

Thoughts on Waiver Provisions for the Ten Communities Program

Introduction

This memo has two objectives: (1) to propose to ZAP a waiver provision for the electrification ordinance that will be acceptable to DOER for the purposes of participation in the State’s Ten Communities program; (2) to explain the reasoning behind the proposed waiver provision.

To begin with, several points of clarification:

- The proposed waiver would apply to residential and commercial major renovation projects, and not to new construction.
- Although the waiver provision would apply to both residential and commercial renovation projects, the discussion section below focuses on residential projects because, among other things, the commercial code is much more complicated.
- Although the proposed waiver provision uses the number “150%,” that is obviously arbitrary. If there were a “correct” number, that would make drafting a waiver provision much easier. The goal here is to pick a reasonable number, so that ISD’s implementation can involve an objective process—making sure that a box has been checked—rather than undertaking a difficult process to determine whether some subjective hardship-type standard has been met.

All of that said....

Here’s the proposed waiver provision itself:

The City will entertain waiver requests for Major Renovation Projects with respect to which an architect, engineer, or general contractor on the project certifies by affidavit that compliance with the requirements of the Ordinance will increase the costs of the project by 150%, compared to the costs of complying only with the requirements of the applicable (i.e., residential or commercial) specialized building code.

Discussion

Applicable code provisions

225 CMR 24.00 governs Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Projects. Under 225 CMR 24.02, “Major Renovation Project” means a level 3 alteration as defined in 225 CMR 22.00 and 23.00. This is also the definition of “major renovation project” in our current draft Electrification Ordinance.

To translate: “major renovations” refer to situations in which the work area exceeds 50 percent of the building area. “Additions” qualify as “major renovations” and refer to work exceeding 1,000 square feet or exceeding 100 percent of the existing conditioned floor area.

“Additions” over 1,000 square feet or that exceed 100 percent of the conditioned floor area (i.e., more than double the size of the house) and level 3 alterations/”major renovations” (over 50 percent of the home is renovated) must follow the specialized code. But “additions” under 1,000 square feet continue to follow Base Energy Code unless they double the size of house (hard to imagine).

Application of code provisions and conclusion

Applying these provisions, I’ll speculate (but I’m not a building professional, so I want to be clear that I’m speculating) that there would be limited circumstances in which the Ten Communities electrification requirements would impose substantial additional costs relative to the residential specialized code. That’s because the specialized code itself is quite stringent, meaning that an electrification requirement might not add substantial costs to a project. But the details matter, so here’s my further reasoning:

- Most home renovations, e.g., kitchen renovations, do not affect over 50 percent of the area of the house. In those circumstances, the Ten Communities program obviously would not apply and thus would not impose additional costs.
- Given the applicability and the stringency of the specialized code, for “major renovations” the electrification requirements may not substantially increase the costs of a project.
- The same is true for “additions” over 1,000 square feet and “additions” that more than double the size of a house. In those circumstances, once again, the specialized code would be applicable and the electrification requirements might not impose substantial additional costs.
- “Additions” under 1,000 square feet are required to follow only the base energy code (unless they double the size of the house which is an almost impossible scenario to imagine). Thus, in this circumstance the specialized code would not be applicable and the electrification requirements could in fact impose substantial additional costs relative to the base energy code.

Apart from all this, we should acknowledge that the specialized code, not to mention the Ten Communities requirements, represents challenges for all stakeholders, including the City itself. For that reason, I have a strong recommendation that Newton’s electrification ordinance not become effective any earlier than DOER requires for the purposes of participation in the Ten Communities Program.