

A Year-Round Occupancy Incentive Model Bylaw for Cape Cod Towns



CAPE COD
COMMISSION

The following model bylaw intends to be a first draft of a zoning amendment that incentivizes year-round housing. Due to the financial benefits of providing vacation housing (whether second homes, vacation rentals, or otherwise), housing for year-round residents can be difficult to access. This is especially true for renter households, who may find few options for year-round leases. The consequences of this market failure are serious, including housing instability; high student turnover in schools and attendant learning challenges; difficulty staffing for Cape Cod businesses, organizations, and public entities; difficulty holding stable employment for the year-round workforce; high housing cost burdens, distortions in the sales market, and more.

This bylaw incentivizes the production of year-round housing, including year-round ownership and rental options. The Home Rule Amendment, Mass. Const. art. LXXXIX, § 7(5), bars enactment of “private or civil law governing civil relationships except as an incident of an independent municipal power.” Massachusetts courts have interpreted Section 7 to limit municipal power to require a particular type of housing tenure—homeownership or rental—in a local bylaw. This bylaw instead bypasses Section 7 by offering a set of incentives to encourage a portion of a development to be held as year-round rental or ownership units.

The proposed incentives include:

- A density bonus (1 unrestricted unit for each year-round ownership unit, 2 unrestricted units for each year-round rental unit)
- Waiving town-defined dimensional rules (while creating new minimum requirements)
- A reduction in parking requirements
- By-right permitting of year-round projects (with an option for site plan review)

This set of incentives can be included altogether or activated individually at the discretion of implementing towns. In many ways, this bylaw follows the form of inclusionary zoning bylaws. From the financial perspective of a developer, the effects are similar, though less extreme than affordability requirements.

The technical specifications in this model bylaw try to be readily usable for local implementers, easily fitting into existing bylaws and working well without much adjustment. **PLEASE SEE THE ACCOMPANYING GUIDE FOR THE REASONING BEHIND THIS MODEL BYLAW'S PROVISIONS.** Nonetheless, there are some places where a town must make decisions about the structure of the

bylaw or the scale of redevelopment. [Places where towns must make decisions or insert language about their existing code are called out in brackets and in pink text.]

The model bylaw was drafted in conjunction with the Cape Cod Commission by Outwith Studio; Utile; and attorneys Blatman, Bobrowski, Haverty & Silverstein.

SECTION [X]. Year-Round Housing Incentive

- I. **Purpose.** The purpose of this section is to provide incentives for the production of year-round housing on Cape Cod. The Town of [TOWN NAME] recognizes that the demand for vacation rentals and second homes has constrained the supply of housing for full-time residents of the region, consequently destabilizing communities, hampering economic development, and increasing the cost of housing and other goods and services for all people. To improve conditions for all, this section of the zoning bylaw intends to increase production of housing occupied by long-term residents who may want or need to rent their home.

- II. **Definitions.** Within this section, the following terms shall have the following meanings:
 - A. “Base density” shall mean the number of units allowed at a development site before the application of any year-round housing incentives provided in this section.

 - B. “By-right” shall mean a zoning permitting process wherein development may proceed under the zoning in place at time of application without the need for a special permit, variance, zoning amendment, waiver, or other discretionary zoning approval. [By-right permitting shall include a Site Plan Review (SPR) Process specified in [SPR SECTION OF TOWN’S ZONING OR OTHER LAND USE CONTROL BYLAW], through which the [SPR AUTHORITY] may add reasonable conditions to the site plan but cannot deny the development to proceed.]

 - C. “Lot Coverage Ratio” shall mean portions of a development where the land is covered by an impervious surface, such as buildings, roads, driveways, porches, or other paved or hardscaped areas. Lot coverage ratios shall be expressed as a percent.

 - D. “Monitoring agency” shall mean [INSERT AGENCY NAME HERE].

 - E. “Qualified household” shall mean an individual, family, or set of unrelated individuals who jointly rent a year-round rental unit on a lease of at least 12 months and who occupy that unit for at least 11 months, or who own and occupy a year-round ownership unit for at least 11 months each calendar year. At least one household member must occupy the household for at least 11 months annually to be a

qualified household.

