

PROPOSED REVISIONS TO SHELBURNE ZONING BYLAW AND SUBDIVISION REGULATIONS
PUBLIC HEARING MARCH 14, 2018

Section 2. Definitions – renumber to accommodate the alphabetical listing of definitions and correct any related references to definitions throughout the bylaw.

Section 2. Definitions --Junkyard/Recycling Center (New) and Composting Facility (New)

Section 2. __ Commercial Junkyard or Recycling Center: *Any area, lot, land, parcel, building or structure or part thereof used for the commercial storage, collection, purchase, sorting, processing, salvaging or reuse of any used or discarded items or materials for the purpose of resale, distribution for permanent disposal, recycling or any related operations other than composting facilities. Any such operation must operate in full compliance with any applicable state or federal regulations.*

Section 2. __ Composting Facility - *Any area, lot, land, parcel, building or structure or part thereof used for the commercial storage, collection, purchase, sale, sorting, or processing, of any compostable material, (that is, any organic material, agricultural or otherwise, which is not contaminated by significant amounts of toxic substances amenable to accelerated biodegradation under controlled conditions). Any such operation must operate in full compliance with any applicable local, state, or federal regulations.*

Section 4.3 - Add "**recycling center**" to the Use Table on the same line as junkyard. (Allowed only in the Industrial Zone by Special Permit).

Section 4.3 – Add "**Composting Facility**" to the Use Table in the Commercial Business Uses Section requiring a "SP" in every district.

Section 2.38 Definitions –Solar Panel Systems for Premises Use: revise the definition as follows—

"Solar Panel Building-Mounted Systems: any system of solar panels, ~~whether located on the building or the ground,~~ designed primarily to generate heat or electricity. ~~for the principal home or business located on the lot; such systems may generate a limited amount of excess electricity for resale to an electrical utility provided the system is designed principally to supply the electrical needs of the home or business on the lot.~~ " to read:

Section 2. __ Solar Panel Building Mounted Systems: any system of solar panels, located on the building designed primarily to generate heat or electricity.

Section 2.37 Definitions – Small-Scale Industrial Solar Energy Generating Facility: revise this definition as follows—

"Small-Scale ~~Industrial~~ **Ground-Mounted** Solar Energy Generating Facility: a **ground-mounted** solar electric system designed for residential/industrial/commercial use ~~that generates up to 250kW on up to one acre~~" to read:

Section 2. __ Small-Scale Industrial Solar Energy Generating Facility: a ground-mounted solar electric system designed for residential/industrial/commercial use on up to one acre.

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Section 2.4.8 Definition – Commercial Electric Generating Facilities: revise this definition as follows,

Section 2. ___ Commercial Electric Generating Facilities: a commercial electric generating facility but specifically excluding a facility generating from coal, nuclear power, and wind turbine systems, except *Wind Turbine Systems for Premises Use*, ~~as defined in Section 2.39.~~ ***Small-Scale Ground-Mounted Solar Energy Generating Facilities, Solar Panel Building-Mounted Systems, and Large-Scale Ground-Mounted Solar Electric Generating Installations.***

Section 4.3 Table of Use Regulations: revise as follows,

<u>Energy Generation Uses</u>	<u>RA</u>	<u>VR</u>	<u>VC</u>	<u>C</u>	<u>I</u>	<u>See</u>
Premises-Use Wind Energy Systems	SP	SP	SP	SP	SP	Sec. 17
Solar panel <i>building-mounted</i> systems for premises-use	Y	Y	Y	Y	Y	
Commercial electric generating facilities	SP	SP	SP	SP	SP	
Coal fired electric generating facilities	N	N	N	N	N	
Nuclear powered electric generating facilities	N	N	N	N	N	
Wind powered electric generating systems not covered in Section 17	N	N	N	N	N	
Large-Scale Ground-Mounted Solar-Electric Generating Installation (<i>LSSI</i>)	SP	N	N	SP	SP	Sec. 18
Small-scale industrial <i>ground-mounted</i> solar energy generating facility	SP	SP	SP	SP	Y	

Section 16: Telecommunications Regulations [Note: amended language is in bold/italics]

Section 16.2 DEFINITIONS -- Amended to read:

Commercial Radio Service (CRS) facility – a facility consisting of ~~a~~ ***one or more of the following***: a radio frequency configuration, ***wireless antenna (regardless of size)***, support structures (***including telephone/electricity/cable poles as well as Commercial Radio Service (CRS) towers***), equipment storage shelters, and accessory equipment required for the reception, switching, and/or transmission of wireless telecommunications including, but not limited to, paging, enhanced specialized mobile radio, personal communications services, cellular telephones and similar technologies, ***but excluding personal and/or small business cell phone systems.***

Wireless Antenna – a device for transmitting and receiving electromagnetic waves, ~~This includes~~ ***including but not limited to***, antennas, whip antennas, microwave dishes, ***and antennas designed to be located on a widely-distributed basis as opposed to on a central tower.***

Section 16.3, 10. ***Change “500” to “1,500.”*** To read:

Section 16.3.10. All new *CRS facilities* shall be at least a distance of 1500 feet from any residential structure.

Section 16.3,11. ***Change “1500” to “3,000.”*** To read:

Section 16.3.11. All new *CRS Facilities* shall be at least a distance of **3000** feet from the property line of any school.

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Section 16.3, 24. Add new section 24. To read:

Section 16.3.24. No new Commercial Radio Service (CRS) facility of any kind or size shall be located in the Village Residential and Village Commercial zones.

Section 18 Large-Scale Ground-Mounted Solar-Electric Generating Installations

Section 18.3 Definitions: Large-Scale Ground-Mounted Solar-Electric Generating Installation - change the maximum acreage of ten (10) acres of land to twenty (20) to read as follows:

Large-Scale Ground-Mounted Solar-Electric Generating Installation -- A solar electric system that is structurally mounted on the ground, is not roof-mounted, and covers at least one acre but not more than **twenty (20)** acres of land.”

Section 21. Siting Large-Scale Industrial & Commercial Facilities These amendments are proposed to address concerns raised by the Attorney General’s office.

Amend **Section 21.4.2.** “The application for a LSICF and ASEFs shall be accompanied by a fee as established by ZBA”, to read as follows:

Section 21.4.2 The application for a LSCIF and ASEF shall be accompanied by a fee established ***in accordance with a fee policy which has been adopted by the ZBA which policy is consistent with state law.***

Section 21.6.4 (1) Delete the words: “and to any private property including damage to residential or business structures, private roads, private water wells, septic systems” and (2) add the following sentence at the end: “Such bonds shall be handled by the Town in accordance with MGL Chapter 44, Section 53G½.”

21.6.4 A certification or evidence satisfactory to the municipality that, prior to the commencement of any activity related to the LSICF or ASEFs, the Applicant (Owner/Operator) shall have accepted and complied with any applicable bonding or permitting requirements. Bonding shall be required to ensure repair by the applicant of any damage to municipal property including but not limited to roads, culverts, bridges, water or sewer facilities, cemeteries, buildings ~~and to any private property including damage to residential or business structures, private roads, private water wells, septic systems,~~ and landscaping caused by the construction, operation or maintenance of the LSICF and ASEFs. **Such bonds shall be handled by the Town in accordance with MGL Chapter 44, Section 53G½.”**

Section 21.6.7 DELETE in its entirety.

~~21.6.7—Assurance that, at least 30 days prior to the commencement of any construction activities, the applicant (Owner/Operator) shall provide an appropriate site orientation and training course of the Operation’s Preparedness, Prevention and Contingency Plan for all emergency responders. The cost and expense of the orientation and training shall be the sole responsibility of the applicant. The Applicant or Owner/Operator shall be required to hold at least one site orientation and training course every six months under this section unless such requirement is waived by the ZBA in their sole discretion.~~

Section 21.6.13 DELETE in its entirety.

~~21.6.13—Certification that private freshwater well testing will be completed in compliance with §21.11.0 of this article.~~

Section 21.7.7 Delete the words “and State” from the last sentence to read:

21.7.7 Odor, vapors or particulate matter produced by construction or operation of the LSICF or ASEF’s shall not exceed federal or state air quality standards. Applicant shall identify all hazardous pollutants that will be emitted that affect air

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quality that are regulated by MassDEP or the EPA. Applicant shall provide assurance that air quality testing will be conducted on a daily, weekly or more frequent basis at any LSICF or ASEF emission location including Compressor Stations, Metering Stations or Venting Stations located in the Town during the construction or operation of the facility to protect public health and safety. An ambient air quality monitoring station(s) shall be installed at least a year prior to the construction and operation of the LSICF or SEF's in order to establish baseline conditions. Such monitoring stations shall be installed on site and within one-half mile down wind of the site in the direction of the prevailing wind. Air quality reports should be provided to Town ~~and State~~ officials at minimum on a monthly basis during construction and operation.

