



Newton City Council

Committee of the Whole Report

With the Zoning & Planning Committee Presiding

Wednesday, February 15, 2023

Present: Councilors Baker, Bowman, Crossley, Downs, Danberg, Gentile, Grossman, Humphrey, Kalis, Kelley, Krintzman, Laredo, Leary, Lipof, Lucas, Malakie, Markiewicz, Norton, Oliver, Ryan, Wright & Albright

Absent: Councilors Greenberg and Noel

City Staff Present: Director of Planning Barney Heath, Co-Director of Sustainability Ann Berwick, Commissioner of Inspectional Services John Lojek

Clerk's Note: The full Committee meeting can be viewed on the following link:

<https://newtv.org/recent-video/107-committee-meetings-and-public-hearings/7906-committee-of-the-whole-february-15-2023>

Referred to Zoning & Planning Committee

#477-22 Request for discussion regarding new MA Building Energy Code amendments and adoption of the Specialized Energy Code

COUNCILORS CROSSLEY, LEARY, ALBRIGHT, DANBERG, LIPOF, KELLEY, NORTON, LAREDO, BOWMAN, HUMPHREY, DOWNS, GREENBERG, WRIGHT, MALAKIE, MARKIEWICZ, AND GROSSMAN requesting discussion with the Sustainability Team and Planning Department about the new Massachusetts Building Energy Code amendments (Base code and Stretch code), and to consider adopting the Specialized Energy Code pursuant to the entirety of 225 CMR 22 and 23 including Appendices RC and CC.

Zoning & Planning Held 7-0 (Councilor Baker not voting)

Action: Zoning & Planning Approved 6-0-2 (Councilors Baker and Wright abstaining)

Note: The Committee of the Whole met with the Zoning & Planning Committee presiding to discuss the above item. They were joined by Ann Berwick, Co-Director of Sustainability, John Lojek Commissioner of Inspectional Services, Deputy Commissioner of Inspectional Services Anthony Ciccariello and Director of Planning and Development Barney Heath. The Chair thanked Ms. Berwick for her diligent work preparing summaries of the new MA Building Energy Code amendments, including explanations of how the optional Specialized Energy Code would add to those requirements, if adopted by the Council, and how adopting this code relates to regulating electricity in new construction.

She also noted that in October of 2009, Newton was the first municipality to adopt the original MA Stretch Code. That board order is attached.

The Chair provided a brief background to help process the information that will be provided during this meeting. The Bureau of Building Regulations and Standards (BBRS) is an agency independent from the State, who oversee Massachusetts' Uniform Building Code. Like all MA communities, Newton must follow this code, and may not write its own code. Normally, The BBRS provides Code Amendments every three years, usually issuing new code on January 1 of a given year and making it fully effective as of July of that same year.

The Chair noted that 13 years ago, the Patrick administration worked with the BBRS to create an alternate, stricter energy code, calling it the 'Stretch' code, and the Legislature passed an Act allowing cities and towns to adopt the stricter energy requirements. Newton was the first to adopt the new code. Now, there are 300 Massachusetts communities that are Stretch Code communities. Stretch code communities automatically incorporate amendments when they are based at the state level.

This year, comprehensive amendments to the Massachusetts Building Code, included significant amendments to the Base Energy Code and the Stretch Code, which became effective January 1 of this year. In addition, the DOER created a new optional code, called the Specialized code, which communities may adopt. These amendments and the new code respond to state legislation requiring strong climate actions to reduce emissions. The Massachusetts Department of Energy Resources (DOER) now administers both the Stretch Code and Specialized Code separately from the BBRS.

The purpose of the meeting tonight is to inform City Council and the public of the key differences between the Stretch Code that is currently in effect, and the Specialized Code that Newton may adopt. If Council decides to adopt the Specialized code, it must then decide when to set the effective date.

Ian Finlayson, Deputy Director of the Energy Efficiency Division for the Massachusetts Department of Energy Resources, is here to explain the differences between the existing code and the new code. There are already four other communities who have adopted the specialized code and are making the effective date July of this year. The DOER recommends that communities give an at least 6-month grace period before it is made effective.

Ms. Berwick introduced Mr. Finlayson and thanked him for his work on the Specialized code. Mr. Finlayson presented his attached PowerPoint titled "MA Stretch Code Update & New Specialized Code".

