

HOUSE No. 3893

The Commonwealth of Massachusetts

PRESENTED BY:

Michelle L. Ciccolo

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act authorizing the town of Lexington to adopt and enforce local regulations restricting new fossil fuel infrastructure in certain construction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>5/5/2021</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>5/26/2021</i>

HOUSE No. 3893

By Ms. Ciccolo of Lexington, a petition (accompanied by bill, House, No. 3893) of Michelle L. Ciccolo and Cindy F. Friedman (by vote of the town) that the town of Lexington be authorized to adopt and enforce local regulations restricting new fossil fuel infrastructure in certain construction. Municipalities and Regional Government. [Local Approval Received.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act authorizing the town of Lexington to adopt and enforce local regulations restricting new fossil fuel infrastructure in certain construction.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Notwithstanding chapter 40A, section 13 of chapter 142, and chapter 164 of
2 the General Laws, the State Building Code, the Fuel and Gas Code, or any other general or
3 special law or regulation to the contrary, the Town of Lexington is hereby authorized to adopt
4 and further amend general or zoning bylaws that restrict new building construction or major
5 renovation projects that do not qualify as fossil fuel-free.

6 SECTION 2. Notwithstanding section 7 of chapter 40A of the General Laws, or any other
7 general or special law or regulation to the contrary, the Building Commissioner of the town of
8 Lexington, or their designee, shall be authorized to enforce restrictions on new building
9 construction and major renovation projects that do not qualify as fossil fuel-free, including
10 through the withholding or conditioning of building permits.

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

15 SECTION 4. This act shall take effect upon its passage. Any bylaw previously approved
16 by the Lexington Town Meeting consistent with Sections 1 through 3 of this Act, including,
17 without limitation Chapter 106 of the Code of the Town of Lexington as enacted by the 2021
18 Lexington Town Meeting, is hereby ratified.

19 SECTION 5. If any provision or section of this act is invalidated, the remainder shall
20 survive in full force and effect. And further, that the Code of the Town of Lexington be
21 amended by adding a new Chapter 106, “Regulating Fossil Fuel Infrastructure in Buildings”, as
22 follows:

23 REGULATING FOSSIL FUEL INFRASTRUCTURE IN BUILDINGS

24 Section 1. Purpose

25 This Bylaw is adopted by the Town of Lexington to protect health, safety, and the natural
26 environment and reduce air pollution and greenhouse gas emissions, which causes climate
27 change, thereby threatening the Town and its inhabitants.

28 Section 2. Definitions

29 “Effective Date” shall mean December 1, 2022, or six months following the date by
30 which the Town is authorized by the Massachusetts General Court to regulate fossil fuel
31 infrastructure, whichever is later.

32 “New Building” shall mean a new building or new accessory building, as defined in the
33 Lexington Zoning Bylaw, Chapter 135 of the Code of the Town of Lexington, associated with a
34 building permit application filed on or after the Effective Date.

35 “On-Site Fossil Fuel Infrastructure” shall mean piping for fuel gas, fuel oil, or other fuel
36 hydrocarbons, including synthetic equivalents, that is in a building, in connection with a
37 building, or otherwise within the property lines of a premises, extending from a supply tank or
38 from the point of delivery behind a gas meter or the customer-side of a gas meter.

39 “Major Renovation” shall mean a project associated with a valid building permit
40 application filed on or after the Effective Date of this article that:

41 for existing structures regulated by the current edition of the International Residential
42 Code as amended by 780 CMR 51: Massachusetts Residential Code, includes the reconfiguration
43 of space and/or building systems, in which the Work Area, not including any added space, is
44 more than 75% of the Gross Floor Area of the principal dwelling, as defined in the Lexington
45 Zoning Bylaw, prior to the project; and

46 for existing structures regulated by the current edition of the International Building Code
47 as amended by 780 CMR 34: Massachusetts Commercial Code, includes the reconfiguration of
48 space and/or building systems, in which the Work Area, not including any added space, is more
49 than 50% of the building floor area prior to the project, as defined by the Massachusetts Building
50 Code.

