

# ANDERSON KREIGER

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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](mailto:green.communities@mass.gov)

***Re: Ten Community Demonstration Comments***

Dear Commissioner Woodcock:

This firm serves as Town Counsel for the Towns of Acton, Concord and Lexington (the “Towns”). We are pleased to submit the following comments on behalf of the Towns regarding the draft 225 CMR 24.00 and the accompanying “Model Rule” issued by the Department of Energy Resources (“DOER”) to implement the Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project (the “Project”) pursuant to Chapter 179 of the Acts of 2022, § 84.

As DOER recognizes, each of the Towns, along with the seven other “Prioritized Communities” identified in the draft regulations, has submitted a home rule petition to the Legislature requesting the authority now possible under the Project: to limit the addition of harmful greenhouse gases to the environment by prohibiting the use of fossil fuels in new construction and major renovations.

All three of the Towns, and most, if not all, of the other Prioritized Communities, also enacted local bylaws implementing such prohibitions. The home rule petitions and the bylaws came about through the hard work of dozens of community activists who worked with builders, businesses, municipal officials, and town counsel to build confidence that the petitions and bylaws properly balanced environmental sustainability goals with practical business and community needs.

The Towns are grateful to DOER for taking the next step in bringing the Project to fruition. We believe that the proposed regulations and Model Rule will make a meaningful difference in creating a more sustainable built environment in the Commonwealth. In that spirit, we share the

following comments on the proposed regulations and the Model Rule based on our experience in the drafting and passage of the initial local bylaws leading to the Project.

**I. The Project Should Maintain a Broad Scope to the Regulations that Includes Major Renovations.**

The draft regulations propose prohibiting fossil fuel-free infrastructure in new construction and major renovations. *See* 225 CMR 24.02. We strongly urge DOER to maintain this scope of prohibition – specifically, to maintain that fossil fuel infrastructure will be prohibited in major renovations (unless exempted by a specific town). The majority of the housing stock in the Towns is old, and there is little room and opportunity for new construction. A substantial amount of the Towns’ building projects are likely to take the form of renovating existing buildings. Further, major renovations requiring a building permit often trigger the applicability of other provisions of building and energy codes, as well as municipal zoning, historical review and other land use requirements.

We also urge DOER to carry out the prohibition, which is clear in the regulations, more clearly in the Model Rule. The Model Rule relies on existing provisions of the Specialized Stretch Energy Code to implement the prohibition on fossil fuel use under the Project. However, as we understand it, there is no path for preventing “combustion equipment”, as defined in the Stretch Code, from being installed in “existing buildings” in the Specialized Code. Only “new buildings” are required to follow the named pathways. “Existing buildings” need only “comply with Chapter 5” of the code. This leaves a potential loophole where the intent of the regulation and the bylaws proposed under it will not match. *See* 225 CMR 22.00, Appx. RC 101.1. This loophole could be closed by simply changing “or major renovations” in both places it appears in Section 4 of the Model Rule to “and major renovations shall not install any new combustion equipment.”

**II. DOER Should Simplify the Process for Prioritized Community Involvement.**

The Towns greatly appreciate DOER’s recognition of the role they played in bringing the Project about, and the efforts DOER has made to ensure that Prioritized Communities are given a meaningful opportunity to participate in the Project. For instance, at 224 CMR 24.04, DOER recognizes that in light of the Prioritized Communities’ efforts, Prioritized Communities need not update or resubmit their home rule petitions to the Legislature to be eligible for participation. The Towns strongly urge DOER to maintain that section of the draft regulations to both recognize the investment those municipalities have made in developing a fossil fuel-free bylaw, and to ensure the efficient and effective implementation of the Project.

The Towns, however, urge DOER to revise the draft regulations in several key areas to ensure the efficient rollout of the Project, and to maintain the Prioritized Communities’ momentum in developing and implementing a fossil fuel free-program:

- **Clarify the Status of Prioritized Communities’ Existing Home Rule Petitions.**  
DOER should use the same language clarifying that Prioritized Communities do not need to update or resubmit home rule petitions to the Legislature to be eligible to participate in

the Project (appearing at 225 CMR 24.04(1)(a)(1)) in other parts of the draft regulation requiring Prioritized Communities to have filed a home rule petition concerning fossil fuel free construction and renovations (i.e., 225 CMR 24.05(1)(a)). This would make clear that Prioritized Communities do not have to duplicate work they have done over the past few years.

