

City of Salem, Massachusetts



"Know Your Rights Under the Open Meeting Law, M.G.L. c. 39 §23B, and City Ordinance Sections 2-2028 through 2-2033."

The City Council Committee on Ordinances, Licenses & Legal Affairs
coposted with the Committee of the Whole
met in the Council Chamber on Wednesday, January 11, 2012 at 7:00 P.M.
for the purpose of discussing the matter(s) listed below. Notice of this meeting was posted on
January 5, 2012 at 5:03 P.M.

(This meeting is being recorded.)

ATTENDANCE

ABSENT WERE:

SUBJECT(S)

- #622 - Review Rules & Regulations for Rooming Houses (COPOSTED MATTER)
- #534 - Stormwater Management Ordinance Amendment (COLLA ONLY)

Cheryl / Ilene for action taken see back

Sec 37.7 Wapows - amended as per Beth Howard

Rescinded - out

C/O'Keefe J. Casey, Beth, Att.

Jay Levy, H. Hawthorn, Dr. Bev.

Tom Fox

Prabha, 5 Minutes P.

Health, Fire, Tom D. Brown, Police

e/B.M. R.I.C.

C/O # 622 - Action taken = 1. Held meeting + received public input + multiple department input.

2. Created subcommittee to form Rules + Guidelines for Rooming / Boarding + holding houses and also

Members are: Jobs houses

1. C/O O'Rourke = chair. Tracy Levy

C/O Sargent - "2 Joan Fix

C/O Lavelly = alternate. Barbara Taylor

Tom St. Pierre / Lt. E. Griffin / Police / Health /

Both, John Casey, Joan Fix, Barbara Schinnerer

3. Remove in committee. Mary Hanford

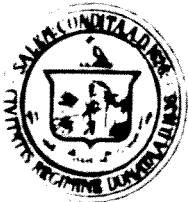
C/O 534 - Moved to approve with ^{amended words} changes as per Both.

On the motion of C. J O'Rourke

the meeting adjourned at 8:15 P.M.


(Chairperson)

#622



CITY OF SALEM

In City Council,
October 13, 2011

Ordered:

That the Committee on Ordinances, Licenses and Legal Affairs co-posted with Committee of the Whole meet to discuss the rules and regulations as they pertain to rooming houses. And that the following be invited, Licensing Board, the City Solicitor, Building Inspector, Police Chief or his designee, Fire Chief or his designee, Health Agent and Collector.

*C/O. Diffusion between Rooming Board
Kodger / Sobel*
C/A.S. Eviction comparison

In City Council October 13, 2011
Adopted

*John Fox: 7 Munroe St. - Drug OD.
Paraphenolone.*
Tommy King 4 Stephens Blvd 179 Bostwick St.
Mirans
Guants.
SRO

ATTEST:

CHERYL A. LAPOINTE
CITY CLERK

Michael Sosnowski

From: Michael Sosnowski [michaelsosnowski@verizon.net]
Sent: Thursday, December 29, 2011 8:58 AM
To: 'Beth Rennard'; mpagliaro@salem.com
Cc: 'mehartfelder@gmail.com'
Subject: RE:

Beth,

At last night's meeting there were some very good points made.

The main points we think have merit and would like to have as an order of conditions are as follows;

- 1, The has to be a live-in manager and that manager has to be registered in much the same way that a liquor license needs a person's name behind it. with phone numbers etc.
- 2, The SRO, single room occupancy has to be enforced.
- 3, Tenants have to be screened thru CORE and SORI checks. No criminals or sex offenders allowed. Note, they are within 1000 feet of the St James, aka St Joe's, school
- 4, No weapons of any kind allowed
- 5, No illegal drugs of any sort either in possession or dealing
- 6, Three violations of the above and the license is lost forever

In addition to the above several good questions were asked.

- 1, Is the transfer of the license a done deal, automatic upon request?
- 2, Is there any circumstance were a license can be refused?
- 3, Do all the other rooming/boarding/sober houses in Salem have conditions/restrictions? If so are they consistent for all and what are they?
- 4, Do surrounding communities have rules and regulations regarding these types of houses? Again, if so, what are they?
- 5, Can we get a list of all the rooming/boarding houses in Salem?
- 6, Can we get a list of who is living in these houses?

One of the key points of last night's meeting was everyone realized the need for this type of housing yet everyone agreed that at the same time the majority do not fit the need. We also recognized the civil rights of all persons on both sides of the fence.

The end goal is to provide the need while at the same time protecting the quality of life of the host neighborhood. To that end these guidelines need to be established.

Thanks
Mike

Mike Sosnowski
Ward Two City Councillor
17 Collins Street
Salem, Ma. 01970
19787456182

From: Beth Rennard [mailto:BRennard@Salem.com]
Sent: Wednesday, December 28, 2011 11:04 AM
To: Melissa Pagliaro
Cc: Michael Sosnowski; Joan Lovely
Subject: RE:

Mike, I would recommend that proposed conditions to the license for the rooming house be presented to the Bd. at or prior to the date the matter is before the Bd. The Bd. should consider the proposed conditions and issue the license accordingly. Unless there is some outstanding issue we need to resolve and condition related to the particular property asking for a license, to issue a temporary license with the intent of later applying (ex post facto) a new law or regulation is problematic. Laws, rules or regulations are generally not applied retroactively. Article I, Section 10 of the Constitution stated, "no State (which includes its subdivisions, cities and towns) shall pass any ex post facto Law." In applying this, the U.S. Supreme Court has established a long standing presumption against retroactive rules as they generally have unjust results. Retroactive legislation is said to be unfair because it deprives citizens of notice and can create economic uncertainty. In the case of the applicant for a rooming house license, he will be making an application under the law as it is at the time of filing and any actions by the Board to change the rules after he has purchased the building and made that economic investment could easily be challenged as a constitutional violation of his property rights and a government "taking." Please give me a call so we can discuss further. I am sure we can figure out how to address the issues if we i.d them. I will be in the office tomorrow. Have a great day.

From: Melissa Pagliaro
Sent: Wed 12/28/2011 10:01 AM
To: Beth Rennard
Subject: FW:

Beth,
Mike stopped by and had some questions about what he could and could not discuss with neighbors at an upcoming meeting her has. He asked if you could email him.

