

**TOWN OF ARLINGTON
MASSACHUSETTS**

**REPORT OF THE
SELECT BOARD**



**TO THE
SPECIAL TOWN MEETING
TUESDAY, OCTOBER 17, 2023**

8:00 P.M.

ARTICLE 14

**BYLAW AMENDMENT/FOSSIL FUEL FREE
INFRASTRUCTURE DEMONSTRATION**

VOTED: That Title VI of the Town Bylaws be and hereby is amended to add a new Article 10 entitled “Prohibition on New Fossil Fuel Infrastructure in New Construction and Major Construction” as follows:

**TITLE VI
ARTICLE 10**

**PROHIBITION ON NEW FOSSIL FUEL INFRASTRUCTURE IN NEW
CONSTRUCTION AND MAJOR RENOVATION**

Section A. Definitions

“Effective Date” shall mean 90 days following the date on which the Town is authorized by the Department of Energy Resources to regulate fossil fuel infrastructure.

“Fossil Fuel-Free Demonstration” shall mean the project codified by the entirety of 225 CMR 24.00, the Fossil Fuel- Free Demonstration.

“Major Renovation” shall mean a renovation project associated with a valid building permit application filed on or after the Effective Date of this article that is, for low-rise residential buildings, a Level 3 Alteration as defined in the International Existing Building Code (IEBC 2021) in which the Work Area exceeds 50% of the existing conditioned floor area and exceeds 1,000 square feet; or that is, for all other building uses, a Level 3 Alteration as defined in the International Existing Building Code (IEBC 2021) in which the Work Area exceeds 50% of the existing conditioned floor area or an alteration that exceeds 20,000 square feet.

“New Construction” shall mean 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.

“Specialized Energy Code” – Codified by the entirety of 225 CMR 22.00 and 23.00 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.

“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.

Section B. Purpose

This Bylaw is adopted by the Town of Arlington, pursuant to “Act Driving Clean Energy and Offshore Wind” (St. 2022, c. 179, § 84) and 225 CMR 24.00, also referred to as the Fossil Fuel-Free Demonstration, the purpose of which is to restrict and prohibit new building construction and major renovation projects that are not fossil fuel-free in the interests of protecting health, safety, and the natural environment and reducing air pollution and greenhouse gas emissions, which cause climate change, thereby threatening the Town and its inhabitants. This bylaw is intended to work in conjunction with the Specialized Stretch Code, adopted by the 2023 Arlington Town Meeting and incorporated into Title VI Art. 3 of the Town Bylaws as well as the Town’s “Net Zero” goals.

Section C. Applicability

- 1. The requirements of this bylaw apply to residential and non-residential buildings that qualify as New Construction or Major Renovation.**
- 2. The requirements of this bylaw shall not apply to:**
 - a. 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 24.00.**
 - b. Multi-family buildings over 12,000 square feet with permit applications filed prior to January 1, 2027, that utilize gas or propane for domestic water heating as the only combustion equipment.**
 - c. Utility service piping connecting the grid to a meter, or to a gas meter itself.**
 - d. Piping required to fuel backup electrical generators.**
 - e. Portable propane appliances for outdoor cooking and heating.**
 - f. The extension or modification of heating systems via HVAC system modification, or modification of radiator, steam, or hot water piping, so long as new fossil fuel piping is not installed.**
 - g. Repairs of any existing portions of a fuel piping system deemed unsafe or dangerous by the Plumbing and Gas Fitting Inspector.**

Section D. Fossil Fuel-Free Demonstration

The Fossil Fuel-Free Demonstration, as codified by the entirety of 225 CMR 24.00, is herein incorporated by reference into the Town of into Title VI, Article 3 of the Town of Arlington General Bylaws.

With adoption of the Fossil Fuel-Free Demonstration, and upon approval by DOER, the following amendments to the Specialized Energy Code (codified in Title VI Article 3 of the Town Bylaws) are adopted. These changes are enforceable by the Building Inspector and will go into effect for any project seeking a permit after the Effective Date.

- 1. Low-rise Residential Code (225 CMR 22 Appendix RC)**
 - a. Sections RC102 and RC101 “Zero Energy Pathway” and “Mixed Fuel Pathway” shall not be permitted for use for new construction.**
- 2. Commercial and All Other (225 CMR 23 Appendix CC)**
 - a. Sections CC103 and CC105 “Zero Energy Pathway” and “Mixed-Fuel Pathway” shall not be permitted for new construction, with the following exceptions:**
 - i. Research laboratories for scientific or medical research,**
 - ii. Hospitals regulated by the department of public health as a health care facility,**
 - iii. Medical offices regulated by the department of public health as a health care facility,**
 - iv. 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.**
- 3. Equipment or appliances used for space heating, service water heating, cooking, clothes drying, and/or lighting that can utilize coal, oil, natural gas, other fuel hydrocarbons, including synthetic equivalents, or other fossil fuels may not be installed as part of any residential or non-residential Major Renovation, with the exception of C(2)(a – g) and D(2)(a)(i – iv) above. All Major Renovations associated with C(2)(a – g) and D(2)(a)(i – iv) must follow applicable stretch code requirements.**

Section E. Waivers

- 1. In the event that compliance with the provisions of this bylaw makes a project financially infeasible or impractical to implement, the Building Inspector may grant a waiver subject to reasonable conditions. Where appropriate, such waivers shall be issued narrowly for specific portions of a project that are financially infeasible or impractical to implement under the requirements of this Article. Waiver requests shall be supported by a detailed cost comparison, inclusive of available rebates and credits. A waiver request may be made at any time and may be based upon submission of conceptual plans. Particular consideration for waivers will be given to projects sponsored by non-profit or government-sponsored affordable housing entities.**

- 2. Guidance regarding the granting of waivers and prescription of conditions shall be provided by the Select Board prior to the Effective Date and periodically extended or amended in the light of experience and changing circumstances.**

Notwithstanding the foregoing, Compliance with this bylaw may be considered financially infeasible if:

- 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; and/or**
 - b. If technological or other factors would make the project unsuitable for its intended purpose.**
- 3. The Building Inspector’s decision with respect to the granting of a waiver, the scope thereof, and any conditions prescribed, shall be appealable to the Town Manager in accordance with procedures established by the Town Manager.**

Section F. Appeals

The Town Manager shall hear appeals from decisions by the Building Inspector on the applicability of this bylaw under section C in accordance with such procedural rules as may be adopted from time to time by the Town Manager.

(4-0) Mr. DeCoursey recused himself from the discussion and vote.

COMMENT: The Select Board recommends positive action under this Article to ensure the Town’s participation in the Municipal Fossil Fuel Free Building Demonstration Program (“Demonstration Program”) created by the state legislature, through the Department of Energy Resources (“DOER”). Town Meeting’s passage of this updated bylaw, as well as compliance with so-called “MBTA Communities” zoning requirements are prerequisites for participation in the Demonstration Program and will allow the Town to restrict the use of fossil fuel infrastructure in new building construction and major renovations, restrictions critical to the Town’s localized climate and quality goals.

The Board further notes that the recommended vote closely mirrors the previously approved iteration of a “Clean Heat Bylaw”, which passed in the 2020 Town Meeting with 92% of voting members’ support. Much of that version of the Clean Heat Bylaw’s original content is not disturbed by DOER-suggested amendments and many important provisions for waivers, appeals and exemptions, in limited circumstances, remain available.



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