

Town of Dighton

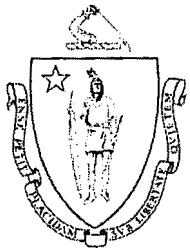


RETURN OF SERVICE

I have served Attorney General Letter, General Bylaw approvals/updates and Zoning Bylaw approvals/updates and this packet has been posted at:

Dighton Town Hall
North Dighton Post Office
Dighton Post Office
Dighton Water District- Williams St.
Dighton Fire Station- Main St.
207 Main Street

Michael Thibodeau
Michael Thibodeau
Constable
Date: 3/12/24



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
CENTRAL MASSACHUSETTS DIVISION
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WORCESTER, MA 01608

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ATTORNEY GENERAL

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February 26, 2024

Shara Costa, Town Clerk
Town of Dighton
979 Somerset Ave
Dighton, MA 02715

Re: Dighton Special Town Meeting of October 30, 2023 – Case # 11252
Warrant Articles # 18 and 19 (Zoning)
Warrant Articles # 20 and 22 (General)

Dear Ms. Costa:

Articles 18, 19, 20 and 22 - We approve Articles 18, 19, 20 and 22 from the October 30, 2023 Dighton Special Town Meeting. Our comments regarding Article 18 are provided below.

Article 18 – Under Article 18 the Town voted to amend the zoning by-laws, Section 5400, “Site Plan Review,” by deleting in full the existing text and inserting new text in Subsection 5420, “Procedures;” Subsections 5441, 5442 and 5445 related to the contents of the site plan; Subsection 5450, “Waiver of Compliance;” and Subsection 5460, “Minor Site Plan;” and by italicizing all words in Section 5400 that are defined in Section VI, “Definitions.” We approve these amendments and offer comments for the Town’s consideration regarding the amended text in Subsection 5445.

The Town’s existing zoning by-laws, Section 5410, “Applicability,” require site plan review by the Planning Board for several uses, including multi-family uses as follows: “[c]onstruction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or multi-family structure.” Section 5400, “Contents of Plan,” identifies the contents that must be included in the site plan. Subsection 5445, as amended, requires as follows:

The Planning Board may require a Development Impact Statement as set forth in § 5340.

Section 5300 of the Town’s existing zoning by-laws relates to special permits including the criteria upon which a special permit will be granted. Section 5340, “Development Impact Statements (DIS)“ identifies the particular information that may be required in a DIS including

Subsection 5344 (f), "Support Systems; Schools" that requires information related to the increase to the student population.

As applied to site plan review of multi-family dwellings, the Development Impact Statement requirement of Subsection 5445 incorporating the requirements of Section 5340 raises concern under federal and state law, including the federal Fair Housing Act (FHA) and Massachusetts Anti-Discrimination Law. The Town should consult with Town Counsel to determine if future amendments are needed to address these issues.

1. Potential Fiscal Impact on Essential Public Services

As part of a site plan application, Section 5445 authorizes the Planning Board to require a Development Impact Statement under Section 5340. Section 5340's Development Impact Statement criteria requires the applicant to include information related to a development project's impact on an increase to the student population.

In applying Section 5445 (and existing Section 5340), the Town should be aware of recent Land Court decisions analyzing the question whether a potential impact on essential public services, including education of children, is a lawful consideration in the context of multi-family housing. In two recent decisions the Land Court determined that consideration of potential increased costs for educating school-aged children is not a lawful consideration when reviewing a special permit application for multi-family housing. In Bevilacqua Co. v. Lundberg, No. 19 MISC 000516 (HPS), 2020 WL 6439581, at *8-9 (Mass. Land Ct. Nov. 2, 2020), judgment entered, No. 19 MISC 000516 (HPS), 2020 WL 6441322 (Mass. Land Ct. Nov. 2, 2020) the court ruled that the Gloucester City Council's denial of a special permit to construct an eight-unit multi-family building based on the potential fiscal impact of the proposed development on the Gloucester public schools was "legally untenable." Id. at *9. Because the right to a public education is mandated and guaranteed by the Massachusetts Constitution, (see McDuffy v. Secretary of the Executive Office of Educ., 415 Mass. 545, 621 (1993) and Hancock v. Comm'r of Education, 443 Mass. 428, 430 (2005)) "[a denial of] a special permit to build housing because the occupants of that housing might include children who will attend public schools is [a denial of the children's] constitutional right under the Massachusetts Constitution to a public education." Id. at *8 (citing McDuffy and Hancock). "Therefore, notwithstanding the fiscal impact to a municipality from the construction of housing that may result from the obligation to educate children in the public schools, fiscal impact, as a reason for denying permits to construct housing, must give way when it runs afoul of the constitutional obligation of Massachusetts municipalities to provide a public education to all children." Id. at *9.

