



# Programs & Services Committee Report

## City of Newton In City Council

**Wednesday, February 21, 2018**

Present: Councilors Rice (Chair), Baker, Albright and Greenberg

Absent: Councilors Kalis, Brousal-Glaser, Krintzman and Schwartz

City Staff Present: Rachel Blatt (Long Range Planner), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

### Referred to Programs & Services, Zoning & Planning and Finance Committees

**#59-18**      **Ordinance amendment for licensing and criteria for lodging houses**  
COUNCILORS CROSSLEY, ALBRIGHT, NORTON, DANBERG, LEARY, KALIS, AND BAKER  
requesting amendments to Chapters 17 and 20 of the City of Newton Ordinances to establish criteria, licensing requirements, and fees for lodging house owners and resident supervising agents.

**Action:**      **Programs & Services Held 4-0**

**Note:** The City is considering new regulations and zoning requirements for lodging houses because there have been violations in some establishments in terms of life safety issues and various impacts on neighborhoods. In order to update the current ordinance for lodging houses, an amendment to the zoning ordinance, as well as licensing requirements are necessary. The zoning amendment, which was voted out of the Zoning & Planning Committee after several discussions, includes an intent statement, a definition of a lodging house, allowed zones, and building and parking standards. It will go into effect on April 1, 2018. The item being considered this evening addresses licensing and operator requirements as well as fees and fines and works in conjunction with the zoning ordinance. The Licensing Board has also drafted its own set of regulations relative to lodging houses.

Rachel Blatt, Long Range Planner, presented a PowerPoint, attached to this report, which provides an overview of the current ordinance as well as the proposed ordinance. Please refer to it for details. The draft ordinance language, along with considerable background information, was also provided to the Committee in the Planning Memo, which may be found at:

<http://www.newtonma.gov/civicax/filebank/documents/87782>

### Committee Comments/Questions

A Committee member explained that zoning sets the use opportunities and licensing sets the operations. There are several lodging houses in the City that are claiming to be exempt from because they have been continuously in existence prior to zoning and, therefore, "grandfathered" in on the new zoning requirements. They would, however, be subject to all licensing

requirements. Newly created lodging houses would have to go through the special permit process as well as the licensing process.

A Councilor asked that the ordinance require the City to keep records of all departmental inspections and not just annual inspections. There is a concern that establishments would make sure they are complying with all regulations on their inspection day, but may not continue thereafter. He would like to be sure that City personnel have access to properties in order to do inspections when needed. Ms. Blatt noted that the ordinance states that departments may conduct inspections as may be required to ensure safety and compliance with local ordinances, including zoning.

He wanted there to be some control over the non-conforming structures that claim to be exempt from the zoning because there would still be possible impacts on the neighborhood. He also wanted City personnel to be able to enforce all of the ordinances. If the Commissioner of Inspectional Services makes the determination that an establishment is exempt, that is the final word. He was concerned about that and wanted the Licensing Board to be able to look at that decision as well. Maura O'Keefe, Assistant City Solicitor explained that any decision of the ISD Commissioner is appealable to the Zoning Board of Appeals. The Councilor said that that is very difficult thing to do and requires a vote of 4 of the 5 members of the ZBA. He was particularly concerned about the Boston College area as students may end up using lodging houses as dormitories. While the focus of the ordinance is on safety and the well-being of the residents of lodging houses, there needs to be great care taken to be sure the properties and neighbors around the lodging house are impacted as little as possible. Ms. O'Keefe explained that the Licensing Board 's jurisdiction is within MGL Chapters 138 and 140 and it cannot impose anything other than what the zoning ordinance or Inspectional Services Commissioner could. If the Commissioner said a property is exempt, the Licensing Board cannot change that. In reviewing applications, the Licensing Board has no jurisdiction to reconsider any matter already determined upon by any other department of the City. They can only collect approvals by various departments, but they do not have concurrent authority to override any other department's authority.

A Committee member noted that it is not clear that the resident agent is authorized for a particular property only, and not allowed to be an agent at other establishments. Ms. Blatt said she would clarify that section. It was also asked if there would be someone to take over the agent's responsibilities while away or on vacation. Ms. Blatt noted that the ordinance requires that they are "reachable" in some manner so if they can be reached by phone, that should be sufficient. The proposed ordinance is modeled after Brookline's by-law and that issue was not addressed. Ultimately the responsibility always falls to the owner so it would be up to them to make sure there is coverage. A Councilor said that there should be effective responsibility. If the agent can be reached by phone but cannot solve the issue due to distance, that would be ineffective. Ms. Blatt noted she would look into some options.

