Planning Department

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January 2, 2013

Notice of Public Hearing on Proposed Zoning Changes

Please publish the following as a LEGAL NOTICE on ***January 17, 2013*** and ***January 24, 2013***.

Acton Planning Board public hearing - 2/5/13, 7:45 PM, Town Hall – Faulkner Room (204), on proposed zoning bylaw and map changes to: (A) Define and regulate donation collection bins; (B) Rezone 145-149 Great Road (Brookside Shops) to Limited Business; (C) Allow limited commercial use of private neighborhood/community recreation facilities; (D) Define and regulate community service organizations; (E) Allow and regulate drive-up windows for restaurants and retail stores (citizens' petition); (F) Allow the sale, service and storage of certain home heating fuels; (G) Amend the definitions for warehouse, distribution plant, and manufacturing; (H) Regulate the dispensation of medical marijuana; (I) Clarify existing exemptions from the prohibition against outdoor retail sales; (J) Allow certain ongoing outdoor retail activities in retail locations; (K) Allow for limited outdoor sale events in retail locations; (L) Allow certain self-service outdoor sales in retail locations; (M) Allow farmers markets on private properties in most non-residential zoning districts; (N) Allow temporary yard sales in all zoning districts; (O) Amend the regulation for outdoor storage in industrial zoning districts; and (P) Define and regulate solar power installations. Except for item (M), agricultural operations will not be impacted. Proposals are available at the Planning Department in Town Hall.

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2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW – DONATION COLLECTION BINS**

(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw by inserting under section 3.8 – Accessory Use Regulations, a new subsection 3.8.4 as follows:

3.8.4 Donation Collection Bins – Donation Collection Bins (in this section hereinafter referred to as Bin or Bins) are outdoor receptacles or containers designed or intended for the donation and the temporary storage of books, clothing or other goods and materials. Bins may be placed on non-residential LOTS within any Business, Industrial or Office District, or in other Districts on LOTS owned or occupied by a Municipal, Educational, or Religious USE, subject to the following requirements:

Donation Collection Bins are also subject to permits and certain disclosure and conformance requirements as set forth in Chapter E of the General Bylaws of the Town of Acton.

3.8.4.1. Only one Bin shall be allowed on a LOT measuring 1 acre or less in area. For LOTS over 1 acre in area, up to three Donation Collection Bins may be allowed on a LOT.

3.8.4.2. Bins shall meet all minimum front, side, and rear yard setback requirements for BUILDINGS and STRUCTURES of the Zoning District in which they are located.

3.8.4.3. Bins shall not be placed on lawns and other landscaped areas.

3.8.4.4. Bins shall not be placed or located so as to block or obstruct the following: pedestrian or BUILDING access or egress; the minimum number of vehicle parking and handicap parking spaces required under this Bylaw and under the Massachusetts Architectural Access Board (AAB) regulations; ACCESS driveways; interior driveways; maneuvering aisles; loading areas; public or private utilities, services, or drainage systems; fire lanes, alarms, hydrants, or other fire protection equipment; and emergency accesses or egresses.

3.8.4.5. Bins shall be operated and maintained so that all sidewalks and walkways continuously meet minimum Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (AAB) standards.

3.8.4.6. Bins shall be completely screened on three sides from abutters' and public view with fencing, landscaping, walls, or similar devices.

3.8.4.7. Bins shall be fully enclosed and locked, and have not more than one receiving door with a theft prevention device.

3.8.4.8. Bins shall not exceed 200 cubic feet in size.

3.8.4.9. Bins shall have one sign, not exceeding 4 square feet in display area, attached to the exterior of the Bin displaying the Bin owner's or operator's name and contact information, collection times, and other required information. No advertising shall be allowed on the sign.

3.8.4.10. Bins shall be regularly emptied of their content so that they do not overflow and do not result in donated goods and materials being strewn about the surrounding area.

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3.8.4.11. Bins and their surroundings shall be maintained in a state of good repair, in a neat and clean condition, and free of trash, debris, refuse or like materials.

, or take any other action relative thereto.

SUMMARY

There is a fair number of donation collection bins in Acton; they may be operated by charitable not-for-profit or by for-profit organizations. Currently, zoning does not allow the placement of such bins anywhere in Acton. All donation collection bins are currently illegal. This article would establish zoning standards for donation collection bins pertaining to the placement, setbacks, visual screening, and maintenance. Adoption of this article will enact these standards in the Zoning Bylaw going forward. Because no bins are currently legal, existing bins will also have to be brought into compliance with the standards, except for reasonable exemptions pursuant to M.G.L. Ch.40A S.3, Dover Amendment. Rejection will direct staff to enforce the current zoning bylaw and cause the removal of all donation collection bins not otherwise exempt from zoning pursuant to the Dover Amendment. A companion article in this warrant would establish a general bylaw that requires annual permits for donation collection bins, disclosure requirements, and timelines for bylaw conformance.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

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2013 DRAFT ZONING ARTICLE **AMEND ZONING MAP – BROOKSIDE SHOPS**
(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw, Map Number 1, by changing the zoning district designation for Town Atlas parcel F-4/37 (145 to 149 Great Road) from Residence 8 (R-8) to Limited Business (LB), or take any other action relative thereto.

SUMMARY

145-149 Great Road is the site of Brookside Shops (Staples, Trader Joe's, Talbots, etc.). Originally zoned for General Business, the site was rezoned to single-family residential (R-8) in 1990 as part of a comprehensive zoning plan for Great Road. The then-owners of the subject site objected to the rezoning of their property and availed themselves of statutory grandfathering protection devices to preserve the pre-1990 General Business zoning for their property. Brookside Shops was built about ten years ago under these grandfathering protections in conformance with pre-1990 General Business District zoning requirements.

Today, the grandfathering protections for the subject property have expired, and the site is subject to residential R-8 zoning regulations. Severe non-conformity restrictions result from the mismatch between the established commercial use and the residential zoning regulations. This makes it often impossible for the existing businesses to implement changes to their establishments without involvement by the Board of Appeals for special permits or variances.

Every commercial use at Brookside Shops is nonconforming. Acton does not allow use variances. This means that customary shopping plaza businesses cannot change from one business type to another. For instance, vacant retail space in the plaza can only be reused for retail; it cannot be converted to a restaurant or a bank. Similarly, restaurant space can only be used for restaurant use; and a space occupied by a bank can only be used by a bank. In addition, depending on the business types involved, the resizing of commercial spaces within the plaza is severely constrained or cannot be allowed. This is a recipe for potentially extensive long-lasting vacancies in the plaza, which contributes to blight and discourages reinvestment for upkeep and modernizations in the future.

When initially proposed in the late 1990's, the plaza was not embraced or welcome by many Acton residents. Now after more than ten years in business, it is an established part of Acton's commercial fabric along Great Road. This article is intended to acknowledge the commercial nature of the property that now exists and to provide for its regulation through zoning with the appropriate zoning tools for commercial properties.

The proposed Limited Business (LB) zoning is consistent with the zoning of other business properties along Great Road. LB zoning for the site will not eliminate all non-conformities, but will reduce them considerably and most importantly allow the range of commercial uses that are customary for shopping plazas and centers, including retail shops, restaurants, personal service businesses, and financial institutions. This zoning change does not result in allowing future expansion of the plaza, nor does it negate the special permits that were issued for it or any of the conditions and requirements contained therein.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

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2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW**
(Two-thirds vote) **COMMERCIAL INSTRUCTION**
IN PRIVATE COMMUNITY FACILITIES

To see if the Town will vote to amend the Zoning Bylaw as follows:

A. In section 3 containing definitions of principal land uses, delete the principal definition 3.2.3 Recreation in its entirety and replace it with the following new definition:

3.2.3 Recreation – A pool, tennis or other recreation facility owned and operated by a neighborhood association or a condominium for the use by the members of the association or condominium and their guests. The facility may also be used for commercial instruction, education and training in skills of all kinds for the members of the association or condominium or the public at large.