The Bevilacqua decision also raises, but does not resolve, the question whether consideration of fiscal impacts from potential increase in demands on other essential public services is similarly unlawful in the context of multi-family housing:

Generally, a municipality may not condition the availability of fundamental public services, such as fire protection, on the ability of any particular member of the public to pay taxes sufficient to support those services. Emerson College v. City of Boston, 391 Mass. 415 (1984) (city may not charge "augmented fire

services availability" fee for fire protection for properties requiring additional protection). That prohibition against denying members of the public the right to fundamental public services based on ability to pay is especially applicable when it comes to the right to a public education mandated and guaranteed by the Massachusetts Constitution.

Id. at *8.

Similarly, in 160 Moulton Drive LLC v. Shaffer, No. 18 MISC 000688 (RBF), 2020 WL 7319366, at *13-15 (Mass. Land Ct. Dec. 11, 2020), judgment entered, No. 18 MISC 000688 (RBF), 2020 WL 7324778 (Mass. Land Ct. Dec. 11, 2020) the court rejected the town's argument that the financial impact of educating the number of school-aged children projected to live in the apartments would be greater than the increased tax revenue, thus making the apartment use "substantially more detrimental" (in the language of the applicable by-law) than the existing restaurant use. "The Town cannot deny a permit on the grounds that its own property tax scheme is insufficient to provide for the needs of its inhabitants. Whether the Town has enough funds to provide public education for its school-aged children is simply not a matter for the Board to consider in reviewing special permit applications." Id. at *14 (citing Bevilacqua at *8-9).

The court in 160 Moulton Drive LLC echoed the Bevilacqua court's question whether increased demand for any essential public service is a lawful consideration when reviewing a special permit for multi-family housing:

Denial of a special permit on the grounds that increased tax revenue would not support the education of the children living therein is tantamount to conditioning the availability of public services on the ability of the residents to pay for them, which I find to be unreasonable and arbitrary. See Emerson College v. City of Boston, 391 Mass. 415 (1984).

Id. at *14.

In light of the holdings in Bevilacqua and 160 Moulton Drive LLC that the potential fiscal impact of educating school-age children is a legally untenable ground for denial of a permit for multifamily housing, and the open question whether a reviewing board may consider the impact on other essential public services, we strongly encourage the Town to consult closely with Town Counsel regarding whether the site plan review criteria in Section 5445 (and the existing text in Section 5340 (f)) should be enforced when reviewing a site plan application for a multi-family dwelling and whether it should be amended at a future town meeting.

2. FHA and MA Anti-Discrimination Law Requirements

The site plan requirement that the Planning Board can require a Development Impact Statement under Section 5340, as applied to multi-family dwellings, also raise concerns considering the Town's obligation to comply with the provisions of FHA and G.L. c. 151B when reviewing applications for multi-family housing in the Town. These statutes broadly prohibit

discrimination in housing based on certain characteristics including race, color, religion, sex, gender identity, sexual orientation, familial status, national origin, handicap and ancestry. See 42 U.S.C. § 3604 and G.L. c. 151B, § 4, ¶¶ 4A and 6. The FHA and the Massachusetts Anti-Discrimination Law prohibit towns from using their zoning powers in a discriminatory manner, meaning in a manner that has the purpose or effect of limiting or interfering with housing opportunities available to members of a protected class.

Violations of the FHA and G.L. c. 151B occur when a town uses its zoning power to intentionally discriminate against a member of a protected class or when such zoning power has a discriminatory impact on members of a protected class. See, e.g., Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project, Inc., 135 S.Ct. 2507, 2521-22 (2015) (recognizing disparate impact discrimination under the FHA); Burbank Apartments Tenant Ass'n v. Kargman, 474 Mass. 107 (2016) (recognizing disparate impact discrimination under G.L. c. 151B). Discriminatory impact can occur when a zoning rule, neutral on its face, “disproportionately disadvantages members of a protected class.” Burbank Apartments, 474 Mass. at 121 (discussing disparate impact in housing).

We strongly encourage the Town to consult closely with Town Counsel when reviewing site plan applications for multi-family dwellings to ensure compliance with the FHA and G.L. c. 151B.

