

# Understanding the Dover Amendment's Protection of Educational Uses of Land

## What is the Dover Amendment and how does it protect educational uses of land?

**The Dover Amendment is a state law that exempts certain high-priority land uses from local zoning regulations. Education is one of the uses protected under the Dover Amendment.** As a result, cities and towns must allow nonprofit entities or religious organizations to use local land or structures that they own or lease (or that the Commonwealth owns or leases) for educational purposes. Cities and towns cannot require that protected educational uses obtain special permits, variances, or other discretionary zoning approvals to proceed and cannot subject protected educational uses to any local zoning rules that would substantially diminish or detract from the usefulness of the land or structure(s) at the site. Zoning rules that regulate the bulk and height of structures or determine yard size, lot area, setbacks, open space, parking, and building coverage requirements may be applied to a Dover-protected educational use so long as they do not unreasonably burden the use.

## What kinds of uses are considered “educational” for Dover Amendment purposes?

In Massachusetts law, “education” is a very broad term. Our “educational” system includes not just traditional schools and colleges but programs that help people of all ages to improve their lives and reach their full potential. Substance abuse treatment centers, congregate living facilities for people with disabilities, residential mental health programs, and transitional housing programs for people experiencing homelessness or re-entering society after a period of incarceration have all qualified as educational uses entitled to protection under the Dover Amendment. Many of these programs include elements other than traditional classroom education, such as housing, detoxification supports, or social and recreational activities; the Dover Amendment still protects them so long as their primary or dominant goal is one that can reasonably be described as educational. Uses that are ancillary to an educational program can also be protected by the Dover Amendment: dorms, parking lots, and athletic field lights, for example, have all been considered protected educational uses when they were being used to support an overall educational program.

## Which local zoning laws can be applied to an educational use protected by the Dover Amendment?

Cities and towns may require a Dover-protected educational use to comply with local zoning rules concerning bulk and height of structures, or determining yard size, lot area, setbacks, open space, parking, and building coverage requirements, but only where those rules are reasonable when applied to the use. Local rules are considered unreasonable – and therefore cannot be applied to a Dover-protected educational use – if applying them would effectively deny the use or significantly detract from or diminish the usefulness of the land or structure without appreciably advancing legitimate municipal interests.

Once a use is deemed an educational use protected by the Dover Amendment, the municipality cannot require the applicant to obtain a variance or a special permit and must limit the scope of any site plan review to those regulations that can lawfully be applied to a Dover-protected use.



A Dover-protected educational use proposed in a nonconforming structure (or in a conforming structure on a nonconforming lot) does not require a finding, under G.L. c. 40A, § 6, that it will not be substantially more detrimental to the neighborhood than the prior use. A § 6 finding may be required in limited circumstances where a nonconforming structure will be modified to accommodate an educational use.

### **What is the role of community and neighborhood preference and public comment?**

The purpose of the Dover Amendment is to prevent local preferences from interfering with certain land uses. Public input may appropriately help a local land use board to assess whether local dimensional regulations allowed by the Dover Amendment are reasonable when applied to a specific Dover-protected use. But public comments on the value of a protected use to the community or in general, or comments about projected negative impacts that cannot be remedied with a permissible form of regulation of a Dover-protected use, do not aid municipal officials in making the limited zoning decisions left to them by the Dover Amendment and can unfairly delay and burden a legally protected land use.

### **Where can I get more information about the Dover Amendment and how it protects religious and educational uses of land?**

The Dover Amendment is Section 3 of chapter 40A of the Massachusetts General Laws (G.L. c. 40A, § 3). The Attorney General has published detailed Guidance to educate the public on the Dover Amendment's protection of religious and educational uses of land. You can find the Attorney General's Guidance at [Mass.gov/ago/Dover-Amendment-Religious-Educational-Uses](https://www.mass.gov/ago/Dover-Amendment-Religious-Educational-Uses).