- F. "Special Permit" shall mean a zoning permitting process wherein development may proceed only with a Special Permit from the [SPECIAL PERMIT GRANTING AUTHORITY] as specified in [SPECIAL PERMIT SECTION OF TOWN'S ZONING], a process that may result in the approval, approval with conditions, or denial of the development proposal.
- G. "Unrestricted housing units" shall mean the housing units within a year-round project that are not set aside as year-round occupancy units under the provisions of this section, which may or may not be occupied by qualified households, and which are not monitored for compliance by the monitoring agency.
- H. "Year-round occupancy units" shall mean housing units that are either:
 - 1. Year-round rental units as defined in this section
 - 2. Year-round ownership units as defined in this section
- I. "Year-round ownership units" shall mean housing units that are owner-occupied and qualify as the owner's principal residence, as defined in the Code of Massachusetts Regulations (830 CMR 62.3.1), and which are occupied by qualified households. A year-round ownership unit may not be used as a short-term rental subject to Rooms Excise Tax, as defined in the Code of Massachusetts Regulations (830 CMR 64G.1.1). Year-round ownership units may be used as short-term rentals meeting the requirements of the 14-day exemption provided under 830 CMR 64G.1.1.(3)(b).
- J. "Year-round project" shall mean any proposed or built housing development that contains year-round occupancy units in any proportion to unrestricted housing units and is permitted under the regulations of this section. Year-round projects may include non-residential uses if allowed by the underlying zoning district and subject to the requirements of that zoning district and related regulations.
- K. "Year-round rental units" shall mean housing units that are rented by the property owner to a tenant using a lease or contract for a term of no less than 12 months, and which are occupied by qualified households. A year-round rental unit may not be used as a short-term rental subject to Rooms Excise Tax, as defined in the Code of

Massachusetts Regulations (830 CMR 64G.1.1), whether or not its use as a short-term rental would qualify for the 14-day exemption provided under 830 CMR 64G.1.1.(3)(b).

III. Application.

- A. The incentives provided in this section shall be granted by-right [and subject to Site Plan Review] to residential [and mixed-use] developments in the following districts: [INSERT BY-RIGHT DISTRICT NAMES].
- B. The incentives provided in this section shall be granted by Special Permit to residential [and mixed-use] developments in the following districts: [INSERT SPECIAL PERMIT DISTRICT NAMES].
- C. Notwithstanding other provisions of this zoning bylaw, the incentives provided under this section shall not be allowed in districts not specified in this subsection.

IV. Incentives. Year-round projects may take advantage of the following incentives, subject to the provisions of this subsection.

A. Density Incentive

- 1. The number of total housing units allowed in a year-round project may be increased above the base density. In exchange for the provision of year-round occupancy units numbering less than or equal to the base density, additional unrestricted units may be allowed on-site according to the following rules:
 - a) For each year-round ownership unit developed as part of a year-round project, one additional unrestricted unit may be allowed.
 - b) For each year-round rental unit developed as part of a year-round project, two additional unrestricted units may be allowed.
- 2. No additional units shall be granted for the provision of year-round occupancy units in excess of the base density.

B. Dimensional Incentive.

1. In applying the density incentive provided under this subsection, year-round projects are allowed to waive the following dimensional and design standards:

[Towns should pick and choose which dimensional changes would be most impactful, depending on the requirements of the target districts.]

- a) Front, side, rear, and/or internal setback regulations for the whole parcel, as specified in [INSERT CITATION HERE].
 - b) Facade stepback and variation regulations, as specified in [INSERT CITATION HERE].
 - c) Lot coverage regulations, as specified in [INSERT CITATION HERE].
 - d) Building height regulations, as specified in [INSERT CITATION HERE].
 - e) Open space regulations, as specified in [INSERT CITATION HERE].
 - f) Insert other regulations as needed/desired.
2. Year-round projects shall be subject to the following dimensional standards:
 - a) **Setbacks.**
 - (1) The minimum front setback of a year-round project shall be the lesser of
 - (a) [15] feet
 - (b) The setback required in the relevant zoning district
 - (c) The average setback of parcels that are not vacant adjoining the proposed development on the side lot lines.
 - (2) The minimum side and rear setbacks shall be the lesser of
 - (a) [10] feet
 - (b) The setback required in the relevant zoning district
 - b) **Height.** A year-round project may add [one] story and up to [12] feet of building height above the maximum required in the relevant

zoning district.

c) **Lot coverage.**

(1) Year-round projects shall have a maximum lot coverage ratio of no more than [80%].

3. The application of dimensional incentives shall not be interpreted to increase the number of allowed dwelling units beyond what is provided under the base density and density incentive provided in this section.

C. **Parking Incentive.** The minimum number of automobile parking spaces shall be determined using the following criteria. The application of this parking incentive shall not be understood as increasing the number of allowable units beyond those provided through the base density and density incentive provided in this section.

[There are several options here.

- a. Provide a relatively low minimum parking ratio for all units in a year-round project
- b. Provide a relatively low minimum parking ratio for year-round occupancy units only and regardless of tenure
- c. Provide a relatively low minimum parking ratio for year-round rental units only]

[OPTION A: LOW PARKING RATIO FOR ALL UNITS]

1. The minimum automobile parking ratio for year-round projects shall be [1.2] spaces per dwelling unit. In exchange for this parking incentive, no less than [10%] of all housing units in a year-round project must be reserved as year-round [occupancy/rental] units.

[OPTION B: TIERED PARKING RATIO FOR YEAR-ROUND OCCUPANCY]

1. The minimum number of automobile parking spaces for year-round projects shall be determined by the following criteria.

- a) The minimum parking ratio for unrestricted units shall be that of the relevant zoning district and parking standards specified in [INSERT PARKING CITATION HERE]. This ratio shall be multiplied by the number of unrestricted units in the year-round project,

[INCLUSIVE/EXCLUSIVE] of unrestricted units provided through the density incentive given of this subsection.

- b) The minimum parking ratio for year-round occupancy units shall be [1.2] spaces per year-round occupancy unit. This ratio shall be multiplied by the number of year-round occupancy units in the year-round project [plus unrestricted units provided through the density incentive given in this subsection].

[OPTION C: TIERED PARKING RATIO BY YEAR-ROUND OCCUPANCY AND TENURE]

1. The minimum number of automobile parking spaces for year-round projects shall be determined by the following criteria.
 - a) The minimum parking ratio for unrestricted units shall be that of the relevant zoning district and parking standards specified in [INSERT PARKING CITATION HERE]. This ratio shall be multiplied by the number of unrestricted units in the year-round project, [INCLUSIVE/EXCLUSIVE] of unrestricted units provided through the density incentive given of this subsection.
 - b) The minimum parking ratio for year-round ownership units shall be [1.2] spaces per year-round ownership unit [plus unrestricted units provided through the density incentive given in this subsection].
 - c) The minimum parking ratio for year-round rental units shall be [0.85] spaces per year-round rental unit [plus unrestricted units provided through the density incentive given in this subsection].

[END PARKING RATIO OPTIONS]

2. If the application of the minimum automobile parking ratios required under this section results in fraction parking spaces, the number of required spaces shall be rounded up to the next space.
3. In the case of mixed-use development, the total amount of parking spaces shall be the sum of the amount of parking required under zoning for any non-residential uses and the amount of parking required per dwelling unit under the provisions of this section.

4. Parking requirements may be reduced by Special Permit after a finding by the Special Permit Granting Authority that the grant of a special permit shall not result in substantial detriment to the neighborhood or the Town.

[Towns may consider incorporating other criteria for reducing parking requirements such as the following:

- a) Peak parking demands that overlap in time significantly or do not overlap in time significantly, depending on the uses of mixed-use projects;
- b) Age, demographics, socioeconomics, or other characteristics of occupants of the facility that affect the demand for automobile trips;
- c) Availability of on-street parking or parking at nearby municipally owned facilities.]

D. Permitting Incentive

1. Year-round projects that are granted the incentives of this section by-right shall be allowed by-right [and subject to Site Plan Review].

V. Year-Round Project Standards

- A. Year-round occupancy units shall be included on the site of a year-round project.

[Provisions B and C are both optional. For larger projects, it may be appropriate to set any units intended for vacation rentals away from year-round occupancy units. Similarly, year-round occupants may prefer separate common areas from any vacation renters.]

