

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

DOCKET NO.: 2025-P-1525

MATTHEW BALDASSARRI AND KELLY BALDASSARRI D/B/A
STEPPING STONE INN
Plaintiff-Appellant,

v.

AUTOMATIC SPRINKLER APPEALS BOARD AND CITY OF SALEM
FIRE DEPARTMENT.,
Defendants-Appellees.

On Appeal Judgment of Massachusetts Superior Court for
Essex County,
Action No.: 2477CV01116

**PLAINTIFF-APPELLANTS MATTHEW BALDASSARRI AND KELLY
BALDASSARRI D/B/A STEPPING STONE INN'S BRIEF**

RESPECTFULLY SUBMITTED,
MATTHEW BALDASARRI AND KELLY
BALDASARRI D/B/A STEPPING
STONE INN

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	4
STATEMENT OF ISSUES	6
STATEMENT OF THE CASE	7
STATEMENT OF FACTS.	8
SUMMARY OF ARGUMENT	17
ARGUMENT	7
1. The Court (McCarthy-Neyman, J.) committed an error of law and/or abused its discretion in denying The Plaintiff/Appellant’s Motion for Judgment on the Pleadings by finding that a “Bed and Breakfast” is subject to the enforcement of G.L. c. 148, § 26H, which is specifically aimed at the installation of sprinkler systems in “Rooming Houses”.	18
2. The rules of statutory construction	19
3. THE GENESIS OF G.L. C. 148, § 26H IS SPECIFICALLY ROOTED IN THE AFTERMATH OF A ROOMING HOUSE FIRE AND ITS APPLICATION DOES NOT REACH BEYOND THE INTENDED STRUCTURES OF LODGING AND BOARDING HOUSES.	21
A. By Statutory and Ordinance Definition, Bed and Breakfast Establishments and Lodging Houses and Boarding Houses are Separate and Distinct.	23
B. That Bed and Breakfasts, Like the Stepping Stone Inn, are Separate and Distinct from Lodging Houses Has Been Addressed by Courts of the Commonwealth.	28
4. That “Lodging Houses” are Separate and distinct from “Bed and Breakfasts was Also Made Clear by	

the Massachusetts Department of Revenue Prior to the Enactment of G. L. c. 148, § 26H. . . .	30
5. Evidence that Coach House Inn and Salem Inn Have Sprinklers is Not Dispositive on the Issue of Whether Bed and Breakfasts Are Subject to Purview of G.L. c. 148, § 26H.	32
6. The ASAB's October 27, 2020 Decision Relative to A Building, Which is Not Used as a B&B, Cannot Support its Legal Conclusions Here.	34
CONCLUSION	34
CERTIFICATE OF COMPLIANCE	35
CERTIFICATE OF SERVICE	36
ADDENDUM: October 24, 2025, Memorandum and Decision	38
M.G.L. c. 30A, § 14	42
M.G.L. c. 64G, § 1	45
M.G.L. c. 140, § 22	49
M.G.L. c. 140, § 32A	52
M.G.L. c. 148, s. 26A½	55
M.G.L. c. 148, s. 26G	60
M.G.L. c. 148, s. 26G½.	61
M.G.L. c. 148, § 26H.	63
M.G.L. c. 148, § 26I.	66
M.G.L. c. 231, § 6F.	68
M.G.L. c. 231, § 6E.	70
Department of Revenue Letter Ruling 84-90: Bed and Breakfast Operations	72

Salem, Massachusetts Zoning	
Ordinance § 10.0.	77

TABLE OF AUTHORITIES

CASES

<i>Arlington Contrib. Ret. Bd. v. Contrib. Ret. Appeal Bd.</i> ,	
75 Mass. App. Ct. 437, 441 (2009).	18
<i>Bank of Am., N.A. v. Rosa</i> , 466 Mass. 613, 619 (2013)	24
<i>Bongaards v. Millen</i> , 440 Mass. 10, 15 (2003)	26
<i>Commonwealth v. Gagnon</i> , 439 Mass. 826, 833 (2003) .	20
<i>Commonwealth v. Russ R.</i> , 433 Mass. 515, 521 (2001) .	24
<i>Crossing Over, Inc. v. Fitchburg</i> , 98 Mass. App. Ct. 822,	
824 (2020)	73
<i>Doe v. Worcester Public Schools</i> , 484 Mass. 598, 602	
(2020)	21
<i>Gattineri v. McGeary</i> , 24 LCR 673, 679 (2016)	26
<i>Gordon v. State Building Code Appeals Board</i> , 70 Mass.	
App. Ct. 12, 14 (2016)	17
<i>Harvard Crimson, Inc. v. President & Fellows of Harvard</i>	
<i>College</i> , 445 Mass. 745 (2006)	19
<i>Kenney v. Building Comm'r. of Melrose</i> , 315 Mass. 291,	
295 (1943).	20
<i>Labor Relations Comm'n v. University Hospital, Inc.</i> , 359	
Mass. 516, 521 (1971).	17
<i>MacLaurin v. Holyoke</i> , 475 Mass. 231, 247 (2016). 12	

<i>Matter of the Est. of Mason</i> , 493 Mass. 148 (2023) . . .	19
<i>Metcalf v. BSC Group, Inc.</i> , 492 Mass. 676 (2023) . . .	19
<i>Newbury Junior Coll. v. Brookline</i> , 19 Mass. App. Ct. 197, 203-204 (1985).	30
<i>Reading Co-Operative Bank v. Suffolk Construction Co., Inc.</i> , 464 Mass. 543 (2013)	26
<i>Risk Mgt. Found. of Harvard Med. Insts., Inc. v. Commissioner of Ins.</i> , 407 Mass. 498, 505 (1990) . . .	20
<i>Sang Vo v. City of Boston</i> , 2003 U.S. Dist. LEXIS 16519, (2003)	29
<i>Selvetti v. Building Inspector of Revere</i> , 353 Mass. 645, 647 (1968)	73
<i>Sharris v. Commonwealth</i> , 480 Mass. 586, 594, 106 N.E.3d 661 (2018).	13, 28, 29
<i>Six Bros., Inc. v. Brookline</i> , 493 Mass. 616 (2024)	19
<i>TBI Inc. v. Board of Health of N. Andover</i> , 431 Mass. 9, 18 (2000)	20
<i>Tilman v. Brink</i> , 74 Mass. App. Ct. 845 (2009)	24
<i>White v. Maynard</i> , 111 Mass. 250 (1872)	28
<i>Adler v. Northern Hotel Co.</i> 80 F. Supp. 776, 780 (N. D. Ill.)	28
<i>Zoning Bd. of Appeals of Lunenburg v. Housing Appeals Committee</i> , 464 Mass. 38, 43 (2013).	18

STATUTES

M.L. c. 30A, § 14	7, 17
M.G.L. c. 64G, § 1	15, 31
M.G.L. c. 140, § 22	29, 31
M.G.L. c. 140, § 32A	31
M.G.L. c. 148, s. 26A½	33
M.G.L. c. 148, s. 26G	33
M.G.L. c. 148, s. 26G½.	33
M.G.L. c. 148, § 26H.	<i>passim</i>
M.G.L. c. 148, § 26I.	31
M.G.L. c. 231, § 6F.	24
M.G.L. c. 231, § 6E.	24

LETTER RULING

Department of Revenue Letter Ruling 84-90: Bed Breakfast Operations.	24, 30, 31
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SALEM ORDINANCE

Salem, Massachusetts Zoning Ordinance § 10.0.	25, 29
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STATEMENT OF ISSUE

1. Whether the Court (McCarthy-Neyman, J.) committed an error of law and/or abused its discretion in denying The Plaintiff/Appellant's Motion for Judgment on the Pleadings by finding that a "Bed and Breakfast" is subject to the enforcement of G.L. c. 148, § 26H, which is specifically aimed at the installation of sprinkler systems in "Rooming Houses".

STATEMENT OF THE CASE

For nearly 30 years the Stepping Stone Inn was run as a "Bed and Breakfast" and every year during that existence was exempted from enforcement of G.L. c. 148, § 26H, which is specifically aimed at the installation of sprinkler systems in "Rooming Houses." (See RA - 143-144.) It was not until a fire inspection in the fall of 2024 when the City of Salem ("Salem") Fire Marshall decided to - despite years of a lack of enforcement - to enforce the sprinkler statute against the Stepping Stone Inn. (See RA - 145.)

The Stepping Stone Inn appealed Salem's enforcement to the Automatic Sprinkler Appeals Board ("ASAB"). (See RA - 145.) That appeal wound up in a 3-3 tie, which meant the Board took no action and Salem's enforcement ruling stood. (See RA - 157-161.) The Stepping Stone Inn thereafter filed suit in the Superior Court for review pursuant to M.G.L. c. 30A § 14. (See RA - 140-161.) A motion for judgment on the pleadings was filed, opposed and argued before the Court (McCarthy-Neyman, J.) on September 25, 2025. The Court denied Stepping Stone's motion. (See Addendum at 38.) This appeal follows.

STATEMENT OF THE FACTS

In 1986, following a boarding house fire that resulted in multiple deaths, sprinklers were required in new and existing **lodging and boarding houses**. See G.L. c. 148, § 26H (emphasis added). The relevant statute here, G.L. c. 148, § 26H, reads as follows:

Section 26H. In any city or town which accepts the provisions of this section, every lodging house or boarding house shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code. No such sprinkler system shall be required unless sufficient water and water pressure exists. In such buildings or in certain areas of such buildings, where the discharge of water would be an actual danger in the event of a fire, the head of the fire department shall permit the installation of such other fire suppressant systems as are prescribed by the state building code in lieu of automatic sprinklers. The head of the fire department shall enforce the provisions of this section.

For the purposes of this section '**lodging house**' or '**boarding house**' shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth.

In 1989, the lodging house sprinkler provision of G. L. c. 148, § 26H, was modified to include a five-year phase-in period after a municipality adopted it, St. 1989 c. 330, and, separately, to contain a

statutory right of appeal. St. 1989, c. 557, § 2. In February 1987, the City of Salem adopted G. L. c. 148, § 26H “requiring automatic sprinklers in **Boarding Houses.**” (See Record Appendix (“RA”) at 23-26.)

The Plaintiffs, Matt Baldassarri (“Matt”) & Kelly Baldassarri (“Kelly”) d/b/a Stepping Stone Inn, are the owners of the Property located at 19 Washington Street, Salem, Massachusetts. (See RA at 72:23-25.) Plaintiffs have been the owners and Innkeepers of the Stepping Stone Inn (“Stepping Stone”), a classic New England Bed & Breakfast (“B&B”), since 2014. (See RA at 81.) Prior to Kelly and Matt’s ownership, the Stepping Stone was run as a B&B by the previous owner for 22 years. (See RA at 38; 76:2-9.) Despite Salem adopting the requirements of G. L. c. 148, § 26H in 1987, for 32 years of fire inspections no fire official from the city of Salem ever believed that the Stepping Stone, a B&B, was subject to the fire sprinkler requirement of lodging and boarding houses set forth in the statute. (See RA at 76:6-9; 92:13-24.) Despite receiving a valid May 22, 2024 certificate of inspection,¹ on May 29, 2024, Stepping Stone received a letter from the Salem Fire Department

¹ (See RA at 28.)

stating that – despite 32 years of not needing to comply with G. L. c. 148, § 26H² – Stepping Stone was required to install a fire sprinkler system. (See RA at 35.) Following receipt of the notice, Matt and Kelly timely appealed the decision and a hearing before the ASAB was held on September 18, 2024. (See RA at 64-106.)

Present for the Board at the hearing were: Daniel Gary Rogers, Chair; Kristin Kelly, Vice Chair; H. Jacob Nunnemacher (designee of the State Fire Marshal); Deputy Chief Colin Kelly (designee of the Boston Fire Commissioner); Chief Michael Spanknebel; and Alexander MacLeod. See RA at 65.) At the hearing, the following material evidence was presented:

²To be sure, Cole Kelly, the City of Boston Fire Marshall was flabbergasted by Salem's sudden enforcement after 32 years of believing the statute did not apply:

Hi. Yeah, thanks. Cole Kelly, Fire Marshal, City of Boston. So my question is for the Salem Deputy Chief. I just want to be clear, sir. So this establishment, Stepping Stone Inn, has been inspected by the Fire Department for the past ten years under the current ownership and it was also inspected the previous 22 years before that, and all of that time was within the time that the City of Salem had adopted 26H. So it's gone through years of inspections all while it's been bound by the same Mass. General law? Is that correct, sir?

(See RA at 92:13-23.)

As has always been the case, Stepping Stone is specifically licensed "for use only as a Bed and Breakfast per licensing board." (See RA at 20; 76:23-25.) Stepping Stone is Matt's and Kelly's home from which they run a six (6) room B&B located in the heart of historic Salem, Massachusetts. (See RA at 29-34; 74:6-7.) The home is approximately 3,200 square feet and was constructed in 1846. (See RA at 21.) Matt and Kelly live in the home and provide rooms for guest stays of up to seven (7) days. (See RA at 74:7; 77:11-20.) None of the guest rooms have kitchens and the single main kitchen is off limits to guests. (See RA at 77:7-8; 85:1-4.) Stepping Stone contains numerous fire safety measures, including two large fire escapes off the sides of the home; two points of egress from every room; a wired smoke detector system; emergency fire lighting fire pulls at each exit; fire extinguishers; carbon monoxide detectors; and a wired fire alarm system. (See RA at 75:16-24.)³ At all times relevant

³ In addition to all these fire safety attributes of the Stepping Stone Inn, it worth noting that older structures, such as the stepping stone, are less vulnerable to fire than newer structures:

Similarly, studies have shown that the use of modern construction materials in new

to the Stepping Stone's 32-year operation as a Bed & Breakfast the Salem Fire Department believed that the Plaintiffs B&B fell outside the purview of G.L. c. 148, § 26H and never required the installation of fire sprinklers. (See RA at 76:6-9; 92:13-24.) In addition to the factual evidence presented, Matt and Kelly also argued, among other things, that M.G.L. c. 148, § 26H simply did not apply to a "bed and breakfast," the mention of which is absent from the statute, that their property does not fit the definition of a "boarding" or "lodging" house, and that M.G.L. c. 148, § 26H is being applied too broadly. (See RA at 73-79.) Those and other arguments are further developed below.

7. The City's "Evidence" at the ASAB Hearing.

residential buildings has resulted in fires that combust and spread much more quickly than in older structures, because of the more volatile nature of the materials used. Older residential buildings, on the other hand, tend to be built of materials such as stone, brick, and plaster, which are fire-retardant. Likewise, while newer residential buildings often have air conditioning ducts that allow fire to spread rapidly, older residential buildings generally do not. See Roman, New Fires, New Tactics, National Fire Protection Association Journal (Dec. 29, 2014). Thus, the need for sprinklers in a new residential building may be greater than in an older one. *MacLaurin v. Holyoke*, 475 Mass. 231, 247 (2016).

The City's position at Hearing was based upon its misinterpretation of M.G.L. c. 148, § 26H, which ignored the statute's facial applicability to only **'lodging house[s]'** or **'boarding house[s]'**:

It's the city's position that the Inn is a six-room Inn that meets the definition in 248, Section 26H, where they rent to six or more persons that are unrelated to the operator. And it is our position that, as such, they must install sprinklers, automatic sprinklers.

(See RA at 87:1-6.) According to Gerard Frechette, the City of Salem Fire Marshall:

I know they mentioned they have six rooms. They're right on the cut. The law does not mention how many rooms, it mentions six people or more. I don't know how many people come to Salem and stay in a bed & breakfast by themselves, which would be double occupancy, bringing it up to twelve people plus the two occupants. So you're possibly up to 14 people in the building at this point. At that point I did do an enforcement letter.