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,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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cc: Town Counsel Matthew Costa

Article 18
as accepted

4 Pages

5400. SITE PLAN REVIEW.

5410. Applicability.

The following types of activities and uses require site plan review by the Planning Board:

5411. Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, *institutional*, commercial, industrial, or multi-family *structure*; or

5412. Construction or expansion of a *parking lot* for a municipal, *institutional*, commercial, industrial, or multi-family *structure* or purpose.

5420. Procedures.

Applicants for site plan approval shall submit six (6) copies and an electronic media format acceptable to the Town to the Planning Board for review, and within three (3) days thereafter shall also submit a copy of the site plan to the Board of Health, Board of Appeals, Building Commissioner, Town Engineer/Peer Review Engineer, and Conservation Commission for their advisory review and comments. The Planning Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Planning Board shall be upon a majority of those present and shall be in writing. No building permit or certificate of occupancy may be issued by the Building Commissioner without the written approval of the site plan by the Planning Board, unless sixty (60) days lapse from the date of the submittal of the site plan without action by the Planning Board.

5421. Application for Building Permit. An application for a building permit to perform work as set forth in §5410 available as of right shall be accompanied by an approved site plan

5422. Application for Special Permit or Variance. An application for a special permit or a variance to perform work as set forth in §5410 shall be accompanied by an approved site plan; in the alternative, any special permit or variance granted for work set forth in §5410 shall contain the following condition:

The work described herein requires the approval of a site plan by the Planning Board pursuant to §5400 of the Zoning By-law. Any conditions imposed in such site plan approval shall also be conditions of this special permit/variance.

5423. Where the Planning Board approves a site plan "with conditions", and said approved site plan accompanies a special permit or variance application to the Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance by the Board of Appeals.

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5424. The applicant may request, and the Planning Board may grant by majority vote, an extension of the time limits set forth herein.

5425. No deviation from an approved site plan shall be permitted without modification thereof.

5430. Preparation of Plans

Applicants are invited to submit a pre-application sketch of the proposed project to the Planning Board and to schedule a comment period at a regular meeting of the board. Site Plans shall be submitted on 24" x 36" sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1" = 40'.

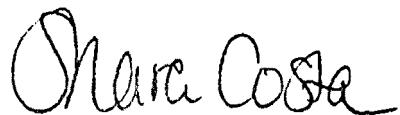
5440. Contents of Plan

The contents of the site plan may be as follows:

5441. Six (6) separate plans prepared at a standard scale or such other scale as may be approved by the Planning Board. The plans are as follows:

- a. Locus plan, at a scale of one (1") inch equals one hundred (100') feet, showing the entire project and its relation to existing areas, *buildings* and roads for a distance of one thousand (1,000') feet from the project boundaries or such other distance as may be approved or required by the planning board.
- b. Site layout, which shall contain the boundaries of the *lot(s)* in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing.
- c. Topography and drainage plan, which shall contain the existing and proposed final topography at two (2') foot intervals and plans for handling stormwater drainage.
- d. Utility plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, and all wetlands including floodplain areas.
- e. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed *buildings* and a color rendering.
- f. Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures and all

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proposed recreational facilities and open space areas.

5442. The site plan may be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.

5443. A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of *dwelling* units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this by-law.

5444. The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to Town of Dighton subdivision regulations.

5445. The Planning Board may require a Development Impact Statement as set forth in §5340.

5450. Waiver of Compliance.

The Planning Board may, upon verbal or written request of the applicant, waive any of the requirements of §5400 where the project involves relatively simple development plans or constitutes a minor site plan.

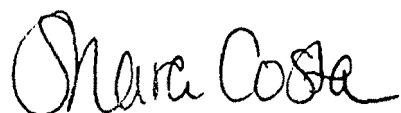
5460. Minor Site Plan.

Applications for permits to build, alter or expand any nonresidential *building*, structure or use in any district where such construction will not exceed a total gross floor area of 2000 square feet, or will not generate the need for more than 10 parking spaces, shall be deemed a minor site plan. For the purposes of computing the total gross floor area of a minor site plan, the Planning Board shall aggregate all such applications made within the five (5) previous calendar years. Unless otherwise waived at the request of the applicant per §5450, minor site plans shall set forth all of the information required by §5440; provided, however, that the scale of the site plan may be 1" = 80', and the plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey, and need not be prepared professionally.

5470. Approval.

Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. The Planning Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. New construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as to:

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5471. Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution;

5472. Maximize pedestrian and vehicular safety both on the site and egressing from it;

5473. Minimize obstruction of scenic views from publicly accessible locations;

5474. Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned;

5475. Minimize glare from headlights and lighting intrusion;

5476. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.

