

Number: 2005-01
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Subject: **Policies and Procedures for the Interpretation of G.L. c. 140 s. 22 and the overall enforcement of "Lodging Houses"**

Purpose: The purpose of this bulletin is to establish a common understanding for the application of G.L. c. 140 s. 22 (the "Lodging House Statute") in light of recent developments in the law until the statute is amended. This bulletin should be read with 2005-2 "Policies and Procedures for Accessing and Inspecting Residential Dwellings."

GENERAL CONSIDERATIONS:

- Commissioner's Bulletin 2001-19 is revoked and void upon signing of this Bulletin 2005-1, which replaces 2001-19. Compliance with the requirements of this 2005-1 bulletin are of the utmost importance as the definitions and some procedures have been set forth in a consent decree in a case in federal court, Sang Vo et. al. v. City of Boston (C.A. No 00-11733-RWZ).
- The interpretations set forth in this Bulletin are in effect until further notice. In the event of changes in the General Laws, Zoning Code or Regulations, this Bulletin and the terms of the federal consent decree will remain the same except to the extent that such change(s) would conflict with this bulletin. **No exceptions to these protocols shall be effective unless specifically set out below.** If at any time, ISD seeks to change the protocols set out in this bulletin, such changes **MUST** be approved by stipulation between the parties in the federal court litigation or after being granted leave from the Court to make such changes.
- These definitions will not act as a bar to other legal requirements of general applicability when applied to lodging/boarding/rooming houses under Building, Sanitary, Zoning or other applicable laws and codes, for example minimum square footage requirements.
- Failure to comply with the requirements of this bulletin may result in action pursuant to the progressive disciplinary process set out in each collective bargaining agreement starting with counseling and working its way up.
- Until the law has changed, this bulletin alone shall be used for the interpretation of G.L. c. 140§. 22 and building and zoning regulations related to lodging/boarding/rooming houses for enforcement purposes. Any employee, including managers, with a question about the interpretation should consult this bulletin or other managers. Despite the statutory language, the number of unrelated occupants alone shall no longer be the means for determining if a residential dwelling is being used and / or occupied as a lodging/boarding/rooming house.

DETERMINATION:

Section 1.0 Definitions: The ISD shall adhere to the following definitions in interpreting the Lodging House Statute:

A. Lodgings: The term “lodgings” in the Lodging House Statute, and similar terms in other laws or regulations enforced by the ISD, shall be limited to:

- single rooming units or sleeping accommodations rented individually,
- occupants living together in a single dwelling unit, but **not** as a single housekeeping unit (with or without common kitchen facilities).

Note: Shared living situations or a single housekeeping unit (i.e., unrelated roommates or housemates with equal rights to the entire dwelling, whether under a tenancy-at-will, lease or other permission), even in excess of four (4) occupants, shall not constitute a lodging house.

B. Family defined: A family for purposes of the "Lodging House Statute" and applicable Building and Zoning Code provisions shall be considered one “person,” “lodger” or “boarder” (**Minimum square footage provisions or similar generic occupancy restrictions are still applicable.**) For purposes of lodging house requirements and enforcement, “family” shall mean two or more persons related by blood, marriage, adoption or analogous family union and living as a single, nonprofit housekeeping unit. (For purposes of the Boston Zoning Code the definition of family set forth in Article 2 and 2A shall still remain in effect for purposes of general applicability.)

C. Person operating: A tenant who, under a lease or at will, allows another person or persons to reside in the dwelling unit occupied by the tenant in exchange for a financial contribution toward the rent, utilities and/or household expenses (or otherwise) shall be the operator or “person conducting it” for purposes of the Lodging House Statute and other Code provisions applicable to lodging houses. ISD may name the "person conducting it" and the owner in any orders to correct or abate the violations issued by this Department for operation of a lodging house/boarding house/ rooming house.

2.0 Enforcement protocol: All ISD staff when inspecting a residential dwelling alleged to be a lodging house shall, in addition to complying with Commissioner's Bulletin 2005-2, follow these protocols in determining if the dwelling is in fact being used as a lodging house. The inspector shall make inquiry to answer the following questions:

- a. Are the "lodgings" being rented to the "persons" individually by "the person conducting (i.e. operating) it"?
- b. Who is the person operating the lodging house arrangement, a tenant or the owner?
- c. Are there four (4) or more "persons" in addition to the "person conducting it" and are these additional "persons" unrelated to the operator ?
- d. Do these additional "persons" NOT have access or the right to access the entire dwelling unit?

If conditions "a" - "d." above exist, the inspector shall issue an abatement order giving the named parties 30 days to abate the illegal use of the residential dwelling as a lodging house.

The inspector may issue the violation pursuant to the State Building Code 780 CMR 110. and (and/or the Boston Zoning Code (Art. 4 §. 4-3) for failure to secure a permit to change the use of the dwelling or engaging in the use prior to securing a permit for such use if five or more "lodgers"). Inspectors may also issue abatement orders for other conditions observed in violation of the State Building Code, Sanitary Code or Zoning Code, including but not limited to life safety violations related to use of a dwelling as a lodging house.

2.1. Persons named in notices of violation: Inspectors shall name the owner of the dwelling in any abatement order. The inspector shall **also** name the "person conducting" the lodging house, if that person is someone other than the owner. Constables shall serve the orders on all named parties. in the City of Boston. Certified mail will be use for parties outside the City of Boston.

2.3 Processing Violations: All violations issued shall follow existing processing protocols in place for the relevant divisions; **HOWEVER, EFFECTIVE APRIL 24, 2005:** a copy of ALL violations relative to the use of a residential dwelling or the interior of a residential dwelling shall be mailed by First Class U.S. Mail to the address and dwelling unit number at which the violation was observed, addressed to "Occupants." A form letter shall also be included explaining the violations and the rights of the occupant (*See attached Exhibit*).

2.4. Referrals to Boston Licensing Board: The inspector shall refer all use/ failure to secure a permit violations relative to lodging houses to the Boston Licensing Board for proceedings before that Board regarding any lodging house abatement orders served on an owner or "person conducting it" **EFFECTIVE APRIL 24, 2005:** All referrals to the Boston Licensing Board shall also be mailed First Class U.S. Mail to the **occupants** of the affected dwellings.

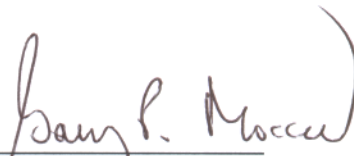
2.5 Monitoring Requirements: All violations issued for lodging houses shall be logged in a database that shall be maintained for tracking all "actions" relative to lodging house enforcement.

3.0 Review of procedures:

ISD shall review and refresh all staff on an annual basis regarding the requirements of lodging house enforcement.



Signed: William J. Good, III
Commissioner,
Inspectional Services Department
Date:



Signed: Gary Moccia
Assistant Commissioner, Inspector of Buildings
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Date: