



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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

June 8, 2026

Katrin Kaminsky, Town Clerk
Town of Worthington
P.O. Box 247
Worthington, MA 01098

**Re: Worthington Special Town Meeting of February 24, 2026 -- Case # 12184
Warrant Articles # 6, 7, 8, and 9 (Zoning)¹**

Dear Ms. Kaminsky:

Article 9 - We approve Article 9 from the February 24, 2026 Worthington Special Town Meeting.

Articles 7 and 8 - Under Article 7, the Town voted to amend its zoning by-laws to add a new Section 8.5.7, "Large-Scale Ground Mounted Solar Photovoltaic Installations Moratorium in Limited Areas." Under Article 8, the Town voted to amend its zoning by-laws to add a new Section 8.8, "Large Capacity Energy Storage Systems Moratorium in Limited Areas," and to add to Section 10 new definitions related to Section 8.8.²

As explained in more detail below, we must disapprove Articles 7 and 8 because the proposed moratoriums are not limited in scope or time, and therefore conflict with state law. See Zuckerman v. Hadley, 442 Mass. 511, 520-521 (2004) (invalidating a rate of development by-law of unlimited duration); see also Amherst v. Attorney General, 398 Mass. 793, 795-96 (1986) (requiring inconsistency with state law or the Constitution for the Attorney General to disapprove a by-law). We also disapprove the portions of Article 8 that prohibit commercial large energy storage systems ("ESS") "of [a] capacity larger than 5MWh" for the additional reason that this prohibition is an unreasonable regulation of ESS in conflict with G.L. c. 40A, § 3, as explained in more detail below.

This decision describes the by-law; discusses the Attorney General's standard of review of

¹ In a decision issued June 8, 2026 under separate cover, we disapproved Article 6.

² During the course of our review of Articles 7 and 8, we received a communication from the Worthington Planning Board urging our approval of Articles 7 and 8 and providing "supplemental materials relating to the recent bylaw amendments." See Letter to Attorney General Campbell from the Worthington Planning Board dated March 12, 2026 ("Planning Board letter"). We appreciate this correspondence as it has aided our review.

town by-laws under G.L. c. 40, § 32; and then explains why, governed as we are by that standard, we disapprove Articles 7 and 8.

I. Summary of Articles 7 and 8

Under Article 7, the Town voted to amend its zoning by-laws to add a new Section 8.5.7, “Large-Scale Ground Mounted Solar Photovoltaic Installations Moratorium in Limited Areas,” that provides in its entirety as follows:

The Town of Worthington has placed a temporary moratorium on Large-Scale Ground Mounted Solar Photovoltaic Installations (LSGMSPI) in the Worthington Water Supply District, the Flood Plain and Westfield River Protection District, the Westfield River Watershed (designated as an Outstanding Resource Water), Mass Wildlife BioMap 3 Core Habitats, and Interim Wellhead Protection Areas (IWPA) around all Public Water Supplies for the purposes of updating protected zoning by-laws as well as creating a Solar Overlay District. The Solar Overlay District will provide Designated Locations (Section 8.5.3) based on site suitability criteria in order to strengthen protection of highly vulnerable water and environmental resources. Protection of these critically important public water sources is incompatible with hazardous materials potentially released from solar equipment due to fire, vandalism, and extreme weather events, as well as site disruption, fracture of the hydrologic barrier and erosion from large scale installations. The moratorium is in effect in those critical areas to provide urgent protection to the public’s health and safety. LSGMSPI shall continue to be allowed in the remainder of the town. The moratorium shall be in effect through June 30, 2027 or until the town adopts amendments to the Zoning By-law Section 8.5 to adopt a Solar Overlay District map and other necessary revisions to protect the safety of the public and public drinking water, and align the By-law with state and federal conservation regulations.

