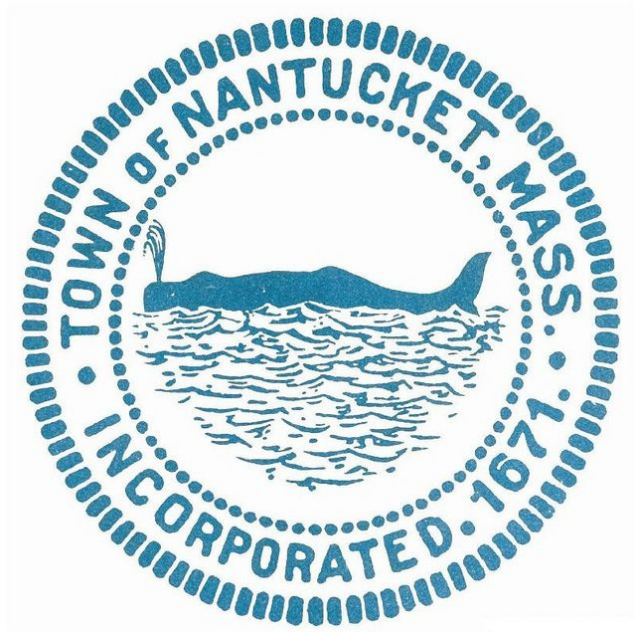


# As-Of-Right Siting

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TOWN OF NANTUCKET



**Massachusetts Green Communities Grant Program**

**Criterion 1**

**AUGUST 6, 2019**

# COMMONWEALTH OF MASSACHUSETTS

## TOWN OF NANTUCKET

### 2019 ANNUAL TOWN MEETING

#### (b)ARTICLE 62

#### (Zoning Bylaw Amendment: Solar Energy Overlay District)

To see if the Town will vote to amend Chapter 139 (Zoning) of the Code of the Town of Nantucket as follows:

1. To amend Section 139- 12 as follows:

A. By amending the title of §139-12 as follows:

Overlay Districts Flood Hazard (FHD), Public Well Recharge (PWR), Multifamily (MF), Neighborhood Employee Housing (NEHOD), County Overlay District (COD) and Town Overlay District (TOD), Harbor Overlay District (HOD), Multi- Family Overlay District (MFOD), Village Height Overlay District (VHOD), and Solar Energy Overlay District (SEOD).

B. By adding a new subsection §139-12.L, as follows:

Solar Energy Overlay District (SEOD). Notwithstanding the provisions of 139-7, solar energy facilities located in the SEOD may proceed without the need for a special permit, variance, or other discretionary approval.

A. This section shall apply to new land based solar energy facilities and to physical modifications to existing land based facilities that materially alter the type, configuration, or size of such facilities or related equipment.

B. General requirements:

a. Minor site plan review, as set forth in §139-23 shall be required for all solar energy facilities in the SEOD. The Planning Board shall be the minor site plan review authority for solar energy facilities in the SEOD. In addition to the minor site plan review requirements of §139-23, the following information shall be included on the site plans:

i. Outline of all existing structures, including purpose (e.g. residence, garage, commercial etc.) for all structures located on the site and on lots within 500 feet of the site. A note indicating the distance from the solar energy facility to each structure shown shall also be included.

ii. Any existing overhead utility lines.

iii. Documentation of the solar energy facility's manufacturer and model and the length, width and height of the solar array.

iv. The name, address and contact information of all applicants, property owners and agents representing the applicant and/or owner.

- v. Property lines and physical features, including roads, for the project site;
- vi. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- vii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures
- viii. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
  - ix. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
- x. Name, address, and contact information for proposed system installer;
  - xi. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
  - xii. The name, contact information and signature of any agents representing the project proponent;
- b. Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);
- c. Proof of liability insurance; and
- d. Description of financial surety that satisfies Section 3.12.3.

The Site Plan Review Authority may waive documentary requirements as it deems appropriate.

