

# **New York Model Municipal Ordinance Project**

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# Intent of Model Ordinances

- To draft “**best practices**” ordinances that avoids drafting problems and legal pitfalls of other energy efficiency and renewable energy ordinances
- Designed with **New York municipalities** in mind, but general enough to be adopted by municipalities in other states



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# Structure of Model Ordinances

- Contains certain **requirements** as well as optional “**add-ons**” (in brackets)
- Contains **blanks** and **suggested requirements** that can be filled in, or altered according to the municipality’s preference
- Most sections include a **commentary** which:
  1. Explains the thought process behind its drafting
  2. Highlights areas of potential controversy and issues to keep in mind in reaching drafting decisions
- These materials are available at:  
<http://www.law.columbia.edu/centers/climatechange/resources/municipal>



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# New York Model Municipal Green Building Ordinance



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# Common Problems of Other Green Building Ordinances

- No mechanism for **updating ordinance** when new versions of rating systems are issued (legal issue: incorporation by reference) (Sec. 4B)
- No requirements for **existing buildings** (optional add-ons in Secs. 5 and 6)
- No clear **compliance process** other than achieving certain rating) (Sec. 6) (legal issue: non-delegation)
- No **enforcement mechanism** (Sec. 7)
- No **exemptions or exclusions** (Secs. 8 and 9)



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# Section 1: Purpose and Intent

- Explains municipality's **commitment to sustainability**
- Also explains purpose behind ordinance:
  1. Encourage **resource conservation**
  2. Reduce **construction waste, building energy use, and greenhouse gas emissions** from buildings
  3. Achieve **economic benefits** of energy and water savings
  4. Achieve **health benefits** of enhanced indoor air quality



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# Section 2: Applicability

## Buildings covered:

1. New construction or major modifications of **municipal buildings** greater than **5,000 sf of conditioned space**
2. New construction or major modifications of **commercial and high rise multi-family residential buildings** greater than **5,000 sf of conditioned space**
3. New construction (optional add on for major modifications) of **1-2 family dwellings** and **low rise multi-family residential buildings** (3 stories or less) regardless of size
4. Two optional add-ons: all **existing municipal purpose buildings** greater than 5,000 sf of conditioned space and all **existing buildings** greater than 5,000 sf of conditioned space



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# Section 3: Definitions

## Representative examples:

- **Commercial building**
  1. Manufacturing and utility buildings *not included*
  2. Schools and other educational buildings *included*
  3. Houses of worship *included*
- **High rise residential v. low rise residential:** High rise residential is *four stories or more*. Low rise residential is *three stories or less*.
- **Major modification:** Rehabilitation work in 2 of 3 major building systems (electrical, HVAC, plumbing), *OR* construction that affects at least 50% of floor area or that increases square footage by at least 50%
- **Municipal building:** Owned (building or land), funded (at least 50% funded or \$2 million), or leased by municipality (at least 50% of conditioned area)
- **Residential building:** Any building used for living, sleeping, eating and cooking. Does not include long term care, assisted living facilities, or hotels (these are considered commercial buildings)



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# Section 4: Rating Systems

- Adopts **LEED-NC v3.0** for commercial and high-rise residential buildings and **LEED for Schools v3.0** for municipal schools
- Adopts **Energy Star** version in effect at date of adoption of ordinance for low-rise and 1-2 family residential buildings
- **Optional add-on:** Adopts **LEED EB:OM v3.0** for existing buildings
- **Delineates process** for adopting new versions of LEED and Energy Star:
  1. **Green building compliance official** (GBCO) in charge of adopting new versions, which must be based on certain criteria listed in Sec. 4(B)(2)
  2. Public notice required prior to adoption



# Section 5: Standards for Compliance

- Municipal buildings greater than 5,000 sf must be **LEED Silver “certifiable”** (not “certified”—legal issue) (meet requirements but don’t need to be officially certified by USGBC)
- Commercial and high-rise multi-family residential buildings greater than 5,000 sf must be **LEED Silver certifiable**
- 1-2 family and low-rise multi-family buildings must achieve requirements of **Energy Star**
- **Optional add-on:** LEED Energy and Atmosphere credit 1 (achieve 2 additional points under credit; 14% more efficient than ASHRAE 90.1-2007 rather than prerequisite of 10%)
- **Optional add-on:** Existing building requirements
  1. **LEED EB:OM certifiable** for existing buildings
  2. **Energy and water benchmarking** for all existing buildings



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# Section 6: Compliance Process