51 “Work Area” shall mean the portions of a building affected by renovations for the
52 reconfiguration of space or building systems, as shown in the drawings included with a building
53 permit application. Areas consisting of only repairs, refinishing, or incidental work not

54 associated with the renovations or reconfiguration for which a building permit is required are
55 excluded from the Work Area.

56 Section 3. Applicability

57 This Chapter shall apply to all building permit applications for New Buildings and Major
58 Renovations proposed to be located in whole or in part within the Town, except that this Chapter
59 shall not apply to:

60 A. utility service piping connecting the grid to a meter, or to a gas meter itself;

61 B. piping required to:

62 i. fuel backup electrical generators, indoor or outdoor cooking appliances, indoor or
63 outdoor fireplaces or fire features, or appliances for outdoor heating; or

64 ii. produce potable or domestic hot water from centralized hot water systems in
65 commercial buildings with building floor areas of at least 10,000 square feet, provided that the
66 Engineer of Record certifies that no commercially available electric hot water heater exists that
67 could meet the required hot water demand for less than 150% of installation or operational costs,
68 compared to a conventional fossil fuel hot water system;

69 C. the extension or modification of heating systems via HVAC system modification,
70 or modification of radiator, steam, or hot water piping, provided new fossil fuel piping is not
71 installed;

72 D. life science buildings, research laboratories for scientific or medical research or
73 medical offices regulated by the Massachusetts Department of Public Health as a healthcare
74 facility; or

75 E. repairs of any existing portions of a fuel piping system deemed unsafe or
76 dangerous by the Plumbing and Gas Fitting Inspector.

77 Section 4. Enforcement

78 A. On and after the Effective Date, no building permit shall be issued by the Town
79 for the construction of New Buildings or Major Renovations that include the installation of new
80 On-Site Fossil Fuel Infrastructure subject to this Chapter.

81 B. The Town Manager, or their designee, shall publish and present an annual report
82 to the Select Board quantifying the number and location of building permit applications for new
83 and major renovation projects exceeding 50% of the original gross floor area of the principal
84 dwelling; the number of new and major renovation projects requesting a waiver from this
85 Chapter, the disposition of those waivers, the reasons for granting or denying those waivers and
86 the square footage of each project for which a waiver is granted.

87 C. The Select Board may adopt additional requirements, exemption, and regulations
88 to implement or enforce said new fossil fuel infrastructure restrictions in major construction,
89 consistent with this Chapter.

90 Section 5. Waivers

91 A. The Building Commissioner may grant a waiver from the requirements of this
92 Chapter in the event that compliance with the provisions of this Chapter makes a project
93 financially infeasible or impractical to implement. Compliance with this Chapter may be
94 considered infeasible if, without limitation:

95 i. as a result of factors beyond the control of the proponent, the additional cost of
96 the project over the long term, including any available subsidies, would make the project
97 commercially unviable; or

98 ii. technological or other factors would make the project unsuitable for its intended
99 purpose.

100 B. Waivers from compliance with this Chapter may be subject to reasonable
101 conditions. Where possible, waivers shall be issued for specific portions of a project that are
102 financially infeasible or impractical to implement under the requirements of this Chapter, rather
103 than entire projects.

104 C. Waiver requests shall be supported by a detailed cost comparison, including
105 available rebates and credits. A waiver request may be made at any time and may be based upon
106 submission of conceptual plans.

107 D. In considering a request for a waiver, the Building Commissioner may consider as
108 a factor the requesting party's status as a non-profit or government-sponsored affordable housing
109 entity.

110 E. The Building Commissioner's decision with respect to the granting of a waiver,
111 the scope thereof, and any conditions imposed by a waiver, shall be appealable to the Select
112 Board, or its designee, within thirty (30) days in accordance with policies established by the
113 Select Board.

114 F. The Select Board shall, prior to the Effective Date issue, and may thereafter
115 amend, guidance regarding the process for requesting and granting waivers, and describing
116 reasonable conditions that may be placed on a waiver.

117 Section 6. Appeals

118 The Select Board, or its designee, shall hear appeals from decisions of the Building
119 Commissioner under this Chapter.