(See RA at 87:24 through 88:6.) For his part, Marshall Frechette specifically rejected the significance of the statutorily defined buildings in play and testified that "[i]n my eyes there's no difference between a lodging house and a bed & breakfast. They're paying nightly, which makes them a lodging house." (See RA at 88:6-9.)⁴ Oddly, Marshall Frechette added that "it's not my job to

⁴ See fn.8, *infra*, noting that Salem actually does define B&Bs and Lodging Houses differently.

interpret the law, that's what the Board is for. My job is to enforce it. And that is pretty much it." (See RA at 88:10-12.)

That was the entirety of the City's evidence and the Board went on to ask questions. On questioning from Board member Boston Fire Marshall Chief Cole Kelly about whether he inquired of his colleagues why the Stepping Stone had passed fire inspections for the previous three decades, Marshall Frechette stated that he "just assumed that [his predecessors] missed it." (See RA at 89:5-11.)

As it related to questions about enforcement of M.G.L. c. 148, § 26H to other places the City considered "Bed & Breakfasts", the City gave examples of the Coach House Inn and the Salem Inn as having sprinkler systems. (See RA at 91:1-3, 12-14.) As noted by Matt at the hearing, the Coach House Inn is not a B&B, as its owners do not reside on site⁵ and the Coach House Inn contains

⁵Among other authorities, Salem itself defines a B&B as a house in which the owner resides and provides rooms for guests:

Bed and breakfast establishment: Accommodations with not more than six (6) bedrooms occupied by bed and breakfast guests in **which the owner of the establishment resides**. Bed and breakfasts are

11 rooms. (See RA at 94:23 through 95:4.) With respect to the Salem Inn, as Matt pointed out, that establishment is a series of 3 buildings with approximately 48 rooms and is not owner occupied. (See RA at 95:4-6.)

8. The October 1, 2024, ASAB Decision.

Although the ASAB was equally divided, 3-3, by operation of law the Salem Fire Department's decision requiring that fire sprinklers installed at the Stepping Stone was upheld. (See October 1, 2024 ASAB Decision, RA at 8-12.) The ASAB provided no legal analysis of the central issue of the appeal – whether the Stepping Stone, a B&B, fell within the purview of M.G.L. c. 148, § 26H – a statute that applies by its own wording only to **'lodging house[s]' or 'boarding house[s].'** (See *generally*, October 1, 2024, ASAB Decision, RA at 8-12.)

intended for guest on intermittent visits, and shall not be used as long-term rental units or apartments. All parking for residents and guests shall be off-street.

Salem, Massachusetts Zoning Ordinance Sec. 10.0. That same zoning ordinance section separately defines rooming, boarding and lodging houses: *"Rooming, boarding or lodging house: A house where lodgings are let to four (4) or more persons not within second degree of kindred to the person conducting it"* It is also noteworthy that B&Bs and lodging houses are separately and distinctly defined in M.G.L. c. 64G, § 1.

To be sure, the ASAB's "Ultimate Findings of Fact and Conclusions" of Law were conclusory at best:

- 1) The Board finds that the City of Salem adopted the provisions of M.G.L. c. 148, section 26H on or about February 17, 1987.
- 2) Section 26H requires the installation of an adequate system of automatic sprinklers in accordance with the state building code in certain lodging or boarding houses. The statute requires installation of said system in all applicable houses within five years after acceptance of the law by a City or Town. The statute defines a "lodging house" or "boarding house" as a house ". . . where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it . . ."

(See RA at 10-11.)

SUMMARY OF ARGUMENT

- The Court (McCarthy-Neyman, J.) committed an error of law and/or abused its discretion in denying The Plaintiff/Appellant's Motion for Judgment on the Pleadings by finding that a "Bed and Breakfast" is subject to the enforcement of G.L. c. 148, § 26H, which is specifically aimed at the installation of sprinkler systems in "Rooming Houses". 13
- The rules of statutory construction Reveal the Court was Wrong
- The genesis of G.L. C. 148, § 26h is specifically rooted in the aftermath of a rooming house fire and its application does not reach beyond the intended structures of lodging and boarding houses.

- By Statutory and Ordinance Definition, Bed and Breakfast Establishments and Lodging Houses and Boarding Houses are Separate and Distinct.
- That Bed and Breakfasts, Like the Stepping Stone Inn, are Separate and Distinct from Lodging Houses Has Been Addressed by Courts of the Commonwealth.
- That "Lodging Houses" are Separate and distinct from "Bed and Breakfasts" was Also Made Clear by the Massachusetts Department of Revenue Prior to the Enactment of G. L. c. 148, § 26H.
- Evidence that Coach House Inn and Salem Inn Have Sprinklers is Not Dispositive on the Issue of Whether Bed and Breakfasts Are Subject to Purview of G.L. c. 148, § 26H.
- The ASAB's October 27, 2020 Decision Relative to A Building, Which is Not Used as a B&B, Cannot Support its Legal Conclusions Here.

ARGUMENT

STANDARD OF REVIEW

Administrative agency decisions, including those of the ASAB, are subject to judicial review under G.L. c. 30A, § 14. *See Gordon v. State Building Code Appeals Board*, 70 Mass. App. Ct. 12, 14 (2016). Judicial review is limited to the administrative record and the standards set forth in G.L. c. 30A, § 14(7). *See G.L. c. 30A, § 14; Labor Relations Comm'n v. University Hospital, Inc.*, 359 Mass. 516, 521 (1971). While the reviewing court "shall give due weight to the experience, technical competence, and specialized

knowledge of the agency," the court may set aside an agency's decision if the substantial rights of a party may have been prejudiced because the agency's decision was in violation of constitutional provisions, in excess of the statutory authority or jurisdiction of the agency, unsupported by substantial evidence, unwarranted by facts, based upon an error of law, arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law. G.L. c. 30, § 14(7). The burden rests with the plaintiff to overcome the presumption that the agency's decision is valid. *See Zoning Bd. of Appeals of Lunenburg v. Housing Appeals Committee*, 464 Mass. 38, 43 (2013). As such, "[a]ll rational presumptions must be applied in favor of the agency's action." *Arlington Contributory Ret. Bd. v. Contributory Ret. Appeal Bd.*, 75 Mass. App. Ct. 437, 441 (2009).

ARGUMENT

- 1. The Court (McCarthy-Neyman, J.) committed an error of law and/or abused its discretion in denying The Plaintiff/Appellant's Motion for Judgment on the Pleadings by finding that a "Bed and Breakfast" is subject to the enforcement of G.L. c. 148, § 26H, which is specifically aimed at the installation of sprinkler systems in "Rooming Houses."**

As revealed below, the Court (McCarthy-Neyman, J.) simply failed to consider all the arguments related to why the statute at issue, G.L. c. 148, § 26H, simply

does not apply to Bed & Breakfasts, as the statute was the genesis of a "rooming house" fire, which, as revealed below is not a rooming situation that included Bed & Breakfasts, which has always been separately defined by statute.

2. The Rules of Statutory Construction Reveal the Court's Error.

In construing a statute, "we begin with its plain language." *Matter of the Estate of Mason*, 493 Mass. 148, 152 (2023), quoting *Metcalfe v. BSC Group, Inc.*, 492 Mass. 676 (2023). This is because "a statute must be interpreted according to the intent of the Legislature," which we derive "from all [of the statute's] words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished." *Matter of the Estate of Mason, supra* at 151, quoting *Harvard Crimson, Inc. v. President & Fellows of Harvard College*, 445 Mass. 745, 749, 840 N.E.2d 518 (2006). "Ordinarily, where the language of a statute is plain and unambiguous, it is conclusive as to legislative intent." *Six Bros., Inc. v. Brookline*, 493 Mass. 616, 622, 228 N.E.3d 565 (2024),

quoting *Sharris v. Commonwealth*, 480 Mass. 586, 594, 106 N.E.3d 661 (2018).

"The literal meaning of a general term in an enactment must be limited so as not to include matters that, although within the letter of the enactment, do not fairly come within its spirit and intent." *Kenney v. Building Comm'r. of Melrose*, 315 Mass. 291, 295 (1943).

"It is a basic canon of statutory interpretation that 'general statutory language must yield to that which is more specific.'" *TBI Inc. v. Board of Health of N. Andover*, 431 Mass. 9, 18 (2000) (quoting *Risk Mgt. Found. of Harvard Med. Insts., Inc. v. Commissioner of Ins.*, 407 Mass. 498, 505 (1990)). It is a well-established rule of statutory construction that "where the [L]egislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded.'" *Doe v. Worcester Public Schools*, 484 Mass. 598, 602 (2020) (citing *Commonwealth v. Gagnon*, 439 Mass. 826, 833 (2003) quoting 2A N.J. Singer, *Sutherland Statutory Construction* § 46.06, at 194 (6th ed. rev. 2000)). As set forth specifically in G.L. c. 4, § 6, "words and phrases shall be construed according to the common and approved usage of the language; but technical words and

phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.”

3. THE GENESIS OF G.L. c. 148, § 26H IS SPECIFICALLY ROOTED IN THE AFTERMATH OF A ROOMING HOUSE FIRE AND ITS APPLICATION DOES NOT REACH BEYOND THE INTENDED STRUCTURES OF LODGING AND BOARDING HOUSES.

“The sprinkler requirement for **lodging houses** at issue in this case was enacted within two years of the 1984 Elliot Chambers rooming house fire, a fire in Beverly in which fifteen people died and fourteen more were injured.” *Crossing Over, Inc. v. Fitchburg*, 98 Mass. App. Ct. 822, 824 (2020) (emphasis added) (citing G. L. c. 148, § 26H, inserted by St. 1986, c. 265; Ortega, 1984 Beverly Fire Etched into Memory of Witnesses, Boston Globe (July 4, 2014), <https://www.bostonglobe.com/metro/2014/07/03/three-decades-later-beverly-rooming-house-fire-that-killed-leaves-legacy-loss-and-reform/PljEbDRo6WmiAs5L84MRNP/story.html>.) In addition to G.L. c. 148, § 26H’s specific relation to lodging and boarding houses, the statutory scheme related to the requirements of fire suppression systems are specific to specific types of structures/properties:

- **M.G.L. c. 148, s. 26A½** - required the retroactive sprinkler installation in buildings or structures over 70' feet high and built prior to January 1, 1975. Original law was effective in 1986.
- **M.G.L. c. 148, s. 26G** - requires sprinklers in certain non-residential buildings that, in the aggregate, consist of over 7,500 s.f. in floor area. Sprinklers are required for new construction, major alterations or when any addition is taking place.
- **M.G.L. c. 148, s. 26G½** - required the retroactive installation of sprinkler systems in nightclubs, dancehalls, discothèques, bars or similar entertainment venues built prior to December 1, 2004 that have a capacity of 100 persons or more. The law required such installations no later than November 15, 2007.

What is clear is that "Bed and Breakfast Establishments," such as the Stepping Stone, are not included in any of the above-listed statutory provisions by name or by operation. It was error for the ASAB to simply assume - without engaging in any legal analysis - that Bed and Breakfast Establishments fall within in the purview of G. L. c. 148, § 26H.

A. By Statutory and Ordinance Definition, Bed and Breakfast Establishments and Lodging Houses and Boarding Houses are Separate and Distinct.

The most reasonable place to start here is with the title of § 26H itself - "Automatic Sprinkler Systems; Lodging or Boarding Houses; Exceptions; Definitions." Indeed, the very title of § 26H denotes its specific application only to Lodging Houses and Boarding Houses. Interestingly, § 26H defines both "lodging house" and "boarding house" as the exact same thing: "a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it" G.L. c. 148, § 26H (para. 2). If the Legislature intended "Bed and Breakfast" establishments to be included within the purview of statute, it would have added "Bed and Breakfast" as a third example of "a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it" But the Legislature did not name "Bed and Breakfast" in § 26H for the obvious reason that it did not intend to include "Bed and Breakfast" as an accommodation subject to the statutory requirements. That "Bed and Breakfast" in both the Commonwealth's statutes and the City of Salem's own Ordinances has a definition completely distinct from "lodging house" and

"boarding house" is further evidence that, if "Bed and Breakfasts" were intended to be subject to the statute, then such would have been specifically named.⁶ See *Bank of Am., N.A. v. Rosa*, 466 Mass. 613, 619 (2013) ("This interpretation is consistent with the statutory maxim, 'expressio unius est exclusio alterius,' meaning 'the expression of one thing in a statute is an implied exclusion of other things not included in the statute.'")⁷

The terms "bed and breakfast" and "lodging house" are both separately defined in G.L. c. 64G, § 1, a statute governing excise taxes on rooms paid for by non-owners:

⁶ It is undisputable that, at the time G.L. c. 148, § 26H was being drafted in 1986, there were clear, distinct and separate statutory definitions of "Lodging House" and "Bed and Breakfast" and the Legislature could have easily named B&Bs in § 26H if it intended to do so. See G.L. c. 64G, § 1 (1966, 14, § 25; 1967, 745; 1984, 358, § 1; 1988, 31, § 1; 2018, 337, § 6; see also Department of Revenue Letter Ruling 84-90: Bed and Breakfast Operations, attached hereto in at Addendum at 72.

⁷ See *Commonwealth v. Russ R.*, 433 Mass. 515, 521 (2001) ("The Legislature enumerated three courts in the immunity statute, but did not include the Juvenile Court. Accordingly, the Legislature's actions suggest that it intended to exclude the Juvenile Court"); *Tilman v. Brink*, 74 Mass. App. Ct. 845, 852-854 (2009) (District Court cannot award attorney's fees under G. L. c. 231, § 6F, because it is not included in statutory definition of "court" under G. L. c. 231, § 6E).

"Bed and breakfast establishment", a private owner-occupied house where not less than 4 rooms are let, a breakfast is included in the rent and all accommodations are reserved in advance.

"Lodging house", a house licensed or required to be licensed under section 23 of chapter 140 and where lodgings are rented to not less than 4 people who shall not be within the second degree of kindred to the owner or operator of such lodging house.

Without question, the Commonwealth fully believes and understands that B&Bs and Lodging Houses are fundamentally different things. The City of Salem also understands the difference and carefully defines both separately and distinctly in § 10 of its Zoning Ordinance:

Bed and breakfast establishment: Accommodations with not more than six (6) bedrooms occupied by bed and breakfast guests in **which the owner of the establishment resides**. Bed and breakfasts are intended for guest on intermittent visits, and shall not be used as long-term rental units or apartments. All parking for residents and guests shall be off-street.

"Rooming, boarding or lodging house: A house where lodgings are let to four (4) or more persons not within second degree of kindred to the person conducting it"

Salem, Massachusetts Zoning Ordinance § 10.0 (Addendum at 77.)

When asked why the Salem Fire department had never found that the Stepping Stone Inn – during its previous

32 years operation⁸ - fell within the purview § 26H, Marshall Frechette stated that he "just assumed that [his predecessors] missed it." (See RA at 89:5-11.)⁹

⁸ That the ASAB did not consider and make specific findings of fact related to the Stepping Stone Inn's 32-year history of passing fire inspections and not being required to comply with G.L. c. 148, § 26H illustrates the ASAB arbitrary and capricious nature of its decision, as well as its failure to base its decision on substantial evidence. In that regard, ASAB also failed to consider the significant burden presented by installing a sprinkler system:

Kelly Baldassarri: Our home was built in 1846, so.

Matt Baldassarri: -- putting them in old homes is a bit of, it's a bit much. It's also --

Kelly Baldassarri: It's a burden.

Matt Baldassarri: It's a financial burden, as well. I mean, we're still paying off the loans from COVID, because we had to close for COVID. So, I mean, you know, it's just, it's a lot to throw onto a small Mom-and-Pop business.

(RA at 78:9-17.)

