

Potential Fossil Fuels Ban on New Development

Public Comment Period Ends February 10th

The Massachusetts Department of Energy Resources (DOER) published a draft program regulation and a model rule for the [Municipal Fossil Fuel Free Building Demonstration Program](#), which Boston filed a home rule petition to join. The program aims to reduce the use of fossil fuels and incentivize local housing production. Acceptance into the program would permit Boston to restrict the use of fossil fuels in new development projects.

Draft Program Regulation – DOER will accept public comments on the [draft regulation](#) and [model rule](#) at a virtual hearing on **February 8** and via written comments by **February 10**. DOER’s draft program regulation requires applications to include:

■ Home rule petition	■ Documentation of meeting housing requirement
■ Proposed ordinance	■ Proof of local approval
■ Implementation plan	■ Sub. Communities - actions taken or plan for production of multi-family housing

DOER recommends that municipalities adopt its model rule as their by-law or ordinance because it ensures appropriate integration with the Massachusetts Specialized Opt-in Energy Code, an optional code with net-zero building performance standards designed to achieve the state’s greenhouse gas emission limits. If a city or town does not plan to use the model by-law or the Department’s Fossil Fuel-Free Code, its application must include an explanation and rationale for any differences.

DOER will prioritize the first ten municipalities that filed home rule petitions. All other municipalities, including Boston, are considered Substitute Communities. DOER will only review applications from Substitute Communities if a Prioritized Community withdraws its application or becomes ineligible. Several selection criteria may be used, such as diversity of participating communities and localized electric grid investments needed. The earliest DOER will issue approval for a Substitute Community is March 1, 2024.

Boston’s Application - Boston approved a home rule petition to join the Program, though the details of Boston’s ordinance have yet to be set. The home rule petition creates an Advisory Committee to help establish the ordinance’s definitions, criteria for applicability, and timelines. The Committee members are appointed by the Mayor with the City Council and include subject matter experts. Boston has a chance of being selected because one community has already withdrawn from the program.

How the Program Works

This new program allows up to ten cities and towns to adopt ordinances or by-laws that restrict or prohibit new building construction or major renovation projects which are not fossil fuel-free. This includes the withholding or conditioning of building permits.

Without the program, municipalities cannot adopt these laws because state law and the State Building Code prohibit municipalities from regulating or restricting the use of fossil fuels in construction, according to a [decision](#) by the Attorney General’s Office. DOER must approve municipalities for the program in the order in which they submit home rule petitions to join. To participate, municipalities must meet a housing production requirement by February 11, 2024. If a municipality does not meet the housing production requirement, DOER may approve a substitute municipality regardless of the order in which it submitted its home rule petition.