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Barney Heath
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MEMORANDUM

DATE: February 23, 2018

TO: Councilor Susan Albright, Chair
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director, Department of Planning and Development
James Freas, Deputy Director
Lily Canan Reynolds, Community Engagement Manager

RE: **#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.

CC: Ouida Young, Law Department
John Lojek, ISD Commissioner
Deborah Youngblood, Health Commissioner
David MacDonald, Chief of Police
Bruce Proia, Fire Chief

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It was determined this past week, that in addition to reviewing the Zoning components of the lodging house ordinance amendments, that the licensing portion was also referred to ZAP.

Since the last ZAP meeting, the licensing portion was reviewed by the Licensing Board and by Programs and Services, which will take this up again at their March 7th meeting.

The attached draft of the Lodging House Licensing Ordinance amendments has been updated to incorporate comments from those two past discussions in the highlighted segments. Additionally, it was pointed out that the last section needed a little reorganizing and this latest version addresses that concern.

Chapter 17 – Licensing and Permits Generally

Art. II. Fees for licenses and permits, 17-2—17-21

Sec. 17-3. Fees for certain licenses and permits.

Notwithstanding any contrary provision in any other section of these Revised Ordinances, there shall be paid a fee on an annual basis or unless otherwise noted to the city clerk for each of the following applications, permits, licenses or charges, the sum set forth as follows:

...
(8) Lodging house ~~and dormitory~~ licenses \$50.00

(#) Dormitory license..... \$50.00

Sec. 17-10. Fees to be paid to the fire department.

Notwithstanding any contrary provision in any other section of these Revised Ordinances, there shall be a fee paid on an annual basis or unless otherwise noted to the fire chief for each of the following applications, permits, licenses or charges, the sum set forth as follows:

...
(b) Inspection fees:

...
~~(10) Quarterly on-site inspection, lodging/rooming houses \$ 50.00~~

Sec 17-16. Fees for interdepartmental inspections.

Notwithstanding any contrary provision in any other section of these Revised Ordinances, there shall be a fee paid on an annual basis or unless otherwise noted to the Commissioner of Inspectional Services for each of the following interdepartmental inspections:

(1) Lodging House Inspection Fee.....\$300.00

Article VI. Lodging Houses, §§ 17-138 – 17-147

Div. 1. Generally, §§17-138 – 17-142

Div. 2. Licenses, §§17-143 - 17-147

DIVISION 1. GENERALLY

Sec.17-138. Definitions.

a) Lodger: A person who occupies space for living and sleeping purposes without separate cooking facilities, paying rent, which may include an allowance for meals; and who is not a member of the housekeeping unit.

- b) Lodging House: Any dwelling designed, occupied, or intended for occupancy by 4 or more lodgers. Includes rooming house, boarding house. It shall not include convalescent, nursing or rest homes; group homes; dormitories of charitable, educational, or philanthropic institutions; fraternity houses; or hotels.
State law reference – M.G.L. c. 140, §22, minus fraternity houses and dormitories of educational institutions
- c) Rooming Unit: The room or group of rooms rented to an individual or household for use as living and sleeping quarters.
- d) Enhanced Single Room Occupancy Units (E-SROs): Any Rooming Unit in a Lodging House that provides cooking facilities within the rooming unit.
State law reference - M.G.L. c.140, §22A – cooking facilities

Sec. 17-139. Requirements for all Lodging Houses.

- a) Common facilities. At minimum the following common facilities are required:
- i. Kitchen for use by all residents that includes food storage and cooking facilities in compliance with the State Sanitary Code.
 - ii. Bathrooms shall be provided in compliance of all applicable codes. Bathrooms shall be provided on the same floor as the associated rooming unit.
- b) Facilities in Rooming Units.
- i. Rooming Units, unless considered E-SROs, shall not include cooking facilities (convection microwaves, stoves, ranges, toasters, etc.) but may include food storage and non-cooking appliances (e.g. mini-fridge, coffee maker, blender, non-convection microwave) in compliance with the licensee’s approved electrical policy (see Sec. 17-144).
 - ii. Rooming units shall have individual keyed locks. Resident supervising agent shall keep the master key (Resident Supervising Agent defined in Sec. 17-144).
 - iii. Rooming Units may include private bathrooms.
- c) Number of Residents. The maximum number of residents in any rooming unit shall be determined by the State Sanitary Code. The maximum number of adult residents at any Lodging House shall be in accordance with requirements in the Zoning Ordinance, Chapter 30 of the Revised Ordinances of the City.