[Note: definition 3.2.3 currently reads:
3.2.3 Recreation – A pool or recreation center owned and operated by a neighborhood association, the use of which is limited to members of the association and their guests.]

B. In section 9, Planned Conservation Residential Community, delete subsection 9.6.1 in its entirety and replace it with the following:

9.6.1 Permitted USES – Permitted uses in a PCRC shall be any use permitted in the underlying Zoning District; ACCESSORY USES typically associated with residential USES; and community facilities owned and operated by the owner of the PCRC or the residents within the PCRC, such as building and grounds maintenance facilities, waste water disposal facilities, recreational facilities, or club houses. Community facilities shall be for the use by the residents within the PCRC and their guests. They may also be used for commercial instruction, education and training in skills of all kinds for the residents within the PCRC and the public at large.

[Note: Subsection 9.6.1 currently states:
9.6.1 Permitted USES – Permitted USES in a PCRC shall be any USE permitted in the underlying Zoning District, as well as ACCESSORY USES typically associated with residential USES, owned and operated by the owner of the PCRC or the residents within the PCRC, such as building and grounds maintenance facilities, wastewater disposal facilities, recreation facilities, or club houses.]

C. In section 9B, Senior Residence developments, delete subsection 9B.4.6 in its entirety and replace it with the following:

9B.4.6 Support services to meet SENIORS' needs, such as skilled nursing service, medical and other health service, food service, recreation and leisure facilities, or a community center; including the use of recreation, leisure, and community center facilities for commercial instruction, education and training in skills of all kinds for SENIORS and the public at large.

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[Note: Subsection 9B.4.6 currently reads:
Support services to meet SENIORS' needs, such as skilled nursing service, medical and other health service, recreation and leisure facilities, a community center, or food service.]

, or take any other action relative thereto.

SUMMARY

This Article will permit community and condominium owned recreation and community facilities to be used for commercial instruction, education and training in skills of all kinds. This amendment allows the broader, less exclusive, use of private community resources in Acton. Income from these activities may help defer the costs of maintaining such facilities.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

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2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW – COMMUNITY SERVICE ORGANIZATIONS**

(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw, Section 3, as follows:

1. In the Table of Principal Uses insert a new line 3.4.11 as follows:

		RESIDENTIAL DISTRICTS				VILLAGE DISTRICTS					OFFICE DISTRICTS	
PRINCIPAL USES		R-2 R-4 R-8 R-8/4 R-10 R-10/8	R-A	R-AA	VR	EAV	EAV-2	NAV	SAV	WAV	OP-1	OP-2
3.4 GOVERNMENTAL INSTITUTIONAL & PUBLIC SERVICE USES												
3.4.11	Community Service Organization	N	N	N	N	Y	Y	Y	Y	Y	Y	Y

		BUSINESS DISTRICTS			INDUSTRIAL DISTRICTS					SP. DIST.	
PRINCIPAL USES		KC	LB	PM	GI	LI	LI-1	SM(1)	TD	ARC	SITE PLAN
3.4 GOVERNMENTAL INSTITUTIONAL & PUBLIC SERVICE USES											
3.4.11	Community Service Organization	Y	Y	Y	Y	Y	Y	Y	Y	N	R

2. In section 3.4 (Governmental, Institutional and Public Service Uses), insert a new land use definition as follows:

   3.4.11 Community Service Organization – An organization, other than religious or educational, incorporated as a 501(c)(3) non-profit corporation under the Federal tax code and dedicated to assist individuals or families in need by providing or distributing free goods, services or other assistance to cover basic needs, such as but not limited to a food pantry, a provider of free clothing furniture, appliances and home goods, or a provider of home heating fuel assistance.

, or take any other action relative thereto.

SUMMARY

This article will create the regulatory space in the zoning bylaw for non-profit community service organizations, unrelated to religious or educational institutions, to locate in the Town of Acton to provide residents and families in need with assistance in basic needs for a safe, healthy and

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dignified existence: food, clothing, shelter and heat. Specifically, this article will allow the Acton Food Pantry, a long standing Acton-based organization to locate their planned new facility at a site in Acton that is affordable to them.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

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Citizens Warrant Article for the next Acton Town Meeting: Spring 2013

2013 **ZONING ARTICLE** **AMEND ZONING BYLAW DRIVE-UP WINDOW**

(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw as follows:

A. In section 3.5.5, delete the phrase "except that drive-up service shall not be allowed", so that Section 3.5.5 is changed to read in its entirety:

"3.5.5 Restaurant – Establishment where food and beverages are sold within a BUILDING to customers for consumption 1) at a table or counter, or 2) in an adjacent outdoor space that does not obstruct a public way, sidewalk, walkway, vehicular parking, or a driveway, or 3) off the premises as carry-out orders, or 4) any combination of the above. In the OP-2 and the TD District, the minimum square footage for an individual restaurant shall be 5,000 square feet measured in NET FLOOR AREA."

[Note: Section 3.5.5 now reads:
3.5.5 Restaurant – Establishment where food and beverages are sold within a BUILDING to customers for consumption 1) at a table or counter, or 2) in an adjacent outdoor space that does not obstruct a public way, sidewalk, walkway, vehicular parking, or a driveway, or 3) off the premises as carry-out orders, except that drive-up service shall not be allowed, or 4) any combination of the above. In the OP-2 and the TD District, the minimum square footage for an individual restaurant shall be 5,000 square feet measured in NET FLOOR AREA.]

B. AMEND Section 3.8.2.2 by inserting the phrase ", restaurant, or retail store" after the word "bank" and before the period, so that Section 3.8.2.2 is changed to read in its entirety:

"3.8.2.2 Drive-up facilities in a bank, restaurant, or retail store."

[Note: Sections 3.8.2 and 3.8.2.2 now read:
3.8.2 ACCESSORY USES permitted in the Office, Business, and Industrial Districts.
3.8.2.2 Drive-up facilities in a bank.]

C. Amend Section 7.7.4 by inserting the phrase ", or a restaurant drive-up window, or a retail store drive-up window" after the phrase "bank drive-up-window" and before the period, so that Section 7.7.4 is changed to read in its entirety:

"7.7.4 WALL SIGNS – A WALL SIGN may be ERECTED on a BUILDING, or on an arcade STRUCTURE attached to the ground floor of a BUILDING, or on a permanent canopy STRUCTURE associated with a motor vehicle service station, or a bank drive-up

window, or a restaurant drive-up window, or a retail store drive-up window."

> *[Note: Section 7.7.4 now reads:*
> *7.7.4 WALL SIGNS – A WALL SIGN may be ERECTED on a BUILDING, or on an arcade STRUCTURE attached to the ground floor of a BUILDING, or on a permanent canopy STRUCTURE associated with a motor vehicle service station or a bank drive-up window.]*

D. Amend Section 10.4.5.3 by inserting the phrase "and drive-up-windows" after the phrase "driveway openings and before the phrase "are convenient and safe", so that Section 10.4.5.3 is changed to read in its entirety:

"10.4.5.3 Provides for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings and drive-up-windows are convenient and safe in relation to vehicular and pedestrian traffic circulation, including emergency vehicles, on or adjoining the site."

> *[Note: Section 10.4.5.3 now reads:*
> *10.4.5.3 Provides for convenient and safe vehicular and pedestrian movement and that the locations of driveway openings are convenient and safe in relation to vehicular and pedestrian traffic circulation, including emergency vehicles, on or adjoining the site.]*

, or take any other action relative thereto.

MOTION

Move that the Town adopt the zoning bylaw amendments as set forth in the Article.