⁹ The 32-years of non-enforcement also presents the question of whether Salem should, if § 26H is found to apply here, be estopped from enforcing § 26H against the Plaintiffs. Although generally estoppel is not usually enforced against a municipality, Plaintiff's counsel is unaware of any Massachusetts Appellate case addressing this particular issue. To the extent this Court will entertain the estoppel argument, Plaintiffs would request leave, pursuant to Superior Court Standing Order 1-96(3)(C) to supplement the record relative to the elements of estoppel: "To establish estoppel, a party must show '(1) a representation intended to induce reliance on the part of a person to whom the representation is made; (2) an act or omission by that person in reasonable reliance on the representation; and (3) detriment as a consequence of the act or omission.'" *Gattineri v. McGeary*, 24 LCR 673, 679 (2016) (citing *Reading Co-Operative Bank v. Suffolk Construction Co., Inc.*, 464 Mass. 543, 556 (2013) (quoting *Bongaards v.*

That assumption – more likely characterized as speculation – was not supported by any evidence in the record, and it is directly contradicted by Salem's own distinct and separate definitions of a "Bed and Breakfast Establishment" and a "Rooming, boarding or lodging house." In addition to his assumptions about his predecessors' actions, Marshall Frechette specifically rejected the significance of the statutorily defined buildings in play and testified that "[i]n my eyes there's no difference between a lodging house and a bed & breakfast. They're paying nightly, which makes them a lodging house." (See RA at 88:6-9.) Despite making his own interpretation of the law, Marshall Frechette oddly added that "it's not my job to interpret the law, that's what the Board is for. My job is to enforce it. And that is pretty much it." (See RA at 88:10-12.) To the extent Marshall Frechette left it to the Board to interpret the law, half of the ASAB disagreed with his interpretation and the other half committed an error of law.

Millen, 440 Mass. 10, 15 (2003)).

B. That Bed and Breakfasts, Like the Stepping Stone Inn, are Separate and Distinct from Lodging Houses Has Been Addressed by Courts of the Commonwealth.

A Bed and Breakfast, in addition to being distinctly and separately defined by the Massachusetts Legislature and Salem's local government, also is distinct from a lodging house insofar as the Stepping Stone Inn entertains guests for, at most, 7 days.¹⁰ Conversely, the term "lodging house" implies a degree of permanence in the occupancy, at least as distinguished from the transiency of hotel and motel accommodations. *Selvetti v. Building Inspector of Revere*, 353 Mass. 645, 647 (1968) (citing) *White v. Maynard*, 111 Mass. 250. *Adler v. Northern Hotel Co.* 80 F. Supp. 776, 780 (N. D. Ill.) ("To be a guest of an inn or hotel it is necessary that the person should be a transient; that is, that he should come to the inn for a more or less definite stay, for if he comes on a permanent basis, he will be deemed a boarder, lodger or tenant")). Salem's own definition specifically incorporates that critical difference between Bed and Breakfast Establishments and Lodging Houses: "Bed and breakfasts are intended for

¹⁰ Matt and Kelly live in the home and provide rooms for guest stays of up to seven (7) days. (See RA at 74:7; 77:11-19.)

guest on intermittent visits, and shall not be used as long-term rental units or apartments." Salem Zoning Ord. § 10.

In 2003, the Federal District Court (Zobel, J.) addressed the definition of "lodging house":

"A house where lodgings are let" simply mirrors the dictionary definition of "lodging house." Oxford English Dictionary Online (2003) (from the second print edition, 1989) ("A house, **other than an inn or hotel**, in which lodgings are let."); see also Selvetti v. Building Inspector of Revere, 353 Mass. 645, 646, 233 N.E.2d 915 (1968) [*25] ("A dictionary definition of . . . 'lodging house' [is] 'a house in which lodgings are let, esp. a house **other than an inn or hotel**.'"). The definition, then, turns on the meaning of "lodgings." Although the Licensing Board defines "lodgings" broadly as "a place to live," the more common and precise definition is "a room in the house of another used as a **place of residence**." Webster's, supra, at 670.

Sang Vo v. City of Boston, 2003 U.S. Dist. LEXIS 16519, *24-25 (2003) (emphasis added).

Further evidence that B&Bs are not "lodging houses" is revealed by the legislative history surrounding the need for licensing lodging houses in the first place:

The impetus for St. 1918, c. 259, by which the lodging house provisions which now appear as G. L. c. 140, §§ 22-32, were originally enacted, appears to have been concern about health and morality. When the Senate Committee on Public Health reported out the bill which led to enactment of the legislation, it noted that the bill was a partial response to a

letter from the State Department of Health urging, as part of the war effort, a campaign against venereal disease. That objective is conspicuous in the statutory text which imposes criminal penalties should a licensee: use a lodging house for immoral solicitation, immoral bargaining, or immoral conduct (G. L. c. 140, § 26); or knowingly permit occupation of a room of less than 400 square feet by a woman on different occasions within a period of thirty days with different men (*ibid.*). Sections 27, 28, and 29 have to do with keeping of registers of the true names of occupants. That the prevention of immoral conduct was a major purpose of lodging house licensing was recognized in *Maier v. Brookline*, 339 Mass. 209, 215 (1959), although the court saw the reach of the lodging house laws as extending to nursing homes, where immoral conduct of the conventional sort was less likely.

Newbury Junior College v. Brookline, 19 Mass. App. Ct. 197, 203-204 (1985).

9. That "Lodging Houses" are Separate and distinct from "Bed and Breakfasts" was Also Made Clear by the Massachusetts Department of Revenue Prior to the Enactment of G. L. c. 148, § 26H.

On October 4, 1984 - some two years before the enactment of G.L. c. 148, § 26H - the Massachusetts Department of Revenue ("DOR") published a Letter Ruling that, among other things, contains two legal rulings relevant to this case. (See Department of Revenue Letter Ruling 84-90: Bed and Breakfast Operations, attached hereto in Addendum at 72.) As stated in that Letter

Ruling, (1) "A bed-and-breakfast operation is a motel¹¹ within the meaning of Chapter 64G, Section 1(c) and Chapter 140, Section 32A" and (2) a B&B is not considered a "lodging" house as defined in Chapter 140, Section 22. (See Addendum at 72.) The DOR's findings are consistent with the definitions and common understanding of Bed and Breakfasts and lodging houses and notes the transient nature of Bed and Breakfast guests.

The DOR Letter Ruling also illustrates that the City of Salem has been improperly licensing the Stepping Stone Inn through G.L. c. 140, § 22 ("Lodging House License") when it should have been licensed through § 32A, as stated in the 1984 Letter Ruling. Although the difference in licensing has no legal impact, it may very well explain why the Stepping Stone Inn's § 22 lodging

¹¹Even if categorized as a motel, this B&B would not need to be sprinklered under some other provision of the Commonwealth's fire code, as it does not fit the height requirements, square footage requirements, and is not a nightclub. At best, a B&B in Salem would fall under the provisions of G.L. c. 148, § 26I, which requires installation of sprinklers in existing structures if and when "substantially rehabilitated." The Stepping Stone has never been substantially rehabilitated: "we have not renovated the house more than, you know, I mean, freshened it up with paint and stuff. But as far as, like, rooms, knocking things down, we haven't done anything like that." (RA 81:8-11.) Further, it is unclear whether the City of Salem has adopted G.L. c. 148, § 26I, for enforcement purposes.

house license specifically states: "19 Washington Square
- For use only as a Bed & Breakfast per Licensing Board."
(See RA at 20; 76:23-25.) Without question, the City of
Salem would not have even allowed the Stepping Stone Inn
to operate as a "lodging house" based upon the specific
language of its license.

10. Evidence that Coach House Inn and Salem Inn
Have Sprinklers is Not Dispositive on the Issue
of Whether Bed and Breakfasts Are Subject to
Purview of G.L. c. 148, § 26H.

Although ASAB does not specifically note its
reliance on the City's evidence related to the Coach
House Inn and the Salem Inn having fire sprinkler
systems, any reliance on that evidence further
demonstrates ASAB's error of law. First, with respect
to the Salem Inn, the evidence revealed that it had a
fire sprinkler system installed sometime in the 1990s.
(See RA at 91:12-14.) Additionally, there was no
testimony that the Salem Inn's installation was the
result of any enforcement action by Salem Fire through
G.L. c. 148, § 26H or any other fire-sprinkler statute
or whether the Salem Inn installed the system on its own
accord. Most notably, however, the Salem Inn is not a
"Bed and Breakfast," as it is not owner occupied and has

48 rooms spread over three different buildings.¹² (See RA at 91:12-14.)

Reference to the Coach House Inn is likewise unavailing, as it, too, is not a bed and breakfast: "I raised my hand. For sake of clarity, I just wanted to point out that the Coach House Inn is not a bed & breakfast because they don't live on the premises, they don't serve breakfast, they have 11 rooms. I don't want to be lumped in with the Coach House Inn, in this particular situation." (See RA at 91:12-14.) Beyond it not being a Bed and Breakfast, there was no evidence presented as to why the Coach House Inn agreed to install a sprinkler system. All we know is that they chose not to fight the City: "Yes, we did have an issue, and the Coach House Inn was cited. And they did bring an appeal, we have settled that, and they are in the process." (See RA at 90:19-21.) There was no evidence of the terms of the settlement agreement between the City and the Coach

¹² Given the nature of the Salem Inn's buildings, it's more likely that it was subject fire sprinkler installation by operation of M.G.L. c. 148, § 26A½ (retroactive sprinkler installation in buildings or structures over 70' feet high and built prior to January 1, 1975) or M.G.L. c. 148, § 26G (requires sprinklers in certain non-residential buildings that, in the aggregate, consist of over 7,500 s.f. in floor area).

House Inn, nor was there evidence of why an agreement was entered instead of the Coach House Inn appealing to ASAB. For all we know the Coach House Inn could have blown the date by which to appeal to ASAB.

11. The ASAB's October 27, 2020 Decision Relative to A Building, Which is Not Used as a B&B, Cannot Support its Legal Conclusions Here.

Made part of the record before the ASAB was its own October 27, 2020, decision, Docket #2020-05 (4 Prospect Ave., Onset, MA), which has no bearing on the issue before ASAB here and, to the extent it was relied upon, further illustrates ASAB's error of law. In that case, the Appellant owned a 4-story, 4-unit apartment building in Onset, Massachusetts, in which she resided but rented the remaining units to long-term - not transient - tenants. All the rented units had their own kitchens. The structure in the Onset case was not a "Bed and Breakfast" in any way and it would have been an error of law for any ASAB member to rely on it. Certainly, because 3 ASAB members voted in Matt's and Kelly's favor, those Board members clearly did not believe the decision in the Onset matter had any bearing on the present case.

CONCLUSION

Based upon the foregoing, Appellant requests that this Court reverse the Order of the Lower Court and

require that the Plaintiff-Appellant need not install a sprinkler system at the subject property.

RESPECTFULLY SUBMITTED,
MATTHEW BALDASARRI AND KELLY
BALDASARRI D/B/A STEPPING
STONE INN

By their attorney,

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Dated: January 26, 2026

CERTIFICATE PURSUANT TO MASS. R. APP. P. 16(k)

I hereby certify that the foregoing brief complies with the Rules of Appellate Procedure that pertain to the filing of briefs, including, but not limited to, Mass. R. App. 16(a)(6), Mass. R. App. P. 16(e), Mass. R. App. P. 16(f), Mass. R. App. P. 16(h), Mass. R. App. P. 18, Mass. R. App. P. 20 and the Interim Electronic Filing Rules for Pilot Courts.

/s/ Keith L. Sachs

CERTIFICATE OF SERVICE

I, Keith L. Sachs, hereby certify that on January 26, 2026, I filed the attached document through the Electronic Filing Service Provider (Provider) for electronic service to the following registered User, who represents the Appellees :

Assistant City Solicitor
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/s/ Keith L. Sachs

ADDENDUM

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2477CV1116

MATT BALDASSARRI d/b/a STEPPING STONE INN, et al.

vs.

AUTOMATIC SPRINKLER APPEALS BOARD, et al.

INTRODUCTION

This is an action for judicial review of a decision by an administrative agency, the Automatic Sprinkler Appeals Board (the “Board”), which affirmed an order of the Salem Fire Department (the “Fire Department”)¹ requiring the plaintiffs, Matt and Kelly Baldassarri, d/b/a Stepping Stone Inn (collectively, the “Plaintiffs” or “Stepping Stone”), to install automatic sprinklers. G. L. c. 30A, § 14. The case is before this court on the parties’ cross-motions for judgment on the pleadings. The City of Salem (the “City”) is also a party and filed an opposition to the plaintiff’s motion for judgment on the pleadings and cross-motion for judgment on the pleadings. For the reasons outlined below, the Plaintiffs’ motion for judgment on the pleadings (Paper No. 8) is **DENIED**, the Board’s cross-motion for judgment on the pleadings (Paper No. 8.2) is **ALLOWED**, and the City’s cross-motion for judgment on the pleadings (Paper Nos. 8.3 and 8.4) is **ALLOWED**.

BACKGROUND

The Plaintiffs own the Stepping Stone Inn, located at 19 Washington Square, Salem, Massachusetts (the “property”). A Salem Lodging House License issued to Stepping Stone on January 1, 2024. By letter dated May 29, 2024 (“notice”), the Fire Marshal for the City, Gerard

¹ The “Board” and the “Fire Department” will also be referred to collectively as the defendants.

Frechette ("Frechette") notified the Plaintiffs that the property was not in compliance with G. L. c. 148, § 26H (the "statute"), which required the property to have a sprinkler system. The statute, which was enacted in 1986, states, in relevant part:

In any city or town which accepts the provisions of this section, every lodging house or boarding house shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code. . . . The head of the fire department shall enforce the provisions of this section.

For the purposes of this section "lodging house" or "boarding house" shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth. . . (emphasis added).

G. L. c. 148, § 26H.

The previous owners of the property ran the property as a bed and breakfast for twenty-two years and were never required to install a sprinkler system. Following receipt of the notice by Fredette that a sprinkler system had to be installed on the property, the plaintiffs timely appealed that decision to the Board. On September 18, 2024, the Board conducted a hearing. Following the hearing, the Board remained equally divided² on the appeal of Fredette's notice and the Fire Department's original notice requiring the installation of sprinklers remained intact.³

DISCUSSION

Pursuant to G. L. c. 30A, this court's review of the Board's decision is limited and deferential to the expertise of the administrative agency. The court may reverse, remand, or modify the decision only if it was "(a) in violation of constitutional provisions; or (b) in excess

² Three board members opposed upholding the notice of the Fire Department and three board members voted in favor of upholding the notice.

³ On October 1, 2024, the Board issued an "Automatic Sprinkler Appeals Board Decision" reflecting its findings.

of statutory authority or jurisdiction of the agency; or (c) based upon an error of law; or (d) made upon unlawful procedure; or (e) unsupported by substantial evidence; or (f) unwarranted by facts found by the court on the record; . . . or (g) arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.” G. L. c. 30A, § 14(7). In reviewing the Board’s decision, the court must give “due weight to the experience, technical competence and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.” Wilson v. Department of Social Servs., 65 Mass. App. Ct. 739, 745 (2006), quoting G. L. c. 30A, § 14(7).

As pointed out by the Board, the “Inn does not argue that the Board erred in concluding that its tie vote precluded the Board from acting on the Inn’s appeal, leaving the underlying order of the Fire Department intact. Instead, the Inn argues that the Fire Department’s original statutory interpretation of Section 26H was incorrect and asks this court to modify the order accordingly. In essence, the Inn asks this Court to treat the Fire Department’s order as the decision subject to judicial review, which the Board agrees is appropriate in this case.” (Paper 8.2 at p. 6).

The crux of the Plaintiffs’ claim is that it was an error of law for the Fire Department to conclude that G. L. c. 148, § 26H, applies to the property and for the Board to affirm that decision. The Plaintiffs argue that this conclusion is wrong because the property is a “bed and breakfast” establishment and not a “lodging house” or “boarding house.” The Plaintiffs agree that the property lets rooms to six or more persons not within the second degree of kindred to the person conducting it. However, Stepping Stone argues that because it is a “bed and breakfast” and not a “lodging house,” as defined in other statutes, it does not have to comply with the statute and install sprinklers. (Paper 8.1 at pp. 12-18).