## **New construction and major modifications**

1. **Application and documentation:** must submit as part of application completed LEED checklist/Energy Star home report, written explanation of how building will achieve LEED points or Energy Star rating, design plans that demonstrate compliance, conflicts with state or federal law with respect to LEED
2. Approval or denial by GBCO in writing

## **Optional add-on: Existing buildings**

1. **LEED EB:OM for municipal purpose buildings**
  - Same documentation as above; existing buildings have 6 months from adoption of law to submit paperwork showing how building will comply with LEED EB:OM
  - Deadline for compliance determined by GBCO
  - Optional: Public notice regarding buildings that must comply



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# Section 6: Compliance Process (Continued)

**Optional add-on: Existing buildings (continued)**

- 2. Energy and water benchmarking for existing buildings**
  - Deadline of one year after adoption of law and annually after that
  - Use EPA Energy Star Portfolio Manager
  - Data made public via the internet within 3 months of submittal



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# Section 7: Enforcement

- **Inspections:** done anytime during construction process by GBCO; stop work order if building is not being constructed in accordance with submitted documentation
- **Substitution of LEED credits or Energy Star features:** allowed at discretion of GBCO if planned credits/features are no longer feasible or other credits/features will realize a more favorable result; must still attain required rating
- **Final approval:** certificate of occupancy issued once building is completed and achieves required rating as determined by GBCO
- **Temporary certificate:** issued if building does not meet required rating so long as deviations are reasonable and mitigation measures are completed as ordered by GBCO. Only for 30 days and can only be renewed twice
- Optional add-on:** can make temporary C of O publicly available



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## Section 8: Exemptions

- **Hardship or infeasibility:** applicant can apply for **partial exemption** if this exists. “Hardship” and “infeasible” are defined in section. Burden on applicant. Must apply for exemption when submitting initial documentation and must comply with required rating in all other respects. Denial must be in writing.
- **Optional add-on: Historic buildings.** Same process as above if applicant believes that required rating cannot be met to preserve historic integrity of building
- **Optional add-on:** building exempt if compliance with law would increase construction costs by 25% (or other number as determined by municipality).



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# Section 9: Exclusions

- State and federal facilities
- Special purpose unit of government facilities (fire districts, school districts, etc.)
- Buildings of municipalities other than one enacting law
- **Optional add-ons:**
  - **Houses of worship:** no legal issues with including these buildings under RLUIPA, but can be excluded for other reasons.
  - **Healthcare facilities:** oftentimes these buildings are excluded because they use large amounts of energy. LEED for Healthcare is possible substitution.



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# Section 10: Appeals

- Made to appellate body
- Normally board of zoning appeals
- Appellate process spelled out in section



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# New York Model Municipal Wind Siting Ordinance



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# Common Problems Siting Wind Energy Facilities in the Existing Landscape

- Existing wind siting ordinances vary widely in their design, content and coverage, and in the quality of their drafting
- Municipal laws vary widely among cities, towns and villages:
  - Some municipalities offer strong protection for renewable energy generation
  - Other municipalities have enacted restrictive provisions
  - Many municipalities do not address wind energy generation at all
- The patchwork of laws complicates the work of architects, engineers and lawyers (among others) who must try to conform their clients' projects to local requirements
- This leads to a loss of opportunities to promote energy independence and combat climate change



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# Section 1: Purpose and Intent

- Explains municipality's **commitment to promoting effective and efficient use of its wind energy resources** through wind energy conversion systems
- Explains purpose of regulating the placement of wind energy conversion systems so that **public health is not jeopardized**
- Also explains benefits of wind energy:
  1. Encourage **development of an abundant, renewable and non-polluting resource**
  2. Reduce **dependence on nonrenewable energy resources** and thereby decrease air and water pollution
  3. Achieve **cost saving benefits** by transmitting excess electricity generated from wind to other users



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# Section 2: Definitions

## Representative Examples:

- **Large Wind Energy Conversion System**
  - Consists of one turbine, one tower, and associated control or conversion electronics
  - Has a rated capacity greater than [150] kilowatts
  - Is intended to supply some portion of its produced electrical power for sale to a power grid
- **Participating Residence**
  - Includes any dwelling for habitation, either seasonally or permanently
  - That has entered into an agreement with a wind energy developer to allow a WECS on or near their property
- **Temporary Wind Measurement Tower**
  - A tower for the measurement of meteorological data installed prior to construction of a WECS
  - Remains in place over a period of several years
  - Provides data to developer regarding the economic viability of the project as well as optimal type of turbine for the location