- **Streamline Home Rule Petition and Local Approval Submittals.** Because municipalities must obtain local approval to submit a home rule petition to the Legislature, the eligibility requirements at 225 CMR 24.05(1)(a)-(b) are redundant. More importantly, DOER can simply recognize that Prioritized Communities have already met this requirement rather than requiring resubmission.
- **Streamline Housing Eligibility Criteria Submittals.** With respect to the proposed 225 CMR 24.05(1)(c), regarding the communities' compliance with the inclusionary housing requirements for the Project, DOER should also consider obtaining from the Department of Housing and Community Development ("DHCD") its list of communities which DHCD considers to have met the relevant criteria.
- **Provide Implementation Plan Templates.** DOER correctly notes that implementation of the Project requires thoughtful planning by municipalities, and we thus believe it is appropriate to require an implementation plan, as required by 225 CMR 24.04(1)(c). The Towns suggest that DOER provide a template implementation plan to make clear what information DOER seeks. Doing so would promote consistency among communities, and aid in DOER's ease of review and eventual approval of a municipality's Project application.
- **Permit Towns to Include General or Zoning Bylaws.** The Towns urge DOER to maintain its drafted definition of "Demonstration Project," which permits municipalities to participate in the Project by passing a general or zoning bylaw. Although the Towns have all passed general bylaws, we believe the flexibility for future enactments is appropriate.

### **III. The Model Rule Can Better Reflect the Goals of the Project While Maintaining Municipal Flexibility.**

As noted above, each of the Towns has already passed bylaws implementing prohibitions on the use of fossil fuels in new construction and major renovations. In all three Towns, these bylaws passed by overwhelming majorities. Concord and Lexington have since re-enacted their bylaws with slight amendments to confirm their intent to maintain involvement in the Project after passage of Chapter 179. Acton plans to present a revised Bylaw to its Spring 2023 Town Meeting. Copies of the Towns' bylaws, as most recently passed by Town Meeting, are attached.

The overwhelming support for the previously passed bylaws was due in large part to careful

vetting by municipal officials, including building inspectors, planning boards, select boards, and counsel. The relative consistency in form between many of the early adopters of these bylaws also assisted passage. Lexington modeled its bylaw on Brookline's and Arlington's, and Acton and Concord in turn on Lexington's. Further, the carefully crafted administrative procedures for waivers and appeals in the bylaws also allayed fears of administrative overreach. In addition, Town Meeting voters in each town appreciated the ability to adopt town-specific exemptions that matched their competing goals for sustainability and community development.

The Towns therefore appreciate that DOER's draft regulations acknowledge that towns may utilize a form of bylaw other than the proposed Model Rule. However, we are concerned that the process for reviewing the Towns' own version of their bylaws as described in 225 CMR 24.08 contradicts this sentiment. Creating a perceived preference for the Model Rule may be viewed as asking the leadership in each Prioritized Community to return to their respective legislative body and ask it to undo the careful balances and procedural safeguards implemented in existing bylaws.

We therefore respectfully suggest that DOER revise 225 CMR 24.08 to remove the preference for the Model Rule. The Model Rule should only be an example of an acceptable pathway for municipalities seeking to develop their own new bylaw or ordinance. Alternatively, DOER could make clear that it is not seeking adoption of the *entirety* of the Model Rule, but only its active prohibitions in Section 4. DOER can accomplish this by requiring language in each Town's bylaws along the lines of the following:

On and after the Effective Date **[to be defined by each Town in its Bylaw]**, no building permit shall be issued by the Town for the construction of New Buildings or Major Renovations that include the installation of new On-Site Fossil Fuel Infrastructure except in accordance with the following amendments to the Specialized Energy Code:

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

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 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,
4. Buildings heated with Clean Biomass Heating Systems as defined in 225 CMR 23 as the only combustion equipment,

5. 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.