Under Article 8, the Town voted to amend its zoning by-laws to add a new Section 8.8, “Large Capacity Energy Storage Systems Moratorium in Limited Areas,” that provides in its entirety as follows:

The Town of Worthington has placed a temporary moratorium on commercial Large Capacity Energy Storage Systems (ESS) in the Worthington Water Supply District, the Flood Plain and Westfield River Protection District, the Westfield River Watershed (designed as an Outstanding Resource Water), Mass Wildlife BioMap3 Core Habitats and Critical Natural Landscapes, Interim Wellhead Protection Areas (IWPA) around all Public Water Supplies, as well as a 300-foot setback from residences and structures where the public congregates, for the purposes of updating protective zoning by-laws as well as creating a Large Capacity ESS Overlay District. Additionally, the moratorium prohibits ESS of capacity larger than 5MWh. The Overlay District will provide Designated Locations based on site suitability criteria in order to strengthen protection of public safety, and highly vulnerable water and environmental resources. Protection of these critically important public water sources is incompatible with hazardous materials potentially released from ESS due to fire, vandalism and extreme weather events, as well as site disruption, fracture of the hydrologic barrier and erosion from large scale installations. The moratorium is in effect in those critical areas to provide urgent protection to the public’s health and safety. ESS shall continue to be allowed in the remainder of the town. The moratorium shall be in effect through June 30, 2027 or until the town adopts amendments to the Zoning By-law Section 8.5 to adopt a Large Capacity ESS Overlay District map and

other necessary revisions to protect the safety of the public and public drinking water, and align the By-law with state and federal conservation regulations.

In addition, under Article 8, the Town amended Section 10 to add new definitions related to terms used in the new Section 8.8, as follows:

Energy Storage System (ESS): A device utilized to store electrical energy (AC or DC) by converting electrical energy into chemical energy or vice-versa. May consist of a single battery or multiple batteries or other means which accomplish this conversion. May also include any devices utilized to provide cooling to said storage device.

Small Capacity Energy Storage System: Any energy storage system less than 150 kWh.

Large Capacity Energy Storage System: Any energy storage system of between 150 kWh and 5 MWh. Energy Storage Systems larger than 5 MWh are prohibited.

II. Attorney General's Standard of Review of Zoning Bylaws

Our review of Articles 7 and 8 is governed by G.L. c. 40, § 32. Under G.L. c. 40, § 32, the Attorney General has a “limited power of disapproval,” and “[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws.” Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”) “As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid.” Bloom v. Worcester, 363 Mass. 136, 154 (1973).

Articles 7 and 8, as amendments to the Town’s zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) (“With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders.”). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General’s standard of review is equivalent to that of a court. “[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare.” Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). “If the reasonableness of a zoning bylaw is even ‘fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.’” Id. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). However, a municipality has no power to adopt a zoning by-law that is “inconsistent with the constitution or laws enacted by the [Legislature].” Home Rule Amendment, Mass. Const. amend. art. 2, § 6.

III. Articles 7 and 8 Impose Moratoriums of Unlimited Duration and Scope in Conflict with State Law

In general, a town has the authority to “impose reasonable time limitations on development, at least where those restrictions are *temporary* and adopted to provide controlled development while the municipality engages in comprehensive planning studies.” Sturges v. Chilmark, 380

Mass. 246, 252-253 (1980) (emphasis added). But the Supreme Judicial Court’s decision on a land use moratorium in Zuckerman, 442 Mass. at 520-21, made clear that a municipality’s authority to adopt a moratorium is limited: “Except when used to give communities breathing room for periods reasonably necessary for the purposes of growth planning generally, or resource problem solving specifically, as determined by the specific circumstances of each case, such [moratorium] zoning ordinances do not serve a permissible public purpose, and are therefore unconstitutional.” Id., at 520-21 (citing Sturges, 380 Mass. at 257).³

Our review of Articles 7 and 8 begins with an analysis of whether the moratoriums are temporary and are limited in their scope. See Zukerman, 442 Mass. at 518 (footnotes omitted) (“What [a Town] may not do is adopt a zoning bylaw for the purpose of limiting the rate of growth for an indefinite or unlimited period....Restraining the rate of growth for a period of unlimited duration, and not for the purpose of conducting studies or planning for future growth, is inherently and unavoidably detrimental to the public welfare, and therefore not a legitimate zoning purpose.”) As explained below, we conclude that Article 7 and Article 8’s proposed moratoriums are not limited in scope or time, and therefore, both moratoriums conflict with state law.