Melissa Pagliaro
City of Salem
Licensing Department
93 Washington Street, Room 8
Salem, MA 01970
978-745-9595 x5631
mpagliaro@salem.com

From: Michael Sosnowski [<mailto:michaelsosnowski@verizon.net>]
Sent: Wednesday, December 28, 2011 9:59 AM
To: Melissa Pagliaro
Subject:

Melissa,
Continuing the conversation we had earlier.
Out of all the items that may or may not be legal to pursue the one that matters most is... can we ask for a **temporary** license only while the whole rules and regulations about rooming /boarding houses are still waiting for review in the combined meeting of the Licensing board and the council committee on OLLA?
Mike

Mike Sosnowski
Ward Two City Councillor
17 Collins Street
Salem, Ma. 01970
19787456182



CITY OF SALEM
LEGAL DEPARTMENT

93 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970
TEL: 978-745-9595 ♦ FAX: 978-744-1279

KIMBERLEY DRISCOLL
MAYOR

ELIZABETH RENNARD, ESQ.
CITY SOLICITOR

ROBIN STEIN, ESQ.
ASST. CITY SOLICITOR

To: Councillor Michael Sosnowski

From: City Solicitor Elizabeth Rennard

Date: January 11, 2012

Re: Rules and Regulations Relative to Lodging Houses

In preparing for this evening's discussion relative to Licensing Board's Rules and Regulations Relative to Lodging Houses, the Solicitor's office has conducted case law research relative to the Board's authority to regulate rooming houses and located Rules and Regulations from another Massachusetts community, the Town of Brookline, as an example of the types of rules and regulations the Licensing Board may adopt.

As to the case law relative to lodging houses, the Appeals Court found that the licensing board may not deny a lodging house license "on general grounds of adverse impact on the neighborhood." Trustees of Paul Revere Realty Trust v. Revere License Commission, 29 Mass.App.Ct. 11, 13 (1990) Licensing agencies have no authority to weigh the general effect on a neighborhood. Id.

A license may be denied "because the facilities are physically inadequate, because the applicant institution [or lodging house owner] has a bad record in running [a lodging house], or because supervisors are unqualified, or of bad character." Trustees of Boston University v. Licensing Board of Boston, 24 Mass.App.Ct. 475, 477 (1987) (citation omitted).

In the Boston University case, the Court explained "While the authority to set standards for licensing is implicit in the authority to license, the power to promulgate regulations must be exercised in a manner consistent with proper interpretation of the statute, here G.L. c. 140." 24 Mass.App.Ct. at 479, n. 5. I interpret this to mean that generally licensing regulations should relate to the aforesaid areas of regulation, adequacy of the facility, record of owner running lodging house, or supervisor's qualifications or bad character.

In searching for sample Rules and Regulations, there was little found except for the Town of Brookline. A copy of their Rules and Regulations, as well as the cases cited above, are attached.

I recommend that a committee be formed to draft proposed Rules and Regulations for Salem's Licensing Board which incorporates the guidelines outlined in the Boston University case, as well as related health, building and fire codes. This committee may include one or more representatives from the Fire, Building, Health and Legal/Licensing Departments as well as the Licensing Board and City Council.

Appeals Court of Massachusetts,
Suffolk.

TRUSTEES OF PAUL REVERE REALTY TRUST

v.

REVERE LICENSE COMMISSION (and a companion case).^{FN1}

FN1. A case brought by the commission against the trustees of Paul Revere Realty Trust seeking an injunction against the continued operation of an unlicensed lodging house was consolidated with the principal case for trial. Since the companion case is dependent on the case brought by the trustees, the opinion only refers to the latter action.

No. 88-P-1069.

Argued March 8, 1990.

Decided July 18, 1990.

Applicant sought review of two decisions of the licensing commission denying applications for a license to operate a lodging house for two years. The Superior Court Department, Suffolk County, John Paul Sullivan, J., reversed and remanded, and certiorari was granted. The Appeals Court, Dreben, J., held that: (1) the arrangement whereby the majority of the rooms in the building were temporarily rented under informal arrangements with the Department of Public Welfare to public welfare recipients who were waiting for long-term housing was consistent with ordinary concepts of a lodging house, and (2) the commission may not deny a lodging house license on general grounds of adverse impact on the neighborhood.

Affirmed as modified.

Brown, J., issued a concurring opinion.

**1038 *11 Ira H. Zaleznik, Boston, for Revere License Com'n.

Francis J. DiMento, Boston, for Trustees of Paul Revere Realty Trust.

Before BROWN, DREBEN and FINE, JJ. DREBEN Justice.

In this action in the nature of certiorari, the trustees of Paul Revere Realty Trust sought review of two decisions of the commission denying the trustees' applications for a license, pursuant to G.L. c. 140, § 23, to operate a *12 lodging house for the years 1986 and 1987. A judge of the Superior Court reversed and remanded the matter to the commission for further proceedings. We affirm for essentially the reasons given by the trial judge.

The guest house here involved was also the subject of litigation in Selvetti v. Building Inspector of Revere, 353 Mass. 645, 233 N.E.2d 915 (1968), and its sequel, 356 Mass. 720, 249 N.E.2d 744 (1969) (Selvetti II). In Selvetti II, the building was predominantly used by flight crews not based in Boston, under agreements with Eastern Airlines, "on a continuing basis for rotating occupancy of certain rooms" and **1039 under less formal arrangements with another airline.

Such use was held to be “consistent with ordinary concepts of a lodging house” even if the Revere ordinance precluded the operation of a motel in the district. *Ibid.*

[1] At the time of the applications in this case, the commission found that the majority of rooms were temporarily rented under informal arrangements with the Department of Public Welfare to public welfare recipients who were waiting for long-term housing. According to the statements of the lawyer for the trustees before the commission, the Department of Public Welfare would ascertain if rooms were available and would then send families to the guest house with vouchers for payment.^{FN2} This arrangement with the department, accounting for the majority of rooms on “a continuing basis for rotating occupancy,” is similar to the rental pattern in *Selvetti v. Building Inspector of Revere*, 356 Mass. at 720, 249 N.E.2d 744, and like it, is “consistent with ordinary concepts of a lodging house.” Contrary to the commission's contention, *Selvetti* does not require a contract. The commission's conclusion that the use of the building is predominantly a transient business and not a lodging house does not recognize that an informal rental of a majority of rooms is consistent with lodging house use.^{FN3} *13 Compare *Hall v. Zoning Bd. of Appeals of Edgartown*, 28 Mass.App.Ct. 249, 254, 549 N.E.2d 433 (1990).

FN2. The commission cites to the lawyer's statements as support for its argument that no contract existed between the department and the trustees. In the circumstances, we treat the lawyer's statements as uncontested.

FN3. The parties disagree as to whether the action of the commission should be reviewed on the “arbitrary and capricious” test or the “substantial evidence” test. The second paragraph of G.L. c. 140, § 30, inserted by St.1987, c. 743 (effective January 14, 1988), prescribes the latter standard. Since we think the commission made an error of law, we need not decide which standard applies.

