

Regulating Solar Energy Systems at the Local Level in Massachusetts

Frequently Asked Questions

1. **Question:** Should a municipality adopt these provisions as a general bylaw or a zoning bylaw?

Answer: First, solar energy systems are a type of land use. Also, because the statutory language that addresses solar energy systems is found primarily under Chapter 40A, which addresses zoning, the Zoning Bylaw/Ordinance is the appropriate place to regulate these systems.

2. **Question:** Can a local government prohibit large-scale solar energy systems within their municipality?

Answer: Given the plain language of the statute, DOER believes that it is prudent for communities to allow large-scale ground-mounted solar energy systems somewhere in the community. However, the answer to this question hinges on understanding of the solar exemption under Chapter 40A Section 3, and DOER is unable to provide a definitive interpretation of unreasonable regulation of large-scale ground-mounted solar energy systems. As drafted, the model zoning allows large-scale ground-mounted solar energy systems in most zoning districts via Site Plan Review. It prohibits such systems in one residential district and allows them upon issuance of a Special Permit in another residential district. This approach recognizes that some communities presently require a Special Permit to install a large-scale ground-mounted solar energy system, and/or restrict such facilities to certain districts. These systems are by definition large, even if they have relatively benign impacts compared to other land uses. Thus, a higher degree of municipal control over the location and permitting of such systems may not be inconsistent with the Chapter 40A Section 3 mandate that regulations be reasonable and necessary to protect public health, safety, or welfare.

DOER acknowledges that this Guidance represents our own understanding of state law and has made every effort to carefully research this issue. While DOER believes our interpretation is reasonable, we anticipate that municipal legal counsel may offer a different interpretation and that communities will need to consider these alternatives moving forward.

3. **Question:** Can a local government prohibit all solar energy systems within a local historic district?

Answer: In DOER's opinion an outright ban on solar energy systems in a local historic district is inconsistent with state statute, and proposed solar installations should be considered on a case-by-case basis. In Chapter 40C Section 7, the language clearly states



the need for Historic Commissions to consider the policies of the Commonwealth related to solar energy systems. One way for local Historic District Commissions to advance their mission while considering the policy of the Commonwealth to encourage the use of solar energy systems and to protect solar access is to adopt thoughtful design guidelines that can help ensure that solar energy systems are sited in a manner that also meets the goals of historic preservation.

4. **Question:** If a municipality has already adopted a large-scale ground-mounted solar overlay district consistent with DOER's earlier model zoning, then do they need to make any other changes to their zoning?

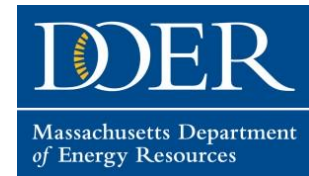
Answer: DOER's *Model As-of-Right Zoning Bylaw: Allowing Use of Large-Scale Ground-Mounted Solar Photovoltaic Installations* provides language for allowing large-scale solar photovoltaic systems in designated locations and was specifically developed for the Green Communities designation and grant program. DOER's more recent *Model Zoning for the Regulation of Solar Energy Systems* applies to all solar energy systems, and communities are advised to review their zoning bylaws or ordinances to determine how they currently regulate all scales and types of solar energy systems to be consistent with state law.

5. **Question:** Does a local government need to incorporate provisions to protect solar easements to be consistent with state law?

Answer: State law allows communities to use their Zoning Bylaw/Ordinance to establish districts that would protect solar access as well as provides for the ability to use a Special Permit process to impose restrictions on neighboring properties for the purposes of protecting access to sunlight. However, it does not require communities to implement these provisions.

6. **Question:** Our municipality would like to get started on this, and we don't know where to begin. How do we get started on encouraging solar energy within our municipality?

Answer: We recommend that you first review DOER's regulatory and policy guidance documents. The next step is to start the discussion with local officials, particularly zoning enforcement agents (e.g., building inspector, etc.) and permit granting authorities (e.g., Zoning Board of Appeals, Planning Board, etc.). Creating a shared understanding among local officials of the unique legal framework established by Massachusetts General Law will help to manage expectations of the community as a whole moving forward. We also recommend involving any local solar energy system installers in the discussion, as they have the most experience and a great deal at stake in the regulations. Many communities have found it useful to create a local energy committee made up of



local government staff and volunteers. DOER has produced a guidance document on tips for organizing an energy committee, which is available under “Opportunities and Publications”, on the DOER Green Communities website: mass.gov/energy/greencommunities. In addition, your Green Communities Regional Coordinator is always available as a resource. You can find your Regional Coordinator also on the DOER Green Communities website.

7. **Question:** We have already defined solar energy systems, but our definitions and/or size thresholds are different than what is recommended here. Do we need to change them?

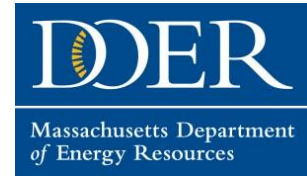
Answer: No, communities can choose their own size thresholds. The model zoning language presented today is not intended for adoption precisely as it is written. Communities will need to carefully consider how this language may be modified to suit local conditions and where it should be inserted into an existing Zoning Bylaw/Ordinance. Further, it is highly recommended that any language adapted from this model be reviewed by municipal counsel prior to adoption. We do recommend that communities keep in mind the general premise of the state law, which is that solar energy systems (with no mention of size or type) may not be prohibited or unreasonably regulated except where necessary to protect the public health, safety or welfare.

8. **Question:** Our municipality does not have site plan review. How do you suggest we regulate solar energy systems in the absence of a site plan review process?

Answer: If your municipality does not currently have a general site plan review process, it may be advantageous to adopt a site plan review process specifically for solar energy systems as described in the model zoning guidance.

9. **Question:** Are there similar guidance documents for other types of renewable energy?

Answer: This more detailed guidance is being provided because of the unique legal framework established by Massachusetts General Law as it relates to solar energy systems specifically. However, the DOER Green Communities Division serves as a resource for all Massachusetts cities and towns interested in reducing their energy use and carbon footprint. There are a variety of resources for different types of renewable energy on our website at mass.gov/energy/greencommunities including model zoning for wind energy systems. In addition, the Smart Growth / Smart Energy Toolkit available at http://www.mass.gov/envir/smart_growth_toolkit/ includes a variety of useful energy related material.



10. **Question:** Where can I go for more information?

Answer: The *Model Zoning for the Regulation of Solar Energy Systems* and the *Policy Guidance for Regulating Solar Energy Systems* documents may be found at <http://www.mass.gov/eea/docs/doer/green-communities/grant-program/model-solar-zoning.pdf> and <http://www.mass.gov/eea/docs/doer/green-communities/grant-program/model-solar-zoning-guidance.pdf> . A webinar recording and presentation discussing these documents is located at <http://www.mass.gov/eea/energy-utilities-clean-tech/webinar-future-and-archive.html> .We also encourage you to visit the DOER Green Communities website at mass.gov/energy/greencommunities for more general information including a question and answer document on ground-mounted solar photovoltaic systems.

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