

**Town of Lexington**

**Motion**

**2023 Annual Town Meeting**

**ARTICLE 27                    Amend Fossil Fuel Bylaw - Compliance with Department of Energy Resources (DOER) Regulations and Guidance**

**MOTION:** That Town Meeting amend the bylaw previously approved by Town Meeting under Article 29 of the 2021 Annual Town Meeting on March 22, 2021 and amended as Article 13 of the 2022-3 Special Town Meeting on November 1, by replacing it with the below for participation 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:

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

[“Combustion Equipment” means as defined in 225 CMR 23.](#)

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

“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, 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 [meets the definition of Level 3 Alteration as defined in 225 CMR 22 and 23.](#)

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~~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~~

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~~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 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~~ Research laboratories for scientific or medical research.
- Hospitals regulated by the department of public health as a health care facility.
- Medical offices regulated by the department of public health as a health care facility.
- Buildings heated with Clean Biomass Heating Systems as defined in 225 CMR 23 as the only combustion equipment.
- Multi-family buildings over 12,000 square feet with permit application filed prior to January 1, 2027 that utilize gas or propane for domestic water heating as the only combustion equipment.
- ~~A.F. Utility service piping connecting the grid to a meter, or to a gas meter itself;~~
- ~~G. piping required to:~~ 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;
- Repairs of any existing portions of a fuel piping system deemed unsafe or dangerous

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by the Plumbing and Gas Fitting Inspector, or

B-I.Piping required to:

- a. fuel backup electrical generators, indoor or outdoor cooking appliances, indoor or outdoor fireplaces or fire features, or appliances for outdoor heating; ~~or:~~
- b. ~~produce potable or domestic hot water from centralized hot water systems in commercial buildings with building floor areas of at least 1012,000 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;~~
- A. ~~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;~~
- B. ~~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~~
- C. ~~repairs of any existing portions of a fuel piping system deemed unsafe or dangerous by the Plumbing and Gas Fitting Inspector.~~

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106- 4 Enforcement

1. On ~~and~~ after the Effective Date, no building permit shall be issued by the Town for the construction of New Buildings ~~or~~ and Major Renovations that include the installation of new On-Site Fossil Fuel Infrastructure subject to this Chapter except in accordance with this Chapter and Chapter 115.
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

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- 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, 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.