- B. Year-round occupancy units shall be similar in size, layout, construction materials, fixtures, amenities, and interior and exterior finishes to comparable unrestricted units in the project.
- C. Year-round occupancy units shall have similar access to common areas, facilities, and services as that are enjoyed by comparable unrestricted units in the project including but not limited to outdoor spaces, amenity spaces, storage, parking, bicycle parking facilities, and resident services.

[Provision D is optional and could be omitted altogether.]

[OPTION FOR TOWNS WISHING TO HAVE THE YEAR-ROUND UNITS MATCH BASELINE PATTERNS OF DEVELOPMENT IN A YEAR-ROUND PROJECT.]

- D. The proportionate amount of year-round occupancy units defined by size and number of bedrooms within the total amount of year-round occupancy units in the year-round project shall be similar to the proportionate amounts of unrestricted units defined by size and number of bedrooms within the total amount of unrestricted units in the project.

VI. Year-round Housing Regulatory Agreement.

- A. Developers of year-round projects shall enter into a multilateral year-round housing regulatory agreement with the Town of [INSERT TOWN] and the monitoring agency. The regulatory agreement shall specify:

1. Relevant dwelling unit counts and proportions, including
 - a) The base number of dwelling units allowed in a project, before any density bonus is applied
 - b) The number of year-round occupancy units
 - c) The proportion of year-round occupancy units relative to the base number of dwelling units allowed in a project, before any density bonus is applied
 - d) The proportion of year-round occupancy units relative to the base number of dwelling units allowed in a project, after any density bonus is applied
2. Relevant parking space counts and ratios, including:
 - a) The total number of parking spaces
 - b) The ratio of parking spaces for unrestricted units
 - c) The ratio of parking spaces for year-round ownership and rental units, where applicable
3. A list of dimensional nonconformities created by application of this section's density incentive.

4. The projected fair market value of the year-round development, to be determined by a third-party independent appraiser selected by the Town and paid by the developer.
 5. That the owner of the year-round project, if held under single ownership, or the owners of individual year-round occupancy units, if units are owned by separate persons or entities, shall grant to the Town of [TOWN NAME] an unlimited and transferable option of sale of the year-round project, if held under single ownership, or year-round occupancy units, if units are owned by separate persons or entities. The regulatory agreement shall specify that such option of sale may only be exercised by the Town or its designee upon wanton violation of the regulatory agreement, notice of violation by the monitoring agency, and continued violation after a compliance period specified by the monitoring agent. The option of sale will set a price equal to the fair market valuation determined in the regulatory agreement.
 6. That a deed restriction shall be placed on the property, and recorded with the Barnstable County register of deeds, specifying the terms of the regulatory agreement. Deed restrictions shall be placed on the project as a whole if held as a single piece of property, or on individual year-round occupancy units if the project is subdivided, split into condominiums, or otherwise having individual housing units owned as separate pieces of property.
- B. No certificate of occupancy may be issued for a year-round project until a regulatory agreement has been signed by all parties.
 - C. If a year-round project is found to remain in violation of its regulatory agreement after the deadline to come into compliance has passed, the Town or its designee shall have unlimited rights to exercise its option specified in the d regulatory agreement.

VII. Monitoring.

- A. A year-round project's compliance shall be monitored on an ongoing basis by the monitoring agency.

- B. Property owners of year-round occupancy units shall submit reports annually to the monitoring agency.
- C. The annual report shall attest that each year-round occupancy unit meets the requirements of this section. Reports shall include any leases, deeds, and verification of occupancy as may be required by the monitoring agency.
- D. The form of annual reports shall be published by the monitoring agency at least 90 days before the report is due.
- E. If a year-round project is found to be in violation of its regulatory agreement, the monitoring agency shall issue notice to the year-round project's present owner and to the Town. The notice shall specify a timeline of no less than 90 days for the owner to bring the year-round project into compliance. Wanton violation following this compliance period shall enable the Town or its designee to exercise the option of sale specified in the regulatory agreement.

VIII. Conflicts.

Unless otherwise stated, the requirements of this section shall apply to uses and structures permitted under the regulations of this section. In the event of a conflict, the regulations of this section shall apply.