

# A Mixed-Use Model Bylaw for Cape Cod Towns

The **guide** that accompanies this model bylaw and helps to explain some of its aspects is available at [www.capecodcommission.org/mumb-guide](http://www.capecodcommission.org/mumb-guide).

This model bylaw intends to be an example first draft of a zoning amendment that allows mixed-use development (residential over retail) for Cape Cod towns. This model bylaw envisions a range of mixed-use developments that could be appropriate in certain areas on Cape Cod. From small infill shop-front buildings to larger redevelopments of no longer used or underutilized commercial sites, this bylaw can be adapted to encourage a range of mixed-use options. Local policymakers can use this model bylaw as a starting point when considering their town's needs and desires for mixed-use development, including locations where it might be appropriate. Towns should also consider the structure of their zoning bylaw.

Towns may want to use the bylaw in **"Village Center"** type areas with an existing and historic mixed-use character and/or in **"Suburban Retrofit"** contexts, where older automobile-oriented commercial sites are likely to be redeveloped in the coming years. The model bylaw references these contexts and includes provisions specific to each context as well where they may differ.

The technical specifications in this model bylaw can fit into and work well with existing bylaws. Users should refer to the accompanying guide to understand the reasoning behind the bylaw's provisions. Some areas of the bylaw provide a range of options from which a town should select its preference, e.g., bylaw structure or appropriate 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.]

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## SECTION [X]. Mixed-Use Development

- I. **Purpose.** The purpose of this section is to allow and regulate development that includes mixed-use residential development. By allowing mixed-use development, this section aims:

[Towns can pick or choose among these purpose statements, and/or add their own.]

- A. To promote public health, safety, and welfare by encouraging active community life.
  - B. To promote economic vitality and greater diversity of housing opportunities.
  - C. To mitigate traffic congestion by promoting housing proximate to compatible commercial uses.
  - D. To provide housing for people at all stages of life and all levels of income.
  - E. To enable the creation of livable, walkable neighborhoods in the town's commercial districts.
  - F. To encourage the continued use of historic village centers.
  - G. To promote consistency, quality, and flexibility in site layout and building design.
  - H. To promote the creation of affordable and attainable housing opportunities for all incomes and ages by increasing residential density and mixed-use where appropriate.
- II. **Definitions.** Within this section, the following terms shall have the following meanings:
- A. "Active use" shall mean any public or semi-public use that encourages pedestrian activity along the front of a building and utilization of a building during substantial portions of the day on most days. Examples of active uses include but are not limited to:
    - 1. Retail
    - 2. Restaurant, bar, or specialty food services
    - 3. Entertainment uses (such as theaters or amusement arcades)
    - 4. Personal service uses (such as salons, barber shops, or spas)
    - 5. Artist galleries and artist studios, provided a publicly accessible gallery is included
    - 6. Libraries and community centers
    - 7. Publicly facing government services, such as post offices

8. Health and fitness facilities
9. Daycare facilities for any age

Active uses do not include office uses; semi-active amenity uses; housing units; or short-term lodging uses (including hotels, motels, and bed and breakfasts). Office uses and semi-active amenity uses may be included in a Mixed-Use Development by Special Permit or by-right pursuant to Subsections IV.A-D.

- B. "Back-lot structure" shall mean any building that does not front a public way or public open space and which is not the most visually prominent building on a parcel when viewed from the primary public way or public open space adjacent to that parcel.
- C. "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.]
- D. "Floor-to-floor height" is the height of the ground floor and upper floors of a building measured vertically from the surface of the finished floor to the surface of the finished floor above, at all points.
- E. "Ground floor" shall mean the lowest story of a building with a finished floor at or above the finished ground level next to a building at the facade.
- F. "Ground floor frontage" shall mean the ground floor facade of the principal structure which faces a public way or public park or, in the case of a corner lot, the facade which faces the more prominent public way or public park.
- G. "Ground floor active use space" shall mean an individually leasable non-residential unit located on the ground floor and that is intended primarily for active uses.

- H. "Housing unit" shall mean a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- I. "Leasable area" shall mean the net area used by an occupant, not including public or semi-public circulation areas and building operation and mechanical areas, except where those mechanicals are solely related to a single occupant.
- J. "Lot coverage" shall mean portions of a development where the land is covered by an impervious surface, such as buildings, roads, driveways, or other paved or hardscaped areas.
- K. "Mixed-use development" shall mean development on a single parcel containing a mix of residential uses and nonresidential uses, including commercial, institutional, or other uses which are permitted under this section.
- L. "Office uses, consumer-facing" shall mean any business or professional offices, medical offices, urgent care facilities, and accessory leasing offices, provided those uses can reasonably expect regular visits of clients and customers. This includes but is not limited to doctors' offices, dentists, attorneys, financial services, realtors, and others, provided these uses meet the general definition given here.
- M. "Office uses, non-consumer-facing" shall mean any business, professional, medical, or other office uses that do not meet the definition of consumer-facing offices. This includes but is not limited to professional services and administrative service offices with infrequent visits from clients and customers.
- N. "Principal entrance" shall mean the addressed entrance to a building or commercial space.
- O. "Principal structure" shall mean the structure which fronts a public way or public open space and that is the most visually prominent building on a

parcel when viewed from the primary public way or public open space adjacent to that parcel.

