Committee on Legislative Matters
and the Northampton City Council

Members:
Councilor William H. Dwight, Chair
Councilor Maureen T. Carney
Councilor Alisa F. Klein
Councilor David A. Murphy

MEETING AGENDA

Date: April 8, 2019
Time: 5 p.m.
Location: City Council Chambers
212 Main St., Northampton, Massachusetts

1. Meeting Called to Order and Roll Call
2. Public Comment
3. Approval of Minutes of Previous Meeting
   A. Minutes of February 11, 2019 Joint Planning Board/Legislative Matters Committee Meeting
      Documents:

   02-11-19_Joint Committee_on_Legislative_Matters-PB_Mtg.pdf

4. Items Referred to Committee
   A. 18.231 An Ordinance Relative to Large-Scale Ground-Mounted Solar Arrays - Continuation of Public Hearing from 2/11/2019
      History:
      - Referred to Legislative Matters Committee and Planning Board - 1/17/2019
      - Alternate version proposed by Public Shade Tree Committee
      - PB opted for its own amendments; positively recommended ordinance as amended - 3/28/2019
- Public Shade Tree Committee endorsement withdrawn

Documents:

18.231 An Ordinance Relative to Large-Scale Ground-Mounted Solar Arrays PostPBAAction.pdf

B. 19.011 An Ordinance Relative to Bicycle Share Services • referred to LM and TPC, 3/7/2019

History:
- Referred to Legislative Matters Committee and Transportation and Parking Commission (TPC) • 3/7/2019
- Positive recommendation, TPC • 3/19/2019
- Reviewed by Bicycle and Pedestrian Subcommittee of TPC
- Amended to add definition of ‘Electric Assist Scooter,’ etc.

Documents:

19.011 An Ordinance Relative to Bicycle Share Services•POST BIKEPED.pdf

5. New Business

6. Adjourn

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Joint Meeting of the Planning Board and City Council Committee on Legislative Matters and the Northampton City Council

Members
Councilor William H. Dwight, Chair
Councilor Alisa F. Klein, Vice Chair
Councilor Maureen Carney
Councilor David A. Murphy

MEETING MINUTES

Date: February 11, 2019
Time: 5 p.m.
Location: City Council Chambers, 212 Main St., Northampton, Massachusetts

1. **Meeting Called to Order and Roll Call:** At 5 p.m., Acting Chair Alisa Klein called the meeting to order. On a roll call, the following councilors were present: Maureen Carney, Alisa Klein and David Murphy. **Absent:** William H. Dwight. Also present were City Solicitor Alan Seewald, City Councilor James Nash and Senior Planner Carolyn Misch.

   **Planning Board Members:** Christa Grenat, George Kohout, Alan Verson, Janna White, Sam Taylor.

   Councilor Klein announced that the meeting was being audio and video recorded for broadcast by Northampton Community Television.

2. **Minutes of January 14, 2019**
   Councilor Carney moved to accept the minutes of January 14, 2019. Councilor Murphy seconded. The motion passed unanimously 3:0 with one absent (Councilor Dwight).

3. **Public hearing on proposed zoning change**

   Councilor Klein introduced the public hearing and announced that she would read the amended version of the ordinance [with changes as recommended by the City Solicitor]. Councilor Klein read the text of the ordinance.

   Councilor Murphy moved to open the public hearing. Councilor Carney seconded. The motion passed unanimously 3:0 by voice vote with one absent (Councilor Dwight). The public hearing was opened at 5:15 p.m.
Attorney Seewald noted that what is formally before the board is the original version as referred by City Council so there is a need to read this version into the record. Most of the changes were to the last section, he advised. Members agreed by consent to read just the portion of the original ordinance that was substantially changed. Councilor Klein proceeded to read this section.

A member of the audience said there was another version of the ordinance endorsed by the Tree Committee. Councilor Klein explained that this version was not formally before them because it was not referred by City Council to Legislative Matters and the Planning Board.

A. 18.231 An Ordinance Relative to Large-Scale Ground-Mounted Solar Arrays
As background, Ms. Misch explained that, in 2011, the city adopted specific provisions for solar installations particularly focused on ground-mounted systems. At that time, the ordinance differentiated between different types of ground-mounted systems: 1) those accessory to buildings and intended to provide electricity to private property, 2) utility-scale systems at a landfill or airport and 3) large-scale, ground-mounted systems not meant to provide energy for use at the site but to provide energy for selling to the grid or other users. (A special permit requirement was added for these large-scale systems.) At the time, a threshold was adopted providing that at no time could applicants clear-cut 25,000 board feet or greater and at no point would a special permit be granted for the city’s primary agricultural areas: i.e., the Special Conservancy District in the flood plain along the Connecticut River.

The 25,000-board-foot threshold was based on the Massachusetts Department of Agriculture threshold for obtaining a Forest Cutting Plan, she noted.

Since 2001, planners have gradually tweaked the districts in which solar systems are allowed either by right or by site plan, tweaked setback requirements and revisited whether to allow solar systems in the flood plain on primary agricultural soils and food production areas. When this restriction was reevaluated, planners heard from the agricultural community that it didn’t want to allow solar arrays on agricultural areas.

In the interim, Northampton has had more and more interest from private developers in installing large-scale, ground-mounted solar arrays, Ms. Misch continued. Three have been approved, including one at the former landfill, but it was discovered that there were some issues that the tweaks did not address. Primarily, there is a loophole in the restriction against tree removal in that someone could clear-cut property today and come in three or four months from now to apply for a special permit for a photovoltaic solar array.