SUMMARY

This article would change the existing Acton Zoning Bylaw to allow drive-up-windows in restaurants and retail stores just as they are currently allowed for banks.

- Part A amends Section 3.5.5 to permit drive-up service at a restaurant.
- Part B amends Section 3.8.2 to allow drive-up window service for a restaurant or a retail store in addition to the presently permitted service by a bank.
- Part C amends Section 7.7.4 placement of a sign for a restaurant or retail store as is presently allowed for a bank.
- Part D amends Section 10.4.5.3 to explicitly give control over drive-up-windows in districts requiring a SPS to the Selectmen.

Acton currently permits drive-up windows for banks at Sections 3.8.2.2, Section 7.7.4, and Section 10.3.6.5 of the Acton Zoning Bylaws. This amendment adds restaurants and retail stores to the permission to use drive-up windows.

The public finds drive-up windows convenient for banking. Also, the public will find drive-up windows convenient for restaurants and retail stores. Picking up some food at a restaurant to take home and eat is a common practice throughout the United States, and citizens of Acton will find such service convenient. Picking up orders at a drive-up window at a retail store such as a pharmacy is also a common practice throughout the United States, and citizens of Acton will also find such service convenient.

The character of Acton will not be affected by these zoning Bylaw changes as the Board of Selectmen control the placement and appearance of the proposed drive-up windows, just as they now control the placement and appearance of bank drive-up windows.

Particularly, Acton Zoning Bylaw Sections 10.3.6 and Section 10.3.6.5 are applicable to restaurants, and they state:

> *10.3.6 Special Permit Conditions – The Special Permit Granting Authority may impose such conditions, safeguards and limitations as it deems appropriate to protect the neighborhood or the Town including, but not limited to:...*
>
> *"10.3.6.5 Regulation of number, design and location of ACCESS drives, drive-up windows and other traffic features;*

Further, Acton Zoning Bylaw Section 10.4 applies to banks and retail stores, and in view of the amendment to Section 10.4.5.3 the Selectmen will have control of the placement and appearance of drive-up-windows of banks and retail stores.

That is, the Town, through the Board of Selectmen, may control all drive-up windows and thereby protect the interests of Town character.

2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW – HEATING A FUELS**
(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw, Section 3.7 (Prohibited Uses), by deleting the words in the sixth line in the right column of the table, and replacing them with the words "Commercial storage of heating oils; commercial storage of natural gas in LNG tanks, gas holders or pressure vessels; except that the storage of liquefied petroleum (LP) gas in up to 20 pound capacity cylinders for retail purposes shall be allowed in quantities that are customary for retail businesses".

[Note – Section 3.7, Table, right column, sixth line currently reads: "Heating fuel sales, service and storage".]

, or take any other action relative thereto.

SUMMARY

The zoning bylaw currently prohibits the sales, service and storage of all types of heating fuels despite the many homes and other buildings that depend on such a business. Although this prohibition makes no distinction between types of heating fuels, it is assumed that it was enacted many years ago out of concerns related to groundwater contamination, and therefore specifically aimed at heating oil. One or two heating oil distributors remain in Acton as legally grandfathered uses, having existed here before the prohibition was enacted. Many Acton homes and buildings use oil for heating. In addition, many homes and buildings in Acton use natural gas for heating, and some may use propane and/or fire wood. This article narrows the town-wide prohibition on the sale, service and storage of heating fuel to the "commercial storage of heating oil and the large-scale commercial storage of heating fuel gases". As a result, the zoning bylaw will allow in the respective business and industrial zoning districts the storage and sale of firewood and other solid fuels and of liquefied petroleum (LP) gas in limited customary retail quantities; and it will allow the sales, but not storage, of heating oil and related services as commercial enterprises to provide Acton's home- and property owners with local heating services.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

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2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW – INDUSTRIAL USES**
(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw, Section 3.6 (Industrial Uses) by deleting sub-sections 3.6.1 (Warehouse), 3.6.2 (Distribution Plant) and 3.6.3 (Manufacturing) and replacing them with new subsection 3.6.1, 3.6.2, and 3.6.3 as follows:

3.6.1 Warehouse – A BUILDING used primarily for the enclosed storage of goods, and materials for any length of time; including receiving, repackaging, and/or reshipping; and including office, administrative, and support facilities related to the foregoing, but not a Distribution Center as defined in section 3.6.2; a personal self-storage facility or mini-warehouse.

[Note – Section 3.6.1 currently reads:
Warehouse – A BUILDING for the enclosed storage of goods and materials, including office, administrative, and support facilities related to the foregoing, but not a distribution plant; a personal self-storage facility or mini-warehouse.]

3.6.2 Distribution Center – An establishment with a BUILDING NET FLOOR AREA larger than 50,000 square feet used primarily for the receiving, short-term enclosed storage, repackaging, and/or reshipping or distribution of goods and materials to retail stores and other market outlets, or directly to the consumer via telephone or internet remote sales; including office, administrative, and support facilities related to the foregoing.

[Note – Section 3.6.2 currently reads:
Distribution Plant - Establishment for the temporary storage of merchandise, products, or equipment and its wholesale, distribution or re-distribution to the market, usually in smaller lots, or its sale directly to the consumer via remote sales, such as sales conducted via telephone or Internet; and support services for the foregoing, such as office and laboratory.]

3.6.3 Manufacturing – An establishment engaged in the creation, fabrication or assembly of products; the physical, mechanical or chemical transformation, processing, blending or assembly of materials, substances or components into products; the development and manufacturing of renewable energy or alternative energy (RE/AE) equipment and systems; the outdoor processing and storage of firewood and other solid fuels subject to effective landscaping or architectural screening that reduces, to the extent feasible and reasonable, their visual impact when viewed from adjacent and nearby STREETS and residentially zoned properties; the research or testing of new and emerging technologies and technological devices; or similar USES and activities; and support facilities and operations related to the foregoing including but not limited to office, administration, laboratory, warehouse, and wholesale distribution of the manufactured products; but, excluding Scientific USE as defined in Section 3.6.4. All operations shall confine harmful, noxious or unpermitted smoke, fumes, dust, noise, pollution, contamination and other emissions and nuisances within the premises. Except as specifically noted, no manufacturing, research or testing shall be conducted outside of a BUILDING, except where a special permit for such outdoor manufacturing, research or testing has been issued by the Board of Selectmen. In the KC District, the maximum NET FLOOR AREA of an establishment that is classified as a Manufacturing USE shall not exceed 10,000 square feet.

[Note – Section 3.6.3 currently reads:
Manufacturing – A manufacturing facility, such as a printing or publishing plant; manufacturing of

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building systems and components; fabrication and assembly of electronic components, precision instruments, or other high technology products; manufacturing of metal products or office supplies; software or hardware development or manufacturing; research or testing of new and emerging technologies and technological devices; establishments engaged in services related to the environment; development and manufacturing of renewable energy or alternative energy (RE/AE) equipment and systems; or similar USES and activities; including office, administrative, laboratory, and support facilities related to the foregoing; but excluding scientific USE as defined in Section 3.6.4. All operations shall confine disturbing smoke, fumes, dust, noise, and other emissions within the premises. No research or testing shall be conducted outside of a BUILDING. In the KC District, the maximum NET FLOOR AREA of an establishment that is classified as a Manufacturing USE shall not exceed 10,000 square feet.]

, or take any other action relative thereto.

SUMMARY

This article redefines three industrial uses.

Warehouse: Storage costs money. Industries strive for reduction or elimination of inventory. Today's industrial processes and logistics have for the most part done away with the need for longer term storage. Warehouses have transformed into distribution facilities with very short product holding times. Products are brought in, repackaged into different batch sizes to meet shipping needs, and sent out as quickly as possible. The proposed revised definition acknowledges this reality, but still leaves room for the more traditional warehouse used for longer-term storage.

