



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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August 28, 2026

Daymian Bartek, Town Clerk
Town of Northborough
63 Main Street
Northborough, MA 01532

Re: Northborough Annual Town Meeting of April 27, 2026 – Case # 12340
Warrant Articles # 6, 49, 50, 51, 52, 53, and 54 (Zoning)
Warrant Articles # 48, 60, and 61 (General)

Dear Ms. Bartek:

Articles 6, 48, 49, 50, 51, 52, 53, 54, 60, and 61 – We approve Articles 6, 48, 49, 50, 51, 52, 53, 54, 60, and 61 adopted at the Northborough April 27, 2026 Annual Town Meeting. Our comments on Article 53 are provided below.

Article 53 – Under Article 53, the Town amended its zoning by-laws to allow Data Centers by special permit in the Town’s Industrial District and prohibit them in all of the Town’s other zoning districts. We approve Article 53 because regulating Data Centers, including allowing them by special permit in certain zoning districts and prohibiting them in others, is within the Town’s Home Rule authority and does not otherwise conflict with state law. See Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986) (requiring inconsistency with state law or the constitution for the Attorney General to disapprove a by-law).

I. Summary of Article 53

Under Article 53, the Town amended Section 7-05-020, (I), “Industrial Uses,” pertaining to uses that are allowed in the Town’s Industrial (“I”) District to add a new subsection 8, “Data Center.” Another change under Article 53 amends Section 7-05-030, Table 1, “Table of Uses, Part B,” “Commercial and Industrial Districts,” to add a new use category for “Data Center” that allows Data Centers in the I District by special permit from the Planning Board (“PB”), and prohibits (“N”) Data Centers in all other zoning districts in the Town. Lastly, the Town added a new Section 7-10-070 that establishes the criteria the Planning Board shall consider when reviewing a Data Center special permit application. Specifically, Section 7-10-070 requires the Planning Board, in reviewing a special permit application, to consider:

- adequacy of electrical infrastructure, including utility coordination and on-site

backup power systems;

- adequacy of cooling water and environmental control systems, including impacts on municipal water supply and wastewater and stormwater infrastructure;

- adequacy of security infrastructure;

- noise and air quality, including noise and vibration from mechanical equipment, cooling systems and backup generators;

- site access, traffic circulation and emergency access;

- screening of mechanical equipment, including backup generators, from public ways and adjacent properties; and

- compliance with federal, state and local environmental, fire protection, and building requirements.

II. The Attorney General's Standard of Review of Zoning By-laws

Our review of Article 53 is governed by G.L. c. 40, § 32. Pursuant to 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.”). Rather, to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796. “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). “The legislative intent to preclude local action must be clear.” Id. at 155. Massachusetts has the “strongest type of home rule and municipal action is presumed to be valid.” Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

Article 53, as an amendment 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, 440 Mass. at 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, 362 Mass. at 101). 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. Article 53’s Data Center Regulations Do Not Appear to Conflict with State Law

Based on our standard of review of town by-laws, we approve Article 53 because regulating Data Centers, including requiring a special permit for their use in certain zoning districts and prohibiting them in other zoning districts, is within the Town’s Home Rule power and does not otherwise conflict with state law, including G.L. c. 40A, the state Zoning Act.¹ As noted earlier, the Attorney General must disapprove a by-law if it conflicts with state law. Amherst, 398 Mass. at 795-96. Because municipalities have “considerable latitude” in legislating, there must be a “sharp conflict” with state law before a local enactment may be disapproved. Bloom, 363 Mass. at 154. “The legislative intent to preclude local action must be clear.” Id. at 155.

Article 53’s regulation of Data Centers does not appear to conflict with any current state statute or regulation. Moreover, towns regularly use their home rule powers to prohibit, within their borders, certain land use activities that are not otherwise prohibited at the state level. See Amherst, 398 Mass. 793, at 798, n. 8 (the town’s by-law prohibiting the discharge of firearms within the town limits was not in conflict with the State’s hunting statutes).

For the reasons discussed above, we cannot identify a basis to disapprove Article 53 and therefore we approve it.

IV. Comments on Article 53’s Approved Provisions

While we approve Article 53, the Town should be aware that on June 25, 2026, Governor Healey issued “Guidance for data centers seeking sales and use tax exemptions and expectations for broader data center development” (“Guidance”). See <https://www.mass.gov/doc/healey-driscoll-administration-statement-of-expectations-for-responsible-data-center-development-and-operations-in-massachusetts/download>. The Guidance establishes the expectations for responsible Data Center development and operations in order to balance economic growth and innovation while protecting Massachusetts residents, businesses, and communities. See Guidance at p. 3. Under the Guidance, Data Centers are expected to: provide their own clean energy; avoid shifting or increasing costs to energy consumers; protect environmental and community health; avoid imposing environmental and social burdens in already burdened communities; contribute meaningfully to the local and state economies; and contribute to clean energy goals. See Guidance at p. 9. The Guidance further states that residents should not bear the costs or burdens associated

¹ In a decision to the Town of Shutesbury dated January 20, 2026 (Case # 12228) we approved a temporary moratorium on Data Centers. In a decision to the Town of Mansfield dated August 5, 2026 (Case # 12047) and Southborough dated August 28, 2026 (Case # 12320) we approved zoning by-laws that allowed Data Centers by special permit in certain zoning districts in the Towns and prohibited them in other zoning districts. And in decisions issued to the Town of Bolton dated August 14, 2026 (Case # 12256) and to the Town of Millis dated August 28, 2026 (Case # 12325) we approved town-wide prohibitions on Data Centers. These decisions can be found on MLU’s website at www.mass.gov/ago/munilaw (decision lookup link).

with Data Centers. Instead, Data Centers should: bear the full cost of their energy supply; minimize or mitigate air or noise pollution; and ensure water usage does not increase customers' water use costs or diminish water quality. The Guidance makes it clear that its expectations supplement, and do not replace, existing state and local siting, permitting and regulatory requirements. Lastly, the Guidance requires the Executive Offices of Economic Development and Energy and Environmental Affairs to develop and provide a resource guide to help municipalities in siting Data Centers in their communities.

While Section 7-10-070 adopted under Article 53 addresses many of the same subjects included in the Guidance, we strongly suggest that the Town discuss this Guidance, as well as any other resources provided by the State, with Town Counsel. In addition, we encourage the Town to monitor for any future changes to state laws or regulations relating to Data Centers and to discuss with Town Counsel any impacts such changes may have on the by-law amendments.

V. Conclusion

Based on our limited scope of review under G.L. c. 40, § 32, we determine that Article 53 does not appear to conflict with state law and on these grounds we approve Article 53. See Amherst, at 795-96. However, the Town must ensure that it interprets and applies the by-law in a manner that does not conflict with state law. The Town should discuss the by-law's application to specific data center projects with Town Counsel to ensure by-law is applied consistent with state law.²

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,

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² For example, the Town cannot interpret or apply the by-law in a manner that conflicts with the protections given to solar energy uses, including battery energy storage systems, under G.L. c. 40A, § 3.