In another issue, planners want to continue to protect agricultural lands but this means they are restricting development in the floodplain and so need to make other locations available for large-scale solar developments. City officials want to make sure they are creating a balance in all of the interests they are trying to protect, including the interest in promoting renewable energy sources, she observed.

The original version of the new solar ordinance submitted to the City Council maintained the special permit criteria but added conditions an applicant would have to meet. After further review with the City Solicitor, he raised concerns about the statutory exemption in state law around municipalities’ ability to restrict solar development. In 1985, the state statute was amended to say municipalities cannot prohibit or unreasonably regulate solar installations to the point that it effectively restricts them altogether. It is generally agreed that the 1985 amendment was directed to rooftop solar systems that would support on-site uses because the technology wasn’t there for large-scale installations at the time and nobody was building them. The law hasn’t caught up to the technology, she suggested.
They now have large-scale five-megawatt systems that are definitely different than what was envisioned in 1985. However, it is an open question throughout the state as to whether the statute applies to these systems since court cases have not been decided about whether cities can actually say no to them. They thought it prudent not to put the city on the path of potential legal challenge by potentially restricting these installations. Further, the city solicitor advised that the 2011 language probably could not withstand legal challenge. This is what led to the proposed amendments to what was first introduced, she concluded.

The primary changes are to eliminate the special permit prohibition on removing 25,000 board feet of timber and instead create a threshold that’s more understandable to most of the public; i.e. – based on the acreage of trees being removed; also, to create a Site Plan Review process that clearly states that these systems are allowed as of right but that certain criteria must be met. The amendment changes the board foot calculation to five acres of tree clearing and creates a standard of review that would require that at least 50% of the land be protected from development for the duration of the time the system is in place. Also, new language requires that stumps remain in place on site to address concern about maintaining carbon in the ground. Recent information indicates that, in New England, carbon is sequestered mainly in the ground so that, when stumps are removed, that is when most of the carbon is released. Leaving stumps in place and mounting solar panels on top provides some element of protection, she suggested.

Other special permit criteria related to clearing within the 200-ft Riverfront Area or 100-foot buffer were proposed to be deleted because that area is already under the jurisdiction of the Conservation Commission, Ms. Misch related. The city solicitor suggested that the Planning Board can’t really override and work in the jurisdiction of the Conservation Commission since its job is to determine if there’s an impact to those areas regulated by the Wetlands Protection Act (WPA). Doing so falls into the category of an additional burden that may be challenged under the Chapter 40A, Section 3 exemption for solar.

The rest of the language contains small tweaks that planners feel will make it a little easier to permit systems they want to encourage, such as those over landfills and parking lots and at airports.

Attorney Seewald began by reading aloud the section of the Zoning Act that protects solar uses 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 and welfare.”

The term ‘necessary to protect’ is a very strict, stringent standard, he stressed. He agreed that, being decades old, the law is completely out of date and should be revised. However, the legislature knows this and has chosen not to change it, so they are stuck with it and this is what they have to apply.

In addition to being city solicitor he has represented solar companies. Most solar arrays go on farmland because large solar arrays need multi-acre parcels of flat open space most often found on farms. The legislature has put a heavy thumb on the scale in favor of solar and in order to prohibit it, municipal officials have to be able to show and prove that it’s necessary to protect the public health, safety and welfare, he explained.

When he read the first iteration, he saw “no work or disturbance [allowed] within 100 feet of any state-protected bordering vegetated wetland. . . .”
An applicant can go before the Conservation Commission and get an Order of Conditions to work in this buffer zone so he thought it was not possible to argue that the prohibition is necessary to protect public health, safety and welfare. This “cuts strongly against any notion that working within 100 feet of a bordering vegetated wetland imperils the health, safety and welfare of people of this city.”

He understands the need to protect the tree canopy and farmland and to find alternative sources of energy to fossil fuels, he assured. These are all laudable goals competing in this arena. However, he feels the city is somewhat constricted in putting a heavy thumb on trees when the legislature has already put a heavy thumb on solar.

He is not saying there is no other way to balance competing interests, he professed. Instead of restricting clearing to five acres, planners could get an expert to tell them exactly how much carbon is going to be released from an area of proposed clearing. Five acres is an arbitrary number, he suggested. In other words, the city can’t just pick five acres and say 4 ½ acres doesn’t pose the same threat to health, safety and welfare as five acres. City officials have to prove that the benefit from the solar is overridden by the detriment from cutting the trees in any particular case, he clarified.

**PUBLIC COMMENT**

Northampton resident Lilly Lombard announced her intention to speak wearing two different hats - as chair of the Northampton Public Shade Tree Commission (PSTC) and as private citizen and activist. As PSTC chair, the committee learned Friday that there were substantive changes to the draft ordinance which they voted to endorse January 2nd, she related. In order to put their stamp of approval as a board, they need to be able to deliberate and they are only able to do so within an open meeting.

She read aloud an official statement stating that the version under consideration is materially different from the version endorsed by her committee. She respectfully requested an additional month for the committee to be able to consider the amended version and discuss it during an open meeting before giving its formal endorsement.

As a private citizen, Attorney Seewald’s remarks about the arbitrariness of considering five acres are very well-taken, Ms. Lombard continued. It makes her feel like they need to step back and really start all over.

In terms of the interpretation of Chapter 40A, she went to the Department of Energy Resources (DOER) website, which acknowledged the lack of clarity in interpretation of this law, she shared. She quoted a post from the site as follows: “Regarding large-scale, ground-mounted solar energy systems, DOER is unable to provide a definitive interpretation of ‘unreasonable regulation’ under Chapter 40A, § 3.”