5477. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances;

5478. Provide adequate access to each *structure* for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Boards Subdivision Rules and Regulations;

5479. Ensure compliance with the provisions of this Zoning by-law, including parking and landscaping.

5480. Lapse.

Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant.

5490. Regulations and Fees.

The Planning Board may adopt and from time to time amend reasonable regulations for the administration of these Site Plan guidelines. The Planning Board may adopt reasonable administrative fees and technical review fees for site plan review.

5491. Any decision of the Planning Board made pursuant to this §5400 shall be appealed to a court of competent jurisdiction in accordance with the provisions of G. L. c. 40A, §17.

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Article 19
as accepted

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Marc Costa

4600. SOLAR ELECTRIC GENERATING FACILITIES

4610. Purpose.

The purpose of this Section is

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- A. to provide standards for the placement, design, construction, operation, monitoring, modification and removal of *Large-Scale* and *Small-Scale Ground-Mounted Solar Electric Installations* (see Section VI. Definitions);
- B. to minimize the adverse impacts of *Large-Scale* and *Small-Scale Ground-Mounted Solar Electric Installations* on adjacent properties and residential neighborhoods;
- C. to minimize impacts on scenic, natural and historic resources; and
- D. to provide adequate financial assurance for complete construction of approved plans and for the eventual decommissioning of such installations.

The provisions set forth in this Section shall take precedence over all other provisions of this Bylaw when considering applications related to the construction, operation, and/or repair of Large-Scale and Small-Scale Ground-Mounted Solar Electric Installations.

4620. Applicability.

The provisions set forth in this Section shall apply to the construction, operation, repair and/or removal of any Large-Scale and Small-Scale Ground-Mounted Solar Electric Installations proposed after the effective date of this Section. Such installation may proceed following issuance of a Site Plan Review Approval by the Planning Board in accordance with Section 5400 hereof and the requirements of this Section 4600 as of right as set forth in the Table of Use Regulations without the need for a special permit, *variance*, zoning amendment, waiver, or other discretionary approval, except that where there is proposed a Large-Scale and Small-Scale Ground Mounted Solar Electric Installation in a Residential District then said installation shall also be subject to the Special Permit process as set forth in 5300 hereof. Any modification of any existing Large-Scale and Small-Scale Ground Mounted Solar Electric Installation that materially alters the type, configuration, or size of such facility or related equipment shall also be subject to this Section.

Except as defined hereunder and any system which is mounted on a *building* and to which the bylaw does not apply, no other solar electric installation shall be permitted in any district.

4621. Accessory Roof-Mounted Solar Photovoltaic Installations.

Nothing in this Section 4600 shall be construed to prevent the installation, pursuant to M.G.L. c. 40A, s. 3, of accessory roof-mounted solar photovoltaic installations in any district.

4622. Exemption for Municipal Land.

Large-Scale and Small-Scale Ground-Mounted Solar Electric Installations shall be allowed to be constructed upon any municipal property meeting the requirements of this bylaw regardless of the Zoning District.

4630. General Requirements.

The following requirements are common to all Large-Scale and Small-Scale Ground-Mounted Solar Electric Installations:

4631. Minimum Lot Size:

- a. A *Large-Scale Ground-Mounted Solar Electric Installation* system may not be located on a parcel of less than eight (8) acres.
- b. A *Small-Scale Ground-Mounted Solar Electric Installation* system may not be located on a parcel of land less than the minimum lot size required under this bylaw for the district in which it is located. Notwithstanding the foregoing any Small-Scale Ground Mounted System which exceed a name-plate capacity of 50 kW Direct Current (DC) shall not be located on a parcel of land which is less than two (2) acres.

4632. Compliance with Laws, Ordinances and Regulations. The construction and operation of all such proposed *Large-Scale* and *Small-Scale Ground Mounted Solar Electric Installations* shall be consistent with all applicable local, state and federal requirements, including but not limited to, all applicable safety, construction, and environmental, electrical, communications. All buildings and fixtures forming part of a solar electric installation shall be constructed in accordance with the Massachusetts State Building Code.

4633. Site Plan Review, Building Permit. No Large-Scale and Small-Scale Ground-Mounted Solar Electric Installation shall be erected, constructed, installed or modified as provided in this Section without first obtaining approval from the Planning Board for Site Plan Approval pursuant to Section 5400 and Section 4600 of this Bylaw and without first obtaining a building permit, and all other applicable permits required by law, and paying any required fees. Any Site Plan Review Application must include documentation showing review and approval from the Fire Chief and Police Chief. In the event Site Plan Review is not completed by the Planning Board one year from the date of a completed application as determined by the Planning Board, the application shall be deemed approved. In addition to the above, any Large-Scale and Small-Scale Ground- Mounted Solar Electric Installation proposed in the Residential District must also receive a Special Permit in accordance with Section 5300 of this bylaw.