Sec. 17-140. Requirements for Enhanced Single Room Occupancy Units (E-SROs).

Licensed lodging houses may provide E-SROs under the following requirements and in accordance with the City’s Zoning Ordinance, Chapter 30 of the Revised Ordinances of the city.

- a) Life Safety. Inclusion of one or more E-SRO unit in a lodging house shall trigger compliance with minimum life safety requirements applicable to new construction for R-1 occupancies as required in the State Building Code. All E-SRO units shall have two independent means of egress from the unit.
- b) Cooking facilities. Cooking facilities in E-SRO units shall consist of a mini-kitchen providing a sink with hot and cold water, food storage area, refrigerator, and electric cook top with a maximum of 2 burners. Ovens and ranges shall not be permitted. Microwaves with or without convection and other accessory appliances shall be permitted in compliance with the licensee’s approved electrical use policy.

- c) Dimensional requirements. Each E-SRO shall have a minimum of 175 square feet.
- d) Max. number of E-SROs. In accordance with MGL c. 140 §22A , only a lodging house letting to more than 5 but less than 20 persons may furnish individual cooking facilities.
- e) Inclusionary Units. E-SRO units that include full living, cooking, and washing facilities, shall be subject to the Inclusionary Housing Section of the Zoning Ordinance (Chapter 30, Section 5.11).

Sec. 17-141. Compliance with City Ordinances and State and Local Codes.

- a) All lodging houses shall comply with the City's Zoning Ordinance, Chapter 30 of the Revised Ordinances of the City.
- b) All lodging houses shall comply with all applicable ordinances and local, state, and federal codes applying generally to residential properties in the city.

Sec. 17-142. Reserved.

DIVISION 2: LICENSES

Sec. 17-143. License Required.

- a) No person shall operate or cause to be operated a Lodging House unless licensed by the Licensing Board of the City of Newton.
- b) Transfer/Sales of Licenses. No licensee may transfer to another person or entity a license issued pursuant to these regulations except upon application to and approval of the transfer by the Licensing Board. Any such transfer shall be subject to the terms and conditions of the original license, unless otherwise ordered by the Board.

All Licenses are specific to an individual property and may not be transferred between properties without approval of the Licensing Board.

- c) Display of Licenses. All licenses issued by the City pursuant to these regulations shall be displayed on the premises in a conspicuous place where they can be easily read.
- d) Taxes and Charges. All taxes and charges owed to the City by the Licensee must be paid on a current basis to receive a license. The City may deny a license or license renewal if property taxes are not current.

17-144. Requirements for Licensees and Agents.

- a) Licensee, defined. That person(s) or entity listed on the lodging house license and the owners of the land and building where the lodging house is operated.
- b) Resident Supervising Agent, defined. That person designated by the licensee to carry out day to day responsibilities.
- c) Responsibility 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 ordinances and all other pertinent laws, regulations, and codes. The appointment of an agent shall in no way relieve the licensee from responsibility for full compliance with the law.

- d) On-site supervision of the premises. Licensed premises must have supervision from a resident who shall be available on a 24-hour basis via phone for residents and city staff. In the event that the licensee does not reside on the premises, the licensee shall designate one or more resident supervising agents who do reside at the property. The Licensing Board shall approve such agent(s).

Contact information for the resident supervisor, including cell phone or similar mobile communication device, as applicable, shall be posted in a conspicuous place inside the lodging house and provided to the Police Department, Health and Human Services Department, Fire Department, and Inspectional Services Department.

Resident supervisor, whether licensee or resident supervising agent, must respond to calls from City officials within a reasonable time: within one hour for emergencies and within 24 hours with respect to all other issues.

In the event that no resident supervisor will be at the property for more than 48 hours, e.g. for a vacation, the licensee shall be responsible for ensuring continuity of management by informing residents and the City of Newton Health and Human Services Department and Police Department of the short term change, and by assuming the role of central point of contact should any issues arise.

- e) Mandatory Certification for Licensees and Agents.

- i. All Licensees and their resident supervising agent(s) shall complete a two-step certification program to acquaint them with important aspects of their roles with regard to ensuring resident safety and compliance with City ordinances. Certification program materials will be developed by the Newton Inspectional Services Department along with representatives from the Health and Human Services Department, and Fire Department.
- ii. All applicants for new licenses shall review guidance materials and complete a written certification test. Their completed test shall be submitted along with their application for review by the certifying departments and the Licensing Board.
- iii. All applicants shall be required to complete an in-person certificate training program within the first year of their licensure. Such in person training shall be offered at least once per year and will be an instructional program that will educate the licensee and the agent(s) with regard to the requirements of these regulations and other laws or related topics that the City may deem necessary for the safe and proper operation of lodging houses.
- iv. The Licensing Board may at its discretion allow an extension to allow a licensee or agent to complete the in-person certification training in the 2nd year of licensure. Failure to complete the in-person training may result in a fine of the licensee not to exceed \$500.00 or the suspension or revocation of the lodging house license, as the Licensing Board, after notice and hearing, may determine.