The website goes on to say, “Given the plain language of the statute, DOER believes that it is prudent to allow large-scaled ground-mounted solar energy systems somewhere in the community.” However, it continues, “... a higher degree of municipal control over the location and permitting of these systems may not be inconsistent with Chapter 40A, Section 3..."

She is hoping they take a little time to go back to the drawing board to draft an ordinance that both allows for solar production some appropriate place in the city while protecting the services trees provide, Lombard reiterated. Along with carbon sequestration, there are other measurable benefits to trees that both enhance public health and welfare and should be taken into consideration, she concluded.
David Roitman of 575 Bridge Road informed members he represents a workgroup of Climate Action Now focused on farming, forests and food systems. One of its advisors is Professor William Moomaw, a leading climate scientist. It was very timely that Attorney Seewald pointed out the arbitrary nature of a clearing limit of five acres and the opportunity for more precise science on this because Professor Moomaw is working on this exact question right now.

Mr. Roitman referred to an e-mail exchange with Mr. Moomaw, lead author of several releases from the International Panel on Climate Change (IPCC). Mr. Moomaw is very attached to the idea that society has basically 12 years to change the way it does things so that greenhouse gas emissions are significantly lowered.

While it is entirely appropriate that a primary focus of this meeting be the legal aspect, that is not the only perspective, he reminded.

Mr. Moomaw's comments strongly suggest what Ms. Lombard has advocated; i.e. - slowing down and making sure they get this right. One point he has emphasized in recent talks is new knowledge and insights about the correlation between the age of trees and how much carbon they sequester. There is new understanding of how important it is to keep older trees in the ground. Another point in his correspondence is that in considering solar vs. trees, it is necessary to not just look at what trees contribute to carbon sequestration but to consider all the other things trees do, including water evaporation, lowering the urban heat island effect, cleaning the water and air of pollutants, etc. The fact that Mr. Moomaw is working on this very issue now and that the results of his work are likely to have a strong bearing on what they're considering all strongly support proceeding with all due care, he suggested.

John Skibiski of 50 Hastings Heights commented that, although a strong supporter of conservation and environmental issues, he realizes that life calls for constant rebalancing and that it is necessary to give up some good to accomplish another end. They have to balance their programs and decide whether they want solar energy or fossil fuel. If they want solar energy, they have to decide whether to build on crop land where somebody raises corn or cattle or on a standing wood lot; which are they going to give up? They really don't want to give up either, but if someone wants to build furniture or a house they're going to have to cut down some trees. He suggested a realistic approach; that the ordinance be usable to those who want to get involved in the solar industry. The city also benefits because there is a Payment in Lieu of Taxes (PILOT). Would they rather have small units scattered all over the city or medium-sized operations in specific locations? He asked rhetorically. Solar farms can't go everywhere, he pointed out. They're not going to be next door and they can't be in town but have to be on the outskirts where there is some space.

He is no solar technician but is a promoter and supporter of solar programs. He is proposing that the city make the ordinance usable for the solar industry and that, in regards to space, planners allow the cutting of 20 acres of timber in order to put in a moderate program if necessary. That would allow for a moderate-sized unit. He doesn't have the expertise to go into the details of the methodology, but a 20-acre clearing would give room for about a three-megawatt unit that would be usable for public purposes. If it were adequately arranged with screening, etc. he would think it would be a complement to the community. He doesn't see that as being unreasonable; he sees it as being a reasonable approach to doing what they're all after – reducing fossil fuel consumption.
He acknowledged there is a tradeoff. The community loses some forest area but gains the promise of solar energy which is long-lasting. He advocated giving further study to the proposal and working out technical terms, but, basically, “it should work, it should not be a hindrance to the community.” The tradeoff would be a patch of woodlands, which Northampton has a lot of, he pointed out. Solar developers can crown-prune trees at the perimeter to allow for maximum sun exposure, he added.

Garrett Stover of 55 Fairview Avenue said he has three solar systems and is an alternative energy advocate. His original comment to them was going to be that they aren’t protecting enough. He understands the constraints the state has left in place but it sounds as if a quantitative analysis of net carbon offset for any non-site serving solar system is ‘something they could get away with.’ He is also intrigued that constraints on solar installations related to aesthetic buffers don’t seem to be in conflict with state law according to the solicitor’s interpretation. If that is the case why aren’t other concerns not directly related to public safety admissible? He asked.

He will be very curious to see what happens when people in wealthy communities in the eastern part of the state who don’t want to look at solar panels start getting involved. He would be interested to see what sorts of challenges and, frankly, what sort of courage other communities have. He would much rather see Northampton continue to uphold its commitment to environmental quality and natural resources on which it has spent a great deal of time and money. The western part of the city has a magnificent portfolio of conservation land, and “it would be a tragedy to lose that.”

In browsing solar industry websites, he noted that, “we’re talking private equity here.” As an ancillary of the business activity and investment, there is a benefit, he acknowledged. But, “these people do not care about your community, they will clear cut as many acres as they possibly can.” An 8% annual return on investment “sounds pretty sweet to me,” he said. The Park Hill Road solar facility has been sold twice, he noted.

“Stay awake and please do whatever you can,” he urged.