In Massachusetts Sober House Corp. v. Automatic Sprinkler Appeals Bd., the Appeals Court reasoned that the Board’s conclusion that a two-story sober home which is “occupied by six or more persons not within the second degree of kindred to the person conducting it . . . is neither a fraternity, a dormitory, nor a rest home or group residence regulated by the agencies of the Commonwealth” met the “definition of lodgings to let, particularly in the context of a statute designed to provide fire protection rather than defined the legal status of a building’s occupants.” 66 Mass. App. Ct. 701, 705 (2006). The court agrees with the City’s argument that the Plaintiffs’ reliance on definitions of “lodging house” and “bed and breakfasts” in statutes other than Chapter 148 is misguided. (Paper no. 8.4 at pp. 8-10). The court declines to look to definitions in unrelated statutes where G. L. c. 148, § 26H, specifically defines a “lodging or boarding house” and Stepping Stone fits that definition as outlined above. Indeed, the Appeals Court noted in Massachusetts Sober House Corp. that the Board emphasized that it “has consistently determined that the provisions of [G.L. c. 148, § 26H, apply] to all houses that fit the criteria stated in [the] statute.” Id. at 704.

ORDER

For the reasons stated above, the Plaintiffs’ motion for judgment on the pleadings (Paper No. 8) is **DENIED**, the Board’s cross-motion for judgment on the pleadings (Paper No. 8.2) is **ALLOWED**, and the City’s cross-motion for judgment on the pleadings (Paper Nos. 8.3 and 8.4) is **ALLOWED**. The Board’s decision affirming the ruling of Fire Department requiring the plaintiffs’ to install a sprinkler system is **AFFIRMED**.


Kathleen M. McCarthy-Neyman
Justice of the Superior Court

DATE: October 24, 2025

ALM GL ch. 30A, § 14

Current through Chapter 70 of the 2025 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE III LAWS RELATING TO STATE OFFICERS (Chs. 29 - 30B) > TITLE III LAWS RELATING TO STATE OFFICERS (Chs. 29 — 30B) > Chapter 30A State Administrative Procedure (§§ 1 — 25)

§ 14. Appeals from Final Decisions of Agencies in Adjudicatory Proceedings.

Except so far as any provision of law expressly precludes judicial review, any person or appointing authority aggrieved by a final decision of any agency in an adjudicatory proceeding, whether such decision is affirmative or negative in form, shall be entitled to a judicial review thereof, as follows:—

Where a statutory form of judicial review or appeal is provided such statutory form shall govern in all respects, except as to standards for review. The standards for review shall be those set forth in paragraph (7) of this section, except so far as statutes provide for review by trial de novo. Insofar as the statutory form of judicial review or appeal is silent as to procedures provided in this section, the provisions of this section shall govern such procedures.

Where no statutory form of judicial review or appeal is provided, judicial review shall be obtained by means of a civil action, as follows:

- (1) Proceedings for judicial review of an agency decision shall be instituted in the superior court for the county (a) where the plaintiffs or any of them reside or have their principal place of business within the commonwealth, or (b) where the agency has its principal office, or (c) of Suffolk. The court may grant a change of venue upon good cause shown. The action shall, except as otherwise provided by law, be commenced in the court within thirty days after receipt of notice of the final decision of the agency or if a petition for rehearing has been timely filed with the agency, within thirty days after receipt of notice of agency denial of such petition for rehearing. Upon application made within the thirty-day period or any extension thereof, the court may for good cause shown extend the time.
- (2) Service shall be made upon the agency and each party to the agency proceeding in accordance with the Massachusetts Rules of Civil Procedure governing service of process. For the purpose of such service the agency upon request shall certify to the plaintiff the names and addresses of all such parties as disclosed by its records, and service upon parties so certified shall be sufficient. All parties to the proceeding before the agency shall have the right to intervene in the proceeding for review. The court may in its discretion permit other interested persons to intervene.
- (3) The commencement of an action shall not operate as a stay of enforcement of the agency decision, but the agency may stay enforcement, and the reviewing court may order a stay upon such terms as it considers proper. Notwithstanding the foregoing, if the sex offender registry board issues a stay of a final classification in a sex offender registry board proceeding, then such stay shall be for not more than 60 days but if a court issues a stay of a final classification in a court appeal held pursuant to [section 178M of chapter 6](#), then such hearing shall be expedited and such stay shall be for not more than 60 days, without written findings and good cause shown.
- (4) The agency shall, by way of answer, file in the court the original or a certified copy of the record of the proceeding under review. The record shall consist of (a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties. The expense of preparing the record may be assessed as part of the costs in the case, and the court may, regardless of the outcome of the case, assess any one unreasonably

refusing to stipulate to limit the record, for the additional expenses of preparation caused by such refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court.

(6) If application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material to the issues in the case, and that there was good reason for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and decision by reason of such additional evidence and shall file with the reviewing court, to become part of the record, the additional evidence, together with any modified or new findings or decision.

(7) The court may affirm the decision of the agency, or remand the matter for further proceedings before the agency; or the court may set aside or modify the decision, or compel any action unlawfully withheld or unreasonably delayed, if it determines that the substantial rights of any party may have been prejudiced because the agency decision is—

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the agency; or
- (c) Based upon an error of law; or
- (d) Made upon unlawful procedure; or
- (e) Unsupported by substantial evidence; or
- (f) Unwarranted by facts found by the court on the record as submitted or as amplified under paragraph (6) of this section, in those instances where the court is constitutionally required to make independent findings of fact; or
- (g) Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

The court shall make the foregoing determinations upon consideration of the entire record, or such portions of the record as may be cited by the parties. The court shall give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.

If the court finds that the action of the appointing authority in discharging, removing, suspending, laying off, lowering in rank or compensation or abolishing his position, or the action of the commission confirming the action taken by the appointing authority, was not justified, the employee shall be reinstated in his office or position without loss of compensation and the court shall assess reasonable costs against the employer.

History

1954, 681, § 1; 1957, 193, § 1; 1968, 637, § 1; 1973, 1114, § 3; 1976, 411, §§ 1, 2; [1998, 463, § 33](#); [2015, 108, § 1](#), effective January 25, 2016.

Annotations

Notes

Codification

Acts 1954, 681, § 1 enacted this section.

Amendment Notes

The 1957 amendment, in the third sentence of clause (1), inserted “except as provided in section thirty–two of chapter six”.

The 1968 amendment, in the last paragraph, deleted the reference to the transferring a person holding public office or having public employment from his or her office or employment without that person’s consent.

The 1973 amendment, rewrote this section to conform it to the new Massachusetts Rules of Appellate Procedure.

The 1976 amendment, by § 1, substituted “commenced” for “filed” in clause (1); and by § 2, rewrote the first sentence of clause (2).

The 1998 amendment, effective Jan 14, 1999, in clause (1) of the second undesignated paragraph, substituted “otherwise provided by law” for “provided in section thirty–two of chapter six”.

The 2015 amendment, effective Jan 25, 2016, added the second sentence of (3).

Notes to Decisions

1.In general

2.Relation to other laws

3.Decisions reviewable

4.Immunity

5.Stay of decisions

6.Notice

7.Petition

8.Jurisdiction

9.Standing

10.Hearing

11.Scope of review

12.Arbitrary and capricious review

13.—Agency procedure

14.Statutory interpretation

15.—Support in findings

16.—Substantial evidence

17.—Error of law

ALM GL ch. 64G, § 1

Current through Chapter 70 of the 2025 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE IX TAXATION (Chs. 58 - 65C) > TITLE IX TAXATION (Chs. 58 — 65C) > Chapter 64G Room Occupancy Excise (§§ 1 — 18)

§ 1. Definitions.

As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

“Bed and breakfast establishment”, a private owner-occupied house where not less than 4 rooms are let, a breakfast is included in the rent and all accommodations are reserved in advance.

“Bed and breakfast home”, a private owner-occupied house where not more than 3 rooms are let, a breakfast is included in the rent and all accommodations are reserved in advance.

“Commissioner”, the commissioner of revenue.

“Hosting platform”, a service through a digital platform, third-party website, software, online-enabled application, mobile phone application or some other, similar electronic process that allows: (i) an operator to advertise, list or offer the use of an accommodation subject to the excise under this chapter in exchange for rent; (ii) an operator to collect the payment of rent on an accommodation; and (iii) a person to arrange, book, reserve or rent an accommodation.

“Hotel”, a building used for the feeding and lodging of guests licensed or required to be licensed under [section 6 of chapter 140](#).

“Intermediary”, a person or entity, other than an operator, that facilitates the sale, use or possession of an occupancy and charges a room charge to the general public; provided, however, that the term “facilitates” shall include a person or entity that brokers, coordinates or in any other way arranges for the purchase, sale, use or possession of occupancies by the general public; provided further, that the term “intermediary” shall include a hosting platform and operator’s agent.

“Lodging house”, a house licensed or required to be licensed under [section 23 of chapter 140](#) and where lodgings are rented to not less than 4 people who shall not be within the second degree of kindred to the owner or operator of such lodging house.

“Motel”, a building or portion of a building in which a person is lodged for hire with or without meals and that is licensed or required to be licensed under [section 32B of chapter 140](#); provided, however, that a “motel” shall not include a hotel or lodging house.

“Occupancy”, the use or possession or the right to the use or possession of a room in a bed and breakfast establishment, hotel, lodging house or motel designed and normally used for sleeping and living purposes for a period of not more than 90 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee, or the use or possession or the right to the use or possession of a room in a short term rental normally used for sleeping and living purposes for a period of not more than 31 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee; provided, however, that “occupancy” shall include the right to the use or possession of the furnishings or the services and accommodations, including breakfast in a bed and breakfast establishment, accompanying the use and possession of such a room.

“Occupant”, a person who uses, possesses or has a right to use or possess a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel for rent under a lease, concession, permit, right of access, license or agreement.

“Operator”, a person operating a bed and breakfast establishment, hotel, lodging house, short-term rental or motel in the commonwealth including, but not limited to, the owner or proprietor of such premises, the lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such bed and breakfast establishment, hotel, lodging house, short-term rental or motel.

“Operator’s agent”, a person who on behalf of an operator of a bed and breakfast establishment, hotel, motel, short-term rental or lodging house: (i) manages the operation or upkeep of a property offered for rent; or (ii) books reservations at a property offered for rent; provided, however, that an “operator’s agent” shall include, but not be limited to, a property manager, property management company or real estate agent.

“Person”, an individual, partnership, trust or association, with or without transferable shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver, trustee, assignee or referee and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of individuals acting as a unit.

“Professionally-managed unit”, 1 of 2 or more short-term rental units that are located in the same city or town, operated by the same operator and are not located within a single-family, two-family or three-family dwelling that includes the operator’s primary residence.

“Rent”, the total consideration paid by or on behalf of an occupant, including any service, cleaning or other charge, to an operator or an intermediary collecting and remitting the excise on behalf of an operator under section 13 in exchange for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature; provided, however, that “rent” shall not include: (i) bona fide refundable security deposits; (ii) any amount paid by an occupant that is included in the taxable gross receipts of the operator under chapter 64H or 64I where the operator is a vendor for purposes of those chapters; or (iii) amounts paid by an occupant to an operator for services offered by the operator on similar terms to non-occupants in the regular course of the operator’s business.

“Short-term rental”, an owner-occupied, tenant-occupied or non-owner occupied property including, but not limited to, an apartment, house, cottage, condominium or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast establishment, where: (i) at least 1 room or unit is rented to an occupant or sub-occupant; and (ii) all accommodations are reserved in advance; provided, however, that a private owner-occupied property shall be considered a single unit if leased or rented as such.

History

1966, 14, § 25; 1967, 745; 1984, 358, § 1; 1988, 31, § 1; [2018, 337, § 6](#), effective March 28, 2019.

Annotations

Notes

Editor’s Notes

[Acts 2018, 337, § 5A](#) (as enacted by [2019, 5 § 37](#)) provides:

Sections 6 to 8 [of [2018, 337](#)] inclusive, shall take effect for transfers of occupancies in bed and breakfast establishments, hotels, lodging houses and motels beginning on or after July 1, 2019.

[Acts 2019, 5, § 32](#) provides:

SECTION 32. [Section 6 of chapter 337 of the acts of 2018](#) is hereby amended by striking out, in [section 1 of chapter 64G](#) of the General Laws, the definition of “Rent” and inserting in place thereof the following definition:

“Rent”, the total consideration paid by or on behalf of an occupant, including any service, cleaning or other charge, to an operator or an intermediary collecting and remitting the excise on behalf of an operator under section 13 in exchange for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature; provided, however, that “rent” shall not include: (i) bona fide refundable security deposits; (ii) any amount paid by an occupant that is included in the taxable gross receipts of the operator under chapter 64H or 64I where the operator is a vendor for purposes of those chapters; or (iii) amounts paid by an occupant to an operator for services offered by the operator on similar terms to non-occupants in the regular course of the operator’s business.

Amendment Notes

The 1967 amendment rewrote subdivisions (a), (b), and (c) to extend the room occupancy excise to include accommodations which are required to be licensed but which are not licensed as such.

The 1984 amendment rewrote the definition of “Lodging house” in clause (b).

The 1988 amendment made technical changes throughout the section, in the opening paragraph, substituted “As” for “When” and changed “otherwise requires” to “requires otherwise”, in the definition of “Motel”, substituted “thereof” for “of a building”, rewrote the definitions of “Operator”, “Occupancy” and “Occupant” to include the reference to “bed and breakfast”, and added the definitions of “Bed and breakfast establishment” and “Bed and breakfast home”. Section 7 provides:

SECTION 7. The provisions of chapter sixty-four G of the General Laws, in effect prior to the effective date of this act, shall not apply to the transfer of room occupancies in a bed and breakfast home, as defined in section one of this act, made prior to the effective date of this act; provided, however, that such provisions shall continue to apply to transfers made prior to the effective date of this act if the excise imposed by said chapter sixty-four G was collected by such bed and breakfast home from the occupant.

The 1989 amendment in the definition of “Occupancy”, in clause (g), corrected “period or ninety” to “period of ninety”.

The 2018 amendment, effective March 28, 2019, rewrote this section.

Notes to Decisions

ALM GL c 64G, by its terms, does not impose a room occupancy excise on rent paid by individuals who remain longer than 90 consecutive days as guests in a hotel, motel, lodging house or other similar establishment listed in the definition of “occupancy.” Therefore, *830 Mass. Code Regs. § 64G.1.1*, which applies a contrary rule, is invalid. [Lowney v. Comm’r of Revenue, 67 Mass. App. Ct. 718, 856 N.E.2d 879, 2006 Mass. App. LEXIS 1152 \(Mass. App. Ct. 2006\)](#).

Under the plain language of [ALM GL c 64G, §§ 1 and 3](#), taxpayers were not obliged to collect room occupancy excise taxes for the first 90 days of occupancy from guests who stayed at their motel for more than 90 days. Therefore, the Massachusetts Appellate Tax Board erred by denying their request for a tax abatement. [Lowney v. Comm’r of Revenue, 67 Mass. App. Ct. 718, 856 N.E.2d 879, 2006 Mass. App. LEXIS 1152 \(Mass. App. Ct. 2006\)](#).

Commissioner of Revenue, under Section 182 of Chapter 184 of Acts of 2002, has established 2-month “amnesty” program beginning on October 1, 2002 and ending on December 2, 2002: this Technical Information Release examines such amnesty program, including, inter alia, subjects of eligibility in program, responsible persons, payment requirements, scope of amnesty, verification and assessment, abatements, disclosure, and forms. Mass Dept of Rev TIR 02-14.

Opinion Notes

Notes to Opinions

Attorney General Opinions

Commissioner of corporations and taxation cannot require payment of room occupancy excise tax on consideration charged for personal occupancy of any room or building in city or town when such city or town does not require license in accordance with [ALM GL c 140, §§ 6, 23](#), or [32B](#). 1966–1967 Mass. Op. Att’y Gen. 34.

