

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

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24.01 Purpose and Application

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

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.

~~Major Renovation. A level 3 alteration as defined in 225 CMR 22.00 and 23.00.~~

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

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

Prioritized Community. ~~A city or town with~~One of the first ten communities to file a home rule petition ~~filed~~ with the general court ~~prior to August 11, 2022~~ and listed in 225 CMR 24.03(1); provided, however, that a city or town that submits a letter of withdrawal pursuant to 225 CMR 24.03(3) ~~or is deemed withdrawn pursuant to 225 CMR 24.03(42)~~ shall ~~not~~no longer be considered a Prioritized Community.

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

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

Substitute Community. A city or town that applies to the Department for participation in the Demonstration Project that ~~didis~~ not ~~file a home rule petition prior to August 11, 2022.~~ Prioritized Community listed in 225 CMR 24.03(1).

24.03 Prioritized Communities

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

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

- ~~(2) Letter of Intent. In order to inform the Department and potential Substitute Communities about participation in the Demonstration Program, Prioritized Communities must confirm their participation by submitting a letter of intent to the Department not later than September 1, 2023.~~

~~(a) This letter must be:~~

- ~~1. signed by an authorized representative of the city or town, and~~
- ~~2. affirm the city or town's intention to participate in the Demonstration Project.~~

~~Prioritized Communities that submit a letter of intent will maintain their Prioritized Community status until February 11, 2024. The Department will publicly post letters of intent to its website.~~

~~(3)~~(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.

(a) This letter must be:

1. signed by an authorized representative of the city or town, and
2. affirm the city or town's intention not to participate in the Demonstration Project.

~~(4) Default.~~ Any Prioritized Community that does not submit either a letter of intent or letter of withdrawal by September 1, 2023 will be deemed withdrawn and shall no longer be a Prioritized Community.

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

24.04 Application Materials and Review Process

(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:

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

1. Home rule petitions previously filed ~~by Prioritized Communities 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.

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

(c) An implementation plan, including:

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;

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

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

3.4. Description of the current process within each city and town for storing building permit data and certificates of occupancy;

4.5. Description of how the ~~local~~ by-law or ordinance will affect the use of fossil fuels for commercial and industrial Process Load in buildings subject to the by-law or ordinance, including but not limited to, restaurants, dry cleaners, and manufacturing uses;

5.6. Description of exemption or waiver process from any requirements, if any, to be included in the by-law or ordinance.

(d) Documentation sufficient to demonstrate that the applicant has achieved at least one of the three housing production eligibility thresholds set forth in 24.05(1)(e2).

~~(e) Proof of Local Approval.~~

~~1. Prioritized and Substitute Communities that do not meet one of the three housing production and eligibility thresholds set forth in 24.05(2) at the time of application may submit an application but must include an explanation of its current status and the applicant's plan to meet such criteria on or before February 11, 2024.~~

~~2. Prioritized and Substitute Communities that do not meet one of the housing production and eligibility thresholds set forth in 24.05(2) at the time of application must provide updates at regular intervals, to be established by the Department, on its status and progress in meeting such criteria on or before February 11, 2024.~~

(2) Additional Materials for Substitute Communities. In addition to the above components, an application from a Substitute Community must include a description of the actions it has taken or will take after the adoption of the proposed ~~bylaw~~by-law or ordinance, to encourage the production of multi-family housing. This description should include, but is not limited to:

(a) The community's progress toward creation of a multi-family zoning district compliant with Sec. 3A of G.L. Ch. 40A, if applicable.

(b) Initiatives taken by the community to support the preservation and production of housing units, including multi-family housing.

(c) Substitute Communities may submit letters of support from community leaders and/or community members.

(3) Review Process. The Department will review and approve applications from Prioritized Communities on a rolling basis ~~and will issue approvals in the order in which cities and towns have.~~

~~(a) The Department shall withhold approval of an application submitted ~~home rule petitions~~ by any Prioritized Community that does not, at the time of application, contain all application materials listed in 24.04(1), until such time as that community submits all materials listed in 24.04(1), or until September 1, 2023, as provided in 24.04(3)(d).~~

~~(b) The Department shall issue a conditional approval and withhold final approval of an application submitted by any Prioritized Community that does not, at the time of application, meet the housing production eligibility requirements set forth in 24.05(2), until such time as that community demonstrates compliance with such requirements, or until February 11, 2024, as described in 24.04(3)(g).~~

~~1. In the event the Department conditionally approves an application on this basis, the Department will provide written notice to such applicant, and proceed with review and approval of Prioritized Communities that meet all applicable requirements.~~

~~(a)~~(c) The Department will provide feedback on completeness of application materials and notify applicant if any requirements are not met, or if any clarifications are needed for approval.

~~(b)~~(d) Prioritized Communities may update and re-submit applications through ~~November 10~~September 1, 2023 based on Department feedback.

(e) September 1, 2023 is the final deadline for Prioritized Communities to submit a complete application. If a Prioritized Community fails to submit a complete application by September 1, 2023, the community will not be considered for participation in the Demonstration Project.

(f) Substitute Communities may update and re-submit applications through November 10, 2023.

~~(e)~~(g) November 10, 2023 is the final deadline for Substitute Communities to submit a complete application.

