

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 40A	ZONING
Section 3	SUBJECTS WHICH ZONING MAY NOT REGULATE; EXEMPTIONS; PUBLIC HEARINGS; TEMPORARY MANUFACTURED HOME RESIDENCES

Section 3. No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale,

based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof; provided, however, that the terms agriculture, aquaculture, floriculture and horticulture shall not include the growing, cultivation, distribution or dispensation of marijuana as defined in section 2 of chapter 369 of the acts of 2012, marihuana as defined in section 1 of chapter 94C or marijuana or marihuana as defined in section 1 of chapter 94G; and provided further, that nothing in this section shall preclude a municipality from establishing zoning by-laws or ordinances which allow commercial marijuana growing and cultivation on land used for

commercial agriculture, aquaculture, floriculture, or horticulture. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.

No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law 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; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. Lands or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and cable or the department of public utilities shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public; provided however, that if lands or structures used or to be used by a public service corporation are located in more than one municipality such lands or structures may be exempted in particular respects from the operation of any zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and cable or the department of public utilities shall after notice to all affected communities and public hearing in one of said municipalities, determine

the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public. For the purpose of this section, the petition of a public service corporation relating to siting of a communications or cable television facility shall be filed with the department of telecommunications and cable. All other petitions shall be filed with the department of public utilities.

No zoning ordinance or bylaw in any city or town shall prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. As used in this paragraph, the term "child care facility" shall mean a child care center or a school-aged child care program, as defined in section 1A of chapter 15D.

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. The provisions of this paragraph shall apply to every city or town, including, but not limited to the city of Boston and the city of Cambridge.

Family child care home and large family child care home, as defined in section 1A of chapter 15D, shall be an allowable use unless a city or town prohibits or specifically regulates such use in its zoning ordinances or by-laws.

No provision of a zoning ordinance or by-law shall be valid which sets apart districts by any boundary line which may be changed without adoption of an amendment to the zoning ordinance or by-law.

No zoning ordinance or by-law shall prohibit the owner and occupier of a residence which has been destroyed by fire or other natural holocaust from placing a manufactured home on the site of such residence and residing in such home for a period not to exceed twelve months while the residence is being rebuilt. Any such manufactured home shall be subject to the provisions of the state sanitary code.

No dimensional lot requirement of a zoning ordinance or by-law, including but not limited to, set back, front yard, side yard, rear yard and open space shall apply to handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person, as defined in section thirteen A of chapter twenty-two.

No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy, except where necessary to protect the public health, safety or welfare.

No zoning ordinance or by-law shall prohibit the construction or use of an antenna structure by a federally licensed amateur radio operator.

Zoning ordinances and by-laws may reasonably regulate the location and height of such antenna structures for the purposes of health, safety, or

aesthetics; provided, however, that such ordinances and by-laws reasonably allow for sufficient height of such antenna structures so as to effectively accommodate amateur radio communications by federally licensed amateur radio operators and constitute the minimum practicable regulation necessary to accomplish the legitimate purposes of the city or town enacting such ordinance or by-law.