Ms. Berwick asked Mr. Finlayson to concisely differentiate between properties regulated as "low-rise residential" versus "commercial" for the purposes of applying the code? Mr. Finlayson explained that for the Energy Code they use the National Model to define low rise residential which includes single and two family homes, townhouses and then 3 categories of multifamily buildings that are 3 stories in height or less. This also includes assisted living facilities and single-room shelters. This definition does not include

short term occupancies like a hotel or a motel. He noted that all buildings 4 stories or higher would be covered by the commercial code.

Mr. Finlayson then explained how additions and renovations are affected by the new specialized code. He further explained that in most cases such projects will not trigger a HERS rating. This is shown in the attached slide titled "Residential: HERS for Large Additions & Alterations". But in any case, there is no difference between the Specialized code and the Stretch code as of July 1, 2024, when the stricter HERS ratings

John Lojek, Commissioner of Inspectional Services explained the department is getting up to speed on this new code. They have been inundated with calls from developers and contractors on how this will be implemented, while the department is still educating themselves on the code. Commissioner Lojek explained that if the Council adopts the new Specialized code, the ISD will need the grace period to be able to prepare for it.

It was noted that Josh Morse, Commissioner of Public Buildings, could not attend this evening, but provided the attached memo regarding how the adoption of the specialized code would affect City owned buildings. In essence, the commissioner supports adoption, writing that the city is ahead of this curve, having begun to design new facilities to be all electric and high performance since 2018.

Councilors asked the following questions:

Q: Have any cost estimates been done regarding renovations/additions in historic homes that do trigger the HERS rating?

A: Mr. Finlayson first explained that the specialized code does not do anything to change requirements for additions or alterations; this is in the Stretch Code, which is already in effect. He then added that such analyses could be done but cautioned at the many very different factors that come into play.

Q: Do the other exceptions and permitted exceptions to the Special Code include historic homes?

A: Additionally, any building that is designated historic or in a historic district is exempt from all of the energy codes because there are genuine challenges with preserving historic buildings.

Q: What definition of passive house is being used here? How does ISD know how to approve?

A: Mr. Finlayson explained that there are two different certification bodies, and they work with the owner's design team to ensure that they will follow the requirements. The basic requirements that are based on peak heating loads, peak cooling loads and ventilation requirements.

Councilors made the following comments:

A Councilor suggested that the Council needs to think more about how these codes may affect the average homeowner seeking to improve their own home, not just how this effects the speculative

developer or contractor building new. A councilor also noted the importance of the State continuously examining the feedback they are receiving from as these new codes impact cities and towns.

Concerns were raised that the stricter construction requirements for additions and renovations may incentivize some to tear down older homes instead of improving the existing home.

A Councilor noted that the HERs rating is included in the existing Stretch code and the new specialized code does not change this. This meeting needs to focus on the differences between the stretch code and the specialized code, and the degree to which it advances climate actions required in our Climate Action Plan.

The public hearing was opened.

Jonathan Kantar, 672 Chestnut Street, explained that he was a part of the process to approve the original Stretch code (in Newton) which he believes was a harder task than what is being discussed tonight. He also noted that for alterations they need to be renovating a 1,000 square feet or more property and that has to represent 50% of the existing building to trigger the HERS rating. The HERS rating will ensure that the City is moving in the right direction (more energy efficient construction) to help prepare for electrification. He also noted that he would be able to take questions regarding cost. It was noted his company is Sage Builders, who have been in the field for years doing this type of work.

Betsy Harper, 19 Fairmont Ave explained that she is a certified Passive House builder and did give feedback to DOER on the code during the comment period in 2021. She is also a residential developer, built a Passive House certified "Victorian" style home in Cambridge, and is a member Green Newton Building Standards Committee. She is in the process of renovating her old Victorian home to earn PH certification, and she urged developers to educate themselves on how to achieve the requirements of these codes.

Lizbeth Heyer, 25 Freeman Street explained she works for 2Life communities which committed to Passive House certification as part of their special permit, which is the basis of the specialized code. 2Life is already using Passive House standards on other projects in the Greater Boston Area.

Beverly Craig, of the Massachusetts Clean Energy Center, presented the attached slides to show examples of seven recently completed multifamily projects where the average cost increment to achieve Passive House certification was 2.4%. She said the cost increment went down as the experience of the design/ build team increased.