In addition, or in the alternative, DOER could take the following steps to improve the Model Rule itself, to make it a more viable option for communities to adopt:

- **Describe the Municipal Action Taken Consistently.** The draft regulation refers to the development of a DOER “Model Rule” that “ensures appropriate integration with the Massachusetts Specialized Municipal Opt-in Energy Code.” However, what DOER appears to be asking municipalities to implement is actually a bylaw or an ordinance, which has a greater force of law, and greater enforceability than a rule (typically adopted by a board or committee of a town without town meeting approval). We therefore recommend referring to the “Model Rule” as a “Model Bylaw” throughout the draft regulations, the draft articles and motions adopting it, and the “Model Rule” itself.
- **Include Language from Previously Passed Town Bylaws that Clarifies the Purpose of the Bylaws.** Section 2 (Purpose) and 4 (Demonstration) of the Model Bylaw appear to conflate DOER’s action in promulgating the proposed regulations with the actions municipalities can take. A municipal bylaw would not typically state the purpose of a section of the Code of Massachusetts Regulations, as that is outside the scope of the municipality’s powers. Similarly, while adoption of certain technical regulations by reference may make sense in some circumstances, here the Model Bylaw appears to ask towns to implement 225 CMR 24.00, which instead is a largely procedural regulations governing how DOER will carry out the Project and approve applications from municipalities. An applicant for a building permit would not be able to read the regulations and understand what they may build within each town.
- **Include Basic Administrative Processes Common to Most Bylaws.** Municipal bylaws must be clear enough for municipal officials, the public, and the courts to interpret because they affect the rights and obligations of residents and businesses. We urge the inclusion of at least basic provisions that (1) provide a waiver process for exemptions that may be necessary, but not explicitly contemplated in the Bylaw; and (2) provide an appeal process to assure a level of municipal review of the Bylaw’s applications, rather than requiring residents and businesses to resort to litigation.
- **Recognize the Need for Distinctions Between Towns.** As is apparent from the model bylaws provided by each of the Towns, each town has, as a matter of policy, deemed various exemptions necessary. Here, again, we appreciate DOER’s taking a limited approach to requiring too many exemptions. We suggest, however, that the draft regulations and the Model Rule clarify whether (and if so how) DOER will review additional exemptions.

#### **IV. DOER Should Revise the Proposed Regulations to Align with Typical Municipal Calendars.**

The draft regulation sets a number of deadlines by which cities and towns must take certain actions in order to participate in the Project. *See* 225 CMR 24.03(2)-(4) (Prioritized Communities must submit letter of intent or letter of withdrawal regarding Project by September 1, 2023, or otherwise default); 225 CMR 24.04(3)(b)-(c) (Prioritized Communities must update, re-submit, or submit complete application for Project by November 10, 2023); 225 CMR 24.04(3)(d) (Prioritized Communities must meet all Project eligibility requirements by February 11, 2024).

Given the Towns' desire to see the Project implemented as quickly as possible, we appreciate the need for these deadlines. However, we note that some of these timelines may be difficult to meet in light of the typical municipal calendar for municipalities with a Town Meeting form of government, such as the Towns.

By statute, G.L. c. 39, § 9, Towns must hold an annual Town Meeting between February and June each year. Since Town Meeting functions as the Town's legislature, the typical annual Town Meeting includes the entirety of the work a legislature is expected to do: discussion and approval of the Town's entire budget, as well as enactment and passage of the Town's general and zoning bylaws. Town staff, counsel, and boards and committees typically begin preparing for an annual Town Meeting (even one held as late as May or June) in November or December of the preceding year. The "warrant", which sets the agenda of what town meeting may legally take up is often set and printed by January or early February at the latest. Thus, even as DOER receives these comments in February 2023, it is quite late for towns to react to the requirements of the proposed regulations at this year's annual Town Meetings.