It was mentioned that state law requires that a log of residents be kept up-to-date. This will track the appropriate number of residents living in an establishment. It was asked how the validity of

the log would be affirmed. It was suggested that the resident agent be required to sign the log under pain and penalties of perjury. There also may be language in other ordinances or state law on this issue.

It was asked if the test for the resident agent would be administered in person or online. There was concern that someone might take the test for someone else. Ms. O'Keefe stated that the Fire Department, who will be administering the test, has not completed its protocol for test-taking. She will suggest they think about a reasonable way to handle this.

The Licensing Board is able to establish their own filing fees including late fees, which are addressed in the draft regulations that the Licensing Board provided to the Committee, attached to the agenda. The late fee reference could be added to the ordinance.

Councilor Danberg had mentioned on several occasions, a lodging house on her street. The establishment has a paved parking lot for 12 cars and spots were being rented out. There was a question as to whether this could continue under these new regulations, or if that would be grandfathered in. Ms. O'Keefe said there may be a zoning violation depending on when the use was established and what the zoning required at that time. If the parking situation was creating noise, or a nuisance, the Licensing Board could penalize the licensee, if the violations were within the parameters of existing ordinances (noise, light, etc). Ms. Blatt also noted that non-accessory parking is a special permit use and there is no special permit for that property. That would be a zoning violation, separate from the lodging house use.

A Councilor said that there are standards that the City can impose through the state licensing statute with the Licensing Board. These can help protect the lodging house residents and the neighborhood. If there is a nonconforming structure, the ability to review things that have been troublesome is necessary since they will not have that opportunity via the special permit process. Ms. Blatt said the Licensing Board will hold a public hearing for a lodging house license. Residents within 200 feet will be notified of that hearing and can bring their concerns to the Board. The Board can consider that information and can condition the license. It also has the authority to bring any licensee to task on any city ordinance, or state or federal law. There would be the threat of losing the license and the inability to run the business. Ms. O'Keefe explained that the Licensing Board regularly conducts public hearings for alcohol licenses and has a procedure in place.

The ordinance also lists violations which results in automatic fines. If two or more of those fines are levied within 12 months, a license will be denied immediately. Councilors noted that there should be open lines of communication between the appropriate departments and the Licensing Board. The Licensing Board regulations also state that it may request any licensee and resident agent to appear for a public hearing with respect to any alleged violation. Those bringing forward the violations (Fire, ISD, etc) will present their evidence and the licensee will have the opportunity to respond. Findings of any violation could result in suspension or revocation of a license. Fines can also be applied.

In the case of a license revocation or suspension, there is concern for the displacement of tenants. Brookline addresses this by setting a date in the future for a suspension/revocation, but requires that no new tenants be accepted. The Licensing Board would handle a suspension or revocation in Newton in such a manner

Follow Up

- Specify that the resident agent is tied to a location
- Add specificity about continuity of management
- Determine how test for resident agent will be administered
- Look at statutes for nursing homes and other facilities for procedures that could be applied to lodging houses
- Add reference to Licensing Board late fees
- Add that any violations would be forwarded to Licensing Board
- Clarify that while monetary penalties are available, revocation or suspension of license would be more effective if the violation is egregious
- Add requirement for the Commissioner of Inspectional Services and other department heads to testify at public hearings. This would allow department heads to assist in creating conditions of a license.

Councilor Baker moved to hold this item in order for the Planning Department to address his concerns. Councilor Rice will have this item back to Programs & Services on March 7<sup>th</sup>; Zoning & Planning will take it up on February 26<sup>th</sup>; and Finance on March 12<sup>th</sup>. If voted out of those Committees on that schedule, it will be before the City Council on March 19<sup>th</sup>. The Committee voted to hold this item.

**#145-18      Re-appointment of William Dietrich to the Biosafety Committee**  
PRESIDENT LAREDO re-appointing WILLIAM DIETRICH, 29 Osborne Path, Newton Centre as a member of the BIOSAFETY COMMITTEE for a term to expire April 1, 2019.

**Action:      Programs & Services Approved 4-0**

**Note:** Councilor Albright moved approval of this appointment and the Committee voted in favor.

**#146-18      Re-appointment of Patrick Costello to the Farm Commission**  
PRESIDENT LAREDO re-appointing PATRICK COSTELLO, 392 Wolcott Street, Auburndale, to the FARM COMMISSION for a term to expire June 30, 2021.

