



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF
ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENERGY RESOURCES
100 CAMBRIDGE ST., 9th FLOOR
BOSTON, MA 02114
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Maura T. Healey
Governor

Rebecca L. Tepper
Secretary

Kimberley Driscoll
Lt. Governor

Elizabeth Mahony
Commissioner

VIA EMAIL AND HAND DELIVERY

May 10, 2023

Steven T. James, Clerk of the House of Representatives

24 Beacon Street
Room 145
Boston, MA 02133

RE: Submission of DOER regulations for Fossil Fuel-Free demonstration project

Dear Mr. Clerk:

On behalf of the Massachusetts Department of Energy Resources (DOER) and in accordance with M.G.L. Chapter 25A Section 12, please find enclosed the draft regulations for the Fossil Fuel-Free demonstration project as required by Section 84 of Chapter 179 of the Acts of 2022.

In addition to the requirements of M.G.L. Ch. 25A Sec. 12, DOER has made additional information, including response to public comments received, available to the public regarding these draft regulations. That information is accessible through the Department's website: <https://www.mass.gov/info-details/municipal-fossil-fuel-free-building-demonstration-program>

Please direct questions and comments on this regulation to:

Johannes Buchanan
Assistant Secretary of Government Affairs
857-268-0011
Johannes.K.Buchanan2@mass.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Mahony". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Elizabeth Mahony
Commissioner

CC:

Chairman Michael Barrett, Joint Committee on Telecommunications, Utilities and
Energy

Chairman Jeffrey Roy, Joint Committee on Telecommunications, Utilities and Energy

Regulation Summary

Summary of Draft DOER Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project

An [Act Driving Clean Energy and Offshore Wind](#) (St. 2022, c. 179, § 84) requires the Massachusetts Department of Energy Resources (DOER) to establish a demonstration project in which cities and towns may adopt and amend general or zoning ordinances or by-laws that require new building construction or major renovation projects to be fossil fuel-free. The purpose of 225 CMR 24.00 is to establish the framework, requirements, and timeline for cities and towns to participate in the DOER's Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project as authorized by St. 2022, c. 179, § 84.

The regulation also establishes data reporting requirements and assessment procedures to measure impacts of fossil fuel free building code requirements.

In response to public comment, DOER made a series of changes to clarify requirements, streamline application requirements and processes, update the review and approval process, and further define certain terms, including the application of city or town by-law or ordinance to major renovations as well as new construction. The DOER has provided a Response to Comments document on its website that describes public comments, responses, and changes.

HOUSE No. 3847

Communication from the Department of Energy Resources of the Executive Office of Energy and Environmental Affairs (under the provisions of section 12 of Chapter 25A of the General Laws) submitting regulations 225 CMR 24.00 – Municipal Fossil Fuel Free Building Construction and Renovation Demonstration Project, and also establishing data reporting requirements and assessment procedures to measure impacts of fossil fuel free building code requirements. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

1 **225 CMR 24.00 – Municipal Fossil Fuel Free Building Construction and Renovation**
2 **Demonstration Project**

3
4 Sections:

- 5
- 6 24.01: Purpose and Application
- 7 24.02: Definitions
- 8 24.03: Prioritized Communities
- 9 24.04: Application Materials and Review Process
- 10 24.05: Eligibility Criteria
- 11 24.06: Substitute Communities
- 12 24.07: Reporting and Assessment of Results
- 13 24.08: Specialized Municipal Opt-in Energy Code and Model Rule
- 14 24.09: Severability

15
16 24.01 Purpose and Application
17

18 The purpose of 225 CMR 24.00 is to establish the framework, requirements, and timeline
19 for cities and towns to participate in the Department’s Municipal Fossil Fuel Free
20 Building Construction and Renovation Demonstration Project as authorized by St. 2022,
21 c. 179, § 84.

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24.02 Definitions

Comparable Municipalities. Municipalities designated by the Department for data collection and reporting purposes that share similar relevant characteristics to Participating Communities.

Demonstration Project. Not more than 10 cities or towns as approved by the Department pursuant to 225 CMR 24.00 that may, notwithstanding chapter 40A of the General Laws, section 13 of chapter 142 of the General Laws and chapter 164 of the General Laws or any other general or special law to the contrary, adopt and amend general or zoning ordinances or by-laws that require new building construction or Major Renovation projects to be fossil fuel-free, and enforce restrictions and prohibitions on new building construction and Major Renovation projects that are not fossil fuel-free, including through the withholding or conditioning of building permits.

DHCD. The Massachusetts Department of Housing and Community Development, as established by M.G.L. c. 23B.