[2] As an additional ground for its denial of the 1987 license, the commission found that the “present operation of the building is unhealthy and detrimental to both the occupants and the neighborhood.” In its decision denying the application for 1986, the commission's additional reason for denial was “that the present use of the building and the manner of operation by the applicant is injurious and detrimental to the neighborhood.” Such considerations as those in the decision for the 1986 license were held irrelevant for dormitories in *Newbury Jr. College v. Brookline*, 19 Mass.App.Ct. 197, 203-205, 472 N.E.2d 1373 (1985), and in *Trustees of Boston Univ. v. Licensing Bd. of Boston*, 24 Mass.App.Ct. 475, 479, 510 N.E.2d 283 (1987). In the latter case, this court found it unnecessary to determine whether the criteria for awarding lodging house licenses for dormitories differ from those for commercial establishments. *Id.* at 479 n. 6, 510 N.E.2d 283.

The rationale of that case, however, applies to all lodging house applicants. No distinction is made in G.L. c. 140, § 23, among the categories of lodging house applicants defined in § 22, and, as indicated in the *Trustees of Boston Univ.* case at 479-480, 510 N.E.2d 283, in turn relying on the *Newbury Jr. College* case, the “Legislature's purpose in enacting § 23 was directed primarily towards considerations of public health and morality.” Both cases held that, in ruling on dormitory applications, the licensing agencies had no authority to weigh the general effect on a neighborhood. We see no reason to apply different criteria here and agree with the trial judge that the commission may not deny the lodging house license “on general grounds of adverse

impact on the neighborhood.” Newbury Jr. College v. Brookline, 19 Mass.App.Ct. at 206-207, 472 N.E.2d 1373.

[3] In its denial of the 1987 application, the commission mentioned, as additional grounds, some factors which are relevant*14 considerations in denying a license. See Newbury Jr. College v. Brookline, 19 Mass.App.Ct. at 204-207, 472 N.E.2d 1373; Trustees of Boston Univ. v. Licensing Bd. of Boston, 24 Mass.App.Ct. at 480, 510 N.E.2d 283. We do not know if, or to what **1040 extent, the commission relied on those grounds, and since we hold that the primary bases of the commission's decisions cannot be sustained, a remand to the commission is necessary. Because three years have passed since the date of the last hearing and conditions may have changed since that time, the matter is remanded to the commission for consideration of a current lodging house license, provided that the trustees apply within thirty days of the rescript from this court for a 1990 lodging house license. As so modified, the judgment is affirmed.

So ordered.

BROWN, Justice (concurring).

I enthusiastically endorse the majority opinion. It should have been clear to the commission that the judge's decision was unassailable, and this appeal represents yet another retrograde battle by a public agency wasting its precious resources as well as scarce judicial resources. Blakeley v. Commissioner of Rev., 28 Mass.App.Ct. 499, 503, 552 N.E.2d 586 (1990) (Brown, J., concurring).

When will communities learn that welfare recipients and the other less fortunate citizens among us have rights *equal* to all? They may be powerless but never defenseless as long as justice and fairness are preserved. Assistance to the needy is, after all, assistance to society as a whole.

Shame on you, commission. Double costs and counsel fees would be the usual response to an appeal this frivolous. See G.L. c. 211A, § 15; Mass.R.A.P. 25 & 26, both as amended, 378 Mass. 925 (1979); Spartichino v. Commissioner of the Metropolitan Dist. Commn., 24 Mass.App.Ct. 965, 966, 511 N.E.2d 623 (1987).

Appeals Court of Massachusetts,
Suffolk.

TRUSTEES OF BOSTON UNIVERSITY
v.
LICENSING BOARD OF BOSTON.

Argued May 18, 1987.
Decided July 16, 1987.
Further Appellate Review Denied Oct. 1, 1987.

University brought action in nature of certiorari challenging Boston Licensing Board's denial of licenses for apartment buildings which it planned to use as dormitories to house undergraduate students. The Boston Housing Court, E. George Daher, J., upheld Board's decision. On appeal, the Appeals Court, Fine, J., held that Boston Licensing Board did not have authority to consider general effect of issuance of lodging house licenses on the neighborhood.

Reversed and remanded.

**283 *475 Verne W. Vance, Jr. (Richard H. Pildes and Stephen A. Williams, Boston, with him) for plaintiff.

Camille F. Sarrouf (Frank C. Corso, Boston, with him), for defendant.

Before ARMSTRONG, BROWN and FINE, JJ.

FINE, Justice.

Boston University (university), a nonprofit educational institution in Boston, applied to the Boston Licensing Board (board) for licenses for sixty-two apartment buildings which it planned to use as dormitories to house undergraduate students. After a public hearing, the board granted licenses for forty-two of the designated buildings and denied licenses for *476 the remaining twenty ^{FN1}. All the buildings for which licenses were denied are located in the "Audubon Circle" neighborhood, where expansion of the university had become highly controversial. The board issued a decision stating as its reasons for denying the licenses that: (1) use of the buildings as dormitories would adversely affect the neighborhood by causing an unreasonable increase in noise, traffic, and parking problems; **284 and (2) issuance of the licenses would contravene the public interest since use of the buildings as dormitories would violate two agreements entered into by the university and the city of Boston. ^{FN2} The university brought this action in the nature of certiorari ^{FN3} challenging the board's denials of the licenses. The case was tried without jury in

the Boston Housing Court. In a lengthy decision, the judge ruled that the board had erred in determining that use of the buildings for dormitory purposes violated the university's agreements with the city. Nevertheless, he upheld the board's decision to deny the licenses on "public interest" grounds because of the detrimental effect the dormitories would have on the vitality of the neighborhood. On appeal, the university contends that the board erred in determining that the issuance of the licenses would violate the *477 agreements and that the board exceeded its authority in considering land use matters. The university also contends that the rationale of the Housing Court judge in upholding the board's decision was wrong. The board maintains that it properly considered public interest factors in denying the licenses. The parties are at odds as to whether the action of the board should be reviewed to determine if it was supported by substantial evidence or merely if it was arbitrary and capricious. See *Caswell v. Licensing Commn. for Brockton*, 387 Mass. 864, 877-878, 444 N.E.2d 922 (1983); *Newbury Jr. College v. Brookline*, 19 Mass.App.Ct. 197, 202 n. 7, 472 N.E.2d 1373 (1985). However, the dispositive question, whether the board applied relevant criteria in reaching its decision, may be answered without reference to either standard of review.

FN1. The board's decision lists twenty-one addresses for which licenses were denied. As to one of the properties listed, 27 Aberdeen Street, the university maintains that it never applied for, and does not seek, a license. The university appeals from the denials of only twenty licenses.