Towns can, if needed, call for a "special" Town Meeting outside of this time. However, the process for convening a special Town Meeting is not a light lift. A Town's Select Board must post notice of the special Town Meeting at least 14 days prior to convening the meeting, print and distribute warrants to all registered voters in town, secure space and staff time, hold public meetings to hear public comment on any matters to be presented at special Town Meeting, and for towns with a quorum for Town Meeting attendance, ensure enough people are available or able to attend the special Town Meeting. This latter consideration can make it particularly hard to convene a special Town Meeting during the summer months or over the holidays.

Because of these potential complications, and because the draft regulation contemplate the need for a potential back-and-forth between DOER and a town, the dates in the draft regulation should be extended to allow towns the opportunity to discuss and vote on any final decisions during annual Town Meeting, rather than forcing rushed, and potentially infeasible special Town Meetings. Specifically, we suggest extending the following deadlines to the following dates:

- 225 CMR 24.03(2)(b) – extend the maintenance of Prioritized Community status from February 11, 2024 to **June 30, 2024** so that towns are able to obtain Town Meeting approval for substantive edits to its application at their typical spring annual Town Meetings without losing Priority Community status in the interim;

- 225 CMR 24.04(3)(d) – extend the final deadline to meet all Project eligibility requirements from February 11, 2024 to **June 30, 2024** so that if a town fails to meet those requirements, the application expires and is deemed void at the same time that the town loses its Prioritized Community status; and
- 225 CMR 24.04(3)(b)-(c) – extend the deadline for towns to update, re-submit, and submit a complete application from November 10, 2023 to **December 31, 2023** so towns are able to obtain Town Meeting approval during the typical timing for a special Town Meeting (October or November) to be called as needed.

DOER can also help address the issues of Town Meeting timing with a few other changes to the regulations:

- **Clarify Whether Options Other than Further Town Meeting Approval are Sufficient to Meet Submittal Obligations.** DOER may eliminate much of the above concern by clarifying that towns are able to meet the obligations and deadlines in the draft regulation by a vote of a Prioritized Town’s *select board* affirming continued interest in participating in the Project. Unlike Town Meetings, select boards meet several times a month (and can meet with 48 hours’ notice). Clarifying that select boards in Prioritized Communities may take the requisite actions for submittals would avoid some of the concerns regarding Town Meeting scheduling.
- **Commit to Ongoing Review and Feedback on Applications.** DOER should commit in the regulations to providing ongoing feedback to municipalities as it reviews applications on a rolling basis, either in general terms (i.e. “promptly”) or within specific response windows (i.e., “within 30 days”). Doing so would ensure municipalities can progress in the application process. Further, DOER should eliminate the requirement to approve applications in the order in which a municipality submitted its home rule petition to avoid delays. *See* 225 CMR 24.04(3). As long as *all* Prioritized Communities applications are addressed first, doing so would not risk the loss of any priority for those communities.

## **V. Clarify Other Portions of the Draft Regulations**

DOER should also clarify certain draft regulatory language:

- **Hospitals or Medical Offices.** The definition of “Hospitals or Medical Offices” includes a list of examples related to substance recovery. *See* 225 CMR 24.02 (examples of a hospital or medical office includes “outpatient withdrawal management, opioid treatment programs, office-based opioid treatment programs, acute treatment services (inpatient detoxification), and clinical stabilization services”). We commend DOER for recognizing the important role of these facilities in the healthcare system, but are concerned that the use of an illustrative list composed *only* of these examples may lead to confusion as to whether other types of Hospitals and Medical Offices are also exempt

from regulation. Striking the list of examples would be sufficient to eliminate this issue.

- **Community Reporting Requirements.** We agree with DOER that it is important for DOER to understand the impacts of the Project and to that end, it is necessary for Participating Communities to submit timely and accurate data to DOER. However, “timely and accurate data reporting” as specified in 225 CMR 24.07(2)(c) is not itself a form of data. We therefore suggest DOER either strike 225 CMR 24.07(2)(c) in its entirety, or move the language appearing at 225 CMR 24.07(2)(c) into the language at 225 CMR 24.07(2) so that it reads “Participating Communities shall submit the following data, in a timely and accurate manner and in an accessible format...”