#### C.Site Control

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

#### D.Operation & Maintenance Plan

The project proponent shall submit a plan for the operation and maintenance of the large- scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

E. Utility Notification

No large- scale ground -mounted solar photovoltaic installation shall be constructed until evidence has been given to the Site Plan Review Authority that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator’s intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

F. Dimension and Density Requirements

- a. For large - scale ground-mounted solar photovoltaic installations, front, side and rear setbacks shall be as follows:

The following setback requirements shall apply:

- i. Front yard: The front yard depth shall be at least 10 feet; provided, however, that where the lot abuts a Conservation- Recreation or Residential district, the front yard shall not be less than 50 feet.
- ii. Side yard. Each side yard shall have a depth at least 15 feet; provided, however, that where the lot abuts a Conservation- Recreation or Residential district, the front yard shall not be less than 50 feet.
- iii. Rear yard. The rear yard depth shall be at least 25 feet; provided, however, that where the lot abuts a Conservation- Recreation or Residential district, the front yard shall not be less than 50 feet.
- iv. The Planning Board may, during minor site plan review, waive the above setback requirements based on site specific considerations.

G. Appurtenant Structures

All appurtenant structures to large- scale ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, and open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

H. Appurtenant Structures

I. Design Standards

- a. Lighting
  - i. Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety

and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

a. Signage

- i. Signs on large- scale ground-mounted solar photovoltaic installations shall comply with a municipality's sign bylaw. A sign consistent with a municipality's sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number.
- ii. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

c. Utility Connections

- i. Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

J. Safety and

Environmental  
Standards a.  
Emergency  
Services

- i. The large-scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

b. Land Clearing, Soil Erosion and Habitat Impacts

- i. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large - scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.

K. Monitoring and Maintenance

a. Solar Photovoltaic Installation Conditions - The large -

scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

b. Modifications - All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Site Plan Review Authority.

#### L. Removal Requirements

a. Any large- scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with Section 3.12.2 of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal.

Decommissioning shall consist of:

(a.) Physical removal of all large- scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.

(b.) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

(c.) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below- grade foundations in order to minimize erosion and disruption to vegetation.

#### M. Abandonment

a. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Site Plan Review Authority. If the owner or operator of the large- scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

#### N. ADDITIONAL PROVISIONS (if any)

a. To amend §139-2 as follows, by inserting the following new definition in alphabetical order:

i. Large-Scale Ground-Mounted Solar Photovoltaic Installation: A solar photovoltaic system that is

structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

ii. On-Site Solar Photovoltaic Installation: A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

iii. Rated Nameplate Capacity: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

iv. Solar energy facilities - All of the equipment, machinery, and structures used for either the primary or accessory purpose of converting, storing or transmitting electricity generated from solar energy

b. To amend §139-4 to add the following:

DISTRICT	ABBREVIATION
Solar Energy Overlay District	SEOD

i. The Solar Energy Overlay District (SEOD) includes the following parcels:

Map 39, Lot 14, Number 188,  
Madaket Road Map 58, Lot 1,  
Massasoit Bridge Road  
Map 58, Lot 38, Madaket Road

To amend §139-17.B to add the following subsection:

7. Solar energy facilities located within the SEOD.

Or to take any other action related thereto.

*(b) (Tobias Glidden, et al)*

PLANNING BOARD MOTION: Moved that Chapter 139 (Zoning) of the Code of the Town of Nantucket be amended as follows *(NOTE: new language is shown as highlighted text, language to be deleted is shown by strikeout; these methods to denote changes are not meant to become part of the final text and, further, that non- sustentative changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Code of the Town of Nantucket)*:

(c)

1. By inserting the following new definition in §139-2 (definitions) alphabetical order:

**LARGE-SCALE GROUND-MOUNTED SOLAR PHOTOVOLTAIC INSTALLATION**

A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted and has a minimum nameplate capacity of 250 kW DC.

**SOLAR ENERGY FACILITIES**

All of the equipment, machinery, and structures used for either the primary or accessory purpose of converting, storing or transmitting electricity generated from solar energy

2. By inserting “Solar Energy Overlay District” at the bottom of the “District” column and “SEOD” at the bottom of the “Abbreviation” column in §139-3F.

3. By inserting a new subsection I in §139-4 as follows:  
 The Solar Energy Overlay District is shown on a map entitled “Solar Energy Overlay District,” as may be amended from time to time.

4. By including the following properties on the map entitled “Solar Energy Overlay District”:

MAP	LOT	NUMBER	STREET
39	14	188	MADAKET ROAD
58	38		MADAKET ROAD
58	1		MASSASOIT BRIDGE ROAD

5. By amending the title of §139-12 as follows:

Overlay Districts Flood Hazard (FHD), Public Well Recharge (PWR), Multifamily (MF), Neighborhood Employee Housing (NEHOD), County Overlay District (COD) and Town Overlay District (TOD), Harbor Overlay District (HOD), ~~Multi-Family Overlay District (MFOD)~~, Village Height Overlay District (VHOD), and Solar Energy Overlay District (SEOD).