Emily Melzer of Olive Street said she is here as a concerned citizen and parent of two children growing up in Northampton and the planet. When she received the [public hearing] notice and saw the big changes, she thought they were significant. It is surprising to her that this is the first she’s heard about such big changes to the trees. A special permit process seems like a great choice because it allows the public to look at small things. To allow clear-cutting for an unlimited amount of acreage for solar systems with a life span of 20 years “feels like a really big decision,” she observed.

There doesn’t seem to be a clear winner in the argument against the value of solar energy vs. the value of trees, she observed. She urged them to do whatever they could within the limit of the law to keep the public voice and allow for a special permit.

She did a little research Friday and found some interesting examples. New Marlborough spent about a year revising its solar policy working closely with a planner from Berkshire Planning. Its zoning does maintain the special permit requirement for certain sizes and places.

Townsend pulled back some of its special permit requirements but not all of them. A notation at the top of an ordinance adopted said “Approved by the Attorney General.” She would like to see what can be learned from other towns and what experts they could bring in to guide them in this process. She reached out to Jo
Comerford’s office and would love to see what they could do at the state level. She would be interested to know why the issue hasn’t been tested in a single one of the communities with special permits in place.

Rebecca Neimark of Columbus Avenue said she thinks it would be counter to public health, safety and welfare if, in clear-cutting trees to create a solar array, they release more carbon than can be saved by solar energy. She too encouraged the board to slow down and try to find a way to protect the health of the community and their future.

Naila Moreira - Northampton resident and teacher at Smith College – said she is in support of all those who spoke in favor of slowing down and considering new ways to retain forest land. She doesn’t see any reason forest land should be lower in priority than farmland considering the many benefits of trees. Carbon sequestration is just one piece of the puzzle; trees as they know provide improved air quality and filter ground water, and residents in areas of trees have lower levels of cortisone and stress hormones.

The point of solar being a private-equity investment is also very well-taken, Ms. Moreira observed. She stressed the need to recognize that they can by their regulations provide incentives for people to put solar systems in places where they would be most appropriate. She cited a statistic that there is 125 megawatts of solar capacity on top of municipal facilities in Massachusetts in cities with populations over 100,000. The City of New Bedford alone put 16 megawatts of solar on top of its municipal buildings, she related. New technologies are coming on board like solar shingles and solar roads which hopefully they will move to. In the meantime, trees have a really long lead time to get them back so short-sighted decisions to chop them down will have really long-term consequences. She supported the proposal to slow things down.

Marty Nathan of 24 Massasoit Street joked that “we’ve all got to be Loraxes in this time.” She looked up on the web the public health importance of trees and found that in addition to producing oxygen, intercepting airborne particulates and reducing smog - enhancing a community’s respiratory health - access to trees in green spaces and parks promotes greater physical activity and reduces stress and blood pressure, etc.

“I think we all know that trees do more than sequester carbon,” she concluded. The latest climate literature contains hair-brained schemes to sequester carbons while trees have been doing it for eons. She agrees with the slowdown and accepts the possibility that if they move forward, they may have to face legislators and the courts.

John Cohen of Island Road said they are overlooking the fact that, not only is the planet in a climate crisis, it is in a crisis of natural biodiversity. Trees and forests are primary habitat of non-human creatures. They are living in an era when the insect population is becoming extinct. The giant web of life of which humans are a minor part requires them to do what they can now not to destroy the web of life that supports them.

Councilor Klein offered the opportunity for Planning Board and Legislative Matters Committee members to pose questions.

In response to a question from Councilor Carney, Ms. Lombard confirmed that the PSTC no longer recommends this version of the ordinance because they haven’t had a chance to discuss it.

Ms. Misch said it makes sense to take their time moving forward but the only drawback is that trees can still be cut in the meantime since there is a loophole in current zoning. In the interim it may make sense to provide some framework for further review, she suggested.
Members asked questions and offered comments. Mr. Verson expressed the opinion that the real question is whether an acre of trees creates more benefit than an acre of solar panels. He doesn't think they can move forward until they get solid information on this point, he said. There is an implicit assumption by PSTC members that trees are better but this may or may not be true. He personally doesn't see a problem with delaying adoption for a couple of months.

Attorney Seewald apologized to Ms. Misch if she came away from their conversation with the idea that a special permit is not allowed. A special permit can be required but when all the discretion provided by state law is stripped out, it essentially turns the process into site plan review, he noted. They can call it a special permit as long as all the criteria go to the issue of being ‘necessary to protect’ public health, safety and welfare, he clarified.

Ms. Misch confirmed that the reason the special permit requirement was eliminated is that it implies greater discretion on the part of the Planning Board. If they advertise that something requires a special permit but in reality restrict denial so significantly, it is not really truth in advertising. She agreed that there is no magic to the threshold of five acres. The idea is to close the loophole in current zoning while finding answers to the questions raised.

Discussion continued, with Councilor Murphy asking if there was any particular timeframe for adoption of the ordinance.

Ms. Misch said no. After seeing what took place on Ryan Road, planners decided it made sense to move forward sooner rather than later. As background, she explained that, as part of the project to install a five-megawatt system at the former Willard gravel pit on Ryan Road, property owners removed over 100,000 board feet of timber. The land was clear-cut before developers applied for the project. The project would not have been able to move forward under revised zoning.

Members discussed how to proceed. Ms. Misch agreed it made sense to understand the science better and fine-tune the threshold for clearing. She doesn't think deferring action for a few months would be a problem. Councilor Klein asked what the process of exploring a more objective performance standard would involve, and Ms. Misch said the planning department would do its best to provide any information requested. No matter what is decided the council may need to revisit the ordinance in a year or so if new information comes out, Misch noted.