Section 21.8.2 Delete the words "chosen by the ZBA" from the first paragraph.

21.8.2 During the construction, operation, maintenance, decommissioning or reclamation activities associated with the LSICF and ASEFs, the ZBA shall require, at the expense of the applicant (Owner/Operator), the services of an independent on-site inspector ~~chosen by the ZBA~~ with proven background and experience in the type of LSICF and ASEFs proposed to be constructed, whose role will include but not be limited to the following:

Section 21.10.5 Amend by deleting "~~The use of street serving exclusively residential neighborhoods is prohibited.~~
a. ~~The use of roads designated by the Town as "scenic" roads shall be prohibited.~~" And to read as follow:

Section 21.10.5 If the ZBA wishes to prohibit the use of specific streets or roads with respect to an application, it shall do so in accordance with MGL Chapter 85, Section 2.

Section 21.10.7 Amend to read as follows:

Section 21.10.7 The ZBA ~~also reserves the right~~ ***may request that the Select Board to*** reduce speed limits, ***in accordance with MGL Chapter 90, Section 17C,*** on areas of roads that may present safety hazards for trucks hauling construction materials.

Section 21.10.15 Add new sentence at the end to read,

21.10.15 The applicant owner/ operator shall take all necessary precautions to ensure the safety of persons in areas established for road crossing and/or adjacent to roadways (for example, persons waiting for public or school transportation). Where necessary and permitted, during periods of anticipated heavy or frequent truck traffic associated with the development, the operator will provide flagmen to ensure the public safety and shall include adequate signs and/or other warning measures for truck traffic and vehicular traffic. ***All such flagging operations shall be conducted in accordance with the 701 CMR Section 700, et. seq. and in consultation with the Massachusetts State Police and MassDOT.***

Section 21.11.0 Add the words "provided that written permission has been given by the property owner" at the end of each of the first two sentences to read as follows--

The Applicant and Owner/Operator of a LSICF and/or ASEFs shall provide the ZBA and Board of Health with the results of a pre-construction and post-construction water analysis and flow rate for each existing freshwater well within 750 feet of the LSICF and/or ASEFs ***provided that written permission has been given by the property owner***. (MADEP Interim Wellhead Protection Area default radius for non-community sources for non-transient wells (NTNC).) If surficial geology warrants a greater testing area, the Board of Health can direct the Applicant and Owner/Operator to conduct testing for additional wells within the larger ***area provided that written permission has been given by the property owner***. The tests shall conform to the following requirements:

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Section 21.11.3 (1) Add the words "If written permission has been granted by the property owner" at the beginning of the Section, and (2) Add the words "provided that written permission has been given by the property owner" at the end of the Section to read:

21.11.3 ***If written permission has been granted by the property owner***, a post-construction sample analysis shall be submitted for water quality testing by the applicant, owner/operator within three months after construction is completed for wells within 750 feet. Wells within 300 feet of the facility or associated structures shall be tested on an annual basis throughout the life of the facility with the results provided to the property owner with a copy to the local Board of Health. If surficial geology warrants a greater testing area, the Board of Health can direct the Applicant and Operator to conduct testing for additional wells within the larger area on an annual basis, ***provided that written permission has been given by the property owner.***

Section 21.11.6 (1) In the first sentence, replace the words "shall have the right to" with "should".

(2) Add the words "provided that written permission has been given by the property owner" at the end of the Section, to read:

21.11.6 If the results of the pre-construction and post-construction sample analyses indicate that well water contamination has occurred or flow rates have been reduced, the owner of the well ~~shall have the right to~~ ***should*** file a complaint against the Applicant, Owner/Operator with the regional MassDEP office with a copy to the Town Board of Health. The Applicant, Owner and Operator shall be required to conduct clean-up activities or repair or replace the well affected. If clean-up activities are conducted, the well shall be tested monthly for the contaminants listed in §21.11.4 for a 24-month period to ensure that the clean-up has been properly completed. The well(s) shall be tested annually thereafter, ***provided that written permission has been given by the property owner.***

Section 21.13.1 Delete the words "or private property" from the Section.