FN2. Entitled "cooperation agreements," both were concerned with achieving neighborhood stability. The agreement of July 15, 1980, among other things, defined campus boundaries and placed limitations on the university in acquiring property outside those boundaries. The agreement of December 1, 1984, among other things, made specific reference to the Audubon Circle neighborhood. It provided for a six-month planning process leading to the sale, within twenty-four months of the agreement, of properties of the university which would be selected according to criteria set forth in the agreement. We are not called upon in this case to decide whether the university has violated the 1984 agreement by not selling within the two-year period any of the buildings for which licenses were sought and denied. The city may take whatever steps it deems appropriate to enforce the agreements. If the use of the dormitories in the Audubon Circle neighborhood is in violation of the agreements, the issuance of licenses would not prevent the agreements from being enforced.

FN3. Mandamus and declaratory and injunctive relief were also sought.

The dispute concerns the breadth of discretion accorded the board under G.L. c. 140, § 23, to grant or deny applications for lodging house licenses for dormitories located in Boston. General Laws c. 140, § 23, as appearing in St.1981, c. 351, § 73, provides: "Licensing authorities may grant licenses for lodging houses...." Dormitories of educational institutions fall within the definition of "lodging houses." G.L. c. 140, § 22. The issue is whether the criteria for awarding

lodging house licenses for dormitories are the same in Boston as they are elsewhere in the Commonwealth.

[1] we held that “[a] dormitory license may be denied because the facilities are physically inadequate, because the applicant institution has a bad record in running dormitories, or because supervisors are unqualified, or of bad character. A dormitory license may not be denied merely because the licensing body thinks that the educational use would not be good for the neighborhood.” Noting that the breadth of discretion which local authorities enjoy in acting on license applications varies depending upon the nature of the activity to be licensed and the legislative objective, we based our narrow interpretation of G.L. c. 140, § 23, in part, on our conclusion, gleaned from the legislative history and the statutory context, that, in enacting the licensing statute, the Legislature was concerned *478 primarily with health and morality. We also recognized, however, that, if the criteria were not so limited, “the licensure statutes run on a collision course with the Dover Amendment.” *Id.* at 205, **285 472 N.E.2d 1373. General Laws c. 40A, § 3,^{FN4} known as the Dover Amendment, provides that no zoning by-law may “prohibit, regulate or restrict the use of land or structures for ... educational purposes on land owned ... by a nonprofit educational corporation.” The Dover Amendment does not apply in Boston, which, for a long time, has had its own zoning regulations, and which, unlike other municipalities in the Commonwealth, may maintain reasonable control over all land use, including use for educational purposes. *Emerson College v. Boston*, 393 Mass. 303, 305 n. 1, 306, 471 N.E.2d 336 (1984). See also *McNeely v. Board of Appeal of Boston*, 358 Mass. 94, 107, 261 N.E.2d 336 (1970).

FN4. As amended through St.1985, c. 637, § 2.

[2] In this case, unlike *Newbury*, a broader range of discretion on the part of the licensing authority would not be in direct conflict with the strictures of the Dover Amendment. Based upon that distinction, the board contends that its discretion to grant or deny a license for dormitory use in Boston extends to general considerations affecting the public interest.^{FN5} It is true *479 that there are numerous cases which recognize such broad discretionary powers on the part of licensing authorities in connection with other licensing statutes. See, e.g., *Newbury Jr. College v. Brookline*, 19 Mass.App.Ct. at 202-203, 472 N.E.2d 1373, and cases cited (recognizing “very broad” discretion of a licensing board to consider public interest factors in applications for common victualler and liquor licenses); *Hood Indus., Inc. v. City Council of Leominster*, 23 Mass.App.Ct. 646, 650, 505 N.E.2d 189 (1987), and cases cited (recognizing similar broad discretion in considering a license application to store flammable chemicals under G.L. c. 148, § 13); *McDonald's Corp. v. East Longmeadow*, 24 Mass.App.Ct. 904, 905-906, 506 N.E.2d 172 (1987). Licensing authorities may possess such broad discretion even if local zoning boards have independent authority to weigh similar public interest considerations with respect to the property. *Marchesi v. Selectmen of Winchester*, 312 Mass. 28, 31, 42 N.E.2d 817 (1942); *Davidson v. Selectmen of Duxbury*, 358 Mass. 64, 67-68, 260 N.E.2d 695 (1970). Those cases are not dispositive, however, of the issue of the breadth of discretion afforded a licensing board by G.L. c. 140, § 23.

FN5. These considerations were spelled out by the board in emergency regulations which it proposed on June 5, 1986, and adopted on July 3, 1986, after hearings. The regulations were applied retroactively to the university's applications which had been filed on March

3, 1986. The particular regulation that addresses public interest factors in the review of dormitory license applications provides:

“No new license for a dormitory and no expansion of a dormitory license will be granted or denied by the Board except after a public hearing at which evidence may be presented bearing on the fitness of the applicant, the plans of the applicant for the units, the plans of the applicant for supervision of the student occupants of the units, and the consideration of whether the proposed dormitory operation will cause an unwarranted increase in noise, pedestrian or vehicular traffic, or parking, trash or crime problems at or near the proposed location.”

While the authority to set standards for licensing is implicit in the authority to license, the power to promulgate regulations must be exercised in a manner consistent with proper interpretation of the statute, here G.L. c. 140, § 23. See *Commonwealth v. Blackgammon's Inc.* 382 Mass. 610, 625, 417 N.E.2d 377 (1981).

[3] In *Newbury*, we held that the range of discretion afforded licensing authorities reviewing dormitory applications under the lodging house statute was not so broad as to include general public interest and land use considerations.^{FN6} *Newbury Jr. College v. Brookline*, 19 Mass.App.Ct. at 206-207, 472 N.E.2d 1373. In that case we were interpreting the language of a statute of Statewide applicability. Normally the **286 meaning of a statute applicable throughout the State does not vary from one municipality to another. See *Young v. Mayor of Brockton*, 346 Mass. 123, 125, 190 N.E.2d 396 (1963); compare *McDonald v. Superior Court*, 299 Mass. 321, 324, 13 N.E.2d 16 (1938). The legislative history of § 23 discussed in *480 the *Newbury Jr. College* case (19 Mass.App.Ct. at 203-205, 472 N.E.2d 1373) supports a conclusion, independent of the Dover Amendment, that the Legislature's purpose in enacting § 23 was directed primarily towards considerations of public health and morality. This was a principal ground of the *Newbury Jr. College* decision. Accordingly, we conclude that the criteria we set forth in *Newbury* apply also in Boston. Thus, in ruling on the university's application for dormitory licenses, the board could consider only the adequacy of the facilities, the university's record in running dormitories, and the qualifications and character of its dormitory supervisors. It did not have the authority to consider, as it did, the general effect of the issuance of lodging house licenses on the neighborhood. The city of Boston is not left, however, without the opportunity to exercise reasonable control over the expansion of its nonprofit educational institutions. See *Emerson College v. Boston*, 393 Mass. at 304 n. 1, 306, 471 N.E.2d 336. An educational institution in Boston may not change any of its buildings from apartment house use to dormitory use without first obtaining a conditional use permit from the zoning authorities. Boston Zoning Code §§ 6.1, 6.3, 8.7 (1985). The university had, in fact, obtained conditional use permits for all of the dormitories for which licenses were denied.