6. Insert a new subsection §139-12.L, as follows:

Solar Energy Overlay District (SEOD). Notwithstanding the provisions of §139-7, solar energy facilities are permitted by right in the SEOD. This section shall apply to new land based solar energy facilities and to physical modifications to existing land-based facilities that materially alter the type, configuration, or size of such facilities or related equipment.

- (1) The Planning Board shall be the review authority for site plan review. Any material modifications to the site or the installation following site plan approval shall require a modification subject to approval by the Planning Board.
- (2) The following shall apply in addition to the requirements of §139-23:
  - a. The Planning Board shall hold a public hearing for which notice is provided as specified in M.G.L. c 40A, § 11;
  - b. Failure of the Planning Board to take action within 60 days of the public hearing, as such hearing may be extended by consent of the applicant, shall constitute an approval of the site plan and associated application;
- (3) In addition to the submission requirements of §139-23, the following documentation is required:
  - a. The solar energy facility’s manufacturer and model and the length, width and height of the solar array.
  - b. Drawings of the large-scale ground-mounted solar photovoltaic installation stamped by a Professional Engineer licensed to



- practice in the Commonwealth of Massachusetts indicating the proposed layout of the system and any potential shading from nearby structures;
- c. One or three-line electrical diagram detailing the large-scale ground-mounted solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
  - d. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
  - e. Name, address, and contact information for proposed large-scale ground-mounted system installer;
  - f. An Emergency, Operation, and Maintenance Plan for the solar energy facilities and any accessory structures or required equipment. All means of shutting down the large-scale ground-mounted solar photovoltaic installation shall be clearly marked on the equipment.

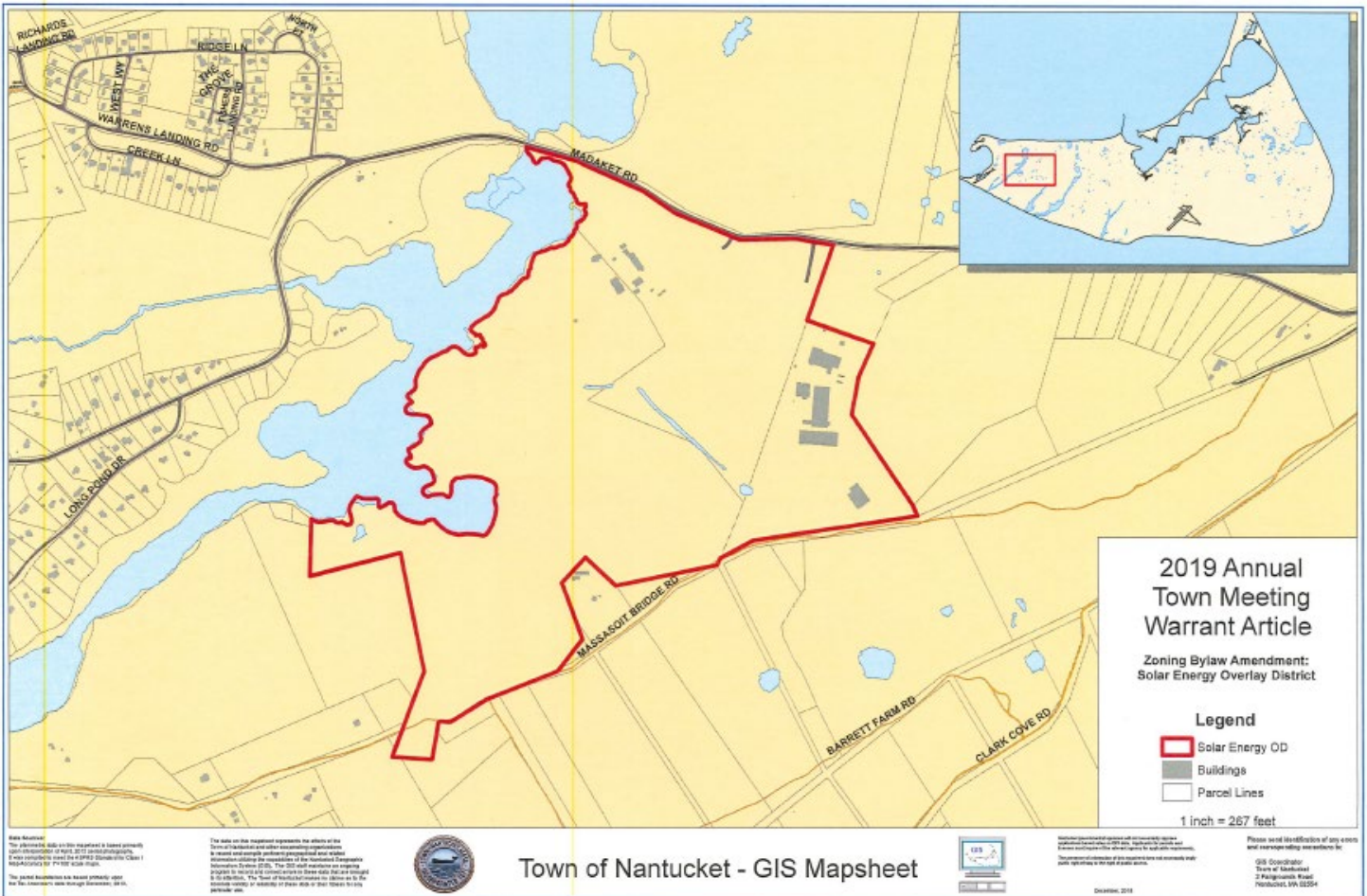
Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures.