A. Duration of the Moratoriums

As written, the proposed moratoriums can be in effect for an unlimited period of time. Specifically, Article 7’s moratorium regarding Large-Scale Ground Mounted Solar Photovoltaic Installations (“large scale solar”) provides that it shall be in effect as follows:

The moratorium shall be in effect through June 30, 2027 or until the town adopts amendments to the Zoning By-law Section 8.5 to adopt a Solar Overlay District map and other necessary revisions to protect the safety of the public and public drinking water, and align the By-law with state and federal conservation regulations.

Similarly, Article 8’s moratorium regarding Large Capacity Energy Storage Systems (“ESS”) provides that it shall be in effect as follows:

The moratorium shall be in effect through June 30, 2027 or until the town adopts amendments to the Zoning By-law Section 8.5 to adopt a Large Capacity ESS Overlay District map and other necessary revisions to protect the safety of the public and public drinking water, and align the By-law with state and federal conservation regulations.

The moratoriums provide that they will remain in effect through June 30, 2027 or until the town adopts zoning amendments, without making it clear which of these two events will result in the expiration of the moratorium and without making it clear when the Town must adopt zoning amendments. Therefore, as written, the by-law would authorize the Town to decide when to end the moratorium by choosing between either the stated date (June 30, 2027) or the stated occurrence (adoption of zoning amendments), with the stated occurrence being something that may not happen.

³ We have approved such temporary moratoria on a variety of land uses only where the record reflects that the proposed moratorium is for a limited period necessary for a town to conduct a legitimate planning process, as required by Sturges.

Because the plain wording of the moratoriums allows the Town to keep the moratoriums in effect until (and unless) it adopts zoning by-law amendments, the wording of Articles 7 and 8 would allow the Town to potentially maintain the moratoriums for an unlimited amount of time simply by not adopting zoning amendments. Stated another way, based on the wording of the moratorium, if the date of June 30, 2027 arrives and the Town has not yet adopted zoning amendments to adopt a Solar Overlay District map or a Large Capacity ESS Overlay District map, under the wording of Articles 7 and 8, the Town could choose to have the moratoriums continue in effect indefinitely until such time as it adopts zoning amendments, without any requirement to adopt the amendments by a certain date or to adopt the amendments at all.⁴

For this reason, the length of the moratoriums proposed under Articles 7 and 8 lacks a definitive expiration date and are therefore not temporary in nature. As such, we must conclude that the moratoriums conflict with state law. See Zukerman, 442 Mass. at 518, fn 16, (“Our holding in [Sturges], and our holding today, should make clear that bylaws restraining growth pass constitutional muster only where they specifically contain time limitations or where it is abundantly clear that they are temporary, because they are enacted to assist a particular planning process.”).

B. Scope of the Moratoriums

In addition, the proposed moratoriums under Articles 7 and 8 lack specificity as to their scope. Not only is it not clear what is prohibited during the moratorium periods, but the vagueness of the moratoriums’ scope leads to potential arbitrary or discretionary enforcement by the Town. Specifically, Article 7 provides in relevant part:

The Town of Worthington has placed a temporary moratorium on Large-Scale Ground Mounted Solar Photovoltaic Installations (LSGMSPI) in the Worthington Water Supply District, the Flood Plain and Westfield River Protection District, the Westfield River Watershed (designated as an Outstanding Resource Water), Mass Wildlife BioMap 3 Core Habitats, and Interim Wellhead Protection Areas (IWPA) around all Public Water Supplies for the purposes of updating protected zoning by-laws as well as creating a Solar Overlay District.

