

ARTICLE 31

HOME RULE PETITION TO REGULATE FOSSIL FUEL INFRASTRUCTURE

To determine whether the Town will vote to authorize the Select Board to petition the Massachusetts General court to enact legislation substantially in the form below, and further to authorize the Select Board to approve amendments to said legislation before its enactment by the General Court that are within the scope of this motion:

AN ACT AUTHORIZING THE TOWN OF LINCOLN TO ADOPT AND ENFORCE LOCAL REGULATIONS RESTRICTING NEW FOSSIL FUEL INFRASTRUCTURE IN CERTAIN CONSTRUCTION

SECTION 1. Notwithstanding chapter 40A, 164 of the General Laws, section 13 of chapter 142 of the General Laws, the State Building Code, the Fuel and Gas Code, or any other general or special law or regulation to the contrary, the town of Lincoln is hereby authorized to adopt and further amend general or zoning by-laws that restrict new construction projects that do not qualify as fossil-fuel-free, as defined in section 3 of this act.

SECTION 2. Notwithstanding section 7 of chapter 40A of the General Laws, or any other general or special law or regulation to the contrary, the Building Inspector of the town of Lincoln, or any designee thereof, shall be authorized to enforce restrictions on new construction that do not qualify as fossil-fuel-free, as defined in Section 3 of this act, including through the withholding of building permits.

SECTION 3. As used in this act, the term “fossil-fuel-free” shall mean new building construction or major renovation that results in an entire building or an entire condominium unit that does not utilize coal, oil, natural gas, other fuel hydrocarbons (including synthetic equivalents), or other fossil fuels in support of its operation after construction.

SECTION 4. This act shall take effect upon its passage. Any bylaw previously approved by the Lincoln Town Meeting consistent with Sections 1 through 3 of this act is hereby ratified.

SECTION 5. If any provision or section of this act is invalidated, the remainder shall survive in full force and effect. And further, that the Code of the Town of Lincoln be amended by adding a new Chapter [XX], “Regulating Fossil Fuel Infrastructure in Buildings”, as follows:

REGULATING FOSSIL FUEL INFRASTRUCTURE IN BUILDINGS

1. Purpose

This Bylaw is adopted by the Town of Lincoln 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, all of which threaten the Town and its inhabitants.

2. Definitions

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

“Effective Date” shall mean January 1, 2023, 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.

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

“On-Site Fossil Fuel Infrastructure” shall mean piping for fuel gas, fuel oil, or other fuel hydrocarbons, including synthetic equivalents, 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.

“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:

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 XXX of the Lincoln 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 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.

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:
 - a. fuel backup electrical generators or
 - b. 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;
- D. Repairs of any existing portions of a fuel piping system deemed unsafe or dangerous by the Plumbing and Gas Fitting Inspector; or
- E. Construction of new affordable housing, as defined in Mass. Gen. Laws c. 184, Section 26. *[Or instead 5..D, below.]*

4. Enforcement

- A. 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 3 “Applicability” and Section 5 “Waivers.”
- B. 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.
- C. The Select Board may adopt reasonable regulations to implement this Chapter.

5. Waivers

- A. 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.
- 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 Select Board may issue, and may thereafter amend, guidance regarding the granting of waivers and describing reasonable conditions that may be placed on a waiver.

6. Appeal

An applicant may appeal a decision of the *[Building Commissioner]* concerning the grant or a denial of a building permit or waiver in connection with this bylaw, within 30 calendar days of that decision, to the Select Board or its designee.

7. Severability

Each provision of this by-law 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.