~~(d)~~(h) February 11, 2024 is the final deadline to meet all eligibility requirements listed in 225 CMR 24.05. After such date ~~the, an~~ application of any Prioritized or Substitute Community failing to meet the eligibility requirements shall be designated as incomplete and shall expire and be deemed void.

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

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

24.05 Eligibility Requirements

(1) Application Requirements. All Prioritized and Substitute Communities must meet ~~each of the following~~three requirements prior to submissions of application to the Department:

(a) Home Rule Petition filed with the general court on the subject matter of these regulations; and

(b) Local Approval received on of Home Rule Petition.

~~(b)~~(2) Housing Eligibility Thresholds. On or before February 11, 2024, the subject matter of these regulations; and

The municipality applicant must demonstrate that it has achieved one of the following housing eligibility thresholds:

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

24.06 Substitute Communities

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

- (a) The Department will not review applications from Substitute Communities until:
 1. Receipt of a Letter of Withdrawal from one or more Prioritized Communities forfeiting their prioritized status, or
 2. ~~Default by a~~ Failure of one or more of the Prioritized ~~Community as established in~~Communities to meet the requirements of 225 CMR 24.~~03(4)-05(2).~~
- (b) The Department will notify and work with applicants to update applications if missing information or for which clarifications are required.
- (c) Substitute Communities must meet all requirements set forth in 225 CMR 24.04 and 225 CMR 24.05 prior to submitting applications to the Department.

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

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

- (a) Contribution to the overall Demonstration Project, including diversity of Participating Communities, ~~such as~~ which includes but is not limited to gateway cities, environmental justice communities, diversity of demographics, diversity of size, scale of building development, and type of housing development;

- (b) Ability to meet Department reporting requirements and effectively monitor and ensure code compliance and implementation;
 - (c) Consistency of proposed ~~bylaw~~by-law or ordinance to the model ~~bylaw~~rule provided by the Department;
 - (d) A preference for cities and towns that meet the compliance guidelines implementing section 3A of chapter 40A of the General Laws through an approved zoning ordinance or ~~bylaw~~, in the case of a town that must seek by-law approval from the Attorney General (AGO) pursuant to G.L. c.40 § 32, an AGO-approved by-law that provides for at least 1 district of reasonable size in which multi-family housing is permitted as right, or, if not applicable, a similar commitment to multi-family housing production as determined by the Department, in consultation with the Executive Office of Housing and Economic Development;
 - (e) Localized electric grid investments needed to support the Demonstration Project as determined through consultation between the Department and electric distribution companies;
 - (f) Demonstrated support from community members and municipal leaders.
- (4) Selection. The Department will issue a determination letter upon approval of any application of a Substitute Community documenting its selection as a Participating Community and the basis therefor. The Department will publish determination letters on its website.

24.07 Reporting and Assessment of Results

- (1) Department Reporting. Not later than September 30, 2025, and every 2 years thereafter, the Department shall compile a report to be filed with the Senate and House Committees on Ways and Means, the Joint Committee on Housing, and the Joint Committee on Telecommunications, Utilities and Energy. The report shall include, but not be limited to, the following components:
- (a) Description of Demonstration Project and list of Participating Communities;
 - (b) Description of the Department's process for selecting Comparable Municipalities as a comparison group for the Demonstration Project;
 - (c) An analysis of the net reduction in emissions:
 1. for each newly constructed building or Major Renovation project subject to the Demonstration Project in each municipality participating in the Demonstration Project; and
 2. for each comparable newly constructed building or Major Renovation project in a number of Comparable Municipalities, as selected by the Department, not participating in the Demonstration Project;
 - (d) An analysis of impacts on: housing production, if any; housing affordability, if any, including electric bills, heating bills and other operating costs; housing

affordability for persons of low and moderate income, if any, including electric bills, heating bills and other operating costs;

(e) Recommendations for the continuation or termination of the Demonstration Project.

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

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

~~(c) Timely and accurate data reporting is required to perform analysis and assessment of impacts of the Demonstration Project.~~

~~(5)~~(3) Reporting Requirements for Electric and Gas Utilities. Each year beginning in 2024, not later than September 30th, all electric and gas distribution companies serving customers in Participating Communities or the Comparable Municipalities shall, in an accessible and standardized format approved by the Department, report the following data:

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

~~(54)~~ Comparable Municipalities. The Department will identify and designate Comparable Municipalities in a manner to be determined by the Department. Comparable Municipalities shall report data as set forth in 225 CMR 24.07(2). The Department will coordinate with Comparable Municipalities on the method and process of data collection and reporting.

24.08 Specialized Municipal Opt-in Energy Code and Model Rule

- (1) Recommended Process. The Department has published a model rule and other guidance in order to assist Participating Communities in achieving the objectives of the Demonstration Project. The Department recommends that cities or towns seeking to participate in the Demonstration Project:
 - (a) Adopt the Specialized Municipal Opt-in Energy Code, as established in 225 CMR 22.00 and 225 CMR 23.00, and
 - (b) Adopt through Local Approval the model rule published by the Department.
- (2) Model Rule. The model rule published by the Department ensures appropriate integration with the Massachusetts Specialized Municipal Opt-in Energy Code. If a Participating Community determines that adoption of a local by-law or ordinance that differs from the model rule published by the Department is necessary, the Participating Community shall provide information as described in 225 CMR 24.04(1)(b) in its application.

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

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

24.09 Severability

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

REGULATORY AUTHORITY

St. 2022, c. 179, § 84.