Commissioner of corporations and taxation has no authority under this section to determine whether city or town should require license for hotel, lodging house, or motel. 1966–1967 Mass. Op. Att’y Gen. 34.

Research References & Practice Aids

Research References and Practice Aids

Law Reviews

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Legal Information Institute’s Income Tax Overview, see www.law.cornell.edu/wex/income_tax

Legal Information Institute’s Property Tax Overview, see www.law.cornell.edu/wex/property_tax

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ALM GL ch. 140, § 22

Current through Chapter 70 of the 2025 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 — 148A) > Chapter 140 Licenses (§§ 1 — 206)

§ 22. Lodging House.

“Lodging house”, as used in sections twenty-two to thirty-one, inclusive, shall mean a house where lodgings are let to four or more persons not within second degree of kindred to the person conducting it, and shall include fraternity houses and dormitories of educational institutions, but shall not include dormitories of charitable or philanthropic institutions or convalescent or nursing homes licensed under section seventy-one of chapter one hundred and eleven or rest homes so licensed, or group residences licensed or regulated by agencies of the commonwealth.

History

1918, 259, § 1; 1960, 740; 1965, 171; 1973, 481.

Annotations

Notes

Amendment Notes

The 1960 amendment inserted the words “convalescent or nursing homes licensed under section seventy-one of chapter one hundred and eleven or rest homes so licensed or,”.

The 1965 amendment rewrote this section so as to bring fraternity houses and dormitories of educational institutions within the definition of “lodging house”.

The 1973 amendment reduced from 5 to 4 the number of persons to whom lodgings may be let without the house being within the definition of “lodging house”, and brought group residences licensed or regulated by agencies of the commonwealth within the definition.

Notes to Decisions

While the purpose of the provisions of ALM GL c 140, §§ 22–32 may be largely the prevention of immoral conduct, the definition of “lodging house” in the instant section is broad enough to include nursing and convalescent homes run for profit, the requirements of §§ 23–32 are not necessarily plainly inappropriate to such homes, and in the absence of any statutory provision exempting such establishments from the requirements of §§ 23–32, they must be taken to be within the scope of the definition of this section, and the fact that a particular house provided lodging as well as nursing and convalescent care to persons of advanced age who were convalescing from illness did not

§ 22. Lodging House.

make the premises any less a lodging house within the instant section. [*Maier v. Brookline*, 339 Mass. 209, 158 N.E.2d 320, 1959 Mass. LEXIS 789 \(Mass. 1959\)](#).

Upon an issue as to whether a building containing 10 bedrooms and 2 utility rooms on a basement floor, and 12 bedrooms on each of 2 upper floors was a lodging house for purposes of a zoning ordinance or a motel, it was stated that the dictionary definition of "lodging" is "accommodation in a house, esp. in rooms for rent" and the definition of "lodging house" is "a house in which lodgings are let, esp. a house other than an inn or hotel". Accordingly the court determined, referring to the instant section, that the house was adapted for use as lodging house but that whether it would be used as such could not be determined until the building was actually put into use. [*Selvetti v. Building Inspector of Revere*, 353 Mass. 645, 233 N.E.2d 915, 1968 Mass. LEXIS 706 \(Mass. 1968\)](#).

A lodging house implies a degree of permanence in its occupancy at least as distinguished from the transient occupancy of hotel and motel accommodations, this distinction being supported by the definition of lodging house in the instant section as compared with the definition of motel in [*ALM GL c 140, § 32A*](#), as being a building which provides sleeping accommodations for transient motorists, and whether a building which was adapted for use either as a lodging house or a motel was used as a lodging house for zoning purposes would depend on whether most occupants would remain indefinitely and for extended periods of time or on whether rooms would be provided for transient motorists or other travelers for short periods of time. [*Selvetti v. Building Inspector of Revere*, 353 Mass. 645, 233 N.E.2d 915, 1968 Mass. LEXIS 706 \(Mass. 1968\)](#).

A building with respect to which an airline and an airline pilots' association had made arrangements on a continuing basis for rotating occupancy of certain rooms by flight crews based elsewhere, as to which flight crews of another air company had a similar but less formal continuing arrangement, and in which rooms were occupied on a seasonal basis by certain horse racing personnel, was consistent with ordinary concepts of a lodging house. [*Selvetti v. Building Inspector of Revere*, 356 Mass. 720, 249 N.E.2d 744, 1969 Mass. LEXIS 887 \(Mass. 1969\)](#).

Judgments enjoining the owners from allowing four unrelated adults to occupy each of their apartments could not stand because the apartments as occupied were not "lodgings" so as to render the owners' properties lodging houses under [*ALM GL c 140, § 22*](#). [*City of Worcester v. College Hill Props., LLC*, 465 Mass. 134, 987 N.E.2d 1236, 2013 Mass. LEXIS 337 \(Mass. 2013\)](#).

Definition of "lodging house" in [*ALM GL c 140 § 22*](#) did not shed light on meaning of words as used in town zoning bylaw. [*Brotherhood of Alpha Upsilon, Inc. v. Zoning Bd. of Appeals*, 15 Mass. App. Ct. 991, 448 N.E.2d 69, 1983 Mass. App. LEXIS 1309 \(Mass. App. Ct. 1983\)](#).

Dormitories of educational institutions fall within definition of "lodging houses." [*Trustees of Boston University v. Licensing Bd. of Boston*, 24 Mass. App. Ct. 475, 510 N.E.2d 283, 1987 Mass. App. LEXIS 2038 \(Mass. App. Ct. 1987\)](#).

City licensing commission could not deny lodging house license on general grounds of adverse impact on neighborhood. [*Trustees of Paul Revere Realty Trust v. Revere License Com.*, 29 Mass. App. Ct. 11, 556 N.E.2d 1038, 1990 Mass. App. LEXIS 370 \(Mass. App. Ct. 1990\)](#).

Denial of applicant's request for a lodging house license under [*ALM GL c 140, §§ 22*](#) et seq. was arbitrary and capricious as the Leominster License Commission: (1) improperly focused on the compatibility of the proposed lodging house with the neighborhood; (2) lacked sufficient evidence to determine that applicant had not demonstrated good character by failing to apply for a license before beginning construction, failing to meet numerous of the Building Inspector's requirements, and renting out rooms in excess of that allowed without a license; (3) did not support its claim that the applicant failed to provide truthful answers to City officials; and (4) did not support its claim that alleged dumping at his projects in other municipalities was done or not addressed by the applicant. [*Jones v. Leominster License Comm'n*, 2012 Mass. Super. LEXIS 171 \(Mass. Super. Ct. May 16, 2012\)](#).

§ 22. Lodging House.

Where property owners alleged that a city's actions in enforcing the Lodging House Act constituted a regulatory taking without just compensation, in violation of the Fifth and Fourteenth Amendments, the property owners' conclusory statement that they were not provided postdeprivation remedies was insufficient to satisfy the second prong of the ripeness requirement; the property owners' substantive due process, equal protection, and state law claims were time-barred. [*College Hill Props., LLC v. City of Worcester*, 135 F. Supp. 3d 10, 2015 U.S. Dist. LEXIS 132976 \(D. Mass. 2015\)](#), *aff'd*, [*821 F.3d 193, 2016 U.S. App. LEXIS 8670 \(1st Cir. Mass. 2016\)*](#).

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ALM GL ch. 140, § 32A

Current through Chapter 70 of the 2025 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > **PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182)** > **TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A)** > **TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 — 148A)** > **Chapter 140 Licenses (§§ 1 — 206)**

§ 32A. Motels, Campgrounds and Manufactured Housing Communities.

No person shall conduct, control, manage or operate, directly or indirectly, any recreational camp, overnight camp or cabin, motel or manufactured housing community unless he is the holder of a license granted under the following section. The term “motel”, as used in section twenty-seven, in this section, and in sections thirty-two B to thirty-two E, inclusive, shall be construed to mean any building or group of buildings which provide sleeping accommodations for transient motorists and which is not licensed as an inn.

History

1939, 416; 1950, 326, § 3; 1954, 134, § 3; 1964, 592, § 3; 1965, 426; [1991, 481, § 14](#).

Annotations

Notes

Amendment Notes

The 1950 amendment replaced the words “trailer camp” with the words “trailer coach park”.

The 1954 amendment made this section applicable to motels.

The 1964 amendment rewrote this section so as to change “trailer coach park” to “mobile home park”.

The 1965 amendment added the second sentence.

The 1991 amendment, effective Dec 31, 1991, in the first sentence, substituted “manufactured housing community” for “mobile home park”.

Notes to Decisions

ALM GL c 140, §§ 32A–32L do not constitute a zoning regulation. [Granby v. Landry, 341 Mass. 443, 170 N.E.2d 364, 1960 Mass. LEXIS 626 \(Mass. 1960\)](#).

ALM GL c 140, §§ 32A–32L do not purport to preempt the field of regulation of trailers. [Granby v. Landry, 341 Mass. 443, 170 N.E.2d 364, 1960 Mass. LEXIS 626 \(Mass. 1960\)](#).

§ 32A. Motels, Campgrounds and Manufactured Housing Communities.

Trailers regulated by ALM GL c 140, §§ 32A–32L are generally recognized as subject to regulation under the police power. [*Granby v. Landry*, 341 Mass. 443, 170 N.E.2d 364, 1960 Mass. LEXIS 626 \(Mass. 1960\)](#).

Under [*ALM GL c 140, § 5*](#), a hotel, for licensing purposes, requires an innholder's license under which it must provide both lodging and food whereas a motel is defined in [*ALM GL c 140, § 32A*](#) as “any building or group of buildings which provide sleeping accommodations for transient motorists and which is not licensed as an inn,” and hotels are not within the group of establishments which by §§ 32A–32L are subject to control with respect to water supply, sanitary conditions and sewage disposal. [*Gallagher v. Board of Appeals*, 351 Mass. 410, 221 N.E.2d 756, 1966 Mass. LEXIS 666 \(Mass. 1966\)](#).

Motel not included with term “hotel” in zoning bylaw. See [*Gallagher v. Board of Appeals*, 351 Mass. 410, 221 N.E.2d 756, 1966 Mass. LEXIS 666 \(Mass. 1966\)](#).

A lodging house implies a degree of permanence in its occupancy at least as distinguished from the transient occupancy of hotel and motel accommodations, this distinction being supported by the definition of lodging house in [*ALM GL c 140 § 22*](#) as compared with the definition of motel in this section, as being a building which provides sleeping accommodations for transient motorists, and whether a building which was adapted for use either as a lodging house or a motel was used as a lodging house for zoning purposes would depend on whether most occupants would remain indefinitely and for extended periods of time or on whether rooms would be provided for transient motorists or other travelers for short periods of time. [*Selvetti v. Building Inspector of Revere*, 353 Mass. 645, 233 N.E.2d 915, 1968 Mass. LEXIS 706 \(Mass. 1968\)](#).

A nonconforming use of property for trailer homes would not be destroyed for zoning purposes if the owner failed to obtain a license under ALM GL c 140, §§ 32A–32L, which latter statute requires a license for such use but is not a zoning regulation, where the defect, assuming that one existed, could be easily remedied by the obtaining of the license. [*Board of Selectmen v. Monson*, 355 Mass. 715, 247 N.E.2d 364, 1969 Mass. LEXIS 862 \(Mass. 1969\)](#).

Legislative intent of Manufactured Housing Community Act is to protect elderly and disabled consumers who live on low incomes and in manufactured houses. [*Danuisis v. Longo*, 48 Mass. App. Ct. 254, 720 N.E.2d 470, 1999 Mass. App. LEXIS 1285 \(Mass. App. Ct. 1999\)](#).

Landowner who subdivided 33-acre tract of land into 49 lots and leased seventeen lots to tenants who placed manufactured homes on them was managing or operating manufactured housing community and was required to obtain license from board of health. [*Danuisis v. Longo*, 48 Mass. App. Ct. 254, 720 N.E.2d 470, 1999 Mass. App. LEXIS 1285 \(Mass. App. Ct. 1999\)](#).

While a lessee's claims regarding the alleged breach of an oral contract were rendered obsolete by prior summary process proceedings by lessors resulting in eviction, alternatively, the lessee's claim that the lessors violated ALM GL c 140, §§ 32A–32S and Mass. Regs. Code tit. 940, § 10 failed as the lessee was not a member of one of the protected groups, elderly persons and families of low and moderate means. Therefore, any claim alleging a violation of ALM GL c 93A on that basis also failed, although a violation of ALM GL c 140, §§ 32A–32S could constitute a deceptive trade practice. [*Richard v. Caplis*, 2005 Mass. Super. LEXIS 568 \(Mass. Super. Ct. Nov. 2, 2005\)](#).

Owner in time-sharing condominium where furnished units are owned for 31 one-week intervals from April through November, and where each one-week interval has its own recorded deed and each owner of each interval pays real estate taxes, need not collect a room occupancy excise when such owner rents out his interval personally or through a real estate agent; a time-sharing condominium does not possess the characteristics of a motel and is thus not subject to a room occupancy excise. Mass. Mass Dept of Rev L R 84-84, [*1984 Mass. Tax LEXIS 338*](#).

§ 32A. Motels, Campgrounds and Manufactured Housing Communities.

End of Document

ALM GL ch. 148, § 26A½

Current through Chapter 70 of the 2025 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 — 148A) > Chapter 148 Fire Prevention (§§ 1 — 60)

§ 26A½. Automatic Sprinklers in Certain Buildings; Exceptions; Appeals; Compliance Schedule.

Every building or structure of more than seventy feet in height above the mean grade and constructed prior to January first, nineteen hundred and seventy-five, shall be protected with an adequate system of automatic sprinklers in accordance with the provisions of the state building code; provided, however, that sprinklers shall not be required to be installed in patient rooms in hospitals, or in public or private libraries, or in houses of religious worship; provided, further, that sprinklers shall not be required to be installed in buildings where construction has commenced prior to January first, nineteen hundred and seventy-five and which have been submitted to the provisions of chapter one hundred and eighty-three A; and provided, further, that automatic sprinklers shall not be required in rooms or areas of a telephone central office equipment building when such rooms or areas are protected with an automatic fire alarm system.

The head of the fire department shall enforce the provisions of this section.

Whoever is aggrieved by the head of the fire department's interpretation, order, requirement, direction or failure to act under the provisions of this section, may, within forty-five days after the service of notice thereof, appeal from such interpretation, order, requirement, direction, or failure to act, to the board of appeals of the fire safety commission as provided in section two hundred and one of chapter six.

Any building or structure subject to the provisions of this section shall comply with the following schedule for the installation of automatic sprinklers:— one-third of the gross square footage of the building or structure shall be equipped with automatic sprinklers by March thirtieth, nineteen hundred and ninety-one; two-thirds of the gross square footage of the building or structure shall be equipped with automatic sprinklers by March thirtieth, nineteen hundred and ninety-four; and the entire gross square footage of the building or structure shall be equipped with automatic sprinklers by March thirtieth, nineteen hundred and ninety-eight; provided, however, that the owner of said building or structure may apply to the board of appeals of the fire safety commission for an extension or a waiver of the provisions of this section as provided for in section two hundred and one of chapter six.

Any building or structure subject to the provisions of this section shall have the option of complying with the following schedule: the entire gross square footage of the building or structure shall be equipped with automatic sprinklers by March thirtieth, nineteen hundred and ninety-four; provided, however, that under said option the owner of said building or structure shall be deemed to have waived his right to any such extension of time.

For purposes of this section, the gross square footage of a building or structure shall include the sum total of the floor areas for all floor levels, basements and sub-basements, measured from outside walls irrespective of the existence of interior fire resistive walls, floors and ceilings.

History

§ 26A½. Automatic Sprinklers in Certain Buildings; Exceptions; Appeals; Compliance Schedule.

1986, 633, § 2; 1987, 465, § 34; 1988, 157, § 2; 1989, 306.

Annotations

Notes

Amendment Notes

The 1987 amendment, in the fourth paragraph, following “installation”, inserted “of”.