### **Conclusion**

The Commonwealth and its municipalities have made significant strides to becoming more sustainable and decreasing its use of fossil fuels. We appreciate DOER’s efforts to help the Towns and other communities to take the next step in doing so and look forward to working with you to shape an effective and efficient Project.

Sincerely,

/s/ *Mina S. Makarious*

Mina S. Makarious



## CHAPTER AC

### ***REGULATING FOSSIL FUEL INFRASTRUCTURE IN BUILDINGS***

#### **AC1. Purpose**

This Bylaw is adopted by the Town of Acton to protect health and safety, and the natural environment, and to reduce air pollution and greenhouse gas emissions, which cause climate change, thereby threatening the Town and its inhabitants.

#### **AC2. Definitions**

**2.1** “Effective Date” shall mean December 1, 2022, or six months following the date by which the Town is authorized by the Massachusetts General Court to regulate fossil fuel infrastructure, whichever is later.

**2.2** “New Building” shall mean a new building as defined in the Acton Zoning Bylaw, Chapter M of the General Bylaws of the Town of Acton, associated with a building permit application filed on or after the Effective Date.

**2.3** “On-Site Fossil Fuel Infrastructure” shall mean piping, for fuel gas, fuel oil, or other fuel hydrocarbons, 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 or the customer-side gas meter.

**2.4** “Major Renovation” shall mean a renovation project associated with a valid building permit application filed on or after the Effective Date of this chapter that:

1. for existing structures regulated by the current edition of the International Residential Code as amended by 780 CMR 51: 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 of the principal dwelling, as defined in Section 1.3.7 of the Acton Zoning Bylaw, prior to the project; and
2. for existing structures regulated by the current edition of the International Building Code as amended by 780 CMR 34: Massachusetts 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.

**2.5** “Work Area” shall mean 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.

### **AC3. Applicability**

**3.1** This chapter shall apply to all building permit applications for New Buildings and Major Renovations proposed to be located in whole or in part within the Town, except that this Chapter shall not apply to:

- A. Utility service piping connecting the grid to a meter, or to a gas meter itself;
- B. Piping required to:
  - i. fuel backup electrical generators, outdoor cooking appliances, or appliances for outdoor heating; or
  - ii. 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;
- C. The extension or modification of heating systems via HVAC system modification, or modification of radiator, steam, or hot water piping, provided new fossil fuel piping is not installed; or
- D. Repairs of any existing portions of a fuel piping system deemed unsafe or dangerous by the Plumbing and Gas Fitting Inspector.

#### **AC4. Enforcement**

**4.1** As of the Effective Date, no building permit shall be issued by the Town for the construction of New Buildings or Major Renovations that include the installation of new On-Site Fossil Fuel Infrastructure that is subject to this Chapter, except as provided for in Section AC3 “Applicability” and Section AC5 “Waivers.”

**4.2** The Town Manager, or their designee, shall publish and present an annual report to the Select Board quantifying the number and locations of residential building permit applications for new and major renovation projects exceeding 75% of the original gross floor area, and the number and locations of commercial building permit applications for new and major renovation projects exceeding 50% of the building floor area prior to the project; the number of new and major renovation projects requesting a waiver from this Chapter, the disposition of those waivers, the reasons for granting or denying those waivers, and the square footage of each project for which a waiver is granted.

**4.3** The Select Board may adopt reasonable regulations to implement this Chapter.

#### **AC5. Waivers**

**5.1** 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.

**5.2** 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.

**5.3** 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.

**5.4** 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.

**5.5** 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.

## **AC6. Appeals**

An applicant may appeal a decision of the Building Commissioner concerning the grant or denial of a waiver pursuant to Section 5 to the Select Board, or its designee, within 30 days of the decision.

**THE COMMONWEALTH OF MASSACHUSETTS  
WARRANT FOR SPECIAL TOWN MEETING  
Thursday, January 19, 2023**

Middlesex, ss.