- P. "Semi-active amenity uses" shall mean accessory communal areas, amenity areas, or services for the building residents only.
- Q. "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.
- R. "Upper floor" shall mean any full story above the ground story of a building.

### III. **Application.**

[There are two options here, depending on the town's existing code and preferences.]

[OPTION FOR TOWNS WITH A USE TABLE]

- A. Mixed-use developments that follow the provisions of this section shall be allowed according to the use table given in [INSERT USE TABLE SECTION].

[OPTION FOR TOWNS WITHOUT A USE TABLE OR WHO OTHERWISE WANT TO STATE THE APPLICATION OF THIS BYLAW HERE IN THE TEXT]

- A. Mixed-use developments that follow the provisions of this section shall be allowed by-right [and subject to Site Plan Review] in the following districts: [INSERT BY-RIGHT DISTRICT NAMES].
- B. Mixed-use developments that follow the provisions of this section shall be allowed by Special Permit [and subject to Site Plan Review] in the following districts: [INSERT SPECIAL PERMIT DISTRICT NAMES].

- C. Notwithstanding other provisions of this zoning bylaw, mixed-use developments that follow the provisions of this section shall not be allowed in districts not specified in this subsection.

IV. **Use Regulations, Principal Structures.** The following regulations shall govern the uses located within the principal structures of mixed-use developments.

- A. Ground floor, fronting a public way or public park
  - 1. Uses allowed by right
    - a) Active uses as defined in this section
    - b) Consumer-facing office uses [A town should consider whether consumer-facing office uses should be by-right or by Special Permit here. The inclusion of consumer-facing office uses as by-right uses may make mixed-use projects more viable, though they may take away from some of their “active” character.]
    - c) An entryway, lobby, and related circulation areas leading to parts of the building that are either on upper floors or not fronting a public way or public park, provided active uses are included according to the dimensional regulations of this section
    - d) Semi-active amenity uses, provided active uses are included according to the dimensional regulations of this section
  - 2. Uses allowed by special permit
    - a) Non-consumer-facing office uses
  - 3. Uses not permitted
    - a) Housing units
    - b) Parking and driving aisles, except driving aisles to reach parking facilities when there is no alternative access available
    - c) Automobile-oriented uses, including but not limited to auto repair, car washes, and drive-through retail or food service
    - d) Building mechanical, maintenance, or operations
    - e) Any other use that is not open to the public

- B. Ground floor, not fronting a public way or public park
  - 1. Uses allowed by right
    - a) Active uses as defined by this section
    - b) Office uses, consumer-facing or non-consumer-facing
    - c) Semi-active amenity uses
    - d) Circulation facilities, including but not limited to hallways, stairwells, and elevator areas
    - e) Accessory storage for building residents
    - f) Building mechanical, maintenance, or operations
  - 2. Uses allowed by special permit
    - a) Housing units
  - 3. Uses not permitted
    - a) [reserved]
- C. Upper floors
  - 1. Uses allowed by right
    - a) Housing units
    - b) Semi-active amenity uses
    - c) Accessory storage for building residents
    - d) Circulation facilities, including but not limited to hallways, stairwells, and elevator areas
    - e) Building mechanical, maintenance, or operations
  - 2. Uses allowed by special permit
    - a) Active uses as defined in this section, limited to the second floor (lowest upper floor) only
    - b) Office uses, consumer-facing or non-consumer-facing, limited to the second floor (lowest upper floor) only
  - 3. Uses not permitted
    - a) [reserved]
- D. Below-ground areas
  - 1. Uses allowed by-right

- a) Semi-active amenity uses
  - b) Accessory storage for building residents and/or ground floor occupants
  - c) Building mechanical, maintenance, or operations
  - d) Parking
  - e) Circulation facilities, including but not limited to hallways, stairwells, and elevator areas
- 2. Uses allowed by Special Permit
    - a) Active uses as defined in this section, provided uses are visible from the ground floor and can be accessed from a public way or public park
    - b) Office uses, consumer facing and non-consumer-facing
  - 3. Uses not permitted
    - a) Housing units
- V. **Use Regulations, Back-Lot Structures.** The following regulations shall govern the uses located within any back-lot structures in mixed-use developments.
- A. Uses allowed by-right
    - 1. Semi-active amenity uses
    - 2. Accessory storage for building residents and/or ground floor occupants
    - 3. Building mechanical, maintenance, or operations areas
    - 4. Parking
    - 5. Circulation facilities, including but not limited to hallways, stairwells, and elevator areas
  - B. Uses allowed by Special Permit
    - 1. Active uses as defined in this section, but only on the ground floor or lowest upper floor
    - 2. Office uses, consumer-facing and non-consumer-facing
    - 3. Housing units
  - C. Uses not permitted
    - 1. Automobile-oriented uses, including but not limited to auto repair, and drive-through uses