Councilor Klein asked who would craft the questions they want answered. Ms. Misch suggested members think about what questions they want answered based on public comments.

Councilor Klein expressed the opinion that the ordinance needs to go back to the PSTC, since it is one of its sponsors. It doesn't make sense to move forward if one of the sponsors has backed out, she suggested.

Councilor Murphy said he shares the concern that one of the sponsors is not comfortable with the ordinance in its current form. From the standpoint of council action, he doesn't think the Legislative Matters Committee would want to act until the Planning Board and PSTC decide if they are going to support the ordinance. Legislative Matters usually weighs in after every other board has weighed in, he noted.

A Planning Board member shared the opinion that, at minimum, planners need to put in a lookback period.
Councilor Murphy moved to continue the public hearing until April 8th. This will give the Planning Board time to review the ordinance and hopefully make a recommendation, he said. Councilor Carney seconded. The motion passed unanimously 3:0 by voice vote with one absent (Councilor Dwight).

Ms. White moved to continue the Planning Board hearing to 7 p.m. on March 28th in Council Chambers. Ms. Grenat seconded. The motion passed unanimously 5:0 by voice vote.

5. **Items Referred to Committee**
   None

6. **New Business**
   None

7. **Adjourn**
   Councilor Murphy moved to adjourn. Councilor Carney seconded. The motion passed unanimously 3:0. The meeting was adjourned at 6:45 p.m.

*Prepared By:*
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CITY OF NORTHAMPTON
MASSACHUSETTS

In the Year Two Thousand and Eighteen

Upon the Recommendation of the Mayor and Public Shade Tree Committee

18.231 An Ordinance Relative to Large-Scale Ground-Mounted Solar Arrays

An Ordinance of the City of Northampton, Massachusetts, providing that Chapter 350 Code of
Ordinances, City of Northampton, Massachusetts, be amended by modifying allowances under special
permit for ground mounted solar photovoltaic arrays.

ORDINANCE

An Ordinance of the City of Northampton, Massachusetts. Be it ordained by the City Council of the City
of Northampton, in City Council assembled, as follows:

USES ALLOWED

Uses Allowed By-Right [for all RR, SR, URA, URB, URC, WSP zoning districts FOR WSP, delete from uses
allowed by Special Permits]:
• Rooftop solar hot water and photovoltaic
• Accessory solar photovoltaic (PV) ground-mounted on a parcel with any building/use, provided that
the PV is sized to generate no more than 200% of the annual projected electric use of the non-PV
building/use or 12 KW, whichever is greater. The setbacks for such a PV shall be the same as for
detached accessory structures as set forth in the table above.

Move from Uses Allowed by Special Permit to Uses Allowed by Right in the OI, GI, CB Districts

Accessory solar photovoltaic ground-mounted on a parcel with any building or use, provided that the PV
is sized to generate no more than 200% of the annual projected electric use of the non-PV building or
use

Delete the following from all districts:

Administrative Site Plan Approval Required for the Following [for all zoning districts].
• Solar photovoltaic of any size, ground-mounted; shall be permitted with administrative site plan from
the Office of Planning & Sustainability if one of the following is met:
  1. The PV array is constructed over any legal parking lot or driveway; or
  2. The PV array is constructed at any assigned landfill site not separated from the site-assigned property
     by any road; or
  3. The PV array is constructed at an airport not separated from the runways by any road; and
  4. The power and telecommunications extensions are not visible from the public way.
Site Plan Approval required for the following uses by Planning Board unless otherwise noted:

- Any other Solar photovoltaic (PV), large-scale ground-mounted not listed above. The removal of significant trees on the subject parcel(s) must be replaced in accordance with 350-12.3 and includes tree removal that occurs within 12 months immediately prior to an application for installation of such a system.

Setbacks:
- Front = 50 feet
- Side = 50 feet
- Rear = 50 feet
- Maximum height = 30 feet
- Open space = 20%

A planted buffer to abutting residential property shall be at least 15 feet in width along the property boundary. It shall contain a screen of plantings of vertical habit in the center of the strip not less than three feet in width and six feet in height at the time of occupancy of such lot. Individual shrubs shall be planted not more than five feet on center, and individual trees thereafter shall be maintained by the owner or occupants so as to maintain a dense screen year-round. At least 50% of the plantings shall be evenly spaced. Whenever possible, existing trees and ground cover should be preserved in this strip, reducing the need to plant additional trees. Trees may not be cut down in this strip without site plan approval.

Projects resulting in more than three acres of canopy removal shall submit the following information with their application and the Board must find that the removal of trees will not negatively impact the health safety and welfare of the residents of Northampton by maintaining a robust and diverse ecosystem for the residents while also creating renewable energy systems. In order for the Board to make such finding, the applicant shall by submitting an analysis of the proposed project’s impact relative to the benefit of the solar installation as follows:

1. Analysis showing that tree removal which occurs on more than one acre of slopes greater than 20% will not cause erosion of top soil and will not increase siltation of any streams present on the site or within 200’ of the property boundary.