Distribution Center: Small distribution facilities appear to the outsider much like traditional warehouses or manufacturers with relatively few employees and only intermittent truck traffic, often only small box trucks and vans, UPS, or FedEx. Large Distribution Centers can generate significant large truck traffic. Acton is a very unlikely place for large distribution centers. They prefer to locate at or very near transportation nodes and interchanges, preferably with multi-modal transportation access (highway, rail, air, river, or sea). Nevertheless, Acton's zoning bylaw carries a use definition for Distribution Plant, and the Table of Principle Uses allows it by special permit in certain districts (OP-2, PM, TD). This article amends the definition of Distribution Plant to Distribution Center and to more closely track the generic and technical definitions for such a facility as an operation that is distinct from a Warehouse. Also, to further distinguish, it introduces a 50,000 square foot minimum threshold for a facility to be defined as a Distribution Center distinct from a Warehouse. Below that size the facility is, for zoning purposes, simply a Warehouse regardless of specific storage, warehousing, receiving or shipping processes, durations or frequencies. The threshold is helpful in making sure that small distributors are not unduly classified as Distribution Centers and as a result prohibited from most industrial districts, or subjected to special permit procedures and requirements in the few districts where Distribution Centers may be allowed.

Manufacturing: The current definition of manufacturing is too limiting. It provides a short list of manufacturing examples; most are derived from industries that once existed or may still exist in Acton. The definition as currently structured leaves little room for other types of manufacturing, such as a coffee roaster and blender, an industrial scale bakery, a specialty machine shops, a maker of gadgets and devices that are not shrouded in the glamour of high-tech or emerging technologies, a designer and manufacturer of clothing and accessories, or simply someone who

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cuts and splits logs for firewood. The proposed new definition begins with a much more generic and inclusive definition of Manufacturing so that the phrase "or similar USES and activities" has a broader meaning and can be applied to a wider range of manufacturing activities. The zoning bylaw has a long list of prohibited uses; many would be considered industrial or manufacturing uses. This list continues to safeguard against noxious, dangerous, and undesirable land uses.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

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2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW**
(Two-thirds vote) **MEDICAL MARIJUANA TREATMENT CENTER**

(This is a placeholder article)
To see if the Town will vote to amend the Zoning Bylaw as follows:

A. In section 3.5, insert a new use definition "Medical Marijuana Treatment Center" consistent with definition in ballot measure 3, as adopted by votes in November 2012.

B. In section 3 – Table of Principal Uses, specify in which districts Medical Marijuana Treatment Centers will be allowed and prohibited, or allowed by special permit.

C. In section 5, state specific dimensional regulation applicable to Medical Marijuana Treatment Centers where allowed.

, or take any other action relative thereto.

SUMMARY

This is a placeholder article. Zoning typically defines land uses and establishes regulations for such uses within the town's zoning districts. Generally, zoning aims to mitigate, modulate, or otherwise regulate the land use to ensure its compatibility with the town's established planning goals and objectives and foster harmony, avoidance of nuisance, public safety, etc. in the immediate neighborhood of the land use. The typical and well-tested zoning tools to accomplish this are various dimensional regulations and landscaping and screening. The imposition of district and dimensional regulations for Medical Marijuana Treatment Centers would be, on the face, permissible as an exercise of customary zoning powers. Because zoning authority to interfere with business structures, affiliations, and governance is not established, and because of the specifics of ballot measure 3 ("Medical marijuana treatment center" shall mean a not-for-profit entity, as defined by Massachusetts law only, registered under this law, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers (2.(H)); "Dispensary agent" shall mean an employee, staff volunteer, officer, or board member of a non-profit medical marijuana treatment center, who shall be at least twenty-one (21) years of age (2.(E)); "Medical use of marijuana" shall mean the acquisition, cultivation, possession, processing, (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transportation, sale, distribution, dispensing, or administration of marijuana, for the benefit of qualifying patients in the treatment of debilitating medical conditions, or the symptoms thereof (2.(I)); "Personal caregiver" shall mean a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use of the qualifying patient. An employee of a hospice provider, nursing, or medical facility providing care to a qualifying patient may also serve as a personal caregiver (2.(J)); *(Requirements for)* Registration of nonprofit medical marijuana treatment centers (9.(A)&(B)).) it is not advisable to attempt to regulate through zoning, how exactly Medical Marijuana Treatment Centers must be established, including any requirement that it must be part of, housed within, or operate as a pharmacy with a licensed pharmacist on the premises.

Another possible way that zoning could insert itself at this time is by way of adopting a moratorium on medical marijuana treatment centers through the close of the Annual Town Meeting in 2014. Burlington and Cambridge are pursuing moratoria. The theory is to give the Town about a year after DPH promulgates its regulations (due out in May 2013) so that the Town can undertake the planning process and draft, and approve a new zoning bylaw on the subject, if warranted after DPH regulations are promulgated. As with all moratoria, shorter is better (less likely to be struck down), so if there is going to be a fall 2013 STM, the subject could be taken up then. The question remains what it is that should be regulated through zoning.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

DRAFT

2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW**
(Two-thirds vote) **OUTDOOR SALES PROHIBITION –**
CLARIFICATION FOR EXISTING EXEMPTIONS

To see if the Town will vote to amend the Zoning Bylaw, Section 3.7 – Prohibited USES, by deleting the last sentence of the first paragraph and replacing it with the following new sentence:

"In addition, the following USES are prohibited in all zoning districts, unless otherwise specifically permitted in this Bylaw."

> *[Note – the first paragraph of Section 3.7 currently reads]:*
> *3.7 Prohibited USES – All USES that pose a present or potential hazard to human health, safety, welfare, or the environment through the emission of smoke, particulate matter, noise or vibration, or through fire or explosive hazard, or glare are expressly prohibited in all zoning districts. In addition, the following USES are expressly prohibited in all zoning districts.*

, or take any other action relative thereto.

SUMMARY

The first paragraph of Section 3.7 is followed by a list of 34 prohibited land USES or land use groups including "open air establishment for storage, distribution, or sale of materials, merchandise, products or equipment". This article amends Section 3.7 to acknowledge that other existing sections of the Zoning Bylaw allow open air displays of merchandise for garden centers, florists, and commercial greenhouses (Section 3.5.1) and for automobile dealerships (Section 3.5.22), and the outdoor storage of materials, goods, and equipment as an accessory use in industrial zoning districts (Section 3.8.2.6).

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

DRAFT

2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW**
(Two-thirds vote) **ONGOING OUTDOOR SALES**

To see if the Town will vote to amend the Zoning Bylaw, Section 3.8 – ACCESSORY USE Regulations, by inserting a new subsection 3.8.3 as follows:

3.8.3 ACCESSORY USES permitted in the Business and Village Districts.

3.8.3.1 The on-premises outdoor display and sale of merchandise by Retail PRINCIPAL USES on private property, subject to the following requirements:

a) The outdoor display and sale of merchandise shall be conducted only by a PRINCIPAL Retail USE located on the same LOT, and shall only include merchandise that is regularly offered for sale inside that business establishment. The outdoor display of seasonal merchandise that is not typically offered for sale indoors, such as but not limited to winter tools, flowers, and beach or pool accessories shall be allowed.

b) The outdoor display and sale shall be confined to an area that is directly contiguous to the BUILDING space that the PRINCIPAL Retail USE occupies.

c) Each outdoor display and sale area shall meet the minimum side, and rear yard setback requirements for BUILDINGS and STRUCTURES of the zoning district in which it is located.

d) Outdoor display and sale areas shall not be placed on lawns and other landscaped areas.

e) Outdoor display and sale areas shall not be placed or located so as to block or obstruct the following: pedestrian or building access or egress; the minimum number of vehicle parking and handicap parking spaces required under this Bylaw and under the Massachusetts Architectural Access Board (AAB); ACCESS driveways; interior driveways; maneuvering aisles; loading areas; public or private utilities, services, or drainage systems; fire lanes, alarms, hydrants, or other fire protection equipment; or emergency access or egress.

f) Outdoor display and sale areas shall be operated and maintained so that all sidewalks and walkways continuously meet minimum Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (AAB) standards.