VI. **Development intensity**

- A. If the underlying zoning district regulations specify minimum or maximum residential or nonresidential development intensity (including but not limited to specifications for residential units per acre or floor area ratio), those regulations shall govern the development intensity of a mixed-use development permitted under this section.
  
- B. [This is an optional provision for communities that do not wish to align their underlying residential intensity requirements with standard mixed-use building types.] Where the zoning district regulations governing a proposed mixed-use development site specify minimum or maximum residential or nonresidential development intensity and those specifications prevent the practical mixed-use development of that site where it would be otherwise permitted, those development intensity regulations may be waived for the given site by and at the discretion of the [SPECIAL PERMIT GRANTING AUTHORITY] through a Special Permit process, as specified in [SPECIAL PERMIT SECTION].

VII. **Dimensional Regulations.** Mixed-use developments permitted under this section shall follow the following dimensional regulations, which supersede regulations specified by the zoning district in which the development is located. Where dimensional regulations are not specified here, the regulations of the zoning district shall apply.

- A. **Minimum lot size.** There shall be no minimum lot size for mixed-use developments permitted under the rules of this section.
  
- B. **Maximum lot coverage**
  - 1. For parcels of less than 20,000 square feet, there is no maximum lot coverage for mixed-use developments following the provisions of this section.
  - 2. For parcels of at least 20,000 square feet, the maximum lot coverage for mixed-use developments following the provisions of this section shall be 80% or that of the zoning district in which the development is

located, whichever is greater.

**C. Active frontage, principal structure**

1. For principal structures with no more than 50 feet of ground floor frontage, at least 50% of the ground floor frontage must be dedicated to active uses or consumer-facing office uses as defined in this section.
2. For principal structures with greater than 50 feet of ground floor frontage, at least 50% of the ground floor frontage must be dedicated to active uses or consumer-facing office uses as defined in this section.

**D. Depth of active use, principal structure.** At least 90% of each ground floor active use space in a principal structure shall be at least 25 feet deep, as measured from the front façade to the back of the ground-floor unit's leasable area.

**E. Ground floor active use space size.** Each ground floor active use space shall have no more than 5,000 square feet in leasable area, except through a Special Permit granted by the [SPECIAL PERMIT GRANTING AUTHORITY].

**F. Ground floor height, principal structure**

1. In districts [INSERT VILLAGE CENTER DISTRICTS], the floor-to-floor height of the principal structure's ground floor shall be no less than 13 feet and no more than 15 feet. In historic structures, existing floor-to-floor heights should be allowed even if they fall outside this range.
2. In districts [INSERT SUBURBAN RETROFIT DISTRICTS] the floor-to-floor height of the principal structure's ground floor shall be no less than 14 feet and no more than 18 feet.

**G. Upper floor height, principal structure.** The floor-to-floor height of the principal structure's upper floors shall be no less than 9 feet and no more than 11 feet.

H. **Minimum building height, principal structure.** The total building height of the principal structure shall be no less than two stories.

I. **Maximum building height, principal structure**

1. The total building height for the principal structure shall be no more than [2, 3, or 4].5 stories.

J. **Upper floor footprint, principal structure.** Excluding any half-story upper floors above the highest full upper floor, the footprint of all of the principal structure's upper floors must be at least 70% of the ground floor.

K. **Setbacks**

1. Setback regulations shall be governed by the zoning district in which mixed-use development is allowed, except for front setbacks, which shall be governed as follows.
2. In districts [VILLAGE CENTER DISTRICTS], front setbacks
  - a) Shall be no more than the lesser of
    - (1) Fifteen feet
    - (2) The maximum front setback specified by the zoning district in which the building is located
    - (3) The predominant front setback of buildings fronting the same primary way on the block in which the development is located.
  - b) Shall be no less than the lesser of
    - (1) Five feet
    - (2) The minimum front setback specified by the zoning district in which the building is located
    - (3) The predominant front setback of buildings fronting the same primary way on the block in which the development is located.
3. In districts [SUBURBAN RETROFIT DISTRICTS], front setbacks
  - a) Shall be no more than the lesser of
    - (1) Twenty-five feet

- (2) The maximum front setback specified by the zoning district in which the building is located.
- (3) The predominant front setback of buildings fronting the same primary way within a quarter mile of the development.

b) Shall be no less than the lesser of

- (1) Fifteen feet
- (2) The minimum front setback specified by the zoning district in which the building is located
- (3) The predominant front setback of buildings fronting the same primary way within a quarter mile of the development.