4634. Fees. The application for a building permit for a Large-Scale Ground-Mounted Solar Electric Installation must be accompanied by the fee required in accordance with the Planning Board Fee Schedule.

4635. Special Permit Granting Authority. The Planning Board shall be the Special Permit Granting Authority hereunder.

4640. Submittal to the Planning Board.

An application for Site Plan Review for a Large-Scale Ground-Mounted Solar Electric Installations shall include the following information. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts.

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- a. 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*
- b. A copy of an Interconnection Application filed with the utility including a one- or three-line electrical diagram detailing the solar electric installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
- c. Documentation of the major system components to be used, including the electric generating components, transmission systems, mounting system, inverter, etc.;
- d. Name, address, and contact information for proposed system installer;
- e. Name, address, phone number and signature of the project proponent, as well as, all co-proponents or property owners, if any;
- f. The name, contact information and signature of any agents representing the project proponent;
- g. Documentation of actual or prospective access and control of the project site;
- h. An operation and maintenance plan (see Section 4642);
- i. Proof of liability insurance;
- j. Evidence that the utility company that operates the electrical grid where the installation is to be located has been informed of the applicant's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement;
- k. Locations of wetlands and Priority Habitat Areas defined by the Natural Heritage & Endangered Species Program (NHESP);
- l. Locations of Floodplains or inundation areas for moderate or high hazard dams;
- m. A list of any *hazardous materials* proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment, as appropriate;
- n. A detailed impact study for the Utility Interconnection including information on the location and type of any poles, transformers or other electrical components required by the utility to support the proposed solar facility including electrical equipment upgrades outside the facility to allow the site to connect to the grid including any necessary tree trimming. The list of abutters shall include abutters within a 300' radius of these changes;
- o. Documentation by an acoustical engineer of the noise levels projected to be generated by the installation;
- p. Description of financial surety that satisfies Section 4690.

4641. Site Control. The applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of

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the proposed solar electric installation. Control shall include the legal authority to prevent the use or construction of any *structure* for human habitation within the setback areas.

4642. Operation and Maintenance Plan. The applicant shall submit to the Planning Board a plan for maintenance of access roads and storm water controls, as well as, general procedures for operational maintenance of the installation.

4650. Design Standards.

The following standards shall apply to any Large-Scale Ground-Mounted Solar Electric Installation.

4651. Lighting. Lighting of *Large-Scale Ground Mounted Solar Electric Installation*, including *energy storage* systems, shall be *Dark Sky* compliant and consistent with local, state and federal law. Lighting of other parts of the installation, such as accessory structures, shall be limited to that required for safety and operational purposes, and shall not cast measurable light onto adjacent properties or into the night sky. Lighting of the solar electric installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

4652. Signage. *Signs* on such installations shall comply with the Town's *sign* by-law. The following *signs* shall be required:

- a. Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger.
- b. Educational *signs* providing information about the facility and the benefits of renewable energy.
- c. Installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the facility.

4653. Utility Connections. The Planning Board may require as a condition of site plan approval that all utility connections from the solar photovoltaic installation shall be underground, after considering 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.

4654. Roads. Access roads shall be constructed to minimize grading, removal of stone walls or trees and minimize impacts to environmental or historic resources.

4655. Control of Vegetation. ~~Herbicides may not be used to control vegetation at the solar electric installation. Mowing, grazing or using geotextile materials underneath the solar array are possible alternatives. Removal of existing trees on the site should be minimized to the maximum extent feasible; the Planning Board, pursuant to the Special Permit and/or Site Plan Review process, may require that replacement trees be planted outside the Facility unless the owner is subject to the fee requirement in Section 4680.~~

[Disapproved by the Attorney General's office on February 17, 2023]

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4656. *Hazardous Materials.* Hazardous materials stored, used or generated on site shall not exceed the amount for a Very Small Quantity Generator of Hazardous Waste as defined by the MassDEP pursuant to MassDEP regulations 310 CMR 30.000 and shall meet all requirements of the MassDEP including storage of *hazardous materials* in a *building* with an *impervious* floor that is not adjacent to any floor drains to prevent discharge to the outdoor environment. If *hazardous materials* are utilized within the solar electric equipment, then *impervious* containment areas capable of controlling any release to the environment and to prevent potential contamination of groundwater are required.