To any of the Constables of the Town of Concord, in said County,

In the name of the Commonwealth of Massachusetts, you are hereby required to notify the legal voters of the Town of Concord, qualified to vote at Town Meeting for the transaction of Town affairs, to meet at the Concord-Carlisle Regional High School at 500 Walden Street, in said town, on Thursday, the 19th day of January, 2023, at 7:00 P.M., by posting a printed copy of this Warrant by you attested, at the Town House. Further a copy thereof shall be posted on the Town's website and mailed to every household at least fourteen days before the Special Town Meeting, then and there to act upon the following Articles:

**FOSSIL FUEL INFRASTRUCTURE: CONFIRM AUTHORIZATION TO APPLY FOR  
PARTICIPATION IN FOSSIL FUEL-FREE DEMONSTRATION PROJECT**

**ARTICLE 1.** To determine whether the Town will vote to confirm that the Select Board is authorized to apply to participate in the Massachusetts Department of Energy Resources' municipal fossil fuel-free demonstration project as established in Section 84 of Chapter 179 of the Acts of 2022, and further that the Select Board apply to the demonstration project with the Bylaw previously approved by Town Meeting as Article 31 of the 2021 Annual Town Meeting on June 13, 2021, with technical corrections to the Bylaw passed thereunder in substantially the form below (~~struck through~~ text to be removed and underlined text to be added):

**PROHIBITION ON THE EXPANSION OF  
FOSSIL FUEL INFRASTRUCTURE FOR NEW CONSTRUCTION**

**1. Purpose**

This Bylaw is adopted by the Town of Concord to protect the health, safety and welfare of the inhabitants of the town from the effects of air pollution, including greenhouse gas emissions that are contributing to climate change, and from fuel leaks and explosions that threaten the Town and its inhabitants.

**2. Definitions**

For the purposes of this bylaw, the following definitions shall apply:

"Building" shall have the same meaning as set forth in Section 1.3.4 of the Concord Zoning Bylaw, provided that the pertinent structure is or will be furnished with a heating or hot water system.

"Effective Date" shall mean ~~December 1, 2022,~~ or six months following the date by which the Town is authorized by the Massachusetts General Court Department of Energy Resources to regulate fossil fuel infrastructure, ~~whichever is later.~~

"New Building" shall mean any new construction that will require heating or cooling and that is associated with a valid building permit application on or after the effective date of this bylaw, including but not limited to, construction (a) on a vacant lot, (b) to replace a demolished building, or (c) of a new accessory building constructed on an existing residential or commercial property.

“On-Site Fossil Fuel Infrastructure” shall mean piping for coal, fuel gas, fuel oil, natural gas or other fuel hydrocarbons, including synthetic equivalents, or other fossil fuels that is are in a building, in connection with a building, or otherwise within the property lines of a premises, extending from a supply tank or from the point of delivery behind a gas meter (customer-side of a gas meter).

### 3. Applicability and Exemptions

3.1. On and after the Effective Date, no building permit shall be issued by the Town for the construction of New Buildings or that include the installation of new On-Site Fossil Fuel Infrastructure subject to this Chapter.

3.2. The provisions of this bylaw shall not apply to (i) the development of new affordable housing, as defined in Mass. Gen. Laws c. 184, § 26; (ii) to cooking stoves and ovens used in restaurants or commercial kitchens; (iii) any fossil fuel infrastructure the exclusive purpose of which is to fuel backup electrical generators; (iv) public utilities, their operations, or installations other than in the Buildings constructed by others; or (v) research laboratories for scientific or medical research, or to hospitals or medical offices regulated by the department of public health as a health care facility.

3.3. 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 building 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.

### 4. Administration

#### 4.1 . Enforcement

The Building and Inspections Department is hereby authorized to enforce the provisions of this bylaw.

#### 5.2 Appeal

Any applicant who is aggrieved by a denial of a building permit, in whole or part, in connection with this bylaw, may appeal to the board or committee designated by the Town Manager to hear and resolve such appeals within 20 days from the date of denial.

### 6. Severability

Each provision of this bylaw shall be construed as separate to the extent that if any section, sentence, clause or phrase is held to be invalid for any reason, the remainder of the by-law shall continue in full force and effect.