2. Analysis of the forest type and relevant habitat that will be lost. This analysis must include the structure and diversity of the canopy, midstory and understory of the forested area to be cleared. Analysis must be performed by an individual with a master’s degree in wildlife biology or ecological science from an accredited college/university or other competent professional with at least two years of experience in wildlife habitat evaluation.
   a. Any forested area within which certifiable vernal pools are found, must be identified and a permit from the Conservation Commission must be granted prior to review by the Planning Board.
   b. Any forested area containing clusters of five or more trees 100 years old or older shall be preserved in order to continue to provide high value ecological benefit to the community. Connection of old growth trees to surrounding stands of trees shall be maintained.
   c. As part of the forest type analysis, the report shall contain information regarding the abundance and distribution of habitats within the region and of the specific site and any
historical information on the extent and quality of these habitats and impact of clearing on these habitats. The applicant must show through analysis that habitat is not fragmented and that connectivity remains in the proposed conditions.

1.3. Analysis showing that the project will be carbon-neutral over the first ten years of operation. The applicant shall provide the following calculations:
   a. The total volume of trees to be removed (provided by an independent certified forester)
   b. Subtracting the estimated timber in replacement trees provided under the Significant Tree section of this zoning ordinance ten years after planting
   c. Conversion of the net timber to be removed to short tons of carbon (using research from the Northern Institute of Applied Climate Science or other methodology after approval by the permit granting authority)
   d. Subtraction of the carbon offsets (short tons of carbon) provided by the solar photovoltaic project over ten years of operation.
   e. If there is any net release of carbon with the above calculations, the applicant shall assign Renewable Energy Credits (REC) to the City to match or exceed said release of carbon.

2.4. At least 50% of the property, shall be protected from tree clearing and future development for the duration of the operation of the solar array installation and until such time as the system is decommissioned and removed.

3.5. Within the area beyond the first three acres of canopy removed, stumps for removed trees must remain in place and no excavation/soil disturbance is allowed other than what would be required to bore support posts for the PV panels.

For RR, WSP, SR, URA, URB, within uses allowed by Special permit, Delete the entire bullet for ground mounted PV solar array.
CITY OF NORTHAMPTON
MASSACHUSETTS

In the Year Two Thousand and Nineteen

Upon the Recommendation of the Mayor

An Ordinance of the City of Northampton, Massachusetts, providing that Chapter 312 Code of
Ordinances, City of Northampton, Massachusetts, be amended by modifying ARTICLE I, V, XIV of said
code; to specify criteria for Bike and Scooter share programs.

19.011 An Ordinance Relative to Bicycle Share Services

ORDINANCE

An Ordinance of the City of Northampton, Massachusetts. Be it ordained by the City Council of the City
of Northampton, in City Council assembled, as follows:

312 ARTICLE I

[Add to Definitions]:

Electric Assist Scooter- A primarily human powered or low speed electric stand-on vehicle used by an
individual for transportation.

Shared Mobility Device (SMD)- a human powered or low speed electric vehicle for public shared use to
individuals on a short term basis and may include bicycles, scooters, Segways or similar devices.

Shared Mobility Device (SMD) Program- A service in which SMDs are made available for public,
shared-use to individuals on a short term basis for a price or free. Services can be provided either to/from
a specified dock or station location or may be dockless or free-floating.

Landscape/Furniture Zone- The area of the public sidewalk along the street that is designated for
landscaping or street furniture. In the CB district, this area is in the brick paver portion of the sidewalk.

312 ARTICLE V Stopping Standing Parking

ADD

312-49 Bicycle and Electric Assist Scooter Parking on the Public Way. For bicycle parking racks and
spacing standards see 350 8.11 C.

A. Bicycles/Scooters are permitted to park, in compliance with subsections herein, in the
landscape/furniture zone, on a bicycle rack, or other facility specifically intended for that purpose.

4/1/2019
B. Bicycles/Scooters are not permitted to be parked at or adjacent to: fire hydrants, benches, trees, trash receptacles.

C. Except when at designated bicycle racks, bicycles shall not be parked in the landscape/furniture zone adjacent to:
   1. Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones;
   2. Loading zones;
   3. Disabled parking zone;
   4. Curb ramps;
   5. Entryways;
   6. Driveways.

D. Bicycles/Scooters shall not obstruct the pedestrian path of travel nor handicap access ramps nor access to street furniture such as benches, pay stations, bus shelters. A parked bicycle shall leave at least 36 inches of unobstructed travel along the pedestrian path.

E. No motorized vehicles, except low speed electric bicycles as specified in 312-78 shall be parked on a bicycle rack or other facility specifically designed and intended for bicycle parking.

F. Bicycles/Scooters parked in violation of the above regulations may be tagged with a notice for removal and impoundment or may be removed by the city or its agent immediately for impoundment. Removed bicycles shall be held by the City for a minimum of 30 days.

G. A bicycle/Scooter parked in accordance with this section that has one or more of the following defects may be tagged and removed and shall be held by the City for a minimum of 30 days. Sent to scrap by the City:
   1. no tires or wheels;
   2. one or more warped wheels or frame;
   3. missing, rusted or broken chain in such a state that renders the bicycle inoperative; or
   4. missing or warped handle bars.

H. Fees for recovering impounded vehicles may be set by the City for up to a $100/per vehicle.

312 ARTICLE VIX Vendors

ADD

312-127 Shared Mobility Device Programs

A. Permits and Fees

1. No private SMD program shall allow their vehicles to park on any City right-of-way or public space without a permit. The permit requirement shall not apply to city-owned or contracted public docks placed within the public way. Parking shall be in compliance with 312.49.

2. The Office of Planning and Sustainability shall issue a permit to operate a docked or dockless SMD program within the City if the applicant submits the application materials set forth in subsection B, below.

3. The Permit fee to operate a SMD program is based on the size of the fleet. Applicants shall pay $15/SMD annually for an SMD operator’s permit.