- g. Design Standards Accessory structures and required equipment shall be clustered on the site to the extent possible and screened from view from abutting properties and rights of way to minimize visual impacts;
- h. Lighting shall be limited to that required for safety and operational purposes.
- i. A sign providing the contact information of the owner or operator, including a 24-hour telephone number, shall be mounted on the site in a visible location for emergency use;
- j. To the extent possible, utility connections shall be installed underground;
- k. Land clearing shall be limited to the minimum amount necessary for the construction, operation and maintenance of the large-scale ground-mounted solar photovoltaic installation. The limits of clearing shall be clearly identified on a site plan.
- l. Removal Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned shall be removed no more than 150 days following the date of discontinued operation. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operation and plans for removal, which shall consist of:
  - i. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
  - ii. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
  - iii. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and

- disruption to vegetation
- m. Abandonment Absent notice of a proposed date of removal or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the large- scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

7. By inserting a new subsection in §139-17B as follows:
8. Solar energy facilities located within the SEOD.

FINANCE COMMITTEE COMMENT: The Committee supports the Planning Board Motion.





MAURA HEALEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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August 6, 2019

Nancy L. Holmes, Town Clerk  
Town of Nantucket  
16 Broad Street  
Nantucket, MA 02554

**RE: Nantucket Annual Town Meeting of April 1, 2019 - Case # 9357**  
**Warrant Articles # 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 56,**  
**57, 59, 61, and 62 (Zoning)**  
**Warrant Articles # 30, 64, 65, 66, 67, 68, 69, and 72 (General)**

Dear Ms. Holmes:

**Articles 30, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 56, 57, 59, 61, 62, 64, 65, 66, 67, 68, 69, and 72** - We approve Articles 30, 38 through 49, 51, 52, 56, 57, 59, 61, 62, 64 through 69, and 72, and the map amendments related to Articles 38 through 46, Articles 49, 51, 52, 62, 68 through 69 from the Nantucket April 1, 2019, Annual Town Meeting. We will send the approved maps to you by regular mail. Our comments on Articles 62 and 67 are provided below.

**Article 62** - Article 62 amends the Town's zoning by-laws by making several changes to create a Solar Energy Overlay District ("District") where large-scale ground mounted solar photovoltaic installations are allowed as of right subject to site plan review. One change adds a new subsection 139-12L, that imposes certain conditions and requirements on solar installations.

General Laws Chapter 40A, Section 3, protects solar energy systems and the building of structures that facilitate the collection of solar energy and provides in pertinent part as follows:

No zoning ordinance or bylaw shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

There are no appellate level judicial decisions to guide the Town or this Office in determining what qualifies as an unreasonable regulation of solar uses under G.L. c. 40A, § 3. However, a Land Court decision provides some guidance. In Briggs v. Zoning Board of Appeals of Marion, 2014 WL 471951 \* 5 (2014), the Land Court determined that a zoning board of appeals' decision maintaining a division between commercial solar energy and residential accessory solar energy uses was reasonable and did not violate G.L. c. 40A, § 3. In addition, as a general principle,

we recognize that the Town may utilize its zoning power to impose reasonable regulations on solar uses based upon the community's unique local needs. *See Burnham v. Board of Appeals of Gloucester*, 333 Mass. 114, 116-117 (1955) ("Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions."). The reasonableness of a regulation is a fact-dependent determination that includes a consideration whether a regulation substantively diminishes or detracts from a project's usefulness or imposes an excessive cost that outweighs legitimate municipal concerns. *See e.g., Duseau v. Szawlowski Realty Inc.*, 2015 WL 59500, \* 8 (2015) (solar project proponent failed to demonstrate that restricting a solar energy project to the Town's Industrial Districts was an unreasonable regulation and not necessary to protect the public health and welfare).

