

Bylaw changes adopted by Fall Annual Town Meeting, October 15, 2016 and approved by the Attorney General of the Commonwealth.

Claims of invalidity by reason of any defect in the procedure of adoption or amendment may only be made within ninety days of this posting.

Copies of the bylaws are available for examination and may be obtained at the Town Clerk's Office.



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

CENTRAL MASSACHUSETTS DIVISION
10 MECHANIC STREET, SUITE 301
WORCESTER, MA 01608

MAURA HEALEY
ATTORNEY GENERAL

(508) 792-7600
(508) 795-1991 fax
www.mass.gov/ago

February 10, 2017

Laurence R. Pizer Town Clerk
Town of Plymouth
11 Lincoln Street
Plymouth, MA 02360

RE: Plymouth Fall Annual Town Meeting of October 15, 2016 - Case # 8159
Warrant Articles # 21 and 26 (Zoning)
Warrant Article # 28 (General)

Dear Mr. Pizer:

Articles 21, 26 and 28 - We approve Articles 21, 26 and 28, and the map amendments related to Article 21, from the October 15, 2016 Plymouth Fall Annual Town Meeting. We will return the approved maps to you by regular mail. Our comments regarding Article 26 are provided below.

Article 26 - Article 26 amends the Town's zoning by-laws to add a new Section 205-77, "Ground-Mounted Solar Photovoltaic Systems" (GMSPS) and amends Section 205-3 to add related definitions.

Ground-mounted solar photovoltaic systems, as defined in Section 205-3, are allowed by right, subject to site plan review, in all districts in the Town. *See* Section 205-77 (B). However, a GMSPS that actively occupies more than 15 acres in area is prohibited. *See* Section 205-77 (B)(2)(a). In addition, GMSPS "are not allowed on parcels in R20-SL, R20-MD, R20-MF, R25, R40 and RR zones that have been previously disturbed (i.e. cleared or substantially cleared of natural vegetation by other than natural forces such as fire or flood) for a period of five years from the date of disturbance." *See* Section 205-77 (B)(2)(b).

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 court decisions to guide the Town or this Office in determining what qualifies as an unreasonable regulation of solar uses in contravention of G.L. c. 40A, § 3. However, the Town should be mindful of this requirement in applying the amendments adopted under Article 26 and consult closely with Town Counsel during the process. In light of the protections granted to solar energy systems in G.L. c. 40A, § 3, we highlight the following provisions in the new by-law.

1. 205-77 (C) (3) - Land Clearing, Soil Erosion and Habitat Impacts.

Section 205-77 (C) (3) (c) provides: “[m]anagement of all vegetated areas within the GMSPS shall be maintained throughout the life of the project through mechanical means and without the use of chemical herbicides.”

Section 205-77 (C) (3) (c) must be applied consistent with the Pesticide Control Act, which establishes the Act’s “exclusive authority in regulating, the labeling, distribution, sale, storage, transportation, *use and application*, and disposal of pesticides in the commonwealth.” See G.L. c. 132B, § 2, as amended by Chapter 264 of the Acts of 1994 (emphasis supplied). Herbicides are included in the definition of pesticides under G.L. c. 132B, § 2.¹ The Town should consult with Town Counsel regarding any questions on this issue.

2. 205-77 (C) (4) - Information Required with Zoning Permit for all GMSPS.

Section 205-77 (C) (4) (d), “Financial Surety,” requires non-municipally owned projects “designed to generate in excess of 2MW” to post a performance guarantee in the form of a cash bond to cover the cost of removal and stabilization of the development site. General Laws Chapter 44, § 53, requires that performance security funds of the sort contemplated here must be deposited with the Town Treasurer and made part of the Town’s general fund (and subject to future appropriation), unless the Legislature has expressly made other provisions that are applicable to such receipt. On August 9, 2016, the State adopted Chapter 218 of the Acts of 2016, “*An Act Modernizing Municipal Finance and Government*,” which took effect on November 7, 2016. Among other amendments, Section 92 of the Act, amends G.L. c. 44 by inserting a new Section 53G ½, which provides as follows:

Notwithstanding section 53, in a...town that provides by by-law...rule, regulation or contract for the deposit of cash, bonds, negotiable securities, sureties or other financial guarantees to secure the performance of any obligation by an applicant as a condition of a license, permit or other approval or authorization, the monies or other security received may be deposited in a special account. Such by-law...rule or regulation shall specify: (1) the type of financial guarantees required; (2) the treatment of investment earnings, if any; (3) the performance required and standards for determining satisfactory completion or default; (4) the procedures the applicant must follow to obtain a return of the monies or other security; (5) the use of monies in the account upon default; and (6) any other conditions or rules as the...town determines are

¹ The definition of “pesticide” in G.L. c. 132B, § 2 includes herbicides, as follows “a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant...”.

reasonable to ensure compliance with the obligations. Any such account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. Monies in the special account may be expended by the authorized board, commission, department or officer, without further appropriation, to complete the work or perform the obligations, as provided in the by-law...rule or regulation. This section shall not apply to deposits or other financial surety received under section 81U of chapter 41 or other general or special law.

In order for the Town to deposit bond proceeds into a special account, the Town would have to comply with the requirements of G.L. c. 44, § 53G ½. Otherwise, bond proceeds must be deposited with the Town Treasurer and made part of the Town's general fund, pursuant to G.L. c. 44, § 53. The Town should consult with Town Counsel on the proper application of Section 205-77 (C) (4) (d).

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

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(508) 792-7600 ext. 4418
nicole.caprioli@state.ma.us

cc: Town Counsel Mark R. Reich