B. Application
1. Applications and renewals for SMD permits shall be submitted to Northampton Office of Planning and Sustainability and shall include these items:
   - Completed Annual Permit;
   - Fee;
   - Insurance documentation;
   - Images and description of SMDs and mobile application;
   - Size of fleet at launch, including any planned fleet expansions during the permit period;
   - Service area at launch, including any planned expansions during the permit period;
   - Plan for educating users on proper SMD parking;
   - Location of all planned stations. No stations shall be created without approval from Office of Planning and Sustainability; and
   - Permissions for overnight parking on private property.

C. Service Area
1. Permits for private programs may only be issued for systems that operate outside the Central Business District throughout the City’s core neighborhoods including in the URA, B, C districts and Florence Center.
2. Programs are encouraged to serve areas outside the area already served by any city-owned or city-contracted SMD program.

D. SMD Fleet Parking and Stations
1. SMD parking on the public way shall be in accordance with Chapter 312-49.
2. Share operators shall inform customers on how to park their SMD properly.
3. Between the hours of 6 AM and 11:59 PM, SMDs shall be parked either on private property outside pedestrian zones or in the landscape/furniture zone of the sidewalk.
4. Between the hours of 12 AM and 6 AM, no SMDs shall be parked in the public way or on public bike racks. SMD operators shall incorporate mechanisms to ensure that overnight parking is on private property or on previously approved SMD stations/racks. Any overnight parking within the right-of-way will subject the SMDs to impoundment in accordance with Chapter 312-49.
5. SMDs shall be upright when parked.
6. Any SMD that is parked incorrectly shall be re-parked in a correct manner or shall be removed by the operator based on these times:
   - 6am to 6pm on weekdays, not including holidays - within two hours of receiving notice.
   - All other times – within 10 hours of receiving notice by 8 AM of the next weekday.
7. SMDs may be parked only on hard surfaces (e.g. concrete, asphalt) within the landscape/furniture zone and may not be parked in landscaped areas.

E. Pedal-Assist/Electric Specifications
All fleets of pedal-assist or E-SMDs shall have governors that allow them to operate on the City’s multiuse paths in accordance with 312-78.

F. Signage and Advertising
1. The company logo, a unique SMD ID number, and a 24-hour customer service number shall appear on each SMD.
2. Additional regulations for logos outside of the SMD program logo, such as a system sponsorships or advertisements, are subject to City of Northampton sign ordinances.
G. Safety and Maintenance

2. All SMDs shall be equipped with working front and rear lights.
3. All SMDs shall be equipped with GPS or other geolocation technology needed for monitoring, enforcement, and for use in crime detection if SMDs are involved.
4. All permitted systems shall have visible language that notifies the user that:
   i. Helmets are recommended to be worn while riding a bicycle;
   ii. Where sidewalk riding is allowed, SMD users shall yield to pedestrians on sidewalks.
5. The operator shall establish and operate a 24-hour customer service number, which is available and staffed at all times the system is operable. This number shall allow the company to be notified that there is a safety or maintenance issue with the SMD.
6. All permitted operators shall have a staffed operations center within half hour drive of Northampton and shall provide a contact person from their company with phone number and email (outside of the public customer service number) for City of Northampton officials to contact directly.
7. Any inoperable SMD, or any SMD that is not safe to operate shall be removed from the right-of-way within 24 hours of notice by any means to the operator by any individual or entity, and shall be repaired before returning it to service.
8. If any department incurs any costs addressing or abating any violations of these requirements that results in the repair or maintenance of public property to abate any violations, upon receiving written notice of the City costs, the permitted operator shall reimburse for such costs within thirty days of receiving itemized notification of such costs.
9. The City may immediately lock or impound SMDs that are found left in violation of these requirements. There will be a fee set annually by the City of up to $100 per SMD to release any locked vehicle that has been locked in violation of these regulations.
10. Prior to the permit being issued, all permittees shall sign and record an indemnification agreement indemnifying and holding harmless the City, its employees, officials, agents and assignees to the greatest extent allowed by law.
11. Permitted operators agree that the City of Northampton is not responsible for educating users regarding helmet requirements or for educating users on how to ride or operate an SMD. Permitted operators agree to educate users regarding laws applicable to riding and operating such SMD.

H. Equitable SMD Program

Operators that provide general service to the community are required to submit an equity plan for SMD access for low income and under-served populations. Applications shall show:

- Service areas where 10% of stations are within 500’ of public housing or DHCD /Federally defined CDBG majority moderate and low income areas or Environmental Justice areas;
- Demonstrated community engagement events/actions;
- Payment options, including solutions for unbanked citizens;
- Customer service plan including staffing, hours, response protocols;
- Subsidized rates for low income populations, and defined by the current HUD Area Median Incomes;
- Engaging local partnerships to assist in subsidized rates;
- Hiring policies and workforce opportunities as a component of the equity plan.

I. Insurance and Indemnity Required

1. General Liability Insurance $1,000,000 minimum per occurrence; and $2,000,000 total.
2. Workers Compensation that meets Massachusetts requirements;
3. Automobile Liability Insurance $1,000,000 minimum per occurrence;
4. A surety or performance bond to protect the City if the private SMD operator goes out of business or is failing to meet certain terms under a contractual agreement. The bond amount will be linked to the system fleet size. The goal of a surety bond is to protect the City in the possible event that they incur the costs of fleet removal due to non-compliance in accordance with the contract. Applicants shall submit vehicle unit costs and decommissioning estimates with a proposed bond amount.
J. Reporting
In order to renew annual permits, operators are required to submit a report of the previous year’s statistics indicating on a monthly basis:

- Number of SMDs in service;
- Number of SMDs out of service (damaged);
- Aggregated system usage including: total unique users, total miles ridden, total number of rentals, average rental duration etc.;
- Monthly summary of SMD distribution and GPS-based natural movement in heat map format;
- Summary of customer comments/complaints and resolution;
- Summary of theft/vandalism and resolution;
- Summary of SMD maintenance activities; and
- Summary of SMD redistribution (rebalancing) activities.