21.13.1 Performance Bond or Escrow Account. Prior to the ZBA issuance of a "Certificate of Compliance for Construction," the Applicant, Owner/Operator shall submit to the Town a Performance Bond from a surety authorized to do business in the state to cover any damage to public ~~or private property~~ that occurs as a result of the construction of the LSICF and any SEF's in an amount and for a term (e.g. construction period plus 2-3 years) determined by a professional engineer and acceptable to the Town. In addition, the Applicant, Owner/Operator shall provide a bond or establish an escrow account that will ensure that all testing and maintenance provisions required during the life of the LSCIF or ASEF facility are completed in accordance with this bylaw and any agreement with the ZBA related to the LSCIF and/or ASEF.

Section 21.14.1 d. Add the words "and/or MGL Chapter 40, Section 58 as the ZBA and the Select Board may determine" at the end of the Section.

d. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the LSICF or ASEF shall be considered abandoned when it fails to operate for more than one year without the written consent of the ZBA. If the owner or operator of the LSICF or ASEF fails to remove the installation in accordance with the requirements of this section within 180 days of abandonment or the proposed date of decommissioning, the Town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous or decommissioned LSICF or ASEF. The Applicant and Owner/Operator shall agree to allow entry to remove an abandoned or decommissioned installation. The Town's cost for the removal may be charged to the property owner in accordance with the provisions of M.G.L. 139 ***and/or MGL Chapter 40, Section 58 as the ZBA and the Select Board may determine.***

Section 21.15.2 Delete the words "plus all court costs, including, but not limited to, reasonable attorney's fees, incurred by the Town on account of such violation" from the Section.

Any applicant, owner/ operator or other person who violates or permits a violation of this Bylaw shall pay to the Town a fine of \$300 per violation per day. ~~plus all court costs, including, but not limited to, reasonable attorney's fees, incurred by the Town on account of such violation.~~ Each day a violation exists shall constitute a separate offense. Further, the

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appropriate officers or agents of the Town are hereby authorized to issue a cease and desist notice and/or to seek equitable relief, including injunction, to enforce compliance herewith.

MARIJUANA ESTABLISHMENTS [Note: the following definitions have been taken from the 12-21-17 Draft Regulations for 935 CMR 500.000: Adult Use Marijuana. The intent of the Shelburne Planning Board is to have the Shelburne definitions for the different marijuana establishments consistent with those State Regulations.]

Section 2 Definitions and Section 4.3 Use Table: add the following definitions relative to Marijuana Establishments to definitions and create a new section for *Marijuana Establishments in Section 4.3 Use Table.*

Craft marijuana cultivator cooperative means a marijuana cultivator comprised of residents of the commonwealth organized as a limited liability company or limited liability partnership under the laws of the commonwealth, or an appropriate business structure as determined by the commission, and that is licensed to cultivate, obtain, manufacture, process, package and brand marijuana and marijuana products to deliver marijuana to Marijuana Establishments but not to consumers.

Independent Testing Laboratory means a laboratory that is licensed by the commission and is: (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the commission; (ii) independent financially from any medical marijuana treatment center or any licensee or marijuana establishment for which it conducts a test; and (iii) qualified to test marijuana in compliance with 935 CMR 500.160 and M.G.L. c.94C, § 34.

Marijuana Cultivator means an entity licensed to cultivate, process and package marijuana, to deliver marijuana to Marijuana Establishments and to transfer marijuana to other Marijuana Establishments, but not to consumers.

Marijuana Establishment means a marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana related business.

Marijuana Product Manufacturer means an entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to Marijuana Establishments and to transfer marijuana and marijuana products to other Marijuana Establishments, but not to consumers.

Marijuana Retailer means an entity licensed to purchase and deliver marijuana and marijuana products from Marijuana Establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to Marijuana Establishments and to consumers.

Medical Marijuana Treatment Center means a not-for-profit entity registered under 105 CMR 725.100, also known as a Registered Marijuana Dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana for medical use.

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Micro-Business means a marijuana establishment that is licensed to act as a: licensed marijuana cultivator in an area less than 5,000 square feet; licensed marijuana product manufacturer, and licensed marijuana delivery service in compliance with the operating procedures for each such license.

Research Facility means an entity licensed to engage in research projects by the Commission.

Social Consumption Operation means an entity licensed to purchase or otherwise acquire marijuana from licensed marijuana establishments and sell single servings of marijuana to consumers for consumption or use on the premises, except as otherwise authorized herein.

