

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

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

**The Dover Amendment is a state law that exempts certain high-priority land uses from local zoning regulations. Religion is one of the uses protected under the Dover Amendment.** As a result, cities and towns must allow religious organizations to use land or structures that they own or lease for religious purposes. Cities and towns cannot require that protected religious uses obtain special permits, variances, or other discretionary zoning approvals to proceed and cannot subject protected religious 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 religious use so long as they do not unreasonably burden the use.

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

The religious purposes exemption applies where the primary or dominant purpose of a proposed land use is to aid a system of faith and worship, including where the use is not inherently religious but facilitates the functioning of a broader religious project. The expansion of a Jewish cemetery, the construction of a church steeple, and the development of an RV park to house the staff, volunteers, and attendees of a religious camp have all received Dover Amendment protection as religious uses of land. The First Amendment to the United States Constitution imposes limits on the level of scrutiny a municipality may apply to a claim of religious purpose.

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

Under the Dover Amendment, cities and towns may require a religious 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 religious 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. Zoning restrictions on religious activity must also comply with the federal Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc et seq., which protects religious land uses from local regulations that “substantially burden” them, unless the regulations serve a compelling governmental interest in the least restrictive way possible. RLUIPA has been found to protect a broad array of religious uses, including church-related meeting or retreat facilities or faith-based charitable operations like providing shelter to people experiencing homelessness.



## How does a claim of Dover protection affect municipal zoning processes?

In some communities, a local by-law or ordinance includes a specific process for a permit applicant to assert a claim that the Dover Amendment protects a use, while in other communities, the applicant simply makes the claim to the zoning enforcement official (usually the building commissioner) in connection with the permit application. In either case, the municipality should assess the claim of Dover protection promptly, ideally in consultation with municipal counsel.

Once a use is determined to be a religious 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 religious 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 a religious 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 protected religious use. But public comments on the value of a protected use to the community, 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).