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# Section 3: Applicability

## Wind Energy Facilities Covered:

1. All wind energy facilities **smaller than 25 megawatts in New York State** (proposed, operated, modified, or constructed after the effective date of the article) subject to the substantive and procedural requirements of the ordinance
2. All wind energy facilities (of any size) (proposed, operated, modified, or constructed after the effective date of this article) subject to the substantive requirements of the ordinance
3. Modifications or alterations (excluding regular maintenance and repair) to an existing wind energy facility are covered



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# Section 3: Applicability (Continued)

## Wind Energy Facilities Covered:

4. **Except:** Facilities for which a required permit has been properly issued and upon which construction has already commenced prior to the effective date of this article are excluded



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# Section 4: Permits Required

- No commercial wind energy facility can be constructed, reconstructed or modified without being granted:
  1. Site Plan Approval
  2. A Special Use Permit (not required for residential WECS)
  3. A Building Permit
- Municipalities can select which zoning districts to permit large and small wind energy facilities but the model ordinance recommends that:
  1. Small wind energy facilities be permitted in all districts other than residential
  2. Large wind energy facilities (while more suited to rural districts) be permitted in any district deemed appropriate by the municipality



# Section 5: Applications for Wind Energy Facilities

- Prior to obtaining a special use permit, an applicant must provide (among other things):
  1. Assessments regarding the nature of the proposed site location and its surrounding area
  2. A full Environmental Assessment Form
  3. A detailed construction and installation plan
  4. Applicants must account for the operation and maintenance of the facility including provisions for emergency response and fire control plans
  5. Optional provisions provide additional considerations when a WECS is proposed on a historic site or near a wetland or important avian area



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# Section 5: Applications for Special Use

## Permits (Continued)

- Applicants must provide detailed analysis on **potential negative externalities** that may arise from wind turbine including:
  1. Visual Impact
  2. Noise
  3. Electromagnetic Interference
  4. Avian Impacts
  5. Geotechnical Impact
  6. Engineers Reports on ice throw, blade throw, catastrophic tower failure, and certification that foundation and tower design meet wind-loading requirements
  7. Optional add-ons address:
    - Shadow Flicker
    - Fiscal and Economic Impacts
    - Land Use and Water Impacts



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# Section 6: Application Review Process

- Applications are submitted to the local municipal clerk for processing
- Municipality has [30] days to determine if the application is complete and to notify the applicant if information is missing
- The municipal planning board is required to conduct at least one public hearing (with notice to the public) prior to reaching its decision on the application
- The municipal planning board is charged with conducting a review under the State Environmental Quality Review Act (SEQRA)
- The municipal planning board may grant the special use permit, grant the special use permit with conditions or to deny it



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# Section 7: Environmental Review

- Any wind energy project of more than [ ] megawatts (but less than 25 megawatts in NY State) **must complete an EIS** in accordance with SEQR or other state equivalent
- In addition to the other requirements laid out in the EIS process, **the EIS must include:**
  1. A detailed construction and installation plan
  2. An operation and maintenance plan
  3. A final transportation plan
  4. A decommissioning and site restoration plan
  5. Optional add-on: A landscaping plan
- **Hearings:** The [Board/Planning Board or SEQR Lead Agency] must conduct at least one public hearing on the Draft EIS with notice given to the public



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# Section 8: Requirements for Approval of WECS

- **Safety:** In order to be granted a special use permit, the wind energy facility must comply with:
  1. Limits on the system's height
  2. Blade placement
  3. Rotational speed and override controls
  4. Anti-climbing features
  5. Protection of electrical equipment from attractive nuisance
  6. Warning lights for aircrafts where certain tower heights are reached
  7. Optional add-on: Board may provide a reasonable setback for ice throw



# Section 8: Requirements for Approval of WECS (Continued)

- **Siting and Installation:** In order to be granted a special use permit, the wind energy facility must meet:
  1. Regulations regarding road access to the project site
  2. Regulation of power lines between turbines and other structures (must be underground), between turbines and on-site substation (should be placed underground to extent practicable), and for connection to the public utility grid and transmission poles (may be aboveground)
  3. Meet interconnection requirements



# Section 8: Requirements for Approval of WECS (Continued)

- **Setbacks:** In order to be granted a special use permit, the wind energy facility must be set back:
  1. [1.5] times tower height from residences on non-participating property
  2. [2] times tower height from nearest school, hospital, church or public library
  3. [1] times tower height from all property lines, overhead utility/transmission lines, towers, electrical substations, meteorological towers and public roads
  4. Waivers: Setbacks may be waived by the municipal board if there is written consent
  5. Optional add-on provides an option to record an easement describing the benefited and burdened properties