Similarly, Article 8 provides in relevant part:

The Town of Worthington has placed a temporary moratorium on commercial Large Capacity Energy Storage Systems (ESS) in the Worthington Water Supply District, the Flood Plain and Westfield River Protection District, the Westfield River Watershed (designated as an Outstanding Resource Water), Mass Wildlife BioMap3 Core Habitats and Critical Natural Landscapes, Interim Wellhead Protection Areas (IWPA) around all Public Water Supplies, as well as a 300-foot setback from residences and structures where the public congregates, for the purposes of updating protective zoning by-laws as well as creating a Large Capacity ESS Overlay District.

⁴ Compare for example the wording of Article 6’s proposed moratorium that provides “This moratorium shall expire on June 30, 2027, unless ended earlier by a vote of Town Meeting or extended by a subsequent vote of Town Meeting.”

However, neither proposed moratorium articulates *what* is prohibited during the moratorium period. In other words, does the moratorium prohibit, for example, the construction and installation of large scale solar or ESS; or the submittal of an application for a permit for a large scale solar or ESS installation; or the use of land or structures for large scale solar or ESS; or something else entirely? Because the scope of the moratorium is not articulated, it results in vague provisions. Under the “void for vagueness” doctrine, a law that “either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.” Commonwealth v. Carpenter, 325 Mass. 519, 521 (1950) (citation and internal quotations omitted).

In addition, this vagueness allows the Town discretion to determine, potentially on a case-by-case basis, the scope of the moratorium and whether certain proposed conduct during the moratorium period is subject to the terms of the moratorium. This may result in arbitrary or discriminatory enforcement of the by-law. Board of Appeals of Hanover v. Housing Appeals Comm., 363 Mass. 339, 363-64 (1973) (“Such vagueness would permit untrammelled [administrative] discretion and arbitrary and capricious decisions...”).

For this reason, we conclude that the moratoriums adopted under Articles 7 and 8 conflict with state law and are disapproved. See Zukerman, 442 Mass. at 520-521, (internal citations omitted) (“Except when used to give communities breathing room for periods reasonably necessary for the purposes of growth planning generally, or resource problem solving specifically, as determined by the specific circumstances of each case...such zoning ordinances do not serve a permissible public purpose...”).

C. Additional Comments regarding the Substantive Nature of Articles 7 and 8

Although we conclude that Articles 7 and 8 conflict with state law because the proposed moratoriums are not limited in time or scope, we also briefly address below the substantive nature of the proposed moratoriums as they relate to G.L. c. 40A, § 3 protected uses.

Articles 7 and 8 seek to impose moratoriums related to large solar installations and ESS, uses that are protected under G.L. c. 40A, § 3. The moratoriums would have prohibited these uses (though the scope of the moratoriums is not clear; see Section III (B) above), in “limited areas” of the Town but provide that “LSGMSPI shall continue to be allowed in the remainder of the town” (Article 7) and “ESS shall continue to be allowed in the remainder of the town” (Article 8). The proposed moratoriums’ “limited areas” appear to include a large area of the Town as follows:

Article 7 (large solar installations): (1) Worthington Water Supply District; (2) Flood Plain and Westfield River Protection District; (3) Westfield River Watershed (designated as an Outstanding Resource Water); (4) Mass Wildlife BioMap 3 Core Habitats; and (5) Interim Wellhead Protection Areas (IWPA) around all Public Water Supplies.

Article 8 (ESS): (1) Worthington Water Supply District; (2) Flood Plain and Westfield River Protection District; (3) Westfield River Watershed (designated as an Outstanding Resource Water); (4) Mass Wildlife BioMap 3 Core Habitats; (5) Critical Natural Landscapes; (6) Interim Wellhead Protection Areas (IWPA) around all Public Water Supplies; and (7) 300-foot setback from residence and structures where the public congregates.

