



TOWN OF ACTON

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February 10, 2023

VIA EMAIL

Patrick Woodcock, Commissioner
Massachusetts Department of Energy Resources
100 Cambridge Street, 9th Floor
Boston, MA 02114
green.communities@mass.gov

Re: Ten Community Demonstration Comments

Dear Commissioner Woodcock:

I write on behalf of the Town of Acton, for which I serve as the Town's Sustainability Director, regarding the draft regulation published by the Department of Energy Resources ("DOER" or the "Department") implementing the Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project ("Project") pursuant to Chapter 179 of the Acts of 2022, § 84.

In 2020, Acton Town Meeting passed a climate emergency declaration. That declaration led to a wide variety of initiatives, including the passage, in 2021, of a new bylaw entitled "Regulation of Fossil Fuel Infrastructure," (the "2021 Bylaw") along with a home rule petition asking the legislature for authority to enact the bylaw. The response from the legislature was Chapter 179 of the Acts of 2022, which gave DOER the responsibility to create and implement the Project.

DOER's draft regulation for the Project, 225 CMR 24.00, is a welcome next step to promoting sustainability in Acton and throughout the Commonwealth. At our May 1, 2023 Town Meeting, we will vote to adopt the specialized opt-in stretch code, and, if successful, we will also consider a bylaw for our participation in the Project. In comparing the model bylaw to the kind of bylaw residents voted to pass in the 2021 Bylaw, we noticed important differences. We recommend the following to bridge those gaps:

Biomass Reference

The model bylaw has an explicit commercial exemption for "Buildings heated with Clean Biomass Heating Systems as defined in 225 CMR 23 as the only combustion equipment." Our bylaw has no such exemption.

We recognize that by excluding clean biomass from the definition of combustion equipment, the specialized stretch code includes clean biomass in its definition of the all-electric pathway. We do not plan to include it in our new bylaw, and we recommend that it not be included in the model bylaw since it is already in the specialized stretch code all-electric pathway.

Domestic Hot Water for Large Buildings

The 2021 Bylaw had language that gave an exemption for piping required to "produce potable or domestic hot water from centralized hot water systems in buildings with a floor area 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.”

The model bylaw uses this language:

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.

We prefer to use our language in our new bylaw, as it provides a measurable way to define when an all-electric domestic hot water system is required. We also recommend that similar language become part of the model bylaw. We are encouraged by Acton’s newest planned 41-unit affordable housing project, McManus Manor, which plans to use an all-electric domestic hot water system. Because of this, we believe that the time to require all-electric domestic hot water systems has already arrived, or will be arriving shortly, and waiting until 2027 will be a detriment to achieving the emissions reductions goals that these regulations aim to meet.

Waiver and Appeal Process

We are planning to include our 2021 waiver and appeal process to our new bylaw. We recommend that the model bylaw or the regulations explicitly allow the inclusion of a waiver and appeal process. It is our understanding that previous bylaws included a waiver and appeal process, and that this was an important part of the Town Meeting discussions. Below is the language from our 2021 bylaw, which we would modify to clarify that there can’t be waivers for the specialized opt-in stretch code, only waivers from the all-electric pathway:

Waivers

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

A. as a result of factors beyond the control of the applicant, the additional cost of the project over the long term, including any available subsidies, would make the project economically unviable; or

B. technological or other factors would make the project unsuitable for its intended purpose.

Waivers from compliance with this Chapter may be subject to reasonable conditions. 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 Chapter, rather than entire projects.

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.

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.

The Select Board shall, prior to the Effective Date, issue and may thereafter amend, guidance regarding the granting of waivers and describing reasonable conditions that may be placed on a waiver.

Appeals

An applicant may appeal a decision of the Building Commissioner concerning the grant or denial of a waiver pursuant to [the waiver process] to the Select Board, or its designee, within 30 days of the decision.

Timing

Finally, we are grateful for the support from the DOER during this process and the willingness to receive feedback and provide answers along the way. The DOER has signaled that the final model rule language will be available in March – we would like to reiterate the importance of meeting this date to enable Towns like Acton to reference the final language in preparation for Town Meeting. In fact, if the model rule language can be made final by March 21st that would align well with our warrant schedule.

Thank you for considering our recommendations on how the model bylaw and the regulations should be changed to fit the needs of Acton and other municipalities, and thank you for taking on this important work. We look forward to implementing a fossil fuel-free demonstration project as part of our commitment to quickly lower emissions to address the climate emergency.

Respectfully,

Andrea Becerra
Andrea Becerra, Sustainability Director