Halina Brown, 56 Cloverdale Road, Chair of the Newton Energy Commission, expressed her support for the adoption of the Specialized code, as it is necessary to achieve the targets in the city's adopted Climate Action Plan. She explained that this will address the issue with the size of homes in Newton and how energy is used.

Jay Walter, 83 Pembroke Street, expressed his support for the specialized code, noting that in his practice, only 30% of his Newton clients are seeking additions over 1,000 sf or more that 50% of the conditioned floor area of the building. And, he said that when this is the case, owners normally are replacing energy systems. He urged the Council to adopt it.

Kathy Pillsbury, 34 Carver Road expressed her support for the specialized code and referenced her own renovation of a 130 year old Victorian home, including energy efficiency retrofits.

MaryLee Belleville, Newton resident expressed concerns regarding the noticing of the public hearing.

The Chair noted that the public hearing notice was posted in the Boston Herald and on the City's website, as required. In addition, email notices were sent out to all building professionals who do business with the city via ISD's list, as well as the Planning department's list.

Kent Gonzales, Northland Investment Cooperation, explained that their special permit required they commit to to three Passive House certified residential buildings, and that they continue to assess feasibility of the remaining residential blocks. Northland has done this assessment and is now committed to certifying 764 of their 800 residential units as Passive House. All of their residential units will have all electric primary vac and domestic hot water systems. Mr. Gonzales said that the transition to these standards was not easy, requiring sharp learning curve, but is feasible and the right thing to do.

Councilor Ryan motioned to close the public hearing which passed unanimously.

The discussion was brought back into committee.

The Committee discussed the date for implementation for the specialized code if it is adopted by the Council. The DOER recommends allowing for at least a six month time lapse between adoption and the effective date, in order to give the industry time to adjust to the change. In addition, DOER recommends aligning the effective date with MA code amendments normally issued on January 1 or July 1 of a given year. If Council adopts the code this month, there would be 9 months to January 1, 2024, or 15 months to July 1, 2024.

Question: what is the difference between the requirements of the Stretch code as of July 2024 (when it becomes most stringent) and the specialized code for multifamily 4 stories and above.

Mr. Finlayson explained that for all electric low-rise buildings there is no change and for additions/renovations for historic buildings there is no change. However, for mixed fuel low rise buildings, solar panels would be required, with exceptions for site conditions that are not hospitable to solar, such as tree canopy or existing buildings shading the site). Additionally, Mr. Finlayson said that for multi-family projects, compliance must be assured by an independent certified professional using either the HERS rating system, TEDI* or Passive House.

*The TEDI pathway is a simplified energy model that assesses heating and cooling demand relative to the type of building.

At the Chair's request, Ms. Berwick explained her attached memo describing in more detail the requirements for participation in the Ten Communities program. The City is one of ten communities who submitted Home Rule petitions to the legislature seeking to require electrification of all new construction and substantial renovations. Instead of taking up these petitions individually, the legislature created the Ten Communities Act, in order to conduct a pilot program, using a model ordinance. Newton must apply to DOER by September 1, 2023, in order to secure its place in the program. This requires not only meeting the housing affordability requirements for participation (Newton is on track to meeting the Chapter 40B 10% threshold by summer), but also that we pass an ordinance using the model code just issued by DOER, and that we adopt the Specialized code either before or concurrent with such an ordinance. Mr. Finlayson explained that DOER is looking for the City's plan, and that DOER intends to act swiftly to implement the program thereafter.

There were concerns raised regarding confusion as to how to achieve passive house certification among builders building professionals.

It was noted that there are trainings available on passive house certification, and an increasing number of professionals certified in Passive House.

Councilors expressed support for adopting the specialized code, which furthers the city's obligations to our Climate Action Plan and enable us to participate as one of the 10 communities requiring electrification.

Councilors thanked Ms. Berwick, Mr. Finlayson, and Inspectional Services Department staff for coming to the meeting and sharing their knowledge on the subject matter.

Councilor Leary motioned to approve the adoption of the specialized code which passed 6-0-2 with Councilors Wright and Baker abstaining.

The Committee then discussed the date by when the code would be effective. It was again noted that the date must be sooner than or at least concurrent with making the Ten communities program effective. A straw vote was taken on the effective date of July 1, 2024 which failed with Councilor Crossley, Danberg, Leary and Ryan opposed), stating a preference for the January 1, 2024.

Respectfully submitted,

Deb Crossley, Chair, Zoning & Planning Committee