

Memo on Final DOER Ten Communities Regulations

The State Department of Energy Resources released its “final” Ten Communities regulations on May 10, 2023. (I say “final” because under rules that are peculiar to DOER the regulations need legislative approval.) The regulations are detailed and have a number of provisions that are different from the draft regulations. Here’s DOER’s redlined version of the [regulations](#). (DOER’s redlining references changes from the draft version of the regulations).

Partly because of the way they’re organized, the regulations are confusing. I’ve reorganized them and extracted the most important points:

Applications must include:

- Copy of home rule petition and date submitted and proof of local approval. (I’m unclear how we could have submitted a home rule petition without local approval....)
- **Copy of proposed ordinance** for participation in the Demonstration Project. If the City proposes an ordinance that is not the model rule, the application must include an explanation of differences and the reasons for any differences.
- An implementation plan, including:
 - If local approval of the community’s proposed ordinance has not been acquired, the community’s plan, including any associated timelines, for acquiring local approval of the proposed by-law or ordinance; **(Important—the ordinance doesn’t have to be approved by the City Council by September 1, 2023);**
 - 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;
 - A demonstrated commitment to collaborate with the Department on data collection, reporting, and outreach/training;
 - Description of the current process for storing building permit data and certificates of occupancy;
 - Description of how the ordinance will affect the use of fossil fuels for commercial and industrial Process Load in buildings subject to the ordinance, including but not limited to, restaurants, dry cleaners, and manufacturing uses;
 - Description of exemption or waiver process from any requirements, if any, to be included in the ordinance.
 - Documentation sufficient to demonstrate that the applicant has achieved at least one of the three housing production eligibility thresholds set forth in 24.05.
 - **Prioritized 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. (Important—date is now February 11, 2024);**

- Prioritized 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.

Review Process

This section is important. Here's my summary of the important points:

- Since DOER will review/approve applications on a rolling basis, and since September 1, 2023 is the date for DOER approval, I recommend that we submit all of our documentation by July 15, 2023 or soon thereafter.
- HOWEVER... There are effectively two exceptions to this: (1) If a Prioritized Community does not have local approval of their proposed ordinance at the time of application, the community must provide the Department with a copy of the final ordinance once local approval is acquired. But our application must include a copy of the *proposed ordinance*. Final ordinances must be submitted to the Department not later than July 1, 2024, with extensions available on a case-by-case basis. Thus, we must submit our draft electrification ordinance with our application, even if the City Council has not yet approved it. (2) Also, we can get a conditional approval of our application if the housing eligibility requirements aren't met until February 11, 2024.

Here are the actual provisions of the regulations (reorganized and somewhat edited):

The Department will review and approve applications from Prioritized Communities on a rolling basis.

The Department shall withhold approval of an application submitted 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). Prioritized Communities may update and re-submit applications through September 1, 2023 based on Department feedback.

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.

The Department shall issue a conditional approval and withhold final approval of an application 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). February 11, 2024 is the final deadline to meet all eligibility requirements listed in 225 CMR 24.05. After such date, an

application of any Prioritized Community failing to meet the eligibility requirements shall be designated as incomplete and shall expire and be deemed void.

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.

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.

If a Prioritized Community does not have local approval of their proposed ordinance at the time of application, the community shall provide the Department with a copy of the final ordinance once local approval is acquired. The Department reserves the right to revoke a community's Participating Community status if the final ordinance conflicts with the requirements of St. 2022, c. 179, § 84.

Final 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.

Major Renovations

The "final" version of the regulations also expand on the definition of major renovations. Here's the regulatory provision:

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.