### 7. Reporting

The Town Manager, or the Town Manager’s designee, shall provide data and other information on the impacts of this Bylaw on emissions, building costs, operating costs, the number of building permits issued, and other information as required or requested by the Department of Energy Resources and the Secretary of Housing and Economic Development.

*This Bylaw was previously approved by voters at the 2021 Annual Town Meeting. It is accepted practice for towns to re-authorize special legislation petitions upon the expiration of each legislative session of the Massachusetts General Court. This article seeks Town Meeting reauthorization of the Bylaw as revised to reflect new statutory guidance from the Massachusetts Department of Energy Resources. Pursuing this opportunity furthers the Town's sustainability goals as printed in the 2020 Sustainable Concord: Climate Action and Resilience Plan: <https://concordma.gov/DocumentCenter/View/25318/Sustainable-Concord-Climate-Action-and-Resilience-Plan-2020?bidId=>.*

## **REAUTHORIZE SPECIAL LEGISLATION PETITION – REAL ESTATE TRANSFER FEE FOR AFFORDABLE HOUSING**

**ARTICLE 2.** To determine whether the Town will authorize the Select Board to petition the General Court for special legislation substantially in the form below, in lieu of the special legislation approved under Article 25 of the 2019 Concord Annual Town Meeting, that would impose a real estate transfer fee to be used by the Town for the purposes of acquiring, creating, preserving, rehabilitating, restoring and supporting affordable housing in the Town, or take any other action relative thereto (~~struck-through~~ text to be removed and underlined text to be added):

**“An act establishing a real estate transfer fee upon the transfer of property in the Town of Concord.”**

SECTION 1. There is hereby imposed a real estate transfer fee, hereafter “the fee,” equal to 1 per cent of the portion of the purchase price exceeding \$1,0600,000 upon the transfer of (i) any real property interest in any residential property situated in the Town of Concord, or (ii) a controlling interest in a trust, limited liability company, or other entity that directly or indirectly holds an interest in any class of residential real property situated in the Town of Concord. The fee shall be the liability of the purchaser of such property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the liability for the fee shall not affect such liability of the purchaser to the Town. The Town may define by bylaw what constitutes a controlling interest and the calculation of the fee.

SECTION 2. The following transfers of real property interests shall be exempt from the fee established in Section 1:

- (i) transfers to the federal government, the Commonwealth, the Town, and any of their instrumentalities, agencies or subdivisions, including the Concord Housing Authority and the Concord Municipal Affordable Housing Trust;
- (ii) transfers to the Concord Housing Development Corporation;
- (iii) transfers of real property subject to an affordable housing restriction;
- (iv) transfers made without additional consideration to confirm, correct, modify or supplement a transfer previously made;
- (v) transfers with consideration under \$100.00;
- (vi) transfers to a charitable organization, as defined in clause Third of section 5 of chapter 59 of the General Laws, or a religious organization, provided, however, that the real property interests so transferred will be held solely for public charitable or religious purposes; and
- (vii) transfers between family members, including spouses, parents and children, grandparents and grandchildren, step-parents and step-children, siblings or step- siblings.

## Town of Lexington

### Motion

#### 2022-3 Special Town Meeting

#### ARTICLE 13 TECHNICAL CORRECTION-GENERAL BYLAW (FOSSIL FUEL)

**MOTION:** That Town Meeting confirm the Select Board is authorized to apply to participate in the Department of Energy Resources' municipal fossil fuel-free demonstration project as established in Section 84 of Chapter 179 of the Acts of 2022, and further that the Select Board apply to the demonstration project with legislation previously approved by Town Meeting as Article 29 of the 2021 Annual Town Meeting on March 22, 2021, with technical corrections to the Bylaw passed thereunder in substantially the form below (~~struck through~~ text to be removed and underlined text to be added):

#### Chapter 106: REGULATING FOSSIL FUEL INFRASTRUCTURE IN BUILDINGS

##### 106- 1 Purpose

This Bylaw is adopted by the Town of Lexington to protect health, safety, and the natural environment and reduce air pollution and greenhouse gas emissions, which causes climate change, thereby threatening the Town and its inhabitants.

