufficient to advance the Specialized Code to a majority fossil fuel free code for the next iteration. We recommend that DOER consolidate the specialized and stretch codes into a single stretch code that takes into account findings from the pilot no later than 2028, to be in effect no later than 2029. We believe it is critical that this single stretch code be net zero and prohibit combustion for primary heating and fossil fuels for all applications. By signaling these updates over the course of this next year, DOER can ensure that the market, developers, and municipalities are prepared for them. DOER should target financial and technical assistance for Environmental Justice and low- and moderate-income communities as well as affordable housing projects to ensure that the demonstration program and these parallel efforts are as equitable, fair, and inclusive as possible. MAPC strongly believes that the Commonwealth's environmental justice, affordable housing, and climate goals must be advanced together.

In closing, we appreciate your consideration of MAPC's recommendations regarding DOER's design, implementation, and next steps for the Municipal Fossil Fuel Free Building Demonstration Program. We look forward to the next iteration of the proposed program and its subsequent implementation to help the Commonwealth meet its ambitious climate goals.

Sincerely,

A handwritten signature in blue ink, appearing to read "K- Antos".

Katherine Antos
Deputy Executive Director of Planning and Sustainability

A handwritten signature in black ink, appearing to read "Julie Curti".

Julie Curti
Director of Clean Energy