FN6. The board suggests that not only is the limitation on the discretion it may exercise under *Newbury* inapplicable in Boston, where the Dover Amendment is not in effect, but also that the limitation is not applicable with respect to lodging houses other than dormitories of educational institutions. Although the general discussion of the objectives of the regulatory scheme, based on the legislative history and social context, relates to all types of lodging houses, it is not necessary in this case for us to decide the breadth of discretion possessed by licensing authorities with respect to lodging houses which are not

dormitories.

[5] The university, relying on *Newbury* (19 Mass.App.Ct. at 208, 472 N.E.2d 1373), asks us to order the board to issue the licenses. It is true that the board found that “the [u]niversity runs its dormitory facilities very well.” Unlike the situation in *Newbury*, however, there is here no “record of consistent obstruction of lawful use”. *Ibid.* Thus, we follow the customary procedure, giving deference to the board to consider the license applications further in light of the criteria we have held to be applicable. We reverse the judgment of the Housing Court, and order the matter remanded to the board for further proceedings and consideration in accordance with this opinion.

So ordered.

TOWN OF BROOKLINE

MASSACHUSETTS

Lodging House Regulations



LODGING HOUSE REGULATIONS - TOWN OF BROOKLINE

May 12, 1999

1. **Authority and Scope:** The following lodging house regulations have been adopted by the Board of Selectmen, the licensing authority for the Town of Brookline, for the enforcement of all statutes, ordinances and by-laws applicable to lodging houses required to be licensed in the Town of Brookline. These regulations shall be applicable to lodging houses pursuant to Chapter 140, § 22, *et seq.* of the General Laws, and all other statutes pertaining to lodging houses, and are intended for the maintenance and protection of the health, safety and welfare of all persons and the health, safety and general welfare of the public. In the event of a conflict between state and local laws, regulations and by-laws they shall be applied and ranked in priority in the following order, unless a contrary intent is clearly stated, with No. 1 being the most senior position:
 1. Special Laws
 2. General Laws
 3. State Codes
 4. By-Laws
 5. Regulations

2. **Effective Date:** These Regulations shall take effect on May 12, 1999, except for that portion of Paragraph No. 42 which gives the Selectmen authority to impose fines up to \$500.00. Said portion of Paragraph No. 42 shall take effect upon the enactment of the Town's Home Rule Petition.

3. **Definitions:**
 - 1) **Lodging House:** Every dwelling or part thereof which contains one or more rooming units in which space is let or sublet for compensation by the licensee, owner or operator to four or more persons not within the second degree of kindred to the person compensated. The term Lodging House shall include: boarding houses, rooming houses, inns, bed and breakfast establishments, dormitories, fraternity houses and other similar dwelling places.
 - 2) **Lodger:** A lodger is any person residing in a rooming unit including any person listed as a lodger on any lease agreement for said unit.

- 3) **Rooming Unit:** The room or group of rooms let to an individual or household for use as living and sleeping quarters.
- 4) **Licensee:** That person(s) or entity listed on the lodging house license and the owner(s) of the land and building where the lodging house is operated.
4. **Responsibilities of Licensee:** The licensee shall be responsible for the proper supervision, operation, and maintenance of the lodging house in accordance with the requirements of these regulations and of all other pertinent laws and by-laws. The appointment of an agent shall in no way relieve the licensee from responsibility for full compliance with all the foregoing laws and regulations. These regulations and the penalties imposed by them shall apply with equal force to the keeper of any lodging house required to be licensed.
5. **Agent(s):** If the licensee because of health, other employment, non-residence on the premises, frequent or extended absences from the premises or other reason, is unable to exercise proper supervision of the premises, he/she shall designate one or more agent(s) to carry out all or part of his/her responsibilities. The Board of Selectmen shall approve such agent(s) prior to assuming such responsibilities. Based on the qualifications of the agent(s) designated and the extent of their responsibilities, the board may require that more than one agent be provided. If, for any reason, an agent ceases to exercise his/her responsibilities, the licensee shall at once notify the Board of Selectmen and take immediate steps to provide proper interim supervision and obtain a suitable replacement.

The agent(s) shall be available on a 24-hour basis and must post his/her telephone or beeper number in a conspicuous place inside the Lodging House. The agent must also notify the Selectmen's' Office, Police Department, Health Department, Fire Department and Building Department of his/her beeper or telephone number.

Each educational institution shall submit to the Board of Selectmen the name of the Dean of Residences or other school official having jurisdiction over each dormitory, specifying the location thereof.

Each fraternity shall submit to the Board of Selectmen the names of the officers or other members living on the premises who are responsible for the operation of the fraternity house, the university with which the fraternity

is affiliated, and the Dean of Residence or other university official having jurisdiction over the fraternity.

The foregoing requirements for approval of agents shall not apply to those lodging houses that are dormitories of educational institutions or fraternities.

6. Mandatory Training for Licensees and Agents:

- A) All Licensees and their Agent(s), including in the case of educational institutions, the Resident Agent or Dean of Residence, shall complete a one-time training program conducted by the Brookline Health Department along with representatives from the Town's Building Department, Fire Department and Police Department.
- B) The training program shall be offered once per year and will be an instructional program which will educate the licensee and the agent(s) with regard to the requirements of the Town's lodging house regulations and any other laws or related topic(s) as the participating Town officials deem necessary for the safe and proper operation of lodging houses.
- C) If at anytime there is a change in the Licensee, Agent, Resident Agent or Dean of residence, the newly designated person(s) shall be required to complete the training program.
- D) The Health Department shall send a list of all persons completing the training program to the Board of Selectmen.
- E) Failure to complete the training program may result in a fine of the license holder not to exceed \$500.00 or the suspension or revocation of the lodging house license, as the Board of Selectmen after notice and hearing may determine.

- 7. Registers, Card Files and Rosters:** The licensee of every lodging house, except dormitories of educational institutions and fraternities, shall keep or cause to be kept, in permanent form, a register. Such register shall contain the true name or name in ordinary use and the last residence of every person engaging or occupying a private room together with a true and accurate record of the room assigned to such person and of the day and hour of check-in and check-out. The entry of the names of the person engaging a room and the lodgers of said room shall be made by said person engaging said room or by an lodger thereof.