In order to protect water supplies and preserve public safety associated *Energy Storage Systems* should not be located in the Zone 1 of any public water supply and should be located above the 100-year flood plain. The *Energy Storage Systems* must be located within a *structure* with the following features: an acid resistant membrane floor for potential leaks of *hazardous materials*; a temperature and humidity-maintained environment; a smoke/fire detection system, UL approved monitoring system, fire alarm fire suppression system, a thermal runaway system, and a local disconnect point or emergency shutdown feature.

The *building* and systems must be approved by the Dighton Fire Chief and must be designed and installed in accordance with all applicable State codes and safety requirements, as well as, safety measures recommended by the National Fire Protection Association. The applicant will provide specialized emergency response funding for training of Dighton Fire Department staff prior to grid inter-connection. Periodic inspections to ensure the integrity of the batteries, other equipment, and the containment systems, may be required as a condition of the Special Permit and the Site Plan Review.

4657. *Noise.* Noise generated by Large-Scale Ground-Mounted Solar Electric Installations and associated equipment and machinery shall conform to applicable state and local noise regulations, including the MassDEP's Division of Air Quality noise regulations, 310 CMR 7.10. A source of sound will be considered in violation if the source:

- a. increases the broadband sound level by more than 10 db(A) above ambient; or produces a "pure tone" condition, when an octave band center frequency sound pressure level exceeds the two (2) adjacent center frequency sound pressure levels by three (3) decibels or more.

Said criteria are measured both at the property line and at the nearest inhabited residence. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours, unless established by other means with the consent of the MassDEP.

4658. *Accessory Structures.* All accessory structures to *Large-Scale Ground-Mounted Solar Electric Installations* shall be subject to reasonable regulations concerning the bulk and height of *structures*, *lot area*, setbacks, open space, parking and *building coverage* requirements. All building setbacks shall be in conformance with Appendix B. All such

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accessory structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. To the maximum extent feasible, *structures* which are visible or directly adjacent to residentially zoned or occupied properties or which are adjacent to a public way shall be screened from view by landscaping or other means and/or joined or clustered to avoid adverse visual impacts.

4659. Dimensional and Density Requirements; Setbacks.

- a. For *Large-Scale Ground-Mounted Solar Electric Installations*, front, side and rear setbacks for system components shall be as follows:
 - I. *Front yard*. The front *yard* depth shall be at least 75 feet and shall be measured from the roadway right of way center line; provided, however, that where the *lot* abuts a Residential district, the front *yard* shall not be less than 100 feet.
 - II. *Side yard*. Each side *yard* shall have a depth at least 100 feet, and at least 200 feet from any *dwelling* on another parcel as measured from the closest point of the array.
 - III. *Rear yard*. The rear *yard* depth shall be at least 100 feet, and at least 200 feet from any *dwelling* on another parcel as measured from the closest point of the array.
 - IV. *Buffers*. A natural buffer shall be provided around the entire facility, including the Large-Scale Ground-Mounted Solar Electric Installation and any accessory structures, for the purpose of screening from view the same by a person standing at ground level, from adjacent streets and properties. Such buffering can be existing vegetation or landforms, or new plantings. Said buffer shall be at least 50 feet deep and shall be continuous, save only where access drives must pass through the buffer. Said buffer shall conform with setback requirements in Appendix B. Such vegetation shall be of a type that will grow to at least 10 feet within five years of the completion of construction of the Large-Scale Ground-Mounted Solar Electric Installation. When vegetation is planted, at least 75% of such planted vegetation shall be evergreen species. Landscape plans, showing existing and proposed vegetation shall be provided as part of the Site Plan, with specifications as to type and size noted so that it can be clearly understood what will be planted.
- b. For *Small-Scale Ground Mounted Solar Electric Installations*, front, side and rear setbacks for system components shall be in accordance with the setbacks required for accessory *structures* within the district in which it is located, but in all events shall be at least 100 feet from any *dwelling* on another parcel.
- c. For *Energy Storage Installations*, in order to secure public safety concerns the following shall be as follows:
 - a. Fire Department must have access to a municipal maintained public water supply within 800 feet of the center point of the Battery *Energy Storage* System modules, but at no time should be located any closer than 100 feet from nearest Battery *Energy Storage* System. Adequate water supply shall be determined by

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the applicable public water supplier and the Dighton Fire Chief.