**Action:      Programs & Services Approved 4-0**

**Note:** Councilor Scibelli Greenberg moved approval and the Committee voted in favor.

**#147-18      Re-appointment of Sydra Schnipper to the Community Education Commission**  
PRESIDENT LAREDO re-appointing SYDRA SCHNIPPER, 273 Ward Street, Newton Centre, to the COMMUNITY EDUCATION COMMISSION for a term to expire March 31, 2020.

**Action:      Programs & Services Approved 4-0**

**Note:** Councilor Albright moved approval and the Committee voted in favor.

**#148-18      Council Rules amendment relative to Robert's Rules**  
CITY CLERK requesting to amend the 2018-2019 Council Rules by replacing the reference to Robert's Rules Newly Revised 10<sup>th</sup> Edition with the current edition of Robert's Rules of Order.

**Action:      Programs & Services Approved 4-0**

**Note:** Councilor Baker moved approval and the Committee voted in favor.

Meeting adjourned

**Respectfully Submitted,**

**John B. Rice, Chair**

# Lodging House Regulation

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## **PROPOSED LODGING HOUSE LICENSING AMENDMENTS**

# Outline

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- What is a lodging house?
- Lodging House Ordinance Updates
- Proposed Licensing Amendments
- New since 2017 discussion

# What is a lodging house?

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## **Lodging House**

- 4+ individuals living in a quasi-group setting
- Leasing a room rather than sharing in an apartment lease
- Access to but not legal responsibility for shared kitchen and bath facilities

*Also known as a boarding house or a rooming house*



# What is a lodging house?

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Renter #1 | Renter #2 | Renter #3 | Renter #4 |

## Lodging House



## Shared Apartment



Same distinction applies for larger groups:

- more than four individual lodgers = lodging house
- More than four roommates = association of persons

# Why is Newton considering regulating lodging houses?

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- Life Safety Concerns of existing boarding houses
- Licensing is a more effective vehicle for dealing with problem operators/problematic situations
- Uniformity of standards for all existing and future boarding houses
- Transparency – clear information for operators and neighbors

# How does Newton currently regulate a lodging house?

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## Newton, MA

### Zoning

- Defines a lodging/rooming/boarding house
- Establishes where lodging houses can be located and by what process those locations are approved
  - Use is allowed by Special Permit in the MR-1, MR-2, MR-3, and MR-4 districts (3.4.1)
- Sets parking standards
  - 1 parking stall per sleeping room plus 1 per 3 employees (5.1.4)

### License Fees

- \$50/year Lodging House License (§17.3)
- \$50/quarter On-site Inspection Fee (§17-10)
- **NO REGULATIONS ASSOCIATED WITH THE FEES**

# Zoning and Licensing

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## Zoning

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## Licensing

### Establishing a new lodging house

- Allowed Zones
- If/When a special permit is required
- Parking standards
- Building Development Standards

Approval of use of a property

### Operating a lodging house

- Operator Requirements
- Inspection Schedule
- License Fees
- Responsibilities for Managing Lodgers
- Responsibilities for Property Maintenance

Approval of an operator

# Outline of Licensing Amendments

- 17-138. Definitions.
- 17-139. Requirements for all Lodging Houses.
- 17-140. Requirements for Enhanced Single Room Occupancy Units (E-SROs).
- 17-141. Compliance with City Ordinances and State and Local Codes.
- 17-142. Reserved.
  
- 17-143. License Required.
- 17-144. Requirements for Licensees and Agents.
- 17-144. Responsibilities of Licensees and Resident Supervising Agents regarding Residents.
- 17-145. Responsibilities of Licensees and Agents regarding Property Maintenance & Management.
- 17-146. License Application and Renewal Requirements.
- 17-147. Reserved.

Fees: 17-13, 17-16, Fines 17-146 & 20

# New Since 2017

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## Revised 2-Step Certification Program:

- Step 1 – before licensing, reading with written test | Step 2 – training w/in 1-2 years

Clarified language around separating special permit decision from the licensing decision:

17-146 (d): *“The Board shall not reconsider any matter already determined by the City Council or any other Department of the City.”*

Clarified renewal schedule is to be set by the Licensing Board

Revised Public Hearing Notice Requirement to mirror that for Special Permits

Text Change post ZAP meeting on Feb 12<sup>th</sup>:

17-146 (c): “The above departments may conduct additional inspections as may be required to ensure safety **and compliance with local ordinances, including zoning**. All inspecting departments shall keep records of annual inspections and visits to the property throughout each year.”