- f) Timeliness Requirements when there is a change of Licensee or Resident Supervising Agent. If at any time there is a change in the Licensee or Agent, the newly designated person(s)

shall be required to notify the Licensing Board at least 48 hours prior to assuming responsibilities and receive their license within 60 days.

17-145. Responsibilities of Licensees and Resident Supervising Agents regarding Residents.

- a) Agreements with Residents. Licensees shall have written agreements with lodgers and supply the Licensing Board a copy of agreements with lodgers and any related documents. Licensees may not enter into agreements with residents that are inconsistent with the terms of these regulations, including, but not limited to, the regulations requiring licenses to inspect occupied and unoccupied rooming units and requiring licensees to institute certain House Rules.
- b) Minors. No room shall be let to any unemancipated person who is younger than eighteen (18) years of age.
- c) Occupancy. No licensee shall vary the occupancy of the licensed premises as certified by the Inspectional Services Department.
- d) Resident and Guest Registries. The licensee of every lodging house shall keep or cause to be kept, in permanent form, a registry of residents. 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 move-in and move-out. The entry of names of the residents shall be made by the residents themselves. Copies of these records shall always be maintained and be available for inspection by any City official.

Guests shall be registered in a separate guest registry with day and time of entry and exit listed.

- e) House Rules. Licensees and their agent(s) shall institute house rules as 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.
 - i. House rules should make residents aware of the City's ordinances and the licensee's policies, which shall be in writing and be reviewed by the Inspectional Services and Planning Departments. At a minimum, house rules shall adequately address the following:
 - 1. Noise control, including use of audio equipment that may disturb the peace;
 - 2. Adherence to laws regarding disorderly behavior;
 - 3. Proper garbage disposal and sanitary storage of food;
 - 4. Cleanliness of rooming units and common areas;
 - 5. Unobstructed egress paths.
 - 6. Compliance with Electrical Use Policy.
 - 7. Prohibition of use of fire escapes for general access to rooming units.
 - 8. Prohibition of tampering or removal of life safety devices.
 - 9. Guest policy.
 - 10. Pet policy.
 - 11. Any other provisions as may be required by the Licensing Board or City Officials.
 - 12. Consequences for repeat violations of the House Rules or the requirements of these regulations, up to and including eviction.

- ii. Licensees or agents shall ensure all residents are aware of the rules by distributing them at move-in, posting them in a visible place in the common area, and distributing updated copies when changes are made.
 - iii. Any change to the house rules shall be submitted to the Inspectional Services and Planning Departments for review.
- f) Electrical Use Policy. Licensees and their agent(s) shall institute an electrical use policy to prevent the lodging house from being a fire risk to the residents and neighborhood.
- i. Licensees and their agent(s) shall institute an electrical use policy to be approved by the Fire Prevention Bureau and Inspectional Services Departments. At a minimum, electrical use policies shall adequately address the following:
 - 1. Prohibition of use of portable heaters.
 - 2. Prohibition of use of candles or other items that require burning (incense, odor oils, etc.).
 - 3. Prohibition of use of cooking appliances other than non-convection microwaves in rooming units, including prohibition of: toasters, toaster ovens, electric hot plates, gas plates, ovens, stoves (including stoves using sterno or other fuel), or grills. The licensee may, at his/her discretion, prohibit the use of non-convection microwaves in rooming units.
 - ii. Licensees or agents shall ensure all residents are aware of the electric use policy by distributing it at move-in, posting it in a visible place in the common area, and distributing updated copies when changes are made.
 - iii. Any change to the electrical use policy shall be submitted to the Inspectional Services Department and Fire Prevention Bureau for review.

17-146. Responsibilities of Licensees and Agents regarding Property Maintenance & Management.

- a) Egress from and Access to Building. Licensees and Agents shall be responsible for ensuring that adequate egress is provided. A minimum of two means of egress shall be provided from each occupied story of a lodging house. No private room shall be used as access to a required fire escape except that additional egress shall be provided to E-SROs in accordance with Sec. 17-140.