**L. Back-Lot Structures.**

1. The dimensions of all back-lot structures shall be governed by the regulation of accessory structures in the zoning district in which mixed-use development is allowed.
2. Where the zoning district does not provide dimensional regulations to govern accessory structures, the regulations of this section pertaining to the dimensions of principal structures shall govern back-lot structures.
3. In no case shall a back-lot structure be taller than a principal structure.

**M. Nonconforming structures.** The dimensional provisions of this section may be waived by Special Permit for the redevelopment of structures that do not conform to these regulations, provided the proposed redevelopment is in line with the purposes of this section.

**VIII. Parking requirements**

- A. The following automobile parking requirements shall apply to mixed-use developments permitted under this section.

Use	Automobile parking maximum
Housing unit	1.25 spaces per housing unit (rounded up to the nearest whole parking space)
Active use	2 spaces per 1,000 square feet (rounded down to the nearest whole parking space)
All other uses (excepting lobbies, circulation, and accessory uses reserved for occupants and residents of the development)	2 spaces per 1,000 square feet (rounded down to the nearest whole parking space)

- B. In districts [VILLAGE CENTER AND/OR SUBURBAN RETROFIT DISTRICTS], automobile parking requirements may be increased under the following conditions:
1. Through a [Special Permit/Parking Waiver], parking may be increased to more than that required by paragraph VIII(A), at the discretion of the [SPECIAL PERMIT GRANTING AUTHORITY], where the Special Permit applicant can demonstrate, through methods acceptable to the [SPECIAL PERMIT GRANTING AUTHORITY], that parking demand will exceed what can be met by the maximum allowable parking, while also accounting for:
    - a) Peak parking demands that overlap in time significantly or do not overlap in time significantly, depending on the use;
    - 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.
- C. All off-street parking areas used exclusively by a mixed-use development shall be located within 50 feet of the building containing the mixed-use development.

- D. The following bicycle parking requirements shall apply to mixed-use developments permitted under this section.

Use	Bicycle parking minimum
Housing unit	1 space per housing unit (rounded up to the nearest whole parking space)
Active use	1 space per 1,000 square feet (rounded down to the nearest whole parking space)
All other uses (excepting lobbies, circulation, and accessory uses reserved for occupants and residents of the development)	1 space per 1,000 square feet (rounded down to the nearest whole parking space)

**IX. Site planning**

- A. Principles. The site plan of mixed-use developments permitted under this section should adhere to the following principles:
1. Promote a walkable and vibrant public realm along a public way or public open space.
  2. Emphasize the connection between public ways and open spaces and the uses of the building.
  3. Promote the active use of any space between the ground floor frontage and public right-of-way.
  4. Minimize the visual and physical impact of parking facilities, primarily from the street in front of the site and secondarily from the side and rear, through building placement and context-appropriate landscaping treatments.
- B. Standards
1. Automobile parking facilities shall be behind the principal structure. In cases where parking behind the structure is not feasible, parking to the side of the structure is permitted, provided it is set back at least ten feet from the front of the front facade.

2. Loading facilities shall not be located at the ground floor frontage. If possible, loading facilities should be located at the rear of the building.
3. To the extent possible, automobile access to parking and loading should be located at the side or rear of the parcel and should be screened from view from the public ways or public open spaces along the front of the parcel and from side and rear adjacent parcels.
4. Bicycle parking should be located near the primary entrance to the development's housing units and/or the primary entrance to ground-floor units.
5. The principal entrance of any ground floor active use space should be along the ground floor frontage.
6. The principal entrance leading to the housing units may be along the ground floor frontage or along the side or rear facades.
7. Exterior stairs leading to residential portions of the mixed-use development should be located on the side or rear of the building.

**X. Additional Housing Provisions**

- A. **Age restrictions.** For any mixed-use development permitted through this section, there shall be no age restrictions placed on any of its housing units.
  - B. **Long-term occupancy.** For any mixed-use development permitted through this section, all housing units made available for rent must be rented on terms of not less than **[ONE TO SIX]** months, except by Special Permit through the process specified in **[SPECIAL PERMIT SECTION]**, regardless of whether the development is otherwise allowed by-right or by Special Permit.
- XI. **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.
- XII. **Severability.** The provisions of this section are severable. If any court of competent jurisdiction shall invalidate any provision herein, such invalidation shall not affect any other provisions of this section. If any court of competent jurisdiction shall invalidate the application of any provision of this section to a particular case, such



invalidation shall not affect the application of said provision to any other case within the Town.