# Section 8: Requirements for Approval of WECS (Continued)

- **Nuisance:**
  1. **Noise:** The noise level generated by a WECS may not exceed an average of:
    - [45] A-weighted decibels (“dBA”) during any 24 hour period measured at the [site property line] of a non-participating residence
    - [50] dBA for more than [ ] minutes in any hour of the day except in extreme wind events
    - Independent certification is required before and after construction to demonstrate compliance with this requirement
    - If the ambient noise level measured at [the site property line] exceeds the standard, the standard shall be equal to the ambient noise level
    - The noise level generated by a WECS must also not increase ambient sound levels by more than 3 dBA at any sensitive noise receptors, including residences, hospitals, libraries, schools, and places of worship, within 2,500 feet of the site property line



# Section 8: Requirements for Approval of WECS (Continued)

2. **Interference with Electromagnetic Communication:**
  - No wind energy facility shall be installed in any location where its would produce electromagnetic interference with signal transmission or reception
  - **Except:** Any interference with television signals shall be mitigated by the wind energy developer
- **Environmental and Visual Effects**
  1. No advertising is allowed on any part of the wind energy facility
  2. No lettering is permitted except for reasonable identification of the manufacturer, facility owner and operator
  3. Colors and surfaces must be white, beige or off-white to minimize visual disruption
  4. Landscaping should be appropriate to screen accessory structures
  5. All facilities must comply with the Endangered Species Act
  6. Optional add-ons address ridgeline installations and shadow flicker



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# Section 8: Requirements for Approval of WECS (Continued)

- **Operation**
  - 1) **Maintenance:** WECS must be maintained in operational condition
    - Owner has 90 days to remedy a situation where the wind energy conversion system becomes inoperative, damaged, unsafe, or violates a permit condition or standard
    - If **not** repaired or brought into permit compliance, municipality may, after public hearing, order remedial action or revoke special use permit
  - 2) **Inspection:** All wind energy facilities must be inspected annually by a [New York State] licensed professional approved by the municipality



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# Section 9 Abatement, Decommissioning, Site Restoration and Bond

- **Abatement and Decommissioning:** If the wind energy facility is not operated for a **continuous period of [12] months** the applicant may be required to decommission the site
- **Decommissioning and Site Restoration Plan:** must include the anticipated life of the project, triggering events for removal, provisions for re-estimate, and plan restoring the site
- **Bond:** Applicant must maintain a bond made payable to the municipality for the removal of nonfunctional facilities and covering site abatement



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# Sections 10 & 11

- **Liability Insurance:** Prior to being issued a building permit, applicant must provide municipality with proof of liability insurance
- **Transfer and Replacement:**
  1. New ownership must present proof that bonds and insurance remain in force
  2. Replacement/modification/alteration to an existing WECS excluding regular maintenance requires amendment to the special use permit
  3. Sets out parameters for replacement of a wind energy conversion system without planning board approval



# Section 12: Requirements for Wind Measurement Towers

- Allows municipalities to permit, as a special use, wind measurement towers in particular districts
- Requires anyone seeking to build a temporary or permanent wind measurement tower to obtain a **special use permit** (valid for up to [5] years)
- Sets out **application requirements** for wind measurement tower
- Wind measurement towers must be **set back** from property lines at least [1] times total tower height
- Sets out requirements for wind measurement tower **removal and site restoration**



# Section 13: Enforcement and Violations

- Directs municipality to appoint staff member or outside consultant to enforce the provisions of the ordinance
- During construction, [code enforcement officer] may issue a stop work order at any time for violations of the ordinance, the special use permit, the building permit or the site plan approval
- Anyone found to be in violation of the ordinance would be guilty of an offense and subject to monetary penalties
- The municipality may institute civil proceedings to collect civil penalties
- Affords municipality authority to institute any appropriate action or proceeding to prevent, correct, or abate any violation or threatened violation



# Sections 14 & 15

- **Host Community Agreements:** Allows municipality to enter into agreement with applicant to compensate the [town/city/village] for expenses or impacts of the wind energy conversion system
- **New York State Real Property Tax Law Exemption:** Optional add-on: Allowing municipality to exercise its right to opt out of the tax exemption provisions of Real Property Tax Law 487



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# **New York Model Residential Solar Siting Ordinance**



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# Section 1: Purpose and Intent

- Explains benefits of solar energy as **renewable and non-polluting energy resource** that can:
  - Prevent fossil fuel emissions
  - Reduce a municipality's energy load
  - Excess energy can offset energy demand on the grid
- Affirms municipality's **commitment to the use of solar energy equipment** as part of its current and long-term sustainability agenda
- States municipality's aim to promote the accommodation of solar energy systems and equipment and access to sunlight necessary therefor