Department. The Massachusetts Department of Energy Resources, as established by M.G.L. c. 25A.

Fossil Fuel-free. As defined by a city or town to include, but not be limited to, an entire building or entire condominium unit that does not, in support of its operation after construction, utilize coal, oil, natural gas, other fuel hydrocarbons, including synthetic equivalents, or other fossil fuels.

Home Rule Petition - A petition submitted to the General Court pursuant to § 8 of art. 89 of the Amendments to the Constitution of the Commonwealth.

Hospitals or Medical Offices. A facility licensed or approved by the Department of Public Health to provide health care, including clinics licensed as health care facilities and facilities that provide substance use disorder treatment services, including outpatient withdrawal management, opioid treatment programs, office-based opioid treatment programs, acute treatment services (inpatient detoxification), and clinical stabilization services.

Local Approval. By a majority vote of the: (i) city council with the approval of the mayor in the case of a city with a mayor elected to serve as the chief executive officer of the city; (ii) city council in every other city; (iii) annual town meeting or a special town meeting called for that purpose in the case of a municipality with a town meeting form of government; or (iv) town council in the case of a municipality with a town council form of government.

58 Major Renovation. Major renovation is defined as (a) low-rise residential additions over
59 1,000 square feet and additions exceeding 100% of the conditioned floor area of the
60 existing dwelling unit, (b) additions over 20,000 square feet and additions that exceed
61 100% of the conditioned floor areas of the existing building for all building use types
62 except low-rise residential, (c) Level 3 Alterations as defined in the International Existing
63 Building Code (IEBC 2021) (which exceed 50% of the existing conditioned floor area)
64 exceeding 1,000 square feet for low rise residential, or exceeding 20,000 square feet for
65 all other building uses, or (d) Change of use of over 1,000 square feet per International
66 Energy Conservation Code (IECC 2021) Sections R505, or (e) change of use of over
67 20,000 square feet or change of use of 100% of the conditioned floor areas of the existing
68 building for all building use types except low-rise residential, International Energy
69 Conservation Code (IECC 2021) Sections C505.

70 Participating Community. A city or town approved by the Department for participation in
71 the Demonstration Project.

72 Prioritized Community. One of the first ten communities to file a home rule petition with
73 the general court and listed in 225 CMR 24.03(1); provided, however, that a city or town
74 that submits a letter of withdrawal pursuant to 225 CMR 24.03(2) shall no longer be
75 considered a Prioritized Community.

76 Process load. Energy demand in commercial or industrial buildings that is not covered by
77 the Massachusetts building energy code.

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79 Research laboratories for scientific or medical research. A building where a laboratory
80 procedure or research activity occurs, where the building has an average ventilation at
81 full occupancy greater than 0.5 cfm/sf. Such buildings shall provide the ventilation design
82 documentation described Section C103.2 of 225 CMR 23.00 at the time of building
83 permitting.

84
85 Substitute Community. A city or town that applies to the Department for participation in
86 the Demonstration Project that is not a Prioritized Community listed in 225 CMR
87 24.03(1).

88
89 24.03 Prioritized Communities

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91 (1) Prioritized Communities. As established by St. 2022, c. 179, § 84, the Department will
92 prioritize the following 10 Prioritized Communities, being the first 10 communities to
93 have filed home rule petitions with the general court in the following order:
94

Order Filed	Town	Filing Date
1	Arlington	4/22/2021

2	Lexington	5/05/2021
3	Brookline	6/01/2021
4	Acton	8/27/2021
5	Concord	9/01/2021
6	Cambridge	4/06/2022
7	Lincoln	4/19/2022
8	Newton	4/20/2022
9	West Tisbury	6/14/2022
10	Aquinnah	6/14/2022

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(2) Letter of Withdrawal. Any Prioritized Community that will not apply to participate in the Demonstration Project must submit a letter of withdrawal to the Department not later than September 1, 2023, and will no longer be considered a Prioritized Community.

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(a) This letter must be:

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1. signed by an authorized representative of the city or town, and

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2. affirm the city or town’s intention not to participate in the Demonstration Project.

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(b) The Department will post letters of withdrawal to its website.

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24.04 Application Materials and Review Process

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(1) Application Materials. Applications must be submitted in a manner and form to be determined by the Department, and shall include all of the following information:

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(a) Copy of home rule petition and date submitted and proof of Local Approval.

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1. Home rule petitions previously filed and associated Local Approvals do not need to be updated or resubmitted to the general court to be eligible for participation in the Demonstration Project.