The 1988 amendment, in the fourth paragraph, substituted “March thirtieth, nineteen hundred and ninety-one” for “January first, nineteen hundred and ninety”, and “March thirtieth, nineteen hundred and ninety-four” for “January first, nineteen hundred and ninety-three”, substituted “March thirtieth, nineteen hundred and ninety-eight” for “January first, nineteen hundred and ninety-seven”, and following “provided, however,”, inserted “that”, and in the fifth paragraph, substituted “March thirtieth, nineteen hundred and ninety-four” for “January first, nineteen hundred and ninety-three”.

The 1989 amendment, in the first paragraph, inserted “, or in houses of religious worship” and made some technical changes.

Notes to Decisions

Owners of cooperative units are not required to comply with [ALM GL c 148 § 26A](#) by installing automatic sprinklers in each room of their residential units because cooperatives come within exemption for condominiums. [1010 Memorial Drive Tenants Corp. v. Fire Chief, 424 Mass. 661, 677 N.E.2d 219, 1997 Mass. LEXIS 76 \(Mass. 1997\)](#).

Sections governing fire prevention do not require individual owner of older residential building to include sprinklers in each room. [1010 Memorial Drive Tenants Corp. v. Fire Chief, 424 Mass. 661, 677 N.E.2d 219, 1997 Mass. LEXIS 76 \(Mass. 1997\)](#).

Question whether exemption from sprinkler requirement applies to buildings constructed prior to January 1, 1975 and submitted to condominium law after effective date of [ALM GL c 148 § 26A½](#) [March 22, 1987] not decided. [285 Lynn Shore Drive Condo. Trust v. Automatic Sprinkler Appeals Bd., 47 Mass. App. Ct. 437, 713 N.E.2d 1014, 1999 Mass. App. LEXIS 831 \(Mass. App. Ct. 1999\)](#).

Purpose of [ALM GL c 148 § 26A½](#), requiring every building or structure more than 70 feet high built before January 1, 1975 to have adequate system of automatic sprinklers, appears to be fire prevention and protection. [AT&T v. Automatic Sprinkler Appeals Bd., 52 Mass. App. Ct. 11, 750 N.E.2d 505, 2001 Mass. App. LEXIS 571 \(Mass. App. Ct. 2001\)](#).

Exemption for “rooms or areas of a telephone central office equipment building” to requirement that every building or structure more than 70 feet high built before January 1, 1975 have adequate system of automatic sprinklers reflects the intention not to subject sensitive telephone equipment to water damage. [AT&T v. Automatic Sprinkler Appeals Bd., 52 Mass. App. Ct. 11, 750 N.E.2d 505, 2001 Mass. App. LEXIS 571 \(Mass. App. Ct. 2001\)](#).

Exemption for “rooms or areas of a telephone central office equipment building” to requirement that every building or structure more than 70 feet high built before January 1, 1975 have adequate system of automatic sprinklers is limited to rooms and areas containing telephone equipment and not entire building; therefore, town's fire department properly ordered building owner to install automatic sprinkler equipment in areas and rooms of building that do not house telephone equipment. [AT&T v. Automatic Sprinkler Appeals Bd., 52 Mass. App. Ct. 11, 750 N.E.2d 505, 2001 Mass. App. LEXIS 571 \(Mass. App. Ct. 2001\)](#).

Opinion Notes

Notes to Opinions

Attorney General Opinions

Only buildings converted to, or constructed as, condominiums prior to 1975 are exempt from sprinkler requirement. 1987–1988 Mass. Op. Att'y Gen. 2.

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ALM GL ch. 148, § 26G

Current through Chapter 70 of the 2025 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 — 148A) > Chapter 148 Fire Prevention (§§ 1 — 60)

§ 26G. Automatic Sprinkler Systems; Required Installation; Exceptions; Alternative Fire Suppressant Systems; Appeal within 45 Days of Notice to Automatic Sprinklers Appeals Board.

Every building or structure, including any additions or major alterations thereto, which totals, in the aggregate, more than 7,500 gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code. No such sprinkler system shall be required unless sufficient water and water pressure exists. For purposes of this section, the gross square footage of a building or structure shall include the sum total of the combined floor areas for all floor levels, basements, sub-basements and additions, in the aggregate, measured from the outside walls, irrespective of the existence of interior fire resistive walls, floors and ceilings. This section shall not apply to buildings used for agricultural purposes as defined in [section 1A of chapter 128](#).

In such buildings or structures, or in certain areas of such buildings or structures, where the discharge of water would be an actual danger in the event of fire, the head of the fire department shall permit the installation of such other fire suppressant systems as are prescribed by the state building code in lieu of automatic sprinklers. Automatic suppressant or sprinkler systems shall not be required in rooms or areas of a telephone central office equipment building when such rooms or areas are protected with an automatic fire alarm system. Sprinkler systems shall not be required in open-air parking structures, defined as: buildings, structures, or portions thereof, used for parking motor vehicles and having not less than twenty-five per cent of the total wall area open to atmosphere at each level, utilizing at least two sides of the structure. This section shall not apply to buildings or additions used for residential purposes.

The head of the fire department shall enforce the provisions of this section.

Whoever is aggrieved by the head of the fire department's interpretation, order, requirement, direction or failure to act under the provisions of this section, may, within forty-five days after the service of notice thereof, appeal from such interpretation, order, requirement, direction or failure to act to the automatic sprinkler appeals board as provided in section two hundred and one of chapter six. The board may grant a reasonable waiver from the provisions of this section, or may allow the installation of a reasonable alternative or modified system of automatic sprinklers upon reviewing the characteristics of buildings that have architectural or historical significance.

History

1982, 545, § 1; 1986, 284, § 1; 1986, 526; 1989, 416, § 2; [1994, 256](#); [2008, 508, §§ 1-4](#).

Annotations

Notes

§ 26G. Automatic Sprinkler Systems; Required Installation; Exceptions; Alternative Fire Suppressant Systems; Appeal within 45 Days of Notice to Automatic Sprink....

Editor's Notes

Section 2 of the inserting act provides as follows:

SECTION 2. This act shall apply to construction of buildings or additions or major alterations commenced after July first, nineteen hundred and eighty-three.

Amendment Notes

The first 1986 amendment, (Ch. 284), rewrote the first sentence of the first paragraph, deleting “every building or addition of more than seven thousand five hundred gross square feet in floor area”, inserting in its place “every building of more than seventy-five hundred gross square feet in floor area or every addition of more than seventy-five hundred gross square feet in floor area”, and adding the proviso with respect to an adequate system of automatic sprinklers for additions only.

The second 1986 amendment, (Ch. 526), inserted a sentence after the third sentence in the second paragraph, exempting open-air parking structures from the requirement of sprinkler systems.

The 1989 amendment, added the fourth paragraph providing that anyone dissatisfied with the department head's interpretation of enforcing the provisions of this section has 45 days following service of notice, to appeal to the automatic sprinkler appeals board.

The 1994 amendment, effective March 29, 1995, in the first paragraph, inserted the last sentence providing an exception for buildings used for agricultural purposes.

The 2008 amendment, effective April 15, 2009, by § 1, rewrote the first paragraph, which formerly read: “In any city or town which accepts the provisions of this section, every building of more than seventy-five hundred gross square feet in floor area or every addition of more than seventy-five hundred gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code; provided, however, that in the case of said addition, such an adequate system of automatic sprinklers shall be installed in said addition only. No such sprinkler system shall be required unless sufficient water and water pressure exists. For purposes of this section, the gross square feet of a building or addition shall include the sum total of the floor areas for all floor levels, basements and sub-basements, measured from outside walls, irrespective of the existence of interior fire resistive walls, floors and ceilings. This section shall not apply to buildings used for agricultural purposes as defined in section one A of chapter one hundred and twenty-eight.”; by § 2, in the second paragraph, substituted “structures” for “additions”; by § 3, in the second paragraph, deleted the former third sentence, which read: “Sprinkler systems shall not be required in a one story building having a fire resistance rating as prescribed in the state building code that is used solely for offices provided the building is protected by an automatic fire alarm system.”; and by § 4, in the fourth paragraph, added the last sentence.

Notes to Decisions

GL [c 148 § 26G](#) is not unconstitutionally vague. [Chief of Fire Dep't v. Wibley, 24 Mass. App. Ct. 912, 507 N.E.2d 256, 1987 Mass. App. LEXIS 1901 \(Mass. App. Ct. 1987\)](#).

Term “unless sufficient water and water pressure exist” means that owner of building or addition to which statute applies must have access to source of water sufficient to operate adequate system of sprinklers, or else exemption applies. [Chief of Fire Dep't v. Wibley, 24 Mass. App. Ct. 912, 507 N.E.2d 256, 1987 Mass. App. LEXIS 1901 \(Mass. App. Ct. 1987\)](#).

§ 26G. Automatic Sprinkler Systems; Required Installation; Exceptions; Alternative Fire Suppressant Systems;
Appeal within 45 Days of Notice to Automatic Sprink....

Source of water for sprinkler system must be on land on which new buildings or addition are constructed or off land and legally available to owner. [*Chief of Fire Dep't v. Wibley*, 24 Mass. App. Ct. 912, 507 N.E.2d 256, 1987 Mass. App. LEXIS 1901 \(Mass. App. Ct. 1987\)](#).

Word "alteration" is defined differently depending on context. [*Congregation Beth Sholom & Community Center, Inc. v. Building Comm'r of Framingham*, 27 Mass. App. Ct. 276, 537 N.E.2d 605, 1989 Mass. App. LEXIS 257 \(Mass. App. Ct. 1989\)](#).

Automatic sprinkler requirement applicable to relatively large nonresidential buildings is fire safety measure. [*Congregation Beth Sholom & Community Center, Inc. v. Building Comm'r of Framingham*, 27 Mass. App. Ct. 276, 537 N.E.2d 605, 1989 Mass. App. LEXIS 257 \(Mass. App. Ct. 1989\)](#).

"Major alterations" includes any work, not repairs, which is major in scope or expenditure, and which results in changes affecting substantial portion of building. [*Congregation Beth Sholom & Community Center, Inc. v. Building Comm'r of Framingham*, 27 Mass. App. Ct. 276, 537 N.E.2d 605, 1989 Mass. App. LEXIS 257 \(Mass. App. Ct. 1989\)](#).

Renovation work to substantial portion of building costing \$550,000, including installation of new ceilings, floors and walls, relocation of air conditioning ducts and stairway, and extension of building to add 210 square feet of space constituted "major alteration," requiring installation of automatic sprinklers. [*Congregation Beth Sholom & Community Center, Inc. v. Building Comm'r of Framingham*, 27 Mass. App. Ct. 276, 537 N.E.2d 605, 1989 Mass. App. LEXIS 257 \(Mass. App. Ct. 1989\)](#).

Requirement that automatic sprinklers be installed if "major alteration" to building is done is not unconstitutionally vague. [*Congregation Beth Sholom & Community Center, Inc. v. Building Comm'r of Framingham*, 27 Mass. App. Ct. 276, 537 N.E.2d 605, 1989 Mass. App. LEXIS 257 \(Mass. App. Ct. 1989\)](#).

Installation of automatic sprinklers in building undergoing "major alteration" could be required even though failure to do so subjects owner to criminal prosecution. [*Congregation Beth Sholom & Community Center, Inc. v. Building Comm'r of Framingham*, 27 Mass. App. Ct. 276, 537 N.E.2d 605, 1989 Mass. App. LEXIS 257 \(Mass. App. Ct. 1989\)](#).

Zoning board did not err in denying a landowner's request to remove a sprinkler and fire alarm system condition from a garage site plan, because (1) the landowner's assertion that it was harmed by the board's uneven application of the zoning laws did not state a cognizable claim, and (2) the board discussed its specific concerns regarding the unknown third parties who would be renting garage space. [*M&R Indus. Park Trust v. Goldrosen*, 22 Mass. L. Rep. 259, 2006 Mass. Super. LEXIS 671 \(Mass. Super. Ct. 2006\)](#).

ALM GL ch. 148, § 26G½

Current through Chapter 70 of the 2025 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 — 148A) > Chapter 148 Fire Prevention (§§ 1 — 60)

§ 26G½. Automatic Sprinklers Required in Nightclubs and Bars.

For the purpose of this section the term “adequate system of automatic sprinklers” shall include: (1) a working automatic sprinkler system; (2) fire alarm system control equipment which provides notice of an emergency within a place of assembly; and (3) adequate monitoring of and reporting of any activation of the automatic sprinkler system and fire alarm equipment, in accordance with the state building code in effect at the time of the installation of such system and equipment.

Every building or structure, or portions thereof, of public assembly, with a capacity of 100 persons or more, that is designed or used for occupancy as a nightclub, dance hall, discotheque, bar, or for similar entertainment purposes, including all rooms, lobbies, and other spaces connected thereto and all means of egress and entrances, including any such public assembly located within a mixed use building or structure, including a building or structure owned or controlled by the commonwealth or a political subdivision thereof, (a) which is existing, or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers, in accordance with the state building code.

Any owner of a business designed or used for occupancy as a nightclub, dance hall, discotheque, bar or for similar entertainment purposes to which the second paragraph does not apply shall install a system of automatic sprinklers within the building or structure in accordance with the state building code if the business: (1) violates the maximum capacity for such building or structure, as established by a duly recognized inspector of buildings, building commissioner or local inspector of a city, town or district or other duly recognized local inspector or inspector, as provided in chapter 143, 2 or more times during a 12-month period; or (2) violates the maximum capacity of such building or structure by a number greater than ½ of such maximum capacity as established by a duly recognized inspector of buildings, building commissioner or local inspector of a city, town or district or other duly recognized local inspector or inspector, as provided in chapter 143. Any owner of a building or structure required to install automatic sprinklers as a result of a violation of this paragraph shall do so within 1 year of being cited for such violation, and shall be responsible for the full costs of installation. Notwithstanding any general or special law to the contrary, any business owner cited for violating the maximum capacity for his place of business shall be subject to a \$10,000 fine for a first or second offense. A third such offense shall result in the business owner losing his license to operate in the commonwealth, and all food, entertainment and other licenses associated with his business. This paragraph shall be enforced by a duly recognized inspector of buildings, building commissioner or local inspector of a city, town or district or other duly recognized local inspector as provided in chapter 143, or any state official with concurrent jurisdiction.

This section shall not apply to a place of assembly within a building, structure or portions thereof used principally as a house of worship, restaurant, lecture hall, auditorium, state or local government building, educational function facility, or other similar place of assembly. Temporary use of such a building or structure or portions thereof as a nightclub, dance hall, discotheque, bar or for similar entertainment purposes, may be allowed if a permit is issued for such use by the head of the fire department in consultation with the local building inspector or inspector who may set the terms and conditions to protect against fire and preserve public safety.

§ 26G½. Automatic Sprinklers Required in Nightclubs and Bars.

Whoever is aggrieved by an interpretation, order, requirement or direction of the head of the fire department under this section, or, whoever is aggrieved by a failure of the head of the fire department to take action under this section, may, within 45 days after the service of notice of such interpretation, order, requirement or direction, or, after 45 days of such failure to act, appeal from such interpretation, order, requirement, direction or failure to act to the automatic sprinkler appeals board as provided in [section 201 of chapter 6](#).

The cost of installing an adequate system of automatic sprinklers pursuant to this section shall be borne in its entirety by the owner of the building or structure.

Except as provided in the third paragraph, the head of the fire department shall enforce this section.

History

[2004, 304, § 5](#).

Annotations

Notes

Editor's Notes

Section 11 of the inserting act provides as follows:

[Section 11](#). Any owner of a building, structure or portions thereof subject to the provisions of the second paragraph of [section 26G ½ of chapter 148](#) of the General Laws shall submit plans and specifications for the installation of an adequate system of automatic sprinklers to the head of the fire department and the local building inspector or inspector within 18 months of the effective date of this act and shall install an adequate system of automatic sprinklers within 3 years of such effective date. The head of the fire department may allow a reasonable extension of time, not to exceed 1 year, to comply with said section 5 if the owner has timely submitted the required plans and specifications, has entered into an existing contract for the installation and clearly documents or shows that he did not cause the delay of installation.