, and

Renumber the current section 3.8.3, including all its subsections 3.8.3.1 through 3.8.3.6 to become section 3.8.4 and subsections 3.8.4.1 through 3.8.4.6.

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, or take any other action relative thereto.

SUMMARY

The Acton Zoning Bylaw does not currently allow the open air display of merchandise, except in very limited settings such as displays of merchandise for garden centers, florists, and commercial greenhouses (Section 3.5.1) and for automobile dealerships (Section 3.5.22). In addition, outdoor sales are not are allowed. In reality, outdoor sales are happening at many retail business locations in Acton, often on weekends when zoning enforcement staff is off duty. Outdoor sales can be enjoyable to the customers and clients of businesses, and help retailers retain existing and attract new customers. This article, if adopted, would allow retail PRINCIPAL USES to have outdoor display and sale of merchandise that is regularly sold inside the store as well as seasonal items, subject to certain regulations on the locations of outdoor display and sales areas.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

DRAFT

2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW**
(Two-thirds vote) **OUTDOOR SALE EVENTS**

To see if the Town will vote to amend the Zoning Bylaw by inserting in Section 3.8.3 – ACCESSORY USES Permitted in the Business and Village Districts (as inserted in the previous article of this warrant), by inserting a new subsection, 3.8.3.2 as follows:

3.8.3.2 The Zoning Enforcement Officer may issue one permit per calendar year for each private property where Retail is a PRINCIPAL USE allowing a temporary outdoor sale event such as a bazaar, festival, fair or similar event that includes the outdoor display and sale of merchandise, subject to the following requirements:

a) The Applicant shall submit a permit application to the Zoning Enforcement Officer sixty (60) days prior to the start of the event.

b) Prior to issuance of the permit, the property owner shall have obtained all other applicable permits and licenses for the event that may be required under other local, State or Federal law.

c) Prior to issuance of the permit, the property owner shall have obtained written notice from the Acton Police Department to proceed with the event.

d) Only the retailers that are permanent tenants on the property may participate in the outdoor sales event. The owner shall not allow off-site or traveling retailers or vendors to participate.

e) Each outdoor display and sale area shall meet the minimum side, and rear yard setback requirements for BUILDINGS and STRUCTURES of the zoning district in which it is located.

f) Outdoor display and sale areas shall not be placed or located so as to block or obstruct the following: pedestrian or building access or egress; the minimum number of handicap parking spaces under the Massachusetts Architectural Access Board (AAB); ACCESS driveways; fire lanes, alarms, hydrants, or other fire protection equipment; and emergency access or egress.

g) Outdoor display and sale areas shall be operated and maintained so that all sidewalks and walkways continuously meet minimum Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (AAB) standards.

h) The event shall last a maximum of three days.

i) The event's hours of operation shall be limited to 7 AM to 9 PM Monday through Sunday, unless otherwise specified by the Zoning Enforcement Officer.

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j) Signs displayed during the event shall not be subject to the zoning regulations for signs set forth in section 7 of this bylaw.

k) All signs, trash and debris shall be removed from the event site immediately upon the termination of the activity.

l) The Zoning Enforcement Officer when issuing the zoning permit shall require documents and information sufficient to determine compliance with this section.

, or take any other action relative thereto.

SUMMARY

The Acton Zoning Bylaw does not currently allow the open air display of merchandise, except in very limited settings such as displays of merchandise for garden centers, florists, and commercial greenhouses (Section 3.5.1) and for automobile dealerships (Section 3.5.22). In addition, outdoor sales are not allowed. This bylaw would allow in the village and business districts temporary sale events on retail properties during which retailers may display and sell merchandise outdoors. Regulations would apply on the location, frequency, duration and hours of operation of outdoor sale events. Pre-approval would be required through an administrative permit procedure.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

DRAFT

2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW**
(Two-thirds vote) **OUTDOOR SELF SERVICE CONVENIENCE**

To see if the Town will vote to amend the Zoning Bylaw, Section 3.8.3 – ACCESSORY USES Permitted in the Business and Village Districts (as inserted in a previous article of this warrant), by inserting a new subsection 3.8.3.3 as follows:

3.8.3.3 On-premises outdoor self service conveniences such as rental movie kiosks, vending machines, propane tank dispensers or similar convenience on private property where Retail is a PRINCIPAL USE, subject to the following requirements:

a) Outdoor self service conveniences shall be confined to an area immediately contiguous to the BUILDING space that the PRINCIPAL Retail USE occupies.

b) Outdoor self service conveniences shall not be placed on lawns and other landscaped areas.

c) Outdoor self service conveniences shall meet the minimum front, side, and rear yard setback requirements for BUILDINGS and STRUCTURES of the zoning district in which it is located.

d) Outdoor self service conveniences shall not be placed or located so as to interfere with the following: pedestrian or building access or egress; the minimum number of vehicle parking and handicap parking spaces required under this Bylaw and under the Massachusetts Architectural Access Board (AAB); ACCESS driveways; interior driveways; maneuvering aisles; loading areas; public or private utilities, services, or drainage systems; fire lanes, alarms, hydrants, or other fire protection equipment; or emergency access or egress.

e) The outdoor self service conveniences shall be maintained so that all sidewalks and walkways continuously meet minimum Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (AAB) standards.

, or take any other action relative thereto.

SUMMARY

The Acton Zoning Bylaw does not currently allow the open air display of merchandise, except in very limited settings such as a displays of merchandise for garden centers, florists, and commercial greenhouses (Section 3.5.1) and for automobile dealerships (Section 3.5.22). In addition, outdoor sales are not allowed. In reality, Self Service Conveniences such vending machines, propane tank dispensers, ATM's or movie kiosks are located outside many retail business locations in Acton. This article would allow outdoor Self Service Conveniences in the Business and Village Districts on LOTS where Retail is the PRINCIPAL USE, subject to regulations about placement and location.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

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2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW**
(Two-thirds vote) **OUTDOOR SALE OF NEW ENGLAND FARM PRODUCTS**

To see if the Town will vote to amend the Zoning Bylaw, Section 3.8.4– ACCESSORY USES Permitted in any Zoning Districts (as renumbered in a previous article of this warrant), by inserting a new subsection, 3.8.4.7 as follows:

3.8.4.7 In Village, Office, Business and Industrial Districts only, the Zoning Enforcement Officer may issue a permit for the recurring outdoor seasonal sales of New England farm products (farmers' market) on private property, subject to the following requirements:

a) Such permit shall be limited to one calendar year.

b) The owner of the property upon which the event will be held shall submit a permit application to the Zoning Enforcement Officer sixty (60) days prior to the start of the first farmers' market of the calendar year.

c) Prior to issuance of the permit, the property owner shall have obtained all other applicable permits and licenses for the farmers' market that may be required under other local, State or Federal law.

d) Prior to issuance of the permit, the property owner shall have obtained written notice from the Acton Police Department to proceed with the farmers' market.

e) The farmers' market shall not recur more than once per week.

f) The event's hours of operation shall be limited to 7 AM to 9 PM Monday through Sunday, unless otherwise specified by the Zoning Enforcement Officer.

g) When applying for the permit, the property owner must specify the proposed hours, and the dates and/or regularity of the farmers' market.

h) Each outdoor display and sale area shall meet the minimum side, and rear yard setback requirements for BUILDINGS and STRUCTURES of the zoning district in which it is located.

i) Outdoor display and sale areas shall not be placed or located so as to block or obstruct the following: the minimum required number of handicap parking spaces and their associated interior driveways and maneuvering aisles as required under this Bylaw for PRINCIPAL USES on the property, and under the Massachusetts Architectural Access Board (AAB); Parking spaces for PRINCIPAL USES on the property remaining open during the event; ACCESS driveways; loading areas; fire lanes, alarms, hydrants, or other fire protection equipment; and emergency access or egress.