The Town provided us with three maps showing the “limited areas” of the proposed moratoriums. See Planning Board letter attachments. According to these maps, Article 7’s proposed moratorium would prohibit large solar installations in 52.9% of the Town during the moratorium period; and Article 8’s proposed moratorium would prohibit ESS in 87% of the Town during the moratorium period.⁵ Although the Town purports to impose the moratoriums on “limited areas” and suggests that these limited areas are designed to protect “critically important public water sources” the moratoriums would impose a complete prohibition on these G.L. c. 40A, § 3 protected uses in more than half of the Town for large scale solar uses and almost 90% of the Town for ESS uses.

Given this, even if the Town had adopted moratoriums that were limited in scope and time as discussed above, our office would have to analyze whether the proposed moratoriums that effect more than half of the Town result in a complete prohibition of G.L. c. 40A, § 3 protected uses such that they conflict with G.L. c. 40A, § 3. See our decision to the Town disapproving Article 6 that sought to impose a town wide moratorium on large solar installations and ESS over 600 kWh. However, because we conclude that the moratoriums are not limited in scope or time and therefore conflict with state law, we do not at this time address whether these moratoriums in the purported “limited areas” conflict with G.L. c. 40A, § 3. But, we note that given the large percentage of the Town that would be subject to the proposed “limited area” moratoriums, there is some concern regarding whether these moratoriums result in a de facto prohibition of solar and ESS uses in the Town such that they would conflict with G.L. c. 40A, § 3.⁶

We encourage the Town to consult further with Town Counsel on this issue to ensure that any zoning amendments adopted by the Town leave sufficient land to accommodate large solar installations and ESS, keeping in mind that if the by-law provisions are used to deny a large solar installation or ESS, or otherwise applied in ways that make it impracticable or uneconomical to build solar energy systems and related structures, such as ESS, such application would run a serious risk of violating G.L. c. 40A, § 3.

IV. Article 8’s Prohibition of ESS with a Capacity Larger than 5 MWh Conflicts with 40A, Section 3

We also disapprove all portions of Article 8’s limitation on ESS capacity larger than 5 MWh because they conflict with G.L. c. 40A, § 3. Section 8.8 provides in relevant part a follows:

Additionally, the moratorium prohibits ESS of capacity larger than 5 MWh.

⁵ The proposed ESS moratorium includes more land than the proposed large solar installation moratorium because the ESS moratorium also includes “critical natural landscapes” and all land within a “300-foot setback from residence and structures where the public congregates.”

⁶ As it relates to the water resource areas only, we note that the Attorney General has previously approved zoning by-law amendments where the Town has excluded certain sensitive water resource protection areas from the districts where solar and ESS uses were allowed in situations where the Town appeared to still leave sufficient land in the Town where these protected uses are allowed. See Tracer Lane II Realty, LLC v. City of Waltham, 489 Mass. 775, 781 (2022) (Waltham’s prohibition on solar energy systems in all but one to two percent of its land area violates the solar energy provisions of G.L. c. 40A, § 3.)

In addition, the amendments to Section 10 add new definitions that “relate to section 8.8 of this bylaw” including a definition for “Large Capacity Energy Storage System” that provides as follows:

Large Capacity Energy Storage System: Any energy storage system of between 150 kWh and 5 MWh. Energy Storage Systems larger than 5 MWh are prohibited.

Article 8’s provisions would prohibit ESS larger than 5 MWh. It is not clear however whether the Town intended a prohibition of ESS over 5 MWh only during the moratorium period or whether these provisions, including the prohibition in the definition section, would continue upon the expiration of the moratorium. In either event, because these provisions would prohibit almost all ESS systems except very small systems under 5 MWh, we additionally disapprove these portions of Article 8 because they conflict with G.L. c. 40A, § 3, as explained below.