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(b) Copy of proposed by-law or ordinance for participation in the Demonstration Project. If the city or town proposes a by-law or ordinance that is not the model rule , the application must include an explanation of differences and provide the applicant’s rationale for any differences.

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(c) An implementation plan, including:

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1. If Local Approval of the community’s proposed by-law or ordinance has not been acquired, the community’s plan, including any associated timelines, for acquiring Local Approval of the proposed by-law or ordinance;

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2. If Local Approval of the community’s proposed by-law or ordinance has been acquired, timeline and effective dates of the by-law or ordinance’s provisions or requirements;

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3. A demonstrated commitment to collaborate with the Department on data collection, reporting, and outreach/training;

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- 126 4. Description of the current process within each city and town for storing
127 building permit data and certificates of occupancy;
- 128 5. Description of how the by-law or ordinance will affect the use of fossil fuels
129 for commercial and industrial Process Load in buildings subject to the by-law
130 or ordinance, including but not limited to, restaurants, dry cleaners, and
131 manufacturing uses;
- 132 6. Description of exemption or waiver process from any requirements, if any, to
133 be included in the by-law or ordinance.
- 134 (d) Documentation sufficient to demonstrate that the applicant has achieved at least
135 one of the three housing production eligibility thresholds set forth in 24.05(2).
- 136 1. Prioritized and Substitute Communities that do not meet one of the three
137 housing production and eligibility thresholds set forth in 24.05(2) at the time
138 of application may submit an application but must include an explanation of
139 its current status and the applicant’s plan to meet such criteria on or before
140 February 11, 2024.
- 141 2. Prioritized and Substitute Communities that do not meet one of the housing
142 production and eligibility thresholds set forth in 24.05(2) at the time of
143 application must provide updates at regular intervals, to be established by the
144 Department, on its status and progress in meeting such criteria on or before
145 February 11, 2024.
- 146 (2) Additional Materials for Substitute Communities. In addition to the above components,
147 an application from a Substitute Community must include a description of the actions it
148 has taken or will take after the adoption of the proposed by-law or ordinance, to
149 encourage the production of multi-family housing. This description should include, but is
150 not limited to:
- 151 (a) The community’s progress toward creation of a multi-family zoning district
152 compliant with Sec. 3A of G.L. Ch. 40A, if applicable.
- 153 (b) Initiatives taken by the community to support the preservation and production of
154 housing units, including multi-family housing.
- 155 (c) Substitute Communities may submit letters of support from community leaders
156 and/or community members.
- 157 (3) Review Process. The Department will review and approve applications from Prioritized
158 Communities on a rolling basis.
- 159 (a) The Department shall withhold approval of an application submitted by any
160 Prioritized Community that does not, at the time of application, contain all
161 application materials listed in 24.04(1), until such time as that community submits
162 all materials listed in 24.04(1), or until September 1, 2023, as provided in
163 24.04(3)(d).
- 164 (b) The Department shall issue a conditional approval and withhold final approval of
165 an application submitted by any Prioritized Community that does not, at the time
166 of application, meet the housing production eligibility requirements set forth in

- 167 24.05(2), until such time as that community demonstrates compliance with such
168 requirements, or until February 11, 2024, as described in 24.04(3)(g).
169 1. In the event the Department conditionally approves an application on this
170 basis, the Department will provide written notice to such applicant, and
171 proceed with review and approval of Prioritized Communities that meet all
172 applicable requirements.
- 173 (c) The Department will provide feedback on completeness of application materials
174 and notify applicant if any requirements are not met, or if any clarifications are
175 needed for approval.
 - 176 (d) Prioritized Communities may update and re-submit applications through
177 September 1, 2023 based on Department feedback.
 - 178 (e) September 1, 2023 is the final deadline for Prioritized Communities to submit a
179 complete application. If a Prioritized Community fails to submit a complete
180 application by September 1, 2023, the community will not be considered for
181 participation in the Demonstration Project.
 - 182 (f) Substitute Communities may update and re-submit applications through
183 November 10, 2023.
 - 184 (g) November 10, 2023 is the final deadline for Substitute Communities to submit a
185 complete application.
 - 186 (h) February 11, 2024 is the final deadline to meet all eligibility requirements listed in
187 225 CMR 24.05. After such date, the application of any Prioritized or Substitute
188 Community shall expire and be deemed void.

189 (4) Final By-Law or Ordinance. If a Prioritized or Substitute Community does not have Local
190 Approval of their proposed by-law or ordinance at the time of application, the
191 community shall provide the Department with a copy of the final by-law or ordinance
192 once Local Approval is acquired. The Department reserves the right to revoke a
193 community's Participating Community status if the final by-law or ordinance conflicts
194 with the requirements of St. 2022, c. 179, § 84.