For the purpose of this section the words "adequate system of automatic sprinklers" shall include: (i) a working automatic sprinkler system; (ii) fire alarm system control equipment which provides notice of an emergency within a place of assembly; and (iii) adequate monitoring of and reporting of any activation of the automatic sprinkler system and fire alarm equipment, in accordance with the state building code in effect at the time of the installation of such system and equipment.

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ALM GL ch. 148, § 26H

Current through Chapter 70 of the 2025 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 — 148A) > Chapter 148 Fire Prevention (§§ 1 — 60)

§ 26H. Automatic Sprinkler Systems; Lodging or Boarding Houses; Exceptions; Definitions.

In any city or town which accepts the provisions of this section, every lodging house or boarding house shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code. No such sprinkler system shall be required unless sufficient water and water pressure exists. In such buildings or in certain areas of such buildings, where the discharge of water would be an actual danger in the event of a fire, the head of the fire department shall permit the installation of such other fire suppressant systems as are prescribed by the state building code in lieu of automatic sprinklers. The head of the fire department shall enforce the provisions of this section.

For the purposes of this section “lodging house” or “boarding house” shall mean a house where lodgings are let to six or more persons not within the second degree of kindred to the person conducting it, but shall not include fraternity houses or dormitories, rest homes or group residences licensed or regulated by agencies of the commonwealth.

Any lodging or boarding house subject to the provisions of this section shall be equipped with automatic sprinklers within five years after acceptance of this act by a city or town.

Whoever is aggrieved by the head of the fire department’s interpretation, order, requirement or direction under the provisions of this section, may within forty-five days after the service of notice thereof, appeal from such interpretation, order or requirement to the board of appeals of the fire safety commission as provided in section two hundred and one of chapter six.

History

1986, 265; 1989, 330; 1989, 557, § 2.

Annotations

Notes

Amendment Notes

The first 1989 amendment, added the third paragraph relative to requiring automatic sprinkler systems in lodging or boarding houses.

The second 1989 amendment, added the fourth paragraph providing that whoever is aggrieved by the fire department’s interpretation, order, requirement or direction, is allowed 45 days within which to appeal such interpretation, etc., as provided in ALM GL c 6 § 201.

Notes to Decisions

Where city sought injunctive relief to require rooming house owner to install automatic sprinkler system after [ALM GL c 148 § 26H](#) was amended to give owner 5 years from city's acceptance of statute to make installation, judge should not have granted injunction. [Chief of Fire Dep't v. Allard, 30 Mass. App. Ct. 128, 566 N.E.2d 628, 1991 Mass. App. LEXIS 114 \(Mass. App. Ct. 1991\).](#)

[ALM GL c 148 § 26H](#) is self-enforcing in sense that it imposes directly on boarding and lodging houses obligation to have automatic sprinkler systems, in contrast to statute authorizing head of fire department to issue order requiring their installation. [Chief of Fire Dep't v. Allard, 30 Mass. App. Ct. 128, 566 N.E.2d 628, 1991 Mass. App. LEXIS 114 \(Mass. App. Ct. 1991\).](#)

When municipality accepts local option statute, it accepts with it any amendments that Legislature may thereafter see fit to make, unless amendatory legislation should otherwise indicate. [Chief of Fire Dep't v. Allard, 30 Mass. App. Ct. 128, 566 N.E.2d 628, 1991 Mass. App. LEXIS 114 \(Mass. App. Ct. 1991\).](#)

As the recovering alcoholics and drug addicts who were going to live in a nonprofit organization's group home would be "lodgers" for purposes of [ALM GL c 148, § 26H](#), because they would pay rent and would have no property interest in the house, the organization was obliged to install an automatic sprinkler system in that home pursuant to § [Mass. Sober Hous. Corp. v. Automatic Sprinkler Appeals Bd., 66 Mass. App. Ct. 701, 850 N.E.2d 585, 2006 Mass. App. LEXIS 753 \(Mass. App. Ct. 2006\).](#)

[ALM GL c 148, § 26H](#)'s definition of a "lodging house" is broad enough to encompass communal living arrangements in which residents of a house can eat there and have access to all of the common areas. Typically, occupancy in such a manner results in use of the property which is different from that which is ordinary and expected in a single family structure. [Mass. Sober Hous. Corp. v. Automatic Sprinkler Appeals Bd., 66 Mass. App. Ct. 701, 850 N.E.2d 585, 2006 Mass. App. LEXIS 753 \(Mass. App. Ct. 2006\).](#)

Sober house and advocacy group were not entitled to judgment on appeal of the Automatic Sprinkler Appeals Board's (Board) decision or to enjoin enforcing the sprinkler law against the house because (1) the sprinkler law applied to the property used as a lodging house, and (2) the Zoning Act's anti-discrimination provision did not bar applying the sprinkler law to the house, as a city's adoption of the state sprinkler law did not make the law a local law to which the anti-discrimination provision applied, the property met the definition of a "lodging house," and the Board's reasonable interpretation of the law was deferred to. [Crossing Over, Inc. v. City of Fitchburg, 35 Mass. L. Rep. 432, 2019 Mass. Super. LEXIS 9 \(Mass. Super. Ct. 2019\).](#)

[Mass. Gen. Laws Ann. ch. 40A, § 3](#), did not exempt sober homes from application of the sprinkler law, [Mass. Gen. Laws Ann. ch. 148, § 26H](#), to lodging houses for disabled persons because the sprinkler law was a State law; however, a sober home could pursue its claims of housing discrimination on the basis of disability. [Crossing Over, Inc. v. Fitchburg, 98 Mass. App. Ct. 822, 161 N.E.3d 432, 2020 Mass. App. LEXIS 177 \(Mass. App. Ct. 2020\).](#)

Notes to Unpublished Decisions

Property owner "jumped the gun" by seeking preliminary injunctive relief since the owner could challenge a City's letter ordering the owner to install an automatic sprinkler system and a Type I alarm system by filing an appeal to the board of appeals of the fire safety commission under [ALM GL c 148, § 26H](#), or appeal to the fire marshal under [527 Mass. Code Regs. § 1.05](#); the owner had a ready avenue of relief, and should have followed the administrative path spelled out by the Massachusetts legislature to redress the owner's grievances. None of the special exceptions to the doctrine of primary jurisdiction were present. [Hoex v. City of Malden, 2007 Mass. Super. LEXIS 512 \(Mass. Super. Ct. Oct. 8, 2007\)](#), *aff'd in part, vacated in part*, [2009 Mass. App. Unpub. LEXIS 510 \(Mass. App. Ct. Aug. 28, 2009\).](#)

§ 26H. Automatic Sprinkler Systems; Lodging or Boarding Houses; Exceptions; Definitions.

Owner's request for a preliminary injunction failed as the owner would not experience irreparable harm if the owner proceeded through the administrative process established by [ALM GL c 148, § 26H](#) and [527 Mass. Code Regs. § 1.05](#); an appeal to the board of appeals of the of the fire safety commission stayed all proceedings in furtherance of the action under [ALM GL c 6, § 201](#), and the City's order to the owner to install sprinklers would have been suspended pending the outcome of the appeal. [Hoex v. City of Malden, 2007 Mass. Super. LEXIS 512 \(Mass. Super. Ct. Oct. 8, 2007\)](#), aff'd in part, vacated in part, [2009 Mass. App. Unpub. LEXIS 510 \(Mass. App. Ct. Aug. 28, 2009\)](#).

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[ALM GL ch. 148, § 26I](#)

Current through Chapter 70 of the 2025 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 - 148A) > TITLE XX PUBLIC SAFETY AND GOOD ORDER (Chs. 133 — 148A) > Chapter 148 Fire Prevention (§§ 1 — 60)

§ 26I. Automatic Sprinkler Systems; New or Rehabilitated Multi-Unit Residential Structures.

In a city, town or district which accepts the provisions of this section, any building hereafter constructed or hereafter substantially rehabilitated so as to constitute the equivalent of new construction and occupied in whole or in part for residential purposes and containing not less than four dwelling units including, but not limited to, lodging houses, boarding houses, fraternity houses, dormitories, apartments, townhouses, condominiums, hotels, motels and group residences, shall be equipped with an approved system of automatic sprinklers in accordance with the provisions of the state building code. In the event that adequate water supply is not available, the head of the fire department shall permit the installation of such other fire suppressant systems as are prescribed by the state building code in lieu of automatic sprinklers. Owners of buildings with approved and properly maintained installations may be eligible for a rate reduction on fire insurance.

History

1989, 642, § 1.

Annotations

Notes

Editor's Notes

Section 3 of the inserting act provides as follows:

SECTION 3. The provisions of section one shall not apply to construction projects approved by permit within one year prior to acceptance of this act by a city, town or district.

Notes to Decisions

[ALM GL c 148 § 26I](#) on its face requires automatic sprinkler systems to be installed where town has adopted statute, building was constructed or substantially renovated after town adopted statute, and building contains not less than four dwelling units. [Pinecrest Village v. MacMillan, 425 Mass. 70, 679 N.E.2d 216, 1997 Mass. LEXIS 114 \(Mass. 1997\)](#).

§ 26I. Automatic Sprinkler Systems; New or Rehabilitated Multi-Unit Residential Structures.

Word “building” refers to entire structure, not individual units within that larger structure. [*Pinecrest Village v. MacMillan*, 425 Mass. 70, 679 N.E.2d 216, 1997 Mass. LEXIS 114 \(Mass. 1997\)](#).

[*ALM GL c 148 § 26I*](#) does not incorporate State building code’s definition [780 CMR § 910.3] of word “building.” [*Pinecrest Village v. MacMillan*, 425 Mass. 70, 679 N.E.2d 216, 1997 Mass. LEXIS 114 \(Mass. 1997\)](#).

Fire chief of town which properly adopted [*ALM GL c 148 § 26I*](#) was correct in requiring that all townhouses composed of four or more units built after date statute was adopted be equipped with automatic sprinklers. [*Pinecrest Village v. MacMillan*, 425 Mass. 70, 679 N.E.2d 216, 1997 Mass. LEXIS 114 \(Mass. 1997\)](#).

City fire chief erred in ordering that automatic sprinkler systems be installed in each of the buildings plaintiff purchased, rehabilitated, and returned to occupancy because the chief’s decisions did not reflect any assessment of the relative costs of sprinkler installation compared with total project costs as the record was unclear as to specific aspects of the scope and nature of the actual physical work performed because the chief made no findings as to the contested issue of the extent of the walls and ceilings that were opened, replaced, or repaired by being covered with gypsum board; and the chief’s decisions did not indicate whether the modifications were so substantial that they constituted the equivalent of new construction. [*MacLaurin v. Holyoke*, 475 Mass. 231, 56 N.E.3d 1254, 2016 Mass. LEXIS 606 \(Mass. 2016\)](#).

Residential sprinkler standard requiring the installation of automatic sprinkler systems under this statute is satisfied when rehabilitative work is so extensive that the building itself, considered as a whole, has been rendered “the equivalent of new construction,” whether in terms of the materials and construction techniques used, the building’s systems, its market value, its expected future useful life, or other comparable measures of equivalence to new construction. [*MacLaurin v. Holyoke*, 475 Mass. 231, 56 N.E.3d 1254, 2016 Mass. LEXIS 606 \(Mass. 2016\)](#).

[ALM GL ch. 231, § 6E](#)

Current through Chapter 70 of the 2025 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES (Chs. 211 - 262) > TITLE II ACTIONS AND PROCEEDINGS THEREIN (Chs. 223 - 236) > TITLE II ACTIONS AND PROCEEDINGS THEREIN (Chs. 223 — 236) > Chapter 231 Pleading and Practice (§§ 1 — 147)

§ 6E. Definitions.

As used in sections 6E to 6G inclusive, the following words shall have the following meanings:—

“Court”, the supreme judicial court, the appeals court, the superior court, the land court, any probate court and any housing court, and any judge or justice thereof;

“Civil action”, any civil proceeding in any court except those conducted pursuant to chapters one hundred and nineteen, one hundred and twenty–three, chapter one hundred and twenty–three A or chapter two hundred and ten;

“Party”, any person, including any officer or agency of the commonwealth or subdivision thereof, or any authority established by the general court to serve a public purpose.

History

1976, 233, § 1; 1976, 313, § 2.

Annotations

Notes

Amendment Notes

The 1976 amendment rewrote the definition of “party”, adding the words “any person, including” preceding the language of the definition as originally enacted.

Notes to Decisions

Arbitrator is not a court that may award attorney's fees under [Mass. Gen. Laws Ann. ch. 231, § 6F](#). [Beacon Towers Condominium Trust v. Alex](#), 473 Mass. 472, 42 N.E.3d 1144, 2016 Mass. LEXIS 5 (Mass. 2016).

At trial of action in District Court under provisions of special act [St 1996 c 358] providing for single jury trial in certain civil cases rather than regular two–trial system between District and Superior Courts, judge. [Brossi v. Fisher](#), 51 Mass. App. Ct. 543, 747 N.E.2d 714, 2001 Mass. App. LEXIS 286 (Mass. App. Ct. 2001).

Though a municipal court had the authority under [Mass. R. Civ. P. 11\(a\)](#) to sanction plaintiffs’ attorneys for filing a baseless lawsuit, it erred by sanctioning plaintiffs themselves because neither Rule 11 nor [ALM GL c 231, § 6F](#),

§ 6E. Definitions.

authorized it to order litigants to pay attorney's fees, and it lacked the inherent authority to do so. [*Tilman v. Brink*, 74 Mass. App. Ct. 845, 911 N.E.2d 764, 2009 Mass. App. LEXIS 1082 \(Mass. App. Ct. 2009\)](#).

Inasmuch as [*ALM GL c 231, § 6E*](#) specifies courts where such proceedings apply and does not include District Court, exclusion can only be construed as clear legislative intent not to include District Courts as proper forum for motion for attorney's fees and costs under [*ALM GL c 231, § 6F*](#), which motion was therefore properly denied. [*Brentwood Nursing Home, Inc. v. Goldstein*, 1986 Mass. App. Div. 8, 1986 Mass. App. Div. LEXIS 9 \(Mass. App. Div. 1986\)](#).

Statute which provided for jury trial in District Court rather than removal or appeal to Supreme Court (St 1996 c 358) did not thereby authorize District Court in such cases to impose sanctions under [*ALM GL c 231 § 6F*](#). [*Brossi v. Fisher*, 1999 Mass. App. Div. 99, 1999 Mass. App. Div. LEXIS 39 \(Mass. App. Div. 1999\)](#), aff'd, [*51 Mass. App. Ct. 543, 747 N.E.2d 714, 2001 Mass. App. LEXIS 286 \(Mass. App. Ct. 2001\)*](#).

Authority found in [*ALM GL c 231 § 6F*](#) for award of attorney's fees where claims are "wholly insubstantial, frivolous and not advanced in good faith" has not been extended to district courts; also, [*ALM R. Civ. P. 11\(a\)*](#) would be inapplicable. [*Isaacson v. Isaacson*, 2000 Mass. App. Div. 233, 2000 Mass. App. Div. LEXIS 86 \(Mass. App. Div. 2000\)](#).

District court erred in allowing a client's motion for sanctions against her former attorney because the district court was not included within the statutory definition of "court." [*Pareles v. Lee*, 2017 Mass. App. Div. 154, 2017 Mass. App. Div. LEXIS 44 \(Mass. App. Div. 2017\)](#).

District court's award of attorney's fees to a tenant had to be reversed because district courts lack authority to award attorney's fees for a frivolous claim, nor did the memorandum and order awarding attorney's fees set forth the legal basis or contain sufficient findings of fact to support a conclusion that the landlord's conduct had the extortionate quality necessary to award fees based on unfair acts or practices. [*Xarras v. Trice*, 2020 Mass. App. Div. 97, 2020 Mass. App. Div. LEXIS 24 \(Mass. App. Div. 2020\)](#).