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# Section 2: Definitions

## Representative Examples:

- **Building-Integrated Photovoltaic System**
  - Consists of integrating photovoltaic modules into the building structure (such as roof or façade)
  - Does not alter the relief of the roof
- **Net Metering**
  - Billing arrangement allowing customers to get credit for excess electricity generated that gets delivered back to the grid
  - Customer only pays for net electricity usage at end of month
- **Small-Scale Solar**
  - Solar photovoltaic systems that produce up to ten kilowatts (kW) per hour of energy
  - Solar-thermal systems which serve the building to which they are attached, and do not provide energy for other buildings



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# Section 3: Applicability

## Solar Energy Systems Covered:

1. All Small-Scale solar energy systems (residential, commercial, multi-family, and condominium) modified or installed after effective date of ordinance
2. **Except:** Solar energy systems for which a valid permit has been issued or for which installation has commenced prior to effective date of ordinance are excluded
3. Solar energy collectors are permitted only to provide power for use by occupants of premises or owners and lessees except that “**collective solar**” arrangements are permitted



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# Section 4: Permits Required

- No Small Scale solar energy system may be installed except in compliance with the ordinance
- **Rooftop and Building Mounted Solar Collectors:**
  1. Building permits required (except for flush-mounted panels)
  2. No height limitations imposed so long as structure is erected only to such height as is reasonably necessary to accomplish purpose it is intended to serve
  3. Optional add-on: Allows placement of solar collectors on flat roofs as of right in non-historic districts (cannot extend horizontally past roofline)
- **Building-Integrated Photovoltaic Systems:** Permitted outright in all zoning districts



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# Section 4: Permits Required (Continued)

- **Ground-Mounted and Free Standing Solar Collectors:** permitted as accessory structures in all zoning districts except:
  1. Building permits required
  2. Must meet setback requirements
  3. Optional add-on: Height shall not exceed [20] feet at maximum tilt
  4. Optional add-ons: Should minimize view blockage and be screened where practicable
- **Solar-Thermal Systems:** Permitted in all zoning districts except building permits are required
- Solar energy systems permitted only if municipality determines that they **do not present any unreasonable safety risks**, including with regard to: Weight load, wind resistance, and ingress and egress in event of emergency



# Section 5: Safety

- Solar installations must be performed by a **qualified solar installer**
- **Electrical connections must be inspected** by a [Code Enforcement Officer] and by an appropriate electrical inspection person/agency
- **Connections to public utility grid must be inspected** by the appropriate public utility
- Systems must be **maintained in good working order**
- Rooftop and building-mounted solar collectors must meet NY's **Uniform Fire Prevention and Building Code Standards**
- If **solar batteries** are included they need to be disposed of in accordance with the laws and regulations of the municipality
- Optional add-on: If a solar collector **ceases to perform for more than 12 consecutive months**, property owner **must remove** no later than 90 days after the end of the twelve month period



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# Sections 6 & 7

- **Appeals:**
  1. If individual is found to be in violation of the ordinance, appeals permitted in accordance with established procedures of municipality
  2. If building permit for a solar collector is denied as a result of a conflict with other municipal goals, applicant can seek relief from municipal [Board of Zoning Appeals]
- **Solar Panel Fast Track Program** [Optional add on]:
  1. Applies to installation of solar panels for commercial buildings and residences
  2. Allows waiver of building permit application fees for construction and installation
  3. Affords expedited review for building permit applications for solar panel installation



# Section 8: Zoning for Future Access

- **Optional add-on:**

1. New structures should be sited to take advantage of solar access, including orientation of buildings with regard to:
  - Sun angles
  - Shading
  - Windscreen potential
2. Whenever feasible, new streets should be located on an east-west access in order to maximize exposure of buildings to the sun
3. Impact of street trees on solar access should be minimized to greatest extent practicable in selecting and locating shade trees



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## Section 8 (Continued) & Section 9

4. When municipal [Planning Board] reviews applications for site plan approval, it should consider whether proposed construction would block access to sunlight between [9:00 a.m. and 3:00 p.m.] for existing approved solar collectors
  5. Municipal [Planning Board] may require subdivisions to be platted to preserve or enhance solar access
  6. Development of subdivisions should be designed and arranged so as to promote solar access for all dwelling units
- **Tree Maintenance and Removal** [Optional add-on]: To the extent that the municipality has discretion regarding the removal and relocation of trees, solar access shall be a factor taken into consideration in deciding whether trees can be removed



# Questions?

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