Until the entry of such name and the record of the room has been made such person shall not be allowed to occupy privately any room upon the licensed premises.

In addition, each licensee shall keep or cause to be kept a card file containing current information on each lodger including full name, date and time of registration, room number, former address, place of employment, registration

number, state of registration, and make of automobile, and the name and telephone number of the person to be notified in case of emergency. These cards should be kept for a minimum of one year after departure of the lodger.

Licenseses of dormitories and/or fraternities shall maintain a roster of all persons residing therein.

The register, card file, and roster required in this section shall be available for inspection at all times by any town official.

The register and card file or the roster shall be stored in a fireproof depository at all times.

8. **Minors:** No room shall be let to any person under eighteen (18) years of age, except one who is a full-time University or College student, or married, or gainfully employed, or has the written consent of his/her parent or guardian. In cases where the licensee or agent is unable to determine whether the lodger is a minor, he/she shall notify the Police Department.

9. **Minimum Standards:**

These regulations are minimum standards intended for the maintenance and enforcement required for the protection of health, safety and welfare of all persons concerned. If there is any conflict with state or local law the stricter provision shall apply.

All lodging houses shall comply with the requirements of Article II of the State Sanitary Code, Minimum Standards of Fitness for Human Habitation, which is incorporated herein by reference, and to the requirements of these regulations, whenever they are in addition to or more stringent than the requirements of Article II of said code.

All lodging houses in which meals are served to lodgers shall comply with the requirements of Article X of the State Sanitary code, Minimum Sanitation Standards for Food Establishments, which is incorporated herein by reference, or to such lesser standards as may be approved in writing by the Director of Public Health.

10. **Bathroom Facilities:** Bathroom facilities, as required by the Sanitary Code, shall be located on the same floor as the individuals who are to use them.

11. **Lighting and Electrical Facilities:**

The electrical service to the building shall conform with the rules and regulations issued by the Commonwealth of Massachusetts, Department of Public Safety, Board of Fire Prevention Regulations, known as the Massachusetts Electrical Code, which is incorporated herein by reference. Specific questions regarding the requirements of the Massachusetts Electrical Code may be directed to the Town of Brookline Electrical Inspector.

- 12. Space and Use:** Every room occupied for sleeping purposes shall contain at least 70 square feet of floor area and shall have a minimum width of 8 feet. Existing rooms in lodging houses having at the time of adoption of these regulations may have a minimum width of not less than 6 feet, but no existing room having a minimum width of 8 feet or more shall be reduced in width to less than 8 feet.

Every room occupied for sleeping purposes by more than one person shall contain at least 60 square feet of floor area for each lodger except that, in fraternities or dormitories where other living space is provided, this requirement may be reduced by the amount of such common living space per lodger, but in no case shall it be reduced to an amount less than 80 square feet of floor area for the first lodger and 60 square feet of floor area for each additional lodger.

13. Room Furnishings:

- I. Every room occupied for living and sleeping purposes shall contain:
- (a) a bed, in good repair, with a firm and even mattress provided by the Owner or the Lodger may choose to provide his/her own bed and mattress;
 - (b) a dresser with at least 16 cubic feet of storage space;
 - (c) at least 6 cubic feet of closet space per lodger including at least 3 feet of hanging rod; and
 - (d) an unperforated, non-combustable waster basket.

If freestanding wardrobes within the room provide the required closet space, the floor area occupied by such wardrobes shall not be included in the computation of required room size under Space and Use, par. 12, above.

- II. It is recommended that the following items be included with the room furnishings or provided in a common area:
- (a) a desk or table, at least 19 inches wide with a top of not less than 6 square feet and a straight back chair;
 - (b) a lounge chair;
 - (c) an individual towel rack;
 - (d) a suitable floor covering.

14. House Rules & Supervision: Licensees and their agent(s) must:

- (a) Exercise due care in the selection of lodgers.
- (b) Inspect all common areas at least daily and all occupied rooms at every change of lodger to insure that all such areas are in a clean and orderly condition and without violation of regulations pertaining to obstruction of egress, cooking in rooms, and other health and safety hazards. A schedule of inspections must be posted at least forty-eight hours prior to said inspection. Posting of the schedule for inspections shall not apply in the case of an emergency.
- (c) Institute and enforce such house rules as are necessary to prevent the lodging house from being a cause of complaint to the Police Department or a cause of nuisance or annoyance to the neighborhood.
- (d) Ensure that House Rules are in writing and **at a minimum** contain rules adequate to address the following matters:
 - 1) Noise Control including use of audio or other equipment which may disturb the peace;
 - 2) Disorderly behavior;
 - 3) Adherence to the Town's Lodging House Regulations and the consequences for repeated violations;
 - 4) Proper garbage disposal; and
 - 5) Cleanliness of rooming units and common areas.
- (e) File a copy of the house rules with the Board of Selectmen as part of the Licensee's license application or renewal thereof.
- (f) Post a copy of the House Rules in a common area of the lodging house.
- (g) Provide every lodger who intends to remain for thirty days or more with a copy of the house rules.
- (h) Meet with the lodgers on an annual basis to discuss house rules.
- (i) Take whatever steps necessary to stop Lodger(s) from repeatedly violating house rules or the requirements of these regulations up to and including eviction.

15. Housekeeping: It shall be the duty of the licensee and/or

his/her agent to provide or cause to be provided:

- (a) Clean sheets and pillow cases to each lodger at least once a week and at each change of lodger.
- (b) Clean blankets and bedspreads to each lodger at each change of lodger and when otherwise necessary.
- (c) A clean mattress pad and/or mattress cover at each change of lodger and when otherwise necessary.
- (d) Daily cleaning of all common bathroom facilities and of community kitchen or laundry facilities.
- (e) Cleaning of all occupied rooms and private bathroom facilities at the change of each lodger or as otherwise necessary for sanitary purposes.
- (f) Cleaning, as necessary, of all other common areas.

If a room is let for thirty (30) consecutive days or more, the Licensee may modify the requirements in paragraphs (a) through (c) above.

