



In Massachusetts, organizations that provide civic, educational, charitable, religious, or benevolent services are given certain rights and protections under the law. Most notably, these organizations may be exempt from state and local taxation and, in certain cases, may bypass local zoning regulations. What are the limitations of local governments when it comes to governing non-profits?

The “Dover Amendment” and the Limitations of Local Zoning Control

In 1946, the Town of Dover attempted to limit the siting of religious schools with the passage of a zoning bylaw amendment. In response, the Massachusetts General Court passed “An Act Prohibiting Discriminatory By-laws And Ordinances,” in 1950 which ultimately became Chapter 40A, Section 3, of the Massachusetts General Laws, more commonly referred to as the Dover Amendment. According to the Dover Amendment:

No zoning ordinance or by-law shall...prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation.

While the Dover Amendment includes additional zoning exemptions (including the interior of homes, solar energy systems, child care facilities, commercial agricultural uses, etc.), controversy over its application generally focuses on exemptions under the phrase “educational purposes.” More than a century of Massachusetts case law recognizes that “education” is “a broad and comprehensive term,” defining it as “the process of developing and training the powers and capabilities of human beings...for activity and usefulness in life.” (*Mount Hermon Boys School v. Gill*, 145 Mass. 139, 146 (1887)). The courts have extended Dover Amendment protection beyond traditional or conventional educational institutions to include programs that assist the elderly and the disabled. Thus, rehabilitation programs, counseling and treatment for people with mental and physical disabilities, and counseling and treatment of those with substance abuse problems have all qualified under the Dover Amendment’s protections.

Dover Amendment protection does not exempt all education programs from all local control. The courts have acknowledged two main limits:

- 1) Dover only applies to those uses of property that have a bona fide goal that is “educationally significant;” and
- 2) The educationally significant goal must be the “primary or dominant” purpose for the proposed use of the land. (*Regis College v. Town of Weston*, 462 Mass. 280 (2012)).

Therefore, in order to meet the Dover Amendment’s definition, an entity must prove that its primary mission is education and that its primary use of the property is also education. Even if eligible for Dover Amendment protection, a municipality remains able to enforce “reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.” That said, the Federal Fair Housing Act, and its prohibitions against the discrimination of those with disabilities, often influences the determination of “reasonable,” recognizing that Dover-eligible uses may require extraordinary property enhancements to provide adequate access.

Entities seeking Dover Amendment protection normally apply to the local zoning enforcement officer, a role often held by the Building Commissioner, for a determination of eligibility.

Non-Profit Tax Exemption and Municipal Revenues

Entities organized and operated for civic, educational, charitable, religious, or benevolent services may seek exemption from taxation. At the Federal level, such organizations generally qualify for exemption under section 501 of the Internal Revenue Code. Under Massachusetts law, such organizations are established under Chapter 180 of the Massachusetts General Laws (MGL), and qualify for exemption under MGL Chapter 59, Section 5. Exemption under MGL Chapter 59 qualifies an entity for exemption from local taxation as well. If an otherwise tax-exempt entity operates in a manner outside its mission (e.g., serves as a landlord to taxable entities), a locality may assess taxes against the activity.

In Worcester, approximately 6,832 acres, or nearly 29% of the city, is owned by tax exempt organizations. Of that amount, 66% is owned by government-related entities, including the City of Worcester, approximately 9.5% is owned by religious organizations (not including educational institutions), while just over 8.7% is owned by colleges and universities. According to the City of Worcester Assessing Office, tax exempt property in the city represents nearly \$5 billion in value—up to \$157 million in additional tax dollars if all properties were assessed at the highest (i.e., commercial/industrial) FY2015 tax rate.

While municipalities are unable to tax entities the Commonwealth has deemed exempt, some cities have negotiated Payments in Lieu of Taxes (PILOTs) with larger non-profits, in part recognizing the entity's use of public services and the lost revenue by virtue of the tax exempt entity's occupancy of limited acreage within municipal borders. (In Boston, such payments may be partially offset by the value of community benefits provided by the non-profit.) Under Massachusetts law PILOTs are voluntary, however, and agreements are generally subject to the ongoing cooperation of the parties.

<u>Financial Agreements Between City and Non-Profits</u>	<u>Year of Execution</u>	<u>Contributions to Municipality</u>	<u>Duration/ Termination</u>
Christopher House	1994	\$75,000 Annual Contribution Minus Any Real Property Taxes Paid	30 Years
Worcester Medical Center	2005	\$1,250,000 Annual Contribution Minus Any Real Property Taxes Paid	2014*
MCPHS University	2008	\$50,000 Initial Payment Plus Annual Payments of 20% of Initial Real Estate Taxes on Certain Properties (Increasing by 2.5% Annually) Dedicated to Worcester Public Library	25 Years
Worcester Polytechnic Institute	2009/ Amended 2014	\$157,403 Initial Payment Plus Annual Payments of Initial Real Estate Taxes and/or Partial Real Estate Taxes on Certain Properties (Increasing by 2.5% Annually) Dedicated to Worcester Public Library and Institute Park	25 Years
Clark University	2010	\$112,176.44 as Payment of Initial Real Estate Taxes on Certain Properties and \$150,000 Annual Payments for Other Cooperative Efforts (Increasing by 2.5% Annually) Dedicated to Worcester Public Library and University Park.	20 Years
University of Massachusetts Medical School	2011	100% of Real Estate Taxes on Certain Property (Increasing by 2.5% Annually) Dedicated to Public Health Division or Worcester Public Schools	5 Years
College of the Holy Cross	2012	\$80,000 Annual Payment Dedicated to LEARRN Mobile Library	5 Years + 5 Years
University of Massachusetts Medical School	2013	Annual Payments Totaling \$1,575,000 Over Five Years Dedicated to Worcester Public Library and Worcester Technical High School	5 Years
The New England Dream Center	2014	Annual Payments of 100% of Real Estate Taxes on Certain Property Dedicated to Worcester Common	Duration of Ownership of 55 Pearl Street

*Worcester Medical Center, also known as Saint Vincent Hospital, is now a subsidiary of Tenet Healthcare and is no longer tax exempt.

Bureau Brief

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