



6 Everett Street
Suite 5116
Cambridge, MA 02138
T: 617-496-2058
F: 617-384-7633

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Patrick Woodcock, Commissioner
Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Via Email: stretchcode@mass.gov

Re: Stretch Code Straw Proposal Comments

Dear Commissioner Woodcock:

The Emmett Environmental Law & Policy Clinic respectfully submits these comments regarding the Department of Energy Resources' ("DOER") Straw Proposal for Stretch Code Update and New Specialized Stretch Code (the "Proposal"). Updating the existing stretch code and adding a new specialized stretch code for net zero buildings can help implement the Commonwealth's greenhouse gas ("GHG") emission reduction mandates and support municipal efforts to reduce GHG emissions and advance buildings that reflect the future of a carbon constrained world.

Cities and town across Massachusetts are committed to reducing GHG emissions, with targets that include reaching net zero and 80% reductions by 2050.¹ Reducing GHG emissions from the building sector will play an important role in meeting these goals and in positioning municipalities and their residents to thrive in a future that requires alternatives to GHG-emitting fuel sources. Reflective of this dynamic, municipalities are already seeking additional authority to regulate GHG emissions from the building sector.² Towns and cities are on the front line with respect to permitting development and ensuring compliance with regulations like those in the Proposal.

The Clinic supports municipal efforts, including by researching opportunities and authority for local action, drafting model ordinances, and supporting individual communities in developing local laws and policies.³ Based on this experience, these comments provide two

¹ Examples of municipalities with net zero, carbon neutrality or other greenhouse gas emission reduction targets include, but are not limited to, Amherst, Arlington, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Concord, Everett, Lexington, Malden, Medford, Melrose, Natick, Newburyport, Newton, Northampton, Quincy, Revere, Somerville, Springfield, Watertown, Wellesley, Westborough, Winchester and Winthrop.

² See e.g., Arlington, H. 3750; Lexington, H. 3893; Brookline, S. 2473; Concord, H. 4117.

³ See e.g., Aladdine Joroff, "Massachusetts Municipalities to Implement Net Zero Building Mandates," July 2019, <http://clinics.law.harvard.edu/environment/files/2020/05/Strategies-for-Massachusetts-Municipalities-to-Implement-Net-Zero-Building-Mandates-July-2019.pdf>; Comments on D.P.U. 20-80, Investigation by the Department of Public

recommendations regarding the implementation of the New Specialized Stretch Code. In brief, the final regulations should (i) minimize administrative burdens on municipalities and building owners that could arise from deferring compliance obligations to the future, and (ii) avoid limiting municipal initiatives relevant to climate change mitigation and/or resiliency. This letter does not offer an opinion on the substantive or technical aspects of the Proposal.

I. Minimize the Potential for Administrative Burdens on Municipalities and Building Owners Associated with Deferred Compliance Obligations.

As noted in the Massachusetts Decarbonization Roadmap, transitioning the Commonwealth’s existing building stock to net zero by 2050 presents an enormous challenge that is likely to impose significant burdens and costs on municipalities and homeowners.⁴ While the Proposal addresses new construction, the standards adopted for “net zero buildings” today will have implications for how municipalities and building owners demonstrate compliance in the future. These future administrative burdens and costs should be minimized to the extent feasible.

As an example, the Proposal’s definition of “net zero building” for 1-4 family residential buildings includes both (a) all-electric buildings and (b) fossil-fuel heated buildings that include onsite solar photovoltaics and are pre-wired for electrification.⁵ As a result, new construction that is “all-electric” will automatically meet the net zero building requirement in the future. However, for new buildings that are constructed in accordance with the proposed fossil-fuel pathway, future owners will be required to demonstrate that they have either electrified or transitioned to other carbon-free sources of heating, drying, and cooking. Demonstrating compliance in the future will require municipalities and homeowners to track and report building status.

Today, cities such as Boston and New York, have sophisticated programs in place for tracking and demonstrating compliance with building emissions standards for existing buildings, including annual reporting requirements for many building owners.⁶ These frameworks for reporting and compliance can be expanded to encompass new buildings as they are constructed. However, these programs do not apply to smaller residential buildings nor is there a similar system at the statewide level in Massachusetts. Thus, each community adopting the New Specialized Stretch Code would be required to create its own monitoring and compliance system. DOER should consider options to minimize the risk of resulting administrative burdens on municipalities and homeowners by, for example:

Utilities on its Own Motion into the Role of Gas Local Distribution Companies as the Commonwealth Achieves its Target 2050 Climate Goals, <https://clinics.law.harvard.edu/environment/files/2021/06/DPU-20-80-Comments-from-Clinic-on-Behalf-of-Municipalities-plus-supplement.pdf>.

⁴ See, e.g., Massachusetts Decarbonization Roadmap at 46, <https://www.mass.gov/doc/ma-2050-decarbonization-roadmap/download>.

⁵ DOER, Straw Proposal for Stretch Code Update, slide 23, <https://www.mass.gov/doc/building-energy-code-straw-proposal-updated-stretch-code-specialized-opt-in-code-feb-2022/download>. As described by the Proposal, “a building will be net zero when the Massachusetts electric grid is net zero.”

⁶ See, e.g., CBC Chapter VII, Section 7-2.2 Building Energy Reporting and Disclosure Ordinance (BERDO).

- Limiting pathways for achieving net zero to those for which compliance can be measured at the time of, or end of, construction;
- Developing a statewide system for tracking future compliance obligations regarding electrification or fuel sources; or
- Providing guidance on penalty and enforcement actions with respect to buildings that do not meet future obligations to electrify or change fuel sources.

II. The Final Regulations Should Avoid Inadvertently Limiting Municipal Initiatives relevant to Climate Change

A goal of the New Specialized Stretch Code is, by its nature, to provide more room for municipal action on issues important to reducing GHG emissions from the building sector. However, this is just one area in which local leadership and innovation is both important and necessary to advance broader climate change mitigation mandates. As such, the final regulations should be written to avoid creating a cap on city and town initiatives beyond net zero buildings. For example, while the use of on-site renewable energy *can* be tied to definitions of net zero buildings, it does not have to be; municipalities could pursue separate or additional requirements for on-site renewable energy under the auspices of climate change mitigation and/or resiliency.

The final regulation should, therefore, explicitly note that any requirements regarding on-site solar are minimum requirements (*i.e.*, floors) that do not limit the authority of municipalities to adopt additional requirements for on-site solar, regardless of whether a community has adopted the New Specialized Stretch Code or not. Similarly, were the final regulations to include other performance metrics relevant to climate change mitigation, such as using other sources of non-GHG emitting energy or materials with lower embodied carbon, these too should be explicitly described as floors rather than caps on local requirements.

As described by the Massachusetts Supreme Judicial Court, the “Legislature has set an ambitious agenda to reduce statewide greenhouse gas emissions” to combat the grave threats that climate change poses.⁷ The Proposal can play an important role in advancing this agenda but should not limit other municipal action.

Thank you for your consideration of these comments.

Respectfully submitted,



Aladdine Joroff, Lecturer & Staff Attorney
Leah Cohen, Fellow
Emmett Environmental Law & Policy Clinic
Harvard Law School
6 Everett Street, Suite 5116
Cambridge, MA 02138

⁷ *New England Power Generators Ass'n, Inc. v. Dep't of Env't Prot.*, 480 Mass. 398, 399 (2018).