In applying the amendments adopted under Article 62 the Town should consult closely with Town Counsel to ensure that the Town does not run afoul of the solar use protections in G.L. c. 40A, § 3.

**Article 67** - Article 67 amends Chapter 135, "Fuel Storage Tanks," by adding a new Section 135-2 pertaining to aboveground fuel storage tanks. The new Section 135-2 imposes replacement and construction requirements on aboveground tanks used to store heating fuel oil. Specifically, the new Section 135-2 provides as follows (with emphasis added):

At time of property transfer all aboveground tanks (any tank used to store fuel oil for the purpose of heating) shall be required to be replaced with double-walled fuel oil storage tanks or shall be required to provide 110% containment capacity to prevent contamination from leaks that may occur. Exterior fuel oil storage tanks must be covered with substantial impermeable construction material to prevent water accumulation within containment in such a way that it satisfies the Board of Health and the Fire Department. The area beneath the exterior tank shall be a 4-inch thick continuous concrete slab. All aboveground elements of a fuel storage system shall be maintained free of leaks and visible rust.

All new construction where aboveground fuel storage tanks are installed (inside and outside) shall be required to be replaced with double-walled fuel oil storage tanks or shall be required to provide 110% containment capacity to prevent contamination from leaks that may occur. Exterior fuel oil storage tanks must be covered with substantial impermeable construction material to prevent water accumulation within containment in such a way that it satisfies the Board of Health and the Fire Department. The area beneath the exterior tank shall be a ~~4~~-inch [sic] thick continuous concrete slab. All aboveground elements of a fuel storage system shall be maintained free of leaks and visible rust.

As written, the requirements in the new Section 135-2 encompass all types and sizes of above ground storage tanks used to store fuel oil used for heating. The Department of Fire Services ("DFS"), Board of Fire Prevention Regulations has promulgated regulations in the Massachusetts Comprehensive Fire Safety Code ("Fire Safety Code") governing above ground storage tanks.<sup>1</sup> According to DFS, the requirements of Section 135-2 are not inconsistent with the Fire Safety Code because the by-law requirements are more stringent than the Fire Safety Code's requirements. *See 527 C. M. R. § 1.02, "Purpose,"* ("[t]he purpose and the intent of 527 CMR 1.00 is to prescribe minimum requirements and controls to safeguard life, property and public

<sup>1</sup> *See, e.g., 527 CM.R. § 1.05 "Modifications to NFPA 1 Fire Code – 2015 Edition,"* (sections 11.5.1.10.5 (11) and 11.5.1.10.7 impose requirements for tank installations located inside and outside of a building).

welfare from the hazards of fire and explosion . . . .”<sup>2</sup> However, in order to avoid any future conflict with the Fire Safety Code, the Town may wish to amend Section 135-2 at a subsequent Town Meeting to clarify what type or size tank it applies to. In addition, the Town may wish to amend Section 135-2 to require compliance with the Fire Safety Code in instances where the Fire Safety Code imposes more stringent requirements on above ground fuel oil storage tanks.<sup>3</sup> The Town should discuss this issue in more detail with Town Counsel.

**Note:** Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) **general** by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) **zoning** by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.

Very truly yours,  
MAURA HEALEY  
ATTORNEY GENERAL



By: Kelli E. Gunagan  
Assistant Attorney General  
Municipal Law Unit  
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Worcester, MA 01608  
(508) 792-7600

cc: Town Counsels John W. Giorgio and Lauren F. Goldberg

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<sup>2</sup> See also 527 C.M.R. § 1.05 “Modifications to NFPA 1 Fire Code – 2015 Edition,” (section 1.3.3.3 provides “[w]hen the requirements of this Code conflict with any other applicable regulation, or ordinance, the provisions which establish the higher standard for the promotion and protection of safety and welfare shall prevail”).

<sup>3</sup> The Town should fix the typographical error indicated in bold and underline in the second paragraph of Section 135-2 to include the number of inches the concrete slab must be for above ground storage tanks in new construction.