##### 106- 2 Definitions

“Effective Date” shall mean ~~December 1, 2022, or six months~~ 90 days following the date by which the Town is authorized by the ~~Massachusetts General Court~~ Department of Energy Resources to regulate fossil fuel infrastructure, ~~whichever is later~~.

“New Building” shall mean a new building or new accessory building, as defined in the Lexington Zoning Bylaw, Chapter 135 of the Code of the Town of Lexington, associated with a building permit application filed on or after the Effective Date.

“On-Site Fossil Fuel Infrastructure” shall mean piping for coal, fuel gas, fuel oil, natural gas or other fuel hydrocarbons, including synthetic equivalents, or other fossil fuels that is in a building, in connection with a building, or otherwise within the property lines of a premises, extending from a supply tank or from the point of delivery behind a gas meter or the customer-side of a gas meter.

“Major Renovation” shall mean a project associated with a valid building permit application filed on or after the Effective Date of this article that:

for existing structures regulated by the current edition of the International Residential Code as amended by 780 CMR 51: 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 of the principal dwelling, as defined in the Lexington Zoning Bylaw, prior to the project; and

for existing structures regulated by the current edition of the International Building Code as amended by 780 CMR 34: Massachusetts Commercial Code, includes the



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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.

“Work Area” shall mean the portions of a building affected by renovations for the reconfiguration of space or building systems, as shown in the drawings included with a building permit application. Areas consisting of only repairs, refinishing, or incidental work not associated with the renovations or reconfiguration for which a building permit is required are excluded from the Work Area.

#### **106- 3 Applicability**

This Chapter shall apply to all building permit applications for New Buildings and Major Renovations proposed to be located in whole or in part within the Town, except that this Chapter shall not apply to:

- A. utility service piping connecting the grid to a meter, or to a gas meter itself;
- B. piping required to:
  - i. fuel backup electrical generators, indoor or outdoor cooking appliances, indoor or outdoor fireplaces or fire features, or appliances for outdoor heating; or
  - ii. produce potable or domestic hot water from centralized hot water systems in commercial buildings with building 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;
- C. the extension or modification of heating systems via HVAC system modification, or modification of radiator, steam, or hot water piping, provided new fossil fuel piping is not installed;
- D. life science buildings, research laboratories for scientific or medical research, or to hospitals or medical offices regulated by the Massachusetts Department of Public Health as a healthcare facility; or
- E. repairs of any existing portions of a fuel piping system deemed unsafe or dangerous by the Plumbing and Gas Fitting Inspector.

#### **106- 4 Enforcement**

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1. On and after the Effective Date, no building permit shall be issued by the Town for the construction of New Buildings or Major Renovations that include the installation of new On-Site Fossil Fuel Infrastructure subject to this Chapter.
2. The Town Manager, or their designee, shall publish and present an annual report to the Select Board quantifying the number and location of building permit applications for new and major renovation projects exceeding 50% of the original gross floor area of the principal dwelling; the number of new and major renovation projects requesting a waiver from this Chapter, the disposition of those waivers, the reasons for granting or denying those waivers and the square footage of each project for which a waiver is granted.
3. The Select Board may adopt additional requirements, exemption, and regulations to implement or enforce said new fossil fuel infrastructure restrictions in major construction, consistent with this Chapter.

#### **106- 5 Waivers**

- A. The Building Commissioner may grant a waiver from 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 proponent, the additional cost of the project over the long term, including any available subsidies, would make the project commercially unviable; or
  - b. technological or other factors would make the project unsuitable for its intended purpose.
- B. 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.
- C. 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.
- D. 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.
- E. 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,

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or its designee, within thirty (30) days in accordance with policies established by the Select Board.

- F. The Select Board shall, 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.

**106- 6 Appeals**

The Select Board, or its designee, shall hear appeals from decisions of the Building Commissioner under this Chapter.

**106- 7. Reporting**

The Select Board, or its designee, shall provide data and other information on the impacts of this Bylaw on emissions, building costs, operating costs, the number of building permits issued, and other information as required or requested by the Department of Energy Resources and the Secretary of Housing and Economic Development.

(10/04/2022)