- b. No less than 200 feet from any property line
- c. No less than 100 feet from the tree line/vegetative buffer
- d. Waivers: Notwithstanding the aforementioned setback requirements, the Planning Board, as appropriate, shall have the authority to waive setback requirements based on site-specific conditions, and only after review of substantial evidence, including but not limited to, detailed engineering reports or product engineering certification, which demonstrate that safety concerns have been minimized and that setbacks have been complied with to a reasonable extent.

4660. Safety and Environmental Standards

The following standards shall apply to any Large-Scale Ground-Mounted Solar Electric Installations.

4661. Emergency Services. The *Large-Scale Ground-Mounted Solar Electric Installation* owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the 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.

4662. Unauthorized Access. Installations shall be surrounded by security fencing of at least eight (8) feet or other suitable barrier approved by the Planning Board including locked gates to prevent unauthorized access. Electrical equipment shall be locked where possible. Keys for all locks on the premises must be stored in a Knox Box maintained and approved by the Fire Department for use in the case of an emergency.

4663. Land Clearing, Soil Erosion and Habitat Impacts. Given the nature of the need for no shadowing and maximum exposure of the solar panels to the sun, clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the installation or otherwise prescribed by applicable laws, regulations, and bylaws. Such installations shall not occur on any slopes greater than 15% in order to minimize erosion. All facilities must be located at least 100 feet from any wetland or Priority Habitat Area as delineated in accordance with the Massachusetts Endangered Species Act Regulations at 321CMR 10.00 or successor regulation.

4670. Monitoring, Maintenance and Reporting

4671. Solar Electric Installation Conditions. The owner or operator of the Large-Scale Ground-Mounted Solar Electric Installation 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 Management Director. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access

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road(s), unless accepted as a public way.

4672. Modifications. All material modifications to a solar electric installation made after issuance of the required building permit shall require approval by the Planning Board.

4673. Annual Reporting. The owner or operator of the installation shall submit an Annual Report which certifies compliance with the requirements of this bylaw and their approved site plan including control of vegetation, noise standards, and adequacy of road access. The Annual Report shall also provide information on the maintenance completed during the course of the year and the amount of electricity generated by the facility. The Annual Report shall be submitted to the Board of Selectmen, Planning Board, Dighton Fire Chief, Emergency Management Director, Building Commissioner, Board of Health, Stormwater Committee and the Conservation Commission no later than 45 days after the end of the calendar year.

4680. Abandonment or Decommissioning

4681. Removal Requirements. Any Large-Scale Ground-Mounted Solar Electric Installation which has reached the end of its useful life or has been abandoned consistent with Section 4680 of this bylaw shall be removed. The owner or operator shall physically remove the installation within 150 days of abandonment or the proposed date of decommissioning and if not, the town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous or decommissioned *Large-Scale Ground Mounted Solar Electric Installation*. As a condition of Site Plan or Special Permit approval, an applicant shall agree to allow entry to remove an abandoned or decommissioned installation. The cost for the removal will be charged to the property owner in accordance with the provisions of M.G.L. 139, Section 3A as a tax lien on the property. The owner or operator shall notify the Planning Board 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 Electric Installation, structures, equipment, security barriers and transmission lines* from the site, including any materials used to limit vegetation.
- (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 Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

4682. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar electric 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 Electric Installation* fails to remove the installation in accordance with the requirements of this Section within 150 days of abandonment or the proposed date of

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decommissioning, the Town may enter the property and physically remove the installation.

4683. Financial Surety. The applicant for a Large-Scale Ground-Mounted Solar Electric Installation shall provide a form of surety, either through escrow account, bond or other form of surety approved by the Planning Board to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than one-hundred twenty-five percent (125%) of the cost of removal and compliance with the additional requirements set forth herein, as determined by the applicant and the Town. Such surety will not be required for municipally- or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer at the time of application for Site Plan Review. The amount shall include a mechanism for calculating increased removal costs due to inflation.

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Large-Scale Ground-Mounted Solar Electric Installation: A solar photovoltaic system, including ground mounted hot water collectors or other solar collector, on a parcel of at least eight (8) acres that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW Direct Current (DC).

Large-Scale Mounted Solar Photovoltaic Installation: A solar photovoltaic system, including ground-mounted hot water collectors or other solar collector, on a parcel of at least eight (8) acres that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 1 MgwDC.

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ARTICLE 20 As Amended

Pg 1062

ARTICLE 20. To see if the town will vote to amend the Town of Dighton General Bylaws by adding a new Article to be inserted after Article XLI as follows:

ARTICLE XLII - Town Budget Bylaw

Section 1.1 Fiscal Year

The fiscal year of the Town shall begin on the first day of July and shall end on the last day of June, unless another period is required by the General Laws of the Commonwealth of Massachusetts.