General Laws Chapter 40A, Section 3 grants zoning protections to solar energy systems and the building of structures that facilitate the collection of solar energy as follows:

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

By statute, ESS qualify as “solar energy systems” and “structures that facilitate the collection of solar energy” and are protected by G.L. c. 40A, § 3. General Laws Chapter 164, Section 1, defines “energy storage system” as “a commercially available technology that is capable of absorbing energy, storing it for a period of time and thereafter dispatching the energy.” See also NextSun Energy LLC v. Fernandes, No. 19 MISC 000230 (RBF), 2023 WL 3317259, at *14 (Mass. Land Ct. May 9, 2023), amended, No. 19 MISC 000230 (RBF), 2023 WL 4156740 (Mass. Land Ct. June 23, 2023), judgment entered, No. 19 MISC 000230 (RBF), 2023 WL 4145901 (Mass. Land Ct. June 23, 2023) (finding that battery energy storage system is entitled to Section 3 solar protections); see also Duxbury Energy Storage, LLC. vs. Town of Duxbury Zoning Board of Appeals, Land Court Misc Case No. 23 Misc 000643 (June 23, 2025 (Reznick, J.), 2025 WL 1743026, * 16 (2025) (Court concluded that “applying the Bylaw's definition of structures and the usual and accepted meanings of facilitate and collection” the proposed stand alone “ESF Project involves the building of structures that facilitate the collection of solar energy” and therefore the BESS project is protected by G.L. c. 40A, § 3 and cannot be prohibited or unreasonably regulated except where necessary to protect the public health, safety or welfare.)

In codifying solar energy and related structures as a protected use under Section 3, the Legislature determined that “neighborhood hostility” or contrary local “preferences” should not dictate whether solar energy systems and related structures are constructed in sufficient quantity to meet the public need. See Newbury Junior Coll. v. Brookline, 19 Mass. App. Ct. 197, 205, 207-08 (1985) (discussing educational-use provision of Section 3); see also Petrucci v. Bd. of Appeals, 45 Mass. App. Ct. 818, 822 (1998) (explaining, in context of childcare provision, that Legislature’s “manifest intent” when establishing Section 3 protected use is “to broaden ... opportunities for establishing” that use). Indeed, the fundamental purpose of Section 3 is to “facilitate the provision of public requirements” that may be locally disfavored. Cty. Comm’rs of Bristol, 380 Mass. at 713.

The Supreme Judicial Court reaffirmed this principle in Tracer Lane II Realty, LLC v. City of Waltham, 489 Mass. 775, 781-782 (2022) , explaining that whether a by-law facially violates Section 3’s prohibition against unreasonable regulation of solar systems and related structures will turn in part on whether the by-law promotes rather than restricts the legislative goal of promoting solar energy in the Commonwealth. While municipalities do have some “flexibility” to reasonably limit where certain forms of solar energy may be sited, the validity of any restriction ultimately entails “balanc[ing] the interest that the...bylaw advances” against “the impact on the protected [solar] use.” Id. at 781-82.

Applying this analysis, we determine that Article 8’s proposed provisions that prohibit “ESS of capacity larger than 5 MWh,” violates G.L. c. 40A, § 3, in that it would completely prohibit most ESS, including 95% of the ESS defined as a “Small Clean Energy Storage Facility” under the State’s new law, Chapter 239 of the Acts of 2024, “An Act Promoting A Clean Energy Grid, Advancing Equity and Protecting Ratepayers” (“the Act”).⁷ Under Section 23 of the Act a “Small Clean Energy Storage Facility” is defined as:

an energy storage system as defined in section 1 of chapter 164 with a rated capacity of less than 100 megawatt hours, including any ancillary structure that is an integral part of the operation of the small clean energy storage facility.