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j) Outdoor display and sale areas shall be operated and maintained so that all sidewalks and walkways continuously meet minimum Americans with Disabilities Act (ADA) and Massachusetts Architectural Access Board (AAB) standards.

k) At all times adequate ingress and egress and sufficient parking shall be maintained as determined by the Zoning Enforcement Officer.

l) Products sold at the farmers' markets must be produced or made on farms in the New England region, with the exception of seasonal Christmas tree sales.

m) Signs displayed during the hours of operation of the farmer's market shall not be subject to the zoning regulations for signs set forth in section 7 of this bylaw.

n) All signs, trash and debris shall be removed from the event site immediately upon the termination of the activity.

o) The Zoning Enforcement Officer when issuing the zoning permit for a farmers' market shall require documents and information sufficient to determine compliance with this section.

, or take any other action relative thereto.

SUMMARY

The Acton Zoning Bylaw does not currently allow the open air display of merchandise, except in very limited settings such as displays of merchandise for garden centers, florists, and commercial greenhouses (Section 3.5.1) and for automobile dealerships (Section 3.5.22). In addition, outdoor sales are not allowed. This bylaw would allow on private property the outdoor seasonal display and sales of New England farm products in the Village, Office, Business and Industrial Districts, unassociated with the principal use on the LOT. Regulations would apply on the location, frequency, duration and hours of operation of outdoor sale events. Pre-approval would be required through an administrative permit procedure.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

DRAFT

2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW**
(Two-thirds vote) **TEMPORARY YARD OR GARAGE SALES**

To see if the Town will vote to amend the Zoning Bylaw, Section 3.8.4 – ACCESSORY USES Permitted in any Zoning District (as renumbered in a previous article of this warrant), by inserting a new subsection, 3.8.4.8 as follows:

3.8.4.8 Temporary yard or garage sales limited to a total of no more than 3 days for each calendar year on a LOT with Residential USE on it.

, or take any other action relative thereto.

SUMMARY

The Acton Zoning Bylaw does not currently allow the open air display of merchandise, except in very limited settings such as displays of merchandise for garden centers, florists, and commercial greenhouses (Section 3.5.1) and for automobile dealerships (Section 3.5.22). In addition, outdoor sales are not allowed. In reality, yard or garage sales are happening on residential lots in Acton, often on weekends. This type of outdoor sale is a typical accessory residential use. This article, if adopted, would legalize garage or yard sales on private residential lots.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

DRAFT

2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW – OUTDOOR STORAGE AND HANDLING**

(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw, Section 3.8.2 (Accessory Uses permitted in the Office, Business and Industrial Districts) by deleting sub-sections 3.8.2.6 and replacing it a new subsection 3.8.2.6 as follows:

3.8.2.6 In the Industrial Districts only, outdoor storage and processing of materials, goods, and equipment provided that all outdoor storage and processing areas are surrounded by landscaping or architectural screening that reduces, to the extent feasible and reasonable, their visual impact when viewed from adjacent and nearby STREETS and residentially zoned properties.

[Note – Section 3.8.2.6 currently reads:
In the Industrial Districts only, outdoor storage of materials, goods, and equipment provided that all outdoor storage areas are completely screened from view from adjacent and nearby STREETS and properties.]

, or take any other action relative thereto.

SUMMARY

The zoning bylaw allows outdoor storage in industrial districts as an accessory use. This article revises the pertinent provision for outdoor storage to add an allowance for outdoor handling and processing, and to amend the screening requirements for such use to a level that is reasonably achievable.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

DRAFT

2013 DRAFT ZONING ARTICLE **AMEND ZONING BYLAW – SOLAR POWER INSTALLATIONS**

(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw as follows:

A. Delete the words "solar systems;" from subsection 3.8.1.1 under Section 3.8.1 (Accessory Uses permitted in the Residential Districts and dwellings in Non-residential Districts),

   and

   Insert under section 3.8.3 (Accessory Uses permitted in any Zoning District) the following new subsections 3.8.3.8 and 3.8.3.9:

   3.8.3.8 Solar photovoltaic and thermal energy systems and devices that primarily benefit and support the PRINCIPAL USE(S) on the same LOT, including but not limited to roof -, wall -, ground -, and pole-mounted installations, and canopy installations above parking lots or driveways.

   3.8.3.9 Solar photovoltaic and thermal energy systems and devices that, without limitation, may benefit all energy users provided such systems are roof mounted or wall mounted installations, or canopy installations above parking lot or driveways.

   [Note: Subsection 3.8.1.1 currently reads:
   3.8.1.1 Private garages or carports; solar systems; greenhouses; tool sheds; barns; swimming pools or tennis courts provided that such recreational facilities are used only by the residents and their guests.]

B. In Section 3, Table of Principal Uses, insert the following new lines and footnote:

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		RESIDENTIAL DISTRICTS				VILLAGE DISTRICTS					OFFICE DISTRICTS	
PRINCIPAL USES		R-2 R-4 R-8 R-8/4 R-10 R-10/8	R-A	R-AA	VR	EAV	EAV-2	NAV	SAV	WAV	OP-1	OP-2
3.2 INDUSTRIAL USES												
3.6.5	Ground-Mounted Neighborhood Solar Photovoltaic Installation (12)	Y	Y	Y	N	N	N	N	N	N	Y	Y
3.6.6	Ground-Mounted Industrial Solar Photovoltaic Installation (12)	SPP	SPP	SPP	N	N	N	N	N	N	Y	Y

		BUSINESS DISTRICTS			INDUSTRIAL DISTRICTS					SP. DIST.	
PRINCIPAL USES		KC	LB	PM	GI	LI	LI-1	SM(1)	TD	ARC	SITE PLAN
3.2 INDUSTRIAL USES											
3.6.5	Ground-Mounted Neighborhood Solar Photovoltaic Installation (12)	N	Y	Y	Y	Y	Y	Y	Y	Y	NR
3.6.6	Ground-Mounted Industrial Solar Photovoltaic Installation (12)	N	SPP	SPP	Y	Y	Y	Y	Y	Y	NR

(12) Refer to Section 3.11 for specific standards, requirements, exemptions and special permit criteria for Ground-Mounted Solar Photovoltaic Installations.

C. In section 3.6 (Industrial Use Definitions) insert the following new subsections:

3.6.5 Ground-Mounted Neighborhood Solar Photovoltaic Installation - A solar photovoltaic installation with a layout that is not more than one (1) acre in size and that is primarily designed to benefit the energy needs of USES in the immediately surrounding area or neighborhood. Layout shall mean the total area of the vertical projection on the ground of all panels in the installation's most horizontal tilt position and shall include all spaces between the panels. Ground-Mounted shall

mean that installations are structurally mounted to the ground in any manner, including but not limited to ground anchored pole, rack, or rail installations, or non-ground penetrating ballasted installations; not roof-mounted installations or canopy installations above parking lots or driveways.

3.6.6 Ground-Mounted Industrial Solar Photovoltaic Installation - A solar photovoltaic installation with a layout that is of any size and that is primarily designed to benefit all energy users regardless of location or vicinity to the installation. The words 'layout' and 'ground-mounted' shall have the same meaning as in section 3.6.5 above.