16. Storage, Collection & Disposal of Waste: The Licensee and his/her agent(s) shall comply with the Town of Brookline's Regulations Governing the Handling, Storage, Collection and Disposal of Waste adopted on June 26, 1998, by the Director of Public Health and all other state or local laws pertaining to the proper storage, collection and disposal of waste. Responsibilities of the Licensee and Agent(s) include but are not limited to the following:

- (a) Storing garbage in watertight, rodent-proof receptacles with tight fitting covers.
- (b) Providing as many receptacles as are sufficient to contain accumulation of all garbage before final collection.
- (c) Locating garbage containers in an area where objectionable odors will not enter any dwelling.
- (d) Informing all lodgers of the rules regarding proper storage, collection and disposal of waste.
- (e) Placing garbage for collection in the designated location no later than 7:00 a.m. on the day of the scheduled collection, and no earlier than 3:30 p.m. of the day preceding the scheduled collection.
- (f) Removing all empty containers of any kind from the area of collection no later than midnight of the collection day.
- (g) Private curbside collection must be carried out on a schedule consistent with the Town's curbside collection service, with regard to the time and date of pick-up. The Commissioner of Public Works must approve any exceptions to this. This rule does not

- apply to private collection at locations other than curbside, such as at the rear or side of the property.
- (h) Town of Brookline Legal Holidays and Holiday Collection Schedule must be observed. A list of legal holidays can be found in Section V(D) of the Town's Regulations Governing the Handling, Storage, Collection and Disposal of Waste (copies of which are available from the Health Department). There will be no collections on legal holidays. Collections on or following a legal holiday will be done one day later for the remainder of that week.

Licensees and their agent(s) should familiarize themselves with the Town's Regulations Governing the Storage, Collection and Disposal of Waste, copies of which are available at the Brookline Health Department.

- 17. Egress Facilities:** There shall be at least two separate and adequate ways of egress from each occupied story of a lodging house. The number and location of such ways of egress shall allow every lodger to reach the outside at ground level by a second way of egress if the principal or customary egress is blocked by fire or smoke, or is otherwise obstructed.

At least one of the required ways of egress shall be a protected interior egress and additional required ways of egress shall be either protected interior egresses or approved fire escapes that lead to a place of safety.

- 18. Protected Interior Egress:** A protected interior egress shall be;
- (1) an interior stairway, including all halls or corridors connecting the flights of stairs or leading to an exterior door at ground level, or providing access from any room, group of rooms, or apartment, which interior stairway is provided with an automatic sprinkler installation approved by the Building Commissioner.
- 19. Approved Fire Escape:** An approved fire escape shall be an exterior stairway with balconies or landings at each floor, and having clear egress to a street, way or place of safety at ground level. Stairs, balconies and landings shall be constructed of non-combustible materials and landings shall be 2 feet in width of passage. Balconies and landings shall be not more than 9 inches below the top of exterior doorsills or windowsills with which they connect.

- A. Access to Approved Fire Escapes:** Access from any occupied story to an approved fire escape shall be through a door with approved hardware, T turn knob, lever or push bar which by one operation will release the door from the inside. Doors shall be a minimum of 5 feet in height and 2 inches in width or as otherwise approved by the Building Commissioner, and shall open in direction of egress so as to allow clear passage. If the top of the doorsill be more than 18 inches above the floor, approved steps permanently attached to the structure shall be provided. No storm or screen door shall be used in such locations. Except as above provided no devices that require unlocking from inside shall be used. Access to fire escapes shall be from a common hall or corridor, or otherwise accessible room, not a toilet or bathroom. Such common or accessible room shall lead directly to the aforementioned common hall or corridor having a door with hardware allowing release by one operation with no locking device, permitting opening at all times in direction of egress.
- B.** No private room shall be used as access to a required fire escape unless the door to the room is equipped with an emergency exit lock of a type and model specially approved by the Building Department. No obstruction shall be permitted in the path of egress to a fire escape.
- C.** Fire escapes are to be used for emergency purposes only. Use of fire escapes for general access to rooms is strictly prohibited.
- 20. Exit Signs:** Continuously illuminated red signs bearing the word "EXIT" in plain block letters at least 5 inches high shall be provided over doors opening into required stairways or leading to fire escapes, and at every change of direction of a corridor or hallway leading to such egress doors.
- 21. Emergency Lighting:** Approved emergency lighting shall be provided along ways of egress. The number, type and location of emergency lighting units shall be as designated by the Building Commissioner.
- 22. Basements and Basement Stairs:** Basements or cellars shall be protected by automatic sprinklers. An automatic sprinkler shall protect interior stairs leading from a basement or cellar to the floor above.

- 23. Portable Fire Extinguishers:** Portable fire extinguishers of a type and capacity approved by the Chief of the Fire Department, shall be provided for each story and basement, one for each 2500 square feet of the floor area, or portion thereof, and maintained in a fully charged and operable condition at all times and kept in their designated places when not being used.
- Such fire extinguishers shall be inspected and serviced annually and after each use in accordance with NFPA 10. Fire extinguishers shall be conspicuously located where they will be readily accessible and immediately available in the event of fire. Preferably they shall be located along normal paths of travel, including exits from areas. Fire Extinguishers shall not be obstructed or obscured from view.
- Portable fire extinguishers other than wheeled types shall be securely installed on the hanger or in the bracket supplied, placed in cabinets or wall recesses. The hanger or bracket shall be securely and properly anchored to the mounting surface in accordance with the manufacturer's instructions.
- Fire extinguishers installed under conditions where they may be subject to dislodging shall be installed in brackets specifically designed to cope with this problem.
- 24. Vertical Openings:** All vertical openings, including stairs other than the required stairs, dumbwaiters, vent shafts, and laundry chutes, shall be provided with sprinklers.
- 25. Hazardous Areas and Combustible Storage:** The Building Commissioner or the Fire Chief may require that kitchens, work shops, heater rooms, storerooms containing combustible materials, or other areas constituting a special hazard be protected by automatic sprinklers, fire resistive construction, additional approved portable fire extinguishing equipment, or other means as directed. Combustible or flammable material shall not be placed, stored or kept in any portion of an exit or elevator car or hoistway or at the bottom of a stairway, fire escape or other means of escape.
- 26. Cooking in Rooms:** The use of electric hot plates, gas plates, stoves using sterno or other fuel, electric percolators, grills, toasters, or other means of cooking is prohibited in any room other than a kitchen approved by the Building Commissioner. Lodgers may use microwaves in their rooming units with the approval of the Licensee.
- 27. Portable Heaters:** The use of portable heaters is strictly

prohibited.

28. **Heating Systems:** The owner shall provide and maintain in good operating condition the facilities for heating every habitable room and every room containing a toilet, shower or bathtub to such temperature as required by the State Health Code.

Central heating systems shall be provided with all the safety devices required for new installations under all applicable laws, by-laws, and regulations of any authority having jurisdiction thereof. The heater should be located in any area suitably ventilated to ensure the safe operation] of the heater or burner.

29. **Maintenance:**

(A) The building and all parts thereof shall be kept in good general repair and properly maintained. All exterior surfaces shall be kept painted where necessary for the purposes of preservation of structural elements or appearance. Interior walls and ceilings shall be periodically refinished in order to maintain such surfaces free from stains, marks, or visible foreign matter.