Section 1.2 Purpose

The purpose of this bylaw is to provide a structure to guide the development and review processes with regard to the Town's operating budget prior to consideration at Town Meeting, to mandate early, timely budget deliberations, to reinforce collaboration and communication. This Bylaw thereby sets forth the process for development of the annual budget presented to Town Meeting.

Section 1.3 Financial Team

There shall be a Financial Team comprised of the Town Administrator, Town Accountant, Treasurer/Collector, Principal Assessor, Town Clerk and Human Resources. The Financial Team shall meet periodically during the fiscal year to review revenue and expenditure trends, develop projections, and assess financial matters as they relate to current, future and forecasted fiscal planning efforts, including those relating to the development of the annual town operating budget.

Section 1.4 Budget Schedule for Town Departments, Boards and Committees

On or about January 1, the Town Administrator shall forward to all Departments, Boards and Committees a budget schedule, which shall include time frames and deadlines for actions necessary to prepare the annual operating budget, together with forms on which each department's budget shall be submitted and the Board of Selectmen's budget priorities and guidelines for budget preparation. This schedule shall include a date, no later than February 1 for the Departments and Committees to submit their budgets for review. The Town Administrator and Town Accountant shall then meet with department, board and committee representatives to review and make recommendations on proposed departmental budget requests.

Guidelines for Department and Committee budgets are as follows:

- a) Payroll figures must be verified by Department Heads with the Town Accountant to confirm adherence to applicable collective Bargaining Agreements or employment contracts. Requests for any salary increase or increase in hours outside of those already approved/negotiated must be submitted prior to budget submittal.
- b) The Town Administrator, with approval from the Board of Selectmen, will provide direction to departments with regard to proposed wage increases for non-union employees.
- c) Budgets must be voted on and signed by a majority of board/committee members, if applicable. The date of vote should be listed. Department Heads must also sign their budgets.

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ARTICLE 20 Cont. 7-2-22
AS Amended

d) If applicable, projected Estimated Receipts should be included by Department (i.e., enterprise fund, revolving fund, fees, etc.) for the upcoming fiscal year.

Section 1.5 Town Administrator Proposed Balanced Budget Recommendation and Letter

On or around March 1, the Town Administrator, with input, support and recommendation from the Town Accountant, shall submit to the Board of Selectmen and Finance Committee a proposed balanced budget for the ensuing fiscal year with an accompanying budget message and supporting documents.

The Town Administrator shall provide a budget message which shall explain the budget for all town departments both in fiscal terms and from a programmatic perspective. It shall outline proposed financial conditions of the town for the ensuing fiscal year, describe important features of the budget, indicate any major variations from the current year in financial conditions, expenditures and revenues together with the reasons for such changes, summarize the town's debt position, and include other material as the Board of Selectmen and Finance Committee may reasonably require.

Section 1.6 Board of Selectmen and Finance Committee Review and Recommendations

Upon receiving the Town Administrator's proposed balanced budget recommendation, letter and accompanying materials, the Board of Selectmen and Finance Committee shall meet jointly to conduct budget reviews with Department Heads, Boards and Committees to review proposed balanced budget recommendations before making their respective budget recommendations.

The final respective budget recommendations of the Board of Selectmen and Finance Committee shall be made in accordance with Section 2 of Article 1 of the General Bylaws of the Town of Dighton with respect to the posting of said recommendations in the Annual Town Meeting Warrant.

Board of Selectmen Recommends

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Shara Costa

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ARTICLE 22

ARTICLE II FINANCE

Section 1.

*Current
Bylaw*

At the annual meeting and before the final adjournment thereof, there shall be appointed by the moderator a finance committee consisting of seven members to serve until the final adjournment of the next annual meeting, and until their successors have been appointed, none of whom shall be an officer of or member of any board of the Town. Vacancies shall be filled by the remaining members of the committee.

(STM 08/24/20)

ARTICLE II FINANCE

Section 1.

*Bylaw
as Amended*

At the annual meeting and before the final adjournment thereof, there shall be appointed by the moderator a finance committee consisting of seven members to serve until the final adjournment of the next annual meeting, and until their successors have been appointed, none of whom shall be an officer of or member of any board of the Town. Vacancies shall be filled by the remaining members of the committee. Town Residency shall be a requirement to serve on the Finance Committee.

(Proposed Amendments STM 10/30/23)

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