Licensees and Agents shall promptly remove any obstacle that may interfere with the means of egress or escape from any building or other premises, or access to any part of the building or premises by the fire department. Doors and windows designated as exits shall be kept clear at all times.

- b) Egress Route Information. Licensees and Agents shall be responsible for ensuring that egress routes are clearly marked and identified.

Licensees or Agents shall establish and post an Evacuation Plan in compliance with the NFPA Protocol for residential occupancies on all levels of the building and near all exits. The facility is required to conduct at least four Evacuation Drills a year held quarterly and submit documentation to Fire Prevention showing that they have been done.

Licensees or Agents shall ensure that exit signs and emergency lighting along the egress routes are in good working order at all times.

- c) Maintenance. The building and all parts thereof shall be kept in good general repair and properly maintained.

17-147. License Application and Renewal Requirements.

- e) Application Requirements. The Licensing Board shall establish application forms and procedures for application filing that at minimum adequately address the following:
- i. Incomplete applications shall not be accepted.
 - ii. Submission of an application containing false information shall be cause for refusing the application or for suspending, canceling, or revoking a license already granted.
 - iii. No person or entity shall obtain or renew a license unless the applicant can demonstrate proof of a legal right to the licensed premises for the term of the license.
 - iv. At minimum the application for a Licensee must contain the following documents:
 - i. Personal information for the licensee and any resident supervising agent(s) at the time of application
 - ii. Contact information for resident supervisor whether licensee or agent
 - iii. Resume
 - iv. Professional References
 - v. Copy of House Rules
 - vi. Copy of Electrical Use Policy
 - vii. Copy of Evacuation Plan
 - viii. Application filing fee
 - v. At a minimum, the application for a Resident Supervising Agent shall include:
 - i. Personal information
 - ii. Contact information
 - iii. Resume
 - iv. Professional References
 - v. Application filing fee
- f) Fees. Inspection and License fees shall be in an amount established by the City Council. Licensing Board Filing fees shall be in an amount established by the Licensing Board.
- vi. Inspection fees are non-returnable once an application has been accepted by the Inspectional Services Department.
 - vii. Annual license fees shall be paid upon application for License or License Renewal.
- g) City Inspections and Reports. All licensed premises shall be inspected by the City of Newton prior to initial license, and annually thereafter. Annual Inspections shall be conducted by the Inspectional Services Department, Health and Human Services Department, and Fire Department coordinated as a one-time inspection. 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.
- The following City departments shall provide a report to the Licensing Board prior to license renewal, Inspectional Services, Fire, Health and Human Services, Treasurer/collector, and Planning Department as appropriate.
- h) Licensing Board Process Requirements. The Licensing Board shall establish procedures for assessing Lodging House License applications and conduct the meetings in accordance with established rules. The Licensing Board shall approve/deny applications for both licensees and their resident supervising agent(s).

The Licensing Board shall hold a public hearing on each application for a new licensee or agent. Public hearing notice requirements shall mirror those for special permits.

The Board shall not reconsider any matter already determined by the City Council or any other Department of the City.

Renewal schedule to be set by the Licensing Board.

- i) Denial of Licenses or Renewal Applications. The Licensing Board may deny an application for a license or renewal or may suspend a license where there is just cause for doing so. A public hearing must be held prior to denial of an application. Public hearing notice requirements shall mirror those for special permits.

Sec. 17-148. Violations.

a) Violations of building, health, or fire code, may result in license review by the Licensing Board. Violation notices for licensed lodging houses from Inspectional Services, Health and Human Services, or the Fire Department shall be promptly forwarded to the Licensing Board for consideration.

b) In addition to the penalties for code and ordinance violations established by the Commonwealth of Massachusetts and City of Newton, the Licensing Board shall have the authority to issue the following penalties for violations of these regulations after notice of hearing and opportunity to be heard.

- i. More than three (3) code violations not addressed within 30 days of inspection unless a correction plan is approved by the Inspectional Services Department or Fire Prevention Bureau as appropriate...\$300 Fine
- ii. More vehicles stored on the premises than allowed on the premises by zoning on (3) or more occasions as recorded by the Inspectional Services Department...\$300 Fine
- iii. More residents on the premises than allowed on two (2) or more occasions as recorded by the Inspectional Services Department...\$300 Fine
- iv. If two (2) or more of the above fines are warranted in any 12-month period or if three (3) or more of the above fines are warranted in a 36-month period...Denial of License Renewal.

Sec. 17-149. Reserved.