(B) All outdoor areas not devoted to walks and drives or otherwise paved shall be landscaped and adequately maintained to prevent overgrowth or unsightly conditions.

(C) Outdoor walks and drives and exterior ways of egress shall be kept unobstructed, free of litter, and clean. Accumulation of ice and snow shall be removed from such areas, including required ways of egress to provide safe walking surfaces and shall be removed in accordance with Article VIII, Section 19(b) of the Town of Brookline By-Laws, as may be amended. A copy of the by-law is available at the Town Clerk's Office.

30. **Automatic Fire Alarm System:** All lodging houses shall be equipped with automatic smoke or heat detectors. The design, installation, and performance of required fire warning systems, pursuant to M.G.L.c. 148 § 26C, shall be in accordance with NFPA 72.

31. **Sprinkler Systems:** Every lodging house shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code. Fire protection systems shall not be disconnected or

otherwise rendered unserviceable without first notifying the fire department. The design, installation, and performance of required fire warning systems, pursuant to M.G.L. c. 148, §26C, shall be in accordance with NFPA 72.

- 32. Care and Maintenance of Fire Protection Systems:** The Licensee shall be responsible for the care and maintenance of all fire protection systems, including equipment and devices, to insure the safety and welfare of the lodgers. If required fire protection systems are temporarily out-of-service for maintenance or repair, the Licensee or his/her agent(s) shall immediately advise the fire department and shall diligently restore the system to working order. Installation of, or modification to, any automatic fire protection system shall require a permit from the head of the fire department.

Aisles, floors, halls, stairways, fire escapes, doors and windows shall be kept in good repair and ready for use, and shall be kept properly lighted.

No person shall shut off, disconnect, obstruct, remove or destroy, or cause or permit to be shut off, disconnected, obstructed, removed or destroyed, any part of any sprinkler system, water main, hydrant or other device used for fire protection in any building owned, leased or occupied by such person or under his control or supervision, without first procuring a written permit to do so from the head of the fire department.

- 33. Egress from and Access to Building:**

Any obstacle, which may interfere with the means of egress or escape from any building or other premises, or with the access to any part of said building or premises by the fire department in the case of fire, shall be removed from aisles, floors, halls, stairways and fire escapes. Doors and windows designated as exits shall be kept clear at all times.

No person shall at any time place an encumbrance of any kind before or upon any fire escape, balcony or ladder intended as a means of escape from fire. The means of egress from each part of the building, including stairways, egress doors, and any panic hardware installed thereon, aisles, corridors, passageways and similar elements of the means of egress, shall at all times be maintained in a safe condition and shall be available for immediate use and free of all obstructions.

All exterior bridges, steel or wooden stairways, fire escapes and egress balconies shall be maintained in accordance with 780 CMR 1028.0 and shall be examined and/or tested, and certified for structural adequacy and safety every five (5) years, by a Massachusetts registered professional engineer, or others qualified and acceptable to the Building Commissioner or his designee. The engineer or other party shall after inspection submit an affidavit to the building department.

34. **Town of Brookline Smoking By-Law:** All lodging houses must conform to the requirements of Article 8.21 of the Town By-Laws regarding Tobacco Control, as may be amended. A copy of the By-Law is available in the Town Clerk's Office.
35. **Town of Brookline Noise By-Law:** All lodging houses must conform to the requirements of Article 8.15 of the Town By-Laws regarding Noise Control, as may be amended. A copy of the By-Law is available in the Town Clerk's Office.
36. **Town of Brookline By-Law Pertaining to Disorderly Behavior:** All Licensees and/or agent(s) must adopt and enforce house rules in order to conform to the requirements of Article 8.5 of the Town By-Laws regarding disorderly behavior. A copy of the By-Law is available in the Town Clerk's Office.
37. **Town of Brookline Snow Removal By-Law:** All lodging houses must comply with the requirements of Article 7.7.2 of the Town By-Laws regarding snow removal. A copy of the By-Law is available in the Town Clerk's Office.
38. **Conflict With Other Laws or Regulations:** Whenever any provision of these regulations is in conflict with a requirement of the Brookline Building Code or other law, by-law or regulation the more restrictive provision shall apply, unless a contrary intent is clearly stated.
39. **Variations in Specific Cases:** The Board of Selectmen may vary any provision of these regulations in a specific case, which appears to them not to have been contemplated by the regulations or in a case where manifest injustice would result. The decision of the Board in such cases shall not conflict with the spirit of any of the regulations or the purpose thereof.

In each case, the Board of Selectmen shall make its decision only after consideration of any report, which may be filed with it by the appropriate Department(s).

- 40. **Certificates of Inspection:** The Board of Selectmen may require certificates of inspection certifying compliance with the various sections of the lodging house regulations.
- 41. **Severability of Provisions:** The invalidity, if so declared by a court of competent jurisdiction of any provision of these regulations shall not affect the validity of the remainder of them.
- 42. **Penalty:** Whoever refuses, neglects or fails to comply with any of these regulations shall be subject to license suspension, license revocation or to a fine not to exceed \$500.00 for each violation, and to the penalties imposed by General Laws, Chapter 140 § 22, et seq., where applicable; and/or such other statutes: the State Sanitary Code, Fire Code, Building Code, Brookline by-laws and other regulations and fines applicable to the particular violation.

Approved and adopted on _____.

By the BOARD OF SELECTMEN:

#622



CITY OF SALEM

In City Council,

October 13, 2011

JAN 11, 2012

Ordered:

That the Committee on Ordinances, Licenses and Legal Affairs co-posted with Committee of the Whole meet to discuss the rules and regulations as they pertain to rooming houses. And that the following be invited, Licensing Board, the City Solicitor, Building Inspector, Police Chief or his designee, Fire Chief or his designee, Health Agent and Collector.

In City Council October 13, 2011
Adopted

ATTEST:

CHERYL A. LAPOINTE
CITY CLERK

Cheryl LaPointe

From: Beth Rennard
Sent: Wednesday, January 11, 2012 8:22 PM
To: Cheryl LaPointe; Lynn Duncan; David Knowlton; Michael Sosnowski
Subject: ordinance amendment for thurs council mtg
Attachments: Ordinance - stormwater.doc

Cheryl, attached is an ordinance amendment that COLLA approved this evening and which they will recommend for first passage at Thursday's meeting. This version is a strike-through version. Once Council votes for first passage and no other changes are made, I will give you the version for the ad. Does that work? thanks

Elizabeth Rennard, Esq.

City Solicitor

Salem City Hall

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Salem, MA 01970

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978-744-1279 fax