D. Insert a new Section 3.11 as follows:

3.11 Special Requirements for Ground-Mounted Solar Photovoltaic Installations

3.11.1 Purposes – To provide reasonable regulations pertaining to public health, safety and welfare for Ground-Mounted Solar Photovoltaic Installations in accordance with Massachusetts General Law Chapter 40A, Section 3.

3.11.2 Applicability – This Section 3.11 shall apply to all Ground-Mounted Neighborhood and Industrial Solar Photovoltaic Installations, including related BUILDINGS, STRUCTURES, and equipment, and to physical modifications of such installations that materially alter their type, configuration, or size. For regulations on solar energy systems as ACCESSORY USES, see Section 3.8.3 of this bylaw.

3.11.3 Standard and Requirements – Except where specifically stated otherwise, the following provisions shall apply to all Ground-Mounted Neighborhood and Industrial Solar Photovoltaic Installations in all zoning districts. They shall not apply to solar energy systems as ACCESSORY USES under Section 3.8.3.

3.11.3.1 Setbacks – The layout of an installation and all related STRUCTURES, BUILDINGS and equipment shall comply with the front, side and rear yard requirements of the zoning district in which they are located, except for power feed and distribution lines and equipment where underground installation is not possible.

3.11.3.2 Landscaping, Screening, and Panel Orientation and Tilt – Landscaping or architectural screening shall be provided to reduce the visual impact of installations and specifically to protect nearby receptors from danger, harm, or nuisance that may result from reflective solar glare of photovoltaic panels. Where necessary, panels shall be oriented or tilted in a manner to prevent such glare upon receptors.

3.11.3.3 Lighting – Night Lighting is prohibited except for security lighting controlled by motion detectors or infrared sensors with an on-time of no more than ten (10) minutes per activation.

3.11.3.4 Utility Connections - All utility connections, conduits, cables, power lines transformers and inverters shall be placed underground, except (a) where otherwise required by the Massachusetts State Building Code or the utility provider; (b) in

adverse ground conditions such as ledge or excess water; or (c) for connection to existing above ground utility lines. Wiring within the installation's layout shall follow industry standards.

3.11.3.5 SIGNS – SIGNS shall comply with the requirements of Section 7 of this Bylaw. However, in Residential Districts not more than one (1) sign up to six (6) square feet in display area may be installed with the names, current telephone numbers, websites and trademarks of the installer, manufacturer, owner, and operator of the installation. In addition, pedestrian scale educational displays are permitted, which may include the names and contact information of the display sponsors, and directions and contacts for additional information.

3.11.3.6 Water Management and Conservation – To the largest extent possible, the ground shall remain pervious to rain water. Where necessary, adequate provision shall be made for groundwater recharge and to prevent site run-off and erosion.

3.11.3.7 Protection of Forest Land – Not more than 1 acre of land shall be deforested for any one Ground-Mounted Industrial Solar Photovoltaic Installation, and no such installation shall be placed on such land that was deforested within the prior 5 years.

3.11.3.8 Exemptions from Zoning Requirements – Ground-Mounted Solar Photovoltaic Installations shall be exempt from requirements of this Bylaw pertaining to LOT area, FLOOR AREA RATIO, Impervious Cover, OPEN SPACE, and vehicular parking.

3.11.3.9 Solar Access - The owners and operators of Ground-Mounted Solar Photovoltaic Installations are advised to acquire solar access easements from abutters where access to sunlight could be impacted from an allowed use on an abutting parcel.

3.11.4 Special Permit for Certain Ground-Mounted Industrial Solar Photovoltaic Installations where required in the Table of Principal USES – The Planning Board may grant Special Permits for Ground-Mounted Industrial Solar Photovoltaic Installations in certain zoning districts as indicated in the Table of Principal USES. When granting such special permit, the Planning Board shall vote in the affirmative the Mandatory Findings for special permits required in Section 10.3 of this Bylaw, and, in addition, find that:

3.11.4.1 In the case of a Residential District location, the visual impact of the installation on its immediate abutters and on the nearby neighborhood has been effectively neutralized through appropriate designs, landscaping, or structural screening; or

3.11.4.2 In the case of a Business District location, the specific site of the installation does not detract from or interrupt the vitality of the business district, or impede its further business development; and that the visual impact of the installation has been sufficiently mitigated through appropriate designs, landscaping, or structural screening.

DRAFT

3.11.5 Special Permit for Certain Ground-Mounted Solar Photovoltaic Installations – The Planning Board may grant Special Permits for Ground-Mounted Solar Photovoltaic Installations that do not meet the standards set forth in section 3.11.3 above, or any of its subsections. When granting such special permit, the Planning Board shall vote in the affirmative the Mandatory Findings for special permits required in Section 10.3 of this Bylaw, and, in addition, find that:

3.11.5.1 The benefit of installing solar photovoltaic power at the installation site as proposed by the application substantially outweighs the public health, safety, and welfare concerns that Section 3.11.3 requirements are intended to protect; or

3.11.5.2 That the particular design, mitigation measures, offsets, agreements, or other provisions for the proposed installation address such concerns in an alternative and satisfactory manner.

, or take any other action relative thereto.

SUMMARY

A close review of the current zoning bylaw reveals that it allows only very small scale solar energy systems (other than municipal or public utility installations) as an accessory to residential uses.

Part A of this article will allow accessory solar energy systems in any zoning district as accessory to any principal use with the only limitation that systems not designed to primarily serve the principal use on the same lot cannot be ground- or pole-mounted.

Parts B and C introduce as principal uses two categories of ground-mounted solar photovoltaic installations: (1) Neighborhood installations with a layout up to one acre designed to serve immediately surrounding areas and neighborhoods, to be allowed in all zoning districts except Village Residential, Kelley's Corner, and Village Districts; (2) industrial installations of any size with unlimited service reach to be allowed by right in the Office Park, Industrial, and ARC zoning districts, and by special permit in Residential Districts (except Village Residential), and Business Districts (except Kelley's Corner).

Part D establishes standards and special permit requirements for neighborhood and industrial solar photovoltaic installations. The standards address among other things setbacks, screening, glare mitigation, night lighting, utility line connections, and signage. The standards and special permit criteria also provide a framework for balancing the encouragement of this green energy technology with the protection of natural resources such as groundwater and forest land and the preservation of vitality and expansion capacity of Acton's business districts.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

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2013 DRAFT ARTICLE **AMEND GENERAL BYLAW – DONATION COLLECTION BINS**

(Majority vote)

To see if the Town will vote to amend the General Bylaw, Chapter E as follows:

A. Insert the following new section E58 as follows:

E58. Donation Collection Bins

The purpose of this bylaw is to regulate Donation Collection Bins in the Town of Acton to protect the public from being misled by Bins that do not disclose for-profit status; prevent clutter around Bins; regulate appropriate Bin signage and identification requirements; establish Bin permits for the orderly administration of this bylaw; and help defray the cost of its administration and enforcement.

Note that Donation Collection Bins are also subject to zoning standards as set forth in Section 3 of the Acton Zoning Bylaw (Chapter M of the General Bylaws of the Town of Acton).

E58.1 Definitions

In this section E58 the following terms shall have the following meanings:

E58.1.1 Donation Collection Bin, or Bin, shall mean any outdoor receptacle or container designed or intended for the donation and the temporary storage of books, clothing, or other goods and materials.

E58.1.2 Property Owner shall mean the owner of land in Acton where a Bin is located or proposed to be located.

E58.1.3 Bin Operator shall mean any person or entity that owns, operates, or controls a Donation Collection Bin located on land in Acton.

E58.2 Annual Bin Permit Required

It shall be unlawful for any person or entity to place or allow to be placed a Donation Collection Bin within the Town of Acton without a Bin Permit from the Zoning Enforcement Officer (ZEO). Each Bin shall require a separate Bin Permit.