285-12B Amend by adding:

Provisions for bicycles, human powered scooters, SMDs or similar vehicles.

(1) Bicycles/Scooters/SMDs shall be allowed to be driven on all streets and shall be allowed on all sidewalks outside the Central Business District, Office Industrial District, and the General Business District.

[Amended 4-5-2018 by Ord. No. 18.043]

(2) Bicycles/Scooters/SMDs shall not be allowed to be driven on the sidewalks in the Central Business District, Office Industrial District, and General Business District, except that bicycles/scooters/SMDs shall be allowed to be driven in those districts on any section of sidewalk that is part of any marked multiuse trails (bicycle path), or marked cycle track or buffered bicycle lane.

[Amended 4-5-2018 by Ord. No. 18.043]

(3) Bicycles/scooters/SMDs shall not be allowed to be driven in Pulaski Park except on the bike path connector through Pulaski Park.

(4) Walking bicycles/scooters/SMDs shall be allowed in all areas where they are not allowed to be driven.
CITY OF NORTHAMPTON
MASSACHUSETTS

In the Year Two Thousand and Nineteen

Upon the Recommendation of the Mayor

An Ordinance of the City of Northampton, Massachusetts, providing that Chapter 312 Code of
Ordinances, City of Northampton, Massachusetts, be amended by modifying ARTICLE I, V, XIV of said
code; to specify criteria for Bike and Scooter share programs.

19.011 An Ordinance Relative to Bicycle Share Services

ORDINANCE

An Ordinance of the City of Northampton, Massachusetts. Be it ordained by the City Council of the City
of Northampton, in City Council assembled, as follows:

312 ARTICLE I

[Add to Definitions]:

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individuals on a short term basis and may include bicycles, scooters, Segways or similar devices.

**Shared Mobility Device (SMD) Program**- A service in which SMDs are made available for public,
shared-use to individuals on a short term basis for a price or free. Services can be provided either to/from
a specified dock or station location or may be dockless or free-floating.

**Landscape/Furniture Zone**- The area of the public sidewalk along the street that is designated for
landscaping or street furniture. In the CB district, this area is in the brick paver portion of the sidewalk.

312 ARTICLE V Stopping Standing Parking

ADD

312-49 Bicycle Parking on the Public Way. For bicycle parking racks and spacing standards see 350
8.11 C.

A. Bicycles are permitted to park, in compliance with subsections herein, in the landscape/furniture
zone, on a bicycle rack, or other facility specifically intended for that purpose.
B. Bicycles are not permitted to be parked at or adjacent to: fire hydrants, benches, trees, trash
receptacles.
C. Except when at designated bicycle racks, bicycles shall not be parked in the landscape/furniture zone adjacent to:
   1. Transit zones, including bus stops, shelters, passenger waiting areas and bus layover and staging zones;
   2. Loading zones;
   3. Disabled parking zone;
   4. Curb ramps;
   5. Entryways;
   6. Driveways.
D. Bicycles shall not obstruct the pedestrian path of travel nor handicap access ramps nor access to street furniture such as benches, pay stations, bus shelters. A parked bicycle shall leave at least 36 inches of unobstructed travel along the pedestrian path.
E. No motorized vehicles, except low speed electric bicycles as specified in 312-78 shall be parked on a bicycle rack or other facility specifically designed and intended for bicycle parking.
F. Bicycles parked in violation of the above regulations may be tagged with a notice for removal and impoundment or may be removed by the city or its agent immediately for impoundment. Removed bicycles shall be held by the City for a minimum of 30 days.
G. A bicycle parked in accordance with this section that has one or more of the following defects may be removed and sent to scrap by the City:
   1. no tires or wheels;
   2. one or more warped wheels or frame;
   3. missing, rusted or broken chain in such a state that renders the bicycle inoperative; or
   4. missing or warped handle bars.
H. Fees for recovering impounded vehicles may be set by the City for up to a $100/per vehicle.

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ADD

312-127 Shared Mobility Device Programs

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2. The Office of Planning and Sustainability shall issue a permit to operate a docked or dockless SMD program within the City if the applicant submits the application materials set forth in subsection B, below.

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   • Completed Annual Permit;
• Fee;
• Insurance documentation;
• Images and description of SMDs and mobile application;
• Size of fleet at launch, including any planned fleet expansions during the permit period;
• Service area at launch, including any planned expansions during the permit period;
• Plan for educating users on proper SMD parking;
• Location of all planned stations. No stations shall be created without approval from Office of Planning and Sustainability; and
• Permissions for overnight parking on private property.

C. Service Area
1. Permits may only be issued for systems that operate outside the Central Business District.
2. Programs are encouraged to serve areas outside the area already served by any city-owned or city-contracted SMD program.

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[Amended 4-5-2018 by Ord. No. 18.043]

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[Amended 4-5-2018 by Ord. No. 18.043]

(3) Bicycles/scooters/SMDs shall not be allowed to be driven in Pulaski Park, except on the bike path connector through Pulaski Park.

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