- 195 (a) Final by-laws or ordinances must be submitted to the Department not later than
196 July 1, 2024. A community may request an extension of this deadline for good cause
197 shown, which the Department will consider on a case-by-case basis.

198

199 24.05 Eligibility Requirements

- 200 (1) Application Requirements. All Prioritized and Substitute Communities must meet the
201 following requirements prior to submissions of application to the Department:
 - 202 (a) Home Rule Petition filed with the general court on the subject matter of these
203 regulations; and
 - 204 (b) Local Approval of Home Rule Petition.

205 (2) Housing Eligibility Thresholds. On or before February 11, 2024, the applicant must
206 demonstrate that it has achieved one of the following housing eligibility thresholds:

- 207 (a) The municipality has met the 10 per cent housing affordability threshold set
208 under chapter 40B of the General Laws as of December 21, 2020 or in a
209 subsequent update from DHCD; or
- 210 (b) The municipality has been granted safe harbor status through a valid-Housing
211 Production Plan that DHCD has certified in accordance with 760 CMR
212 56.03(4); or
- 213 (c) The municipality has approved a zoning ordinance or by-law that provides for
214 at least 1 district of reasonable size in which multi-family housing is permitted
215 as of right; provided, that such multi-family housing shall be without age
216 restrictions and shall be suitable for families with children, as evidenced by a
217 determination of district compliance issued by the department of housing and
218 community development pursuant to its guidelines implementing section 3A
219 of chapter 40A of the General Laws.

220 24.06 Substitute Communities

221 (1) Application Submission. Substitute Communities may submit applications starting on
222 the effective date of these regulations.

- 223 (a) The Department will not review applications from Substitute Communities
224 until:
 - 225 1. Receipt of a Letter of Withdrawal from one or more Prioritized
226 Communities forfeiting their prioritized status, or
 - 227 2. Failure of one or more of the Prioritized Communities to meet the
228 requirements of 225 CMR 24.05(2).
- 229 (b) The Department will notify and work with applicants to update applications if
230 missing information or for which clarifications are required.
- 231 (c) Substitute Communities must meet all requirements set forth in 225 CMR
232 24.04 and 225 CMR 24.05 prior to submitting applications to the Department.
233

234 (2) Timeline of Review. Substitute Communities applications will be considered if less
235 than 10 of the Prioritized Communities participate in the Demonstration Project. The
236 Department will not issue approvals for any Substitute Communities before March 1,
237 2024.

238 (3) Selection Criteria. In addition to ensuring that Substitute Communities meet the
239 requirements set forth in 225 CMR 24.04 and 225 CMR 24.05, the Department will
240 consider the following factors when evaluating applications and selecting Substitute
241 Communities for participation up to a total of 10 Participating Communities and may
242 consider such additional factors as the Department deems appropriate.

- 243 (a) Contribution to the overall Demonstration Project, including diversity of
244 Participating Communities which includes but is not limited to gateway cities,
245 environmental justice communities, diversity of demographics, diversity of
246 size, scale of building development, and type of housing development;
- 247 (b) Ability to meet Department reporting requirements and effectively monitor
248 and ensure code compliance and implementation;
- 249 (c) Consistency of proposed by-law or ordinance to the model rule provided by
250 the Department;
- 251 (d) A preference for cities and towns that meet the compliance guidelines
252 implementing section 3A of chapter 40A of the General Laws through an
253 approved zoning ordinance or, in the case of a town that must seek by-law
254 approval from the Attorney General (AGO) pursuant to G.L. c.40 § 32, an
255 AGO-approved by-law that provides for at least 1 district of reasonable size
256 in which multi-family housing is permitted as right, or, if not applicable, a
257 similar commitment to multi-family housing production as determined by the
258 Department, in consultation with the Executive Office of Housing and
259 Economic Development;
- 260 (e) Localized electric grid investments needed to support the Demonstration
261 Project as determined through consultation between the Department and
262 electric distribution companies;
- 263 (f) Demonstrated support from community members and municipal leaders.

264
265 (4) Selection. The Department will issue a determination letter upon approval of any
266 application of a Substitute Community documenting its selection as a Participating
267 Community and the basis therefor. The Department will publish determination letters
268 on its website.