The recent legislative and regulatory changes as a result of the Act, establish permitting requirements for “small clean energy generation facilities” and define same as an energy storage system with a rated capacity of less than 100 megawatt hours. Because the Act defines a small clean energy generation facility as one that is under the threshold of 100 MWh, the Town’s prohibition of all ESS *over 5 MWh* would result in a prohibition of almost all ESS facilities defined in the Act as a “Small Clean Energy Storage Facility.” Therefore, not only would this prohibition of ESS of a capacity larger than 5 MWh prohibit most ESS, but it would also conflict with the Act’s requirement that beginning on October 1, 2026, a Town *must* accept a consolidated local permit application for “Small Clean Energy Infrastructure Facilities.”⁸ See 225 CMR 29.05, Concurrency and Transition Periods” (a Town may accept (but is not required to accept) a consolidated local permit application during the time period July 1, 2026 through September 30, 2026; however, beginning on October 1, 2026, a Town must accept a consolidated local permit application.)

In addition, there is nothing in Article 8 that provides any actual evidence of a public health, safety or welfare concern sufficient to justify a complete prohibition of all ESS over 5 MWh. Although Article 8, and the supplemental material provided to this office by the Worthington Planning Board (see footnote # 2) discuss its water resource areas as “critically important public water sources [that are] incompatibility with hazardous materials potentially released from ESS...” nothing in Article 8 articulates any record evidence that would justify a prohibition of all ESS over 5 MWh. For this reason, these portions of Article 8 conflict with G.L. c. 40A, § 3 and we disapprove them on that basis as well.

⁷ The Act can be found here: <https://malegislature.gov/Laws/SessionLaws/Acts/2024/Chapter239>

⁸ “Small Clean Energy Infrastructure Facilities” are defined as: “[a] Small Clean Energy Generation Facility, Small Clean Energy Storage Facility or Small Clean Transmission and Distribution Infrastructure Facility.” See 225 CMR 29.02, “Definitions.”

V. Conclusion

We disapprove Articles 7 and 8 in their entirety because they conflict with state law that prohibits the imposition of a moratorium that is not limited in scope or time. See Zukerman, 442 Mass. at 520-521. Further, even were the Town to readopt Articles 7 and 8 to address both the scope and duration of the moratoriums, we do not at this time make a determination as to whether the proposed moratoriums in “limited areas,” (as defined in Articles 7 and 8), would satisfy the requirements of G.L. c. 40A, § 3, but have provided some additional comments to the Town in this regard. Lastly, we further disapprove the portions of Article 8 that prohibit ESS over 5 MWh because these provisions conflict with G.L. c. 40A, § 3 and the Act’s new local consolidated permit provisions. We encourage the Town to consult further with Town Counsel on these issues, including any proposed zoning amendments regulating large solar installations and ESS, to ensure that any proposed amendments are consistent with G.L. c. 40A, § 3 and the Act.⁹

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.

Very truly yours,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

Nicole B. Caprioli

By: Nicole B. Caprioli
Assistant Attorney General
Deputy Director, Municipal Law Unit
10 Mechanic Street, Suite 301
Worcester, MA 01608
(774) 214-4418

cc: Town Counsel Jeffrey T. Blake

⁹ We also highlight that as part of the new legislation, DOER has drafted Regulations (that became final on February 27, 2026); Guidance (that is still pending in draft form); and model by-laws, that may assist the Town with its future zoning amendment efforts. The final Regulations and draft Guidelines are available at: <https://www.mass.gov/info-details/clean-energy-siting-permitting-regulations>; and the model by-laws are available at: <https://www.mass.gov/doc/doer-draft-solar-model-bylaw/download> (solar) and <https://www.mass.gov/doc/doer-draft-battery-energy-storage-systems-bess-model-bylaw/download> (BESS). In addition, DOER is offering technical assistance to municipalities. See 229 CMR 29.11, “Technical Assistance,” (DOER “shall be available to assist Local Governments and Applicants apply 225 CMR 29.00, applicable sections of M.G.L. c. 25A, and Department Guidelines.”).