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**City of Northampton**  
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## MEMORANDUM

Please reply to:

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TO: Northampton City Council  
FROM: Alan Seewald, City Solicitor  
RE: Fuel Storage Licenses, M.G.L. c. 148, § 13  
DATE: March 22, 2021

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You have requested my opinion regarding the role of the Northampton City Council in granting fuel storage licenses pursuant to M.G.L. c. 148, § 13. This issue arose when the Council was considering a fuel storage license at the Big Y Plaza on North King Street, and Councilors were unsure whether the Council was in any way constrained to approve it. The specific question related to the desire to move away from fossil fuels and to reduce greenhouse gases, and whether additional gas stations are consistent with those goals.

Section 13 does not provide narrow and objective criteria for the Council to apply in evaluating an application, so the short answer is that the Council was not constrained to grant the license. The decision whether to issue a license is vested in the Council's substantial discretion limited only by the requirement that its discretion be exercised in a manner that is not arbitrary or capricious. The process is administrative; it is not an adjudication as is, for instance, the issuance of a special permit under the specific criteria set forth in the Zoning Ordinance. Therefore, a record of the concerns underlying the denial must be made and preserved as is required under the Open Meeting Law, but the Council is not required to make detailed findings of fact to support its decision.

The case law under § 13 demonstrates the approach to such a licensing decision and the types of concerns that have supported a denial as a reasonable exercise of discretion. In Marlborough, a denial of a fuel storage license at a Cumberland Farms was upheld where the Council was concerned about "leaks and accidents affecting the nearby reservoir, compensation for affected neighbors, hours of operation, lighting, noise and odors, sidewalks on Walker Street, traffic, use of the station by large diesel trucks, opposition from residents, and competition with existing businesses." *Cumberland Farms, Inc. v. City Council of Marlborough*, 88 Mass. App. Ct. 528 (2015). A denial in Brockton was upheld where the "council may have reasoned that another station would tend to increase traffic at an already burdened intersection; that [vehicles entering and exiting the station] would further interfere with the free flow of traffic; that the risk of accidents to children and others would be increased; that there would be additional noise and odors; and that there was no counterbalancing public demand for another station in this immediate vicinity." *Kidder v. City Council of Brockton*, 329 Mass. 288, (1952).

The Court in *Cumberland Farms* acknowledged that “in exercising its wide discretion to issue or withhold licenses, a licensing authority may take into account ... factors affecting public interests and welfare.” However, the public interests in the cited cases related to the site, not to overall societal goals such as moving away from the use of fossil fuels to power automobiles. When the Court in the Brockton case noted the lack of counterbalancing public demand for another station, it was referring to the fact that there were already four stations along the same street, one of which was diagonally across the street.

While there are no cases under § 13 addressing the specific question of denying a license for a new gas station to promote sustainability goals, thereby rendering the outcome of an appeal less than certain, in my opinion the denial of a fuel storage license would be an appropriate exercise of discretion where both the Commonwealth<sup>1</sup> and the City<sup>2</sup> have specifically expressed policy goals that the Council determines would be undermined by the issuance of the license. Those policy goals are the very expression of the public interest and public welfare that are the within the Council’s wide discretion to consider when making licensing decisions under § 13.

As stated above, this opinion applies to the discretion of the Council where the statute does not provide specific criteria for the Council to apply in considering an application. Where such criteria are provided, the Council would be constrained to make specific findings and limited to applying the stated criteria.

Please let me know if you need any further information in this regard. I would be pleased to appear at an upcoming Council meeting if that would assist the Councilors in understanding their role in statutory licensing matters.

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<sup>1</sup> See, e.g., Mass. EOECA [2015 Updated Clean Energy and Climate Plan for 2020](#).

<sup>2</sup> See, e.g., [Northampton Climate Resilience & Regeneration Plan; 19.123 A Resolution Calling for the Federal Government to Pass a Green New Deal](#).