269
270 24.07 Reporting and Assessment of Results

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272 (1) Department Reporting. Not later than September 30, 2025, and every 2 years
273 thereafter, the Department shall compile a report to be filed with the Senate and
274 House Committees on Ways and Means, the Joint Committee on Housing, and the
275 Joint Committee on Telecommunications, Utilities and Energy. The report shall
276 include, but not be limited to, the following components:

- 277
- 278 (a) Description of Demonstration Project and list of Participating Communities;
- 279 (b) Description of the Department’s process for selecting Comparable
280 Municipalities as a comparison group for the Demonstration Project;
- 281 (c) An analysis of the net reduction in emissions:
 - 282 1. for each newly constructed building or Major Renovation project subject
283 to the Demonstration Project in each municipality participating in the
284 Demonstration Project; and

- 285 2. for each comparable newly constructed building or Major Renovation
286 project in a number of Comparable Municipalities, as selected by the
287 Department, not participating in the Demonstration Project;
288 (d) An analysis of impacts on: housing production, if any; housing affordability,
289 if any, including electric bills, heating bills and other operating costs; housing
290 affordability for persons of low and moderate income, if any, including
291 electric bills, heating bills and other operating costs;
292 (e) Recommendations for the continuation or termination of the Demonstration
293 Project.
294

295 (3) Reporting Requirements for Participating Communities. Annually, not later than June
296 30th, Participating Communities shall submit the following data, in a timely and accurate
297 manner, and in an accessible format as established by the Department, to the appropriate
298 electric and gas distribution companies, or other designees as determined by the
299 Department:
300

- 301 (a) For each applicant for a building permit, the applicant's name, street address,
302 building usage type, square footage, and estimated construction cost.
303 (b) Electronic copies of any third-party energy reporting on new construction and
304 Major Renovation projects that illustrate the expected energy use for each
305 major end use. These include but are not limited to relevant sections of: final
306 Home Energy Reporting System rating reports; Passive house certification
307 reports; building energy modeling reports used to demonstrate commercial
308 energy code compliance through ASHRAE 90.1 or Thermal Energy Demand
309 Intensity (TEDI) building code compliance pathway.
310

311 (2) Reporting Requirements for Electric and Gas Utilities. Each year beginning in 2024,
312 not later than September 30th, all electric and gas distribution companies serving
313 customers in Participating Communities or the Comparable Municipalities shall, in an
314 accessible and standardized format approved by the Department, report the following
315 data:
316

- 317 (a) Monthly kWh and therm usage, monthly electric costs, broken down by cost
318 category, and monthly gas costs, broken down by cost category.
319
320 (b) The information above shall be submitted by account, with an associated
321 anonymized account identifier to track information over time. Each account
322 shall be submitted with an associated rate class, and street address, and be
323 linked to a permit number provided through 225 CMR 24.07(2).
324

325 (4) Comparable Municipalities. The Department will identify and designate Comparable
326 Municipalities in a manner to be determined by the Department. Comparable
327 Municipalities shall report data as set forth in 225 CMR 24.07(2). The Department

328 will coordinate with Comparable Municipalities on the method and process of data
329 collection and reporting.

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331 24.08 Specialized Municipal Opt-in Energy Code and Model Rule

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333 (1) Recommended Process. The Department has published a model rule and other
334 guidance in order to assist Participating Communities in achieving the objectives of
335 the Demonstration Project. The Department recommends that cities or towns seeking
336 to participate in the Demonstration Project:

337

338 (a) Adopt the Specialized Municipal Opt-in Energy Code, as established in 225 CMR
339 22.00 and 225 CMR 23.00, and

340 (b) Adopt through Local Approval the model rule published by the Department.

341

342 (2) Model Rule. The model rule published by the Department ensures appropriate
343 integration with the Massachusetts Specialized Municipal Opt-in Energy Code. If a
344 Participating Community determines that adoption of a local by-law or ordinance
345 that differs from the model rule published by the Department is necessary, the
346 Participating Community shall provide information as described in 225 CMR
347 24.04(1)(b) in its application.

348

349 (a) A Participating Community may modify the model rule provided by the
350 Department, provided such modifications do not conflict with the requirements of
351 225 CMR 24.00 or the requirements of St. 2022, c. 179, § 84.

352 (b) Deviations from the model rule provided by the Department must include
353 exemptions from fossil fuel free requirements for Research Laboratories for
354 Scientific or Medical Research, or for Hospitals or Medical Offices.

355

356 24.09 Severability

357 If any provision of 225 CMR 24.00 is declared invalid, such invalidity shall not affect
358 other provisions or applications that can be given effect without the invalid provision or
359 application.

360

361 REGULATORY AUTHORITY

362 St. 2022, c. 179, § 84.