E58.2.1 Both the Property Owner and the Bin Operator, through their respective duly authorized representatives shall sign any application for a Bin Permit. For a Bin that complies with this Bylaw, the ZEO may issue a Bin Permit in the name of the Property Owner and the Bin Operator for the specific Bin and the specific property where the Bin is located or is to be located. The Bin Permit shall not be transferable.

E58.2.2 The Property Owner and the Bin Operator shall complete a written application for a Bin Permit on a form provided by the ZEO.

E58.2.3 The application for a Bin Permit shall state the name of the proposed Bin Operator and whether the Bin Operator is a public charity or nonprofit charitable organization registered in good standing with the Non-Profit Organizations/Public Charities Division of the Massachusetts Attorney General's Office. Any person or entity not so registered shall be considered a for-profit person or entity for purposes of this Bylaw.

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E58.2.4 Where the proposed Bin Operator is a public charity or nonprofit charitable organization, the application for the Bin Permit shall include a copy of the Bin Operator's latest registration with the Non-Profit Organizations/Public Charities Division of the Massachusetts Attorney General's Office.

E58.2.5 Where the proposed Bin Operator is a for-profit person or entity, the application for the Bin Permit shall include either (a) a copy of the Bin Operator's latest registration as a commercial co-venturer with the Massachusetts Attorney General's office and a statement representing the percentage of profits that the Bin Operator will donate to charity, or (b) a copy of the Bin Operator's Charter, Articles of Organization, Agreement of Association, Instrument of Trust, Business Certificate, License to Operate, or the equivalent, issued by or filed with the Massachusetts Secretary of State or other governmental entity and a statement representing the percentage of profits if any that the Bin Operator will donate to charity.

E58.2.6 Each Bin Permit shall be valid for the calendar year in which it is issued. Each new calendar year shall require a new Bin Permit.

E58.2.7 The application fee for each Bin Permit shall be $150.00 for each Donation Collection Bin.

E58.2.8 Evidence of a valid Bin Permit (to be provided by the ZEO) shall be affixed to each Bin beside the receiving door.

E58.2.9 The ZEO shall maintain a current list of all Bin Permits for Donation Collection Bins.

E58.3 Required Identification Sign

Notwithstanding any other bylaws and rules on signs in the Town of Acton, every Donation Collection Bin shall have one sign attached to its exterior surface not to exceed 4 square feet in size. Such sign shall be clearly visible to the donating public and shall clearly identify and state:

- The name, address, telephone number, and website of the Bin Operator;
- The regular collection times;
- The Bin Operator's status as a registered public charity or nonprofit charitable organization, or its status as a for-profit person or entity under this Bylaw;
- In the case of a for-profit company, the percentage, if any, of proceeds that the Bin Operator donates to charity; and
- A declaration whether the Bin Operator is registered with the Massachusetts Attorney General's Office as a public charity, a nonprofit charitable organization, or a commercial co-venturer, its registration number, and the telephone number and website address for the Attorney General's Non-Profit Organizations/Public Charities Division.

No further advertising shall be permitted on the donation collection bin.

E58.4 Prohibitions, Standards, and Requirements

Each Property Owner and Bin Operator shall comply with the following provisions with respect to each Bin for which it is the property owner or Bin operator, respectively:

E58.4.1 Each Bin shall conform to all requirements of this Bylaw.

E58.4.7 Each Bin shall be fully enclosed and locked, and have one receiving door with a theft prevention device.

E58.4.8 Each Bin shall not exceed 200 cubic feet in size.

E58.4.9 Each Bin must be regularly emptied and its contents removed from the property so that they do not overflow, resulting in used clothing or other donated goods or materials being strewn about the surrounding area.

E58.4.10 Each Bin must be maintained in a state of good repair and in a neat and clean condition, and free of trash, debris, refuse or like material.

E58.5 Applicability, Effective Date, and Grace Period

The provisions of this Bylaw shall take effect pursuant to G.L. c. 40, § 32, and shall apply to both existing Donation Collection Bins and proposed or future Donation Collection Bins located within the Town of Acton. Property Owners and Bin Operators with Bins in existence in Acton prior to the effective date of this Bylaw shall have the following grace periods to come into compliance:

E58.5.1 Within sixty (60) days after the effective date of this Bylaw, the Property Owner and Bin Operator shall file an application with the ZEO for a Bin Permit as required by Section E58.2 of this Bylaw for each existing Donation Collection Bin located in Acton for which it is the property owner or Bin operator, respectively. The application shall demonstrate how the existing Bin complies with this Bylaw or show the proposed changes that shall be completed to achieve compliance.

E58.5.2 Within ninety (90) days after the effective date of this Bylaw, the Property Owner shall fully comply with this Bylaw as to each Bin on its property.

E58.5.3 Non-compliance of any existing Bin with this Bylaw during the grace periods shall not be deemed a violation of this Bylaw.

E58.6 Responsible Entity, Violations, Enforcement, and Penalties

E58.6.1 The Property Owner shall be responsible for ensuring that each Donation Collection Bin on its property in Acton complies with this Bylaw. The Bin Operator shall be responsible for ensuring that each Donation Collection Bin which it owns, operates, or controls and which is located on land in Acton complies with this Bylaw.

E58.6.2 Any violation of this Bylaw shall be punishable by a fine of $300.00 for each offense. Each day that a violation of this Bylaw continues shall constitute a separate offense.

E58.6.3 Any violation of this Bylaw that persists for thirty (30) days or longer shall result in the revocation of any and all Bin Permits issued to the Property Owner and Bin Operator for Donation Collection Bins on the subject property, and an order issued by the Zoning Enforcement Officer for removal of all Bins on the property.

E58.6.4 Failure by the Property Owner or the Bin Operator to comply with an order of removal issued by the ZEO may result in removal and disposal of the Bins by the Town. The Town shall be entitled to recover from the Property Owner and the Bin Operator, jointly and severally, all costs of removal and disposal of all Bins from the property.

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E58.6.5 Where a Bin Permit under this Bylaw has been revoked, no other Bin Permit for a Donation Collection Bin shall be issued for the same property for a period of two years.

, or take any other action relative thereto.

And in Section E45 (Non-Criminal Disposition), insert the following subsection:

Chapter E - Section E58, Collection Donation Bin Bylaw; enforcing person: Zoning Enforcement Officer. – Fine: $300.00 for each offense. Each day that a violation continues shall constitute a separate offense.

, or take any other action relative thereto.

SUMMARY

There is a fair number of donation collection bins in Acton. Some are operated by charitable not-for-profit organizations. Others belong to for-profit companies who may or may not donate a portion of the proceeds to charity. The difference is seldom apparent. As a result, residents of Acton may erroneously believe they are making donations to a non-profit charity when they are actually giving books, clothes, or other goods and materials, for free to a for-profit company. As a result, residents may incorrectly claim tax deductions for their donations. This article would establish an administrative permit requirement for each donation bin. Permits must be renewed annually. It requires the disclosure on the bin of the bin operator's identity and its charitable not-for-profit, or non-charitable for profit status. For-profit operators will have to disclose the percentage of profits that goes to charity, if such a charitable claim is made, and post a declaration that the operator is registered with the Attorney General as a commercial co-venturer with the telephone number for the Attorney General's Non-Profit Organizations/Public Charities Division. Existing bins will have a grace period to come into compliance with this bylaw. A companion article in this warrant would amend the zoning bylaw to establish requirements for locations, setbacks, screening, and related matters for donation collection bins as accessory uses on properties.

Direct inquiries to: Roland Bartl, Planning Director: planning@acton-ma.gov / (978) 929-6631
Selectman assigned:

Recommendations: **Board of Selectmen** **Finance Committee** **Planning Board**

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