Insert a new section into 4.3 Use Table

Marijuana Establishments	RA	VR	VC	C	I
Craft Marijuana cultivator cooperative	SP	N	SP	SP	SP
Independent Testing Laboratory	N	N	SP	SP	SP
Marijuana Cultivator	SP	N	N	SP	SP
Marijuana Product Manufacturer	SP	N	N	SP	SP
Marijuana Retailer	N	N	SP	SP	N
Medical Marijuana Treatment Center	N	N	SP	SP	N
Micro-Business	SP	N	SP	SP	SP
Research Facility	N	N	SP	SP	SP
Social Consumption Operation	N	N	SP	SP	N

SUBDIVISION REGULATION REVISIONS

Add a “C” under Section III Design Standards

C. The Shelburne Fire Department (projects outside the Village of Shelburne Falls) or the Shelburne Falls Fire and Water District (projects inside the Village of Shelburne Falls) will review proposed subdivisions with respect to their impact on water supplies for firefighting (as well as drinking water availability in the Village of Shelburne Falls). The Shelburne Fire Department will be evaluating subdivision applications based on National Fire Protection Association Standards NFPA 1141, Standard for Water Supplies for Suburban and Rural Firefighting. Applicants seeking approval of a subdivision located outside the Village of Shelburne Falls are encouraged to review this standard prior to submitting an application. Applications for approval of subdivisions in the Village of Shelburne Falls are evaluated by the Shelburne Falls Fire and Water District on a case-by-case basis. Applicants seeking approval of a subdivision located in the Village of Shelburne Falls are encouraged to contact the Fire and Water District prior to submitting an application.

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Revise the ANR Form A as follows:

1) Insert the following into the Instructions for submission:

o An application must have the signature of the Shelburne Town Collector verifying taxes paid, as required by Shelburne Town Bylaw Article 3 Section 5, to be considered complete.

2) Insert the following line into the "Form A":

Verification of Taxes Paid: _____ Date: _____
Shelburne Town Collector (Shelburne Town Bylaw Article 3 Section 5)

Typo corrections as follows:

Substitute "Shelburne" for "Orange" on pages 10, 18, and 23.

Revisions recommended by Town Counsel to Section 5.3 Fees.

5.3 Fees

[No changes to section 5.3.A]

A. Expenses for advertising, notices, inspections and professional review will be borne by the applicant.

[Edit as indicated below]

B. As provided by M.G.L. Ch. 44 §53G, the Town of Shelburne Planning Board may impose reasonable fees for the employment of outside consultants, engaged by the Planning Board, for specific expert services. ~~Such services shall be deemed necessary by the Planning Board~~ **when in the opinion of the Planning Board the services are necessary** for the Planning Board to come to a final decision on an application submitted to the Planning Board pursuant to the requirements of: The Town of Shelburne Zoning Bylaws, Town of Shelburne Planning Board Subdivision Regulations, or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time. The Planning Board may also impose fees for other consultant services for the review of the plans, survey or inspections under any of the above-referenced laws or regulations.

[Rename 5.4 to 5.3.B. and insert language in bold typeface]

B. Special Account. Funds received pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Planning Board without further appropriation as provided in G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant **and only in connection with the Planning Board carrying out its responsibilities under the law.** Expenditures of accrued interest may also be made for these purposes. **Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest.**

[Insert a new section 5.3.C]

C. Reporting Requirements. The Town Accountant shall submit annually a report of said special account to the Select Board and Town Administrator for their review. The report shall be published in the town annual report. The Town Account shall submit annually a copy of this report to the director or the bureau of accounts.

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[Renumber 5.5 to 5.3.D and make changes as identified below]

D. Consultant Services. In hiring outside consultants, the Planning Board may engage professional engineers, planners, landscape architects, wildlife scientists, lawyers, designers, or other appropriate professionals able to assist the Planning Board and to ensure compliance with all relevant laws, ordinances, bylaws and regulations. Specific consultant services may include but are not limited to analysis of applications, title searches, mapping of lot and/or municipal boundaries and/or right of way, and environmental or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Planning Board. The consultant shall be chosen by, and report only to, the Planning Board ~~and/or its administrator~~. ***Any Consultants retained shall have an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.***

[Insert a new 5.3.E as follows]

E. Appeals of Choice of Consultant. Applicants may appeal the selection of the consultant to the Select Board. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The required time limits for action upon an application by the Planning Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Select Board within one month following the filing of the appeal, the selection made by the Planning Board shall stand. Such an administrative appeal shall not preclude further judicial review if otherwise permitted by law, on grounds provided for in this section.

Renumber sections 5.6 to 5.4, 5.7 to 5.5 and 5.8 to 5.6.