For purposes of determining whether bankruptcy court would give preclusive effect to a fee order imposed by a state court, the term "court," as used in [*Mass. Gen. Laws ch. 231, §§ 6E to 6G*](#), included any probate court. [*Ford v. Landon \(In re Landon\)*, 2020 Bankr. LEXIS 2147 \(Bankr. N.D. Okla. Aug. 11, 2020\)](#).

Research References & Practice Aids

Research References and Practice Aids

Law Reviews

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ALM GL ch. 231, § 6F

Current through Chapter 70 of the 2025 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES (Chs. 211 - 262) > TITLE II ACTIONS AND PROCEEDINGS THEREIN (Chs. 223 - 236) > TITLE II ACTIONS AND PROCEEDINGS THEREIN (Chs. 223 — 236) > Chapter 231 Pleading and Practice (§§ 1 — 147)

§ 6F. Award of Costs and Counsel Fees in Insubstantial, Frivolous or Bad Faith Actions.

Upon motion of any party in any civil action in which a finding, verdict, decision, award, order or judgment has been made by a judge or justice or by a jury, auditor, master or other finder of fact, the court may determine, after a hearing, as a separate and distinct finding, that all or substantially all of the claims, defenses, setoffs or counterclaims, whether of a factual, legal or mixed nature, made by any party who was represented by counsel during most or all of the proceeding, were wholly insubstantial, frivolous and not advanced in good faith. The court shall include in such finding the specific facts and reasons on which the finding is based.

If such a finding is made with respect to a party's claims, the court shall award to each party against whom such claims were asserted an amount representing the reasonable counsel fees and other costs and expenses incurred in defending against such claims. If the party against whom such claims were asserted was not represented by counsel, the court shall award to such party an amount representing his reasonable costs, expenses and effort in defending against such claims. If such a finding is made with respect to a party's defenses, setoffs or counterclaims, the court shall award to each party against whom such defenses, setoffs or counterclaims were asserted (1) interest on the unpaid portion of the monetary claim at issue in such defense, setoff or counterclaim at one hundred and fifty per cent of the rate set in section six C from the date when the claim was due to the claimant pursuant to the substantive rules of law pertaining thereto, which date shall be stated in the award, until the claim is paid in full; and (2) an amount representing the reasonable counsel fees, costs and expenses of the claimant in prosecuting his claims or in defending against those setoffs or counterclaims found to have been wholly insubstantial, frivolous and not advanced in good faith.

Apart from any award made pursuant to the preceding paragraph, if the court finds that all or substantially all of the defenses, setoffs or counterclaims to any portion of a monetary claim made by any party who was represented by counsel during most or all of the proceeding were wholly insubstantial, frivolous and not advanced in good faith, the court shall award interest to the claimant on that portion of the claim according to the provisions of the preceding paragraph.

In any award made pursuant to either of the preceding paragraphs, the court shall specify in reasonable detail the method by which the amount of the award was computed and the calculation thereof.

No finding shall be made that any claim, defense, setoff or counterclaim was wholly insubstantial, frivolous and not advanced in good faith solely because a novel or unusual argument or principle of law was advanced in support thereof. No such finding shall be made in any action in which judgment was entered by default without an appearance having been entered by the defendant. The authority granted to a court by this section shall be in addition to, and not in limitation of, that already established by law.

If any parties to a civil action shall settle the dispute which was the subject thereof and shall file in the appropriate court documents setting forth such settlement, the court shall not make any finding or award

§ 6F. Award of Costs and Counsel Fees in Insubstantial, Frivolous or Bad Faith Actions.

pursuant to this section with respect to such parties. If an award had previously been made pursuant to this section, such award shall be vacated unless the parties shall agree otherwise.

In proceedings under this section in any action which has been heard by the medical malpractice tribunal established pursuant to section sixty B, the decision of the tribunal may be introduced as evidence relevant to whether a claim was wholly insubstantial, frivolous and not advanced in good faith.

Upon receiving an inmate's complaint and affidavit of indigency, the court may, at any time, upon motion or sua sponte: (1) dismiss a claim or any action without a hearing if satisfied that the claim or action is frivolous or in bad faith; or (2) conduct a hearing presided over by the court or an appointed master, which shall be held telephonically unless the court finds that a hearing in court is necessary, to determine whether the inmate's action is frivolous and in bad faith.

If the court finds that the claim or action is frivolous or in bad faith, the court shall dismiss the claim or action but if, after hearing, the court finds that the claim is both frivolous and in bad faith in order to abuse the judicial process, the court shall, in addition to dismissing such claim or action, order that the inmate lose up to 60 days of good conduct credit earned or to be earned pursuant to [section 129C](#) or [129D of chapter 127](#).

If the court finds at any time that the inmate has repeatedly abused the integrity of the judicial system through frivolous filings, the court may order that the inmate be barred from filing future actions without leave of court. In determining whether a claim or action is frivolous or in bad faith, the court may consider several factors including, but not limited to, the following:— (a) whether the claim or action has no arguable basis in law or in fact; (b) the claim or action is substantially similar to a previous claim in that it is brought by and against the same parties and in that the claim arises from the same operative facts of the previous claim.

No finding shall be made that a claim or action is frivolous or in bad faith solely because a novel or unusual argument or principle of law was advanced in support thereof.

History

1976, 233, § 1; 1986, 351, § 20; [1999, 127, § 179](#).

Annotations

Notes

Amendment Notes

The 1986 amendment added the seventh paragraph relating to actions heard by the medical malpractice tribunal.

The 1999 amendment added the eighth through the eleventh paragraphs.

Notes to Decisions

1. In general

2. Applicability

3. Award of counsel fees

4. Award of costs

Menu



Search Mass.gov

SEARCH

[\(/\)](#) > [Taxes \(/topics/taxes\)](#) > [...](#) > [DOR Legal Library \(/info-details/dor-legal-library\)](#) > [DOR Letter Rulings \(/lists/dor-letter-rulings\)](#)

LETTER RULING

Letter Ruling 84-90: Bed and Breakfast Operations

Notices & Alerts

[MA Tax Amnesty... November 1 – December 30, 2024... Waive Penalties...](#)
[\(/info-details/massachusetts-tax-amnesty-2024\)](#) | Updated Sep. 19, 2024, 11:40 am

DATE:	10/04/1984
ORGANIZATION:	Massachusetts Department of Revenue
REFERENCED SOURCES:	Massachusetts General Laws (https://malegislature.gov/Laws/GeneralLaws)

Sales and Use

October 4, 1984

You request a ruling as to the application of the room occupancy excise to commissions paid to your client ("Company"). You state that the Company operates a bed-and-breakfast reservation service. The Company matches visitors to Massachusetts with local hosts who will lodge the visitors in their homes as paying guests. The Company collects the charges from the visitors and sends them to the hosts after deducting a commission as payment for its services.



Chapter 64G, Section 3 of the General Laws imposes a five percent tax on the transfer of occupancy of any room or rooms in a hotel, lodging house, or motel in Massachusetts. In addition, Chapter 546, Section 22 of the Acts of 1969 imposed a surtax of fourteen percent of the tax imposed under Chapter 64G. The total room occupancy excise is thus 5.7 percent of the rent charged for occupancy. However, the room occupancy excise is not imposed if the total amount of rent charged is less than two dollars per day. (G.L. c. 64G, § 3).

Rent is defined as "the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever." (G.L. c. 64G, § 1(h)).

A motel is defined as any building or a portion of a building, other than a hotel or lodging house, in which persons are lodged for hire with or without meals and which is licensed or required to be licensed under the provisions of section thirty-two B of chapter one hundred and forty or is a private club. (G.L. c. 64G, § 1(c)).

Chapter 140, Section 32A further defines a motel as "any building or group of buildings which provides sleeping accommodations for transient motorists and which is not licensed as an inn." A bed-and-breakfast operation is a motel within the meaning of Chapter 64G, Section 1(c) and Chapter 140, Section 32A.

Any person conducting a bed-and-breakfast operation is required to obtain a license (G.L. c. 140, § 32A), but the failure to obtain a license does not exempt operators from the room occupancy excise. The room occupancy excise is imposed on payment for occupancy in motels licensed or required to be licensed. (See G.L. c. 64G, §§ 1(c), 3).

Each operator of a hotel, lodging house, or motel is required to register for the room occupancy excise. (G.L. c. 64G, § 6). An operator is defined as any person operating a hotel, lodging house, or motel. (G.L. c. 64G, § 1(d)). The operator is responsible for collecting the room occupancy excise from all occupants and paying the room occupancy excise to the Commissioner of the Department of Revenue. (G.L. c. 64G, § 3).

Chapter 64H, Section 2 imposes a five percent sales tax on retail sales of tangible personal property. The sales price subject to sales tax is the total amount paid as consideration. (G.L. c. 64H, § 1(14)).

Sales of meals served by restaurants are subject to the sales tax. A restaurant is defined in part as any eating establishment where food, food products, or beverages are provided and for which a charge is made. (G.L. c. 64H, § 6(h)).

Each vendor of tangible personal property, including meals, is required to register for the sales tax. (G.L. c. 64H, § 7). The vendor is responsible for collecting the sales tax from purchasers and paying the sales tax to the Commissioner of the Department of Revenue. (G.L. c. 64H, §§ 2, 3(a)).

Chapter 64H, Section 1(9)(d) includes in the definition of "retailer"

Every salesman, representative, peddler or canvasser who, in the opinion of the commissioner, is necessary to regard for the efficient administration of this chapter as the agent of the dealer, distributor,

supervisor or employer under whom he operates or from whom he obtains the tangible personal property sold by him. The commissioner may, in such cases, treat and regard such agent as the retailer jointly responsible with his principal, employer or supervisor for the collection and payment of the tax imposed by this chapter.

Based on the foregoing, it is ruled that:

1. The total charges made to paying guests for rent in bed-and-breakfast operations are subject to the room occupancy excise; the total charges made to paying guests for meals in bed-and-breakfast operations are subject to the sales tax. No deduction should be made from the charges for commissions paid to the Company or any other reservation service.
2. Each operator of a bed-and-breakfast operation is required to register with the Commissioner as an operator for the room occupancy excise and as a vendor for the sales tax. Each operator of a bed-and-breakfast operation must collect the room occupancy excise and the sales tax from paying guests and pay such taxes to the Commissioner.
3. operators of bed-and-breakfast operations should apportion charges made to paying guests between charges for rent and charges for meals.
4. If the Company collects the total charges for rent and meals from paying guests of bed-and-breakfast operations on behalf of the operators, the Company should also collect room occupancy excise and sales tax from the guests and remit the collected taxes to the operators of the bed-and-breakfasts who must pay the taxes to the Commissioner.
5. The Company is not an operator as defined in Chapter 64G and is not a vendor as defined in Chapter 64H. The Company need not register as an operator or a vendor.

Very truly yours,

/s/Ira A. Jackson

Ira A. Jackson
Commissioner of Revenue

IAJ:JES:mf

LR 84-90

REFERENCED SOURCES: [Massachusetts General Laws \(https://malegislature.gov/Laws/GeneralLaws\)](https://malegislature.gov/Laws/GeneralLaws)



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Salem, MA

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Salem, Massachusetts - Zoning Ordinan... / SECTION 10.0 - DEFINITIONS / 10.0 - DEFINITIONS

2 Navigation Menu

Navigate between Codes, individual ordinances and documents (related documents such as minutes and agendas). You will also find links back to the municipality or content creator's website.

ZONING ORDINANCE

Next



Salem, MA
Zoning Ordinance

- SECTION 1.0 - PURPOSE AND AUTHORITY
- SECTION 2.0 - DISTRICTS
- SECTION 3.0 - USE REGULATIONS
- SECTION 4.0 - DIMENSIONAL REQUIREMENTS
- SECTION 5.0 - GENERAL REGULATIONS
- ▼ SECTION 6.0 - SPECIAL REGULATIONS
 - 6.1 - REMOVAL OF EARTH PRODUCTS
 - 6.2 - TRAILERS
 - 6.3 - MOTOR VEHICLE LIGHT SERVICE STATIONS
 - 6.4 - SALES OF MOTOR VEHICLES AND BOATS
 - 6.5 - RELIGIOUS OR EDUCATIONAL INSTITUTIONS
 - 6.6 - WIRELESS COMMUNICATION FACILITIES (WCF)
 - 6.7 - DRIVE-THROUGH FACILITIES
 - 6.8 - VISIBILITY AT INTERSECTIONS
 - 6.9 - LAND-BASED WIND ENERGY FACILITIES
 - 6.10 - MARIJUANA ESTABLISHMENTS.
 - 6.11 - MUNICIPAL OR RELIGIOUS REUSE SPECIAL PERMIT modified
 - 6.12 - SOLAR ENERGY FACILITIES

Salem, MA

SECTION 7.0 - SPECIAL RESIDENTIAL REGULATIONS



Municode Codification

SECTION 8.0 - SPECIAL DISTRICT REGULATIONS

SECTION 9.0 - ADMINISTRATION AND PROCEDURES

SECTION 10.0 - DEFINITIONS

10.0 - DEFINITIONS

TABLE OF AMENDMENTS modified< [9.5 - SITE PLAN REVIEW](#)[TABLE OF AMENDMENTS](#) >

SECTION 10.0 - DEFINITIONS



10.0 - DEFINITIONS



In this Ordinance, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the Ordinance. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied". The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts State Building Code shall have the meaning given therein unless a contrary intention is clearly evident in this Ordinance.

Accessory building: A subordinate building located on the same lot as the main, or principal building or principal use, the use of which is customarily incidental to that of the principal building or use of the land.

Affordable Accessory Dwelling Unit: A housekeeping unit with a maximum rent at least 30 percent below the United States Department of Housing and Urban Development (HUD) fair market rent limit for Salem, with its own sleeping, cooking and sanitary facilities, located either

Salem, MA



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in a detached accessory building, or within or attached to a principal dwelling and subordinate in size to the principal unit(s), separated from it in a manner which maintains the appearance of the principal unit(s), and allowed pursuant to Section 3.2.8 of this ordinance.

Accessory use: A use customarily incidental to that of the main or principal building or use of the land.

Adult day care facility: A social day care or adult day health facility as those terms are defined by the Commonwealth's Department of Elder Affairs.

Affordable Housing Restriction: A deed restriction, contract, mortgage agreement, or other legal instrument, acceptable in form and substance to the City of Salem, that effectively restricts occupancy of an affordable housing unit to qualified purchaser or qualified renter, and which provides for administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period of time allowed by law, and be enforceable under the provisions of Chapter 184, Sections 26 or 31 -32 of the Massachusetts General Laws.

Affordable Housing Unit: A dwelling unit that is affordable to and occupied by a low- or moderate-income household and meets the requirements of the Massachusetts Local Initiative Program, for inclusion on the Chapter 40B Subsidized Housing Inventory.

Agriculture, Urban (Urban Agriculture): An umbrella term that describes a range of accessory food and plant growing practices, either for personal use or for sale as an accessory use, that may include composting, the keeping of domestic fowl and honeybees, but does not include other livestock.

Alterations, structural: Any change or rearrangement in the supporting members of a building, such as bearing walls, columns, beams or girders.

Amusement arcade: Any lot licensed to maintain three (3) or more commercial amusement devices that are regulated by Section 177A of Chapter 140 of the General Laws.

Amusements, commercial: Any amusement device licensed under the provision of Massachusetts General Laws, Chapter 140, Section 177A.

Animal clinic or hospital: A place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short term care incidental to the clinic or hospital use.

Antenna: The surface from which wireless radio signals are sent and received by a personal wireless communication facility.

Salem, MA



Arbor: An accessory Structure consisting of an open frame, freestanding or attached to another structure, with horizontal and/or vertical latticework often used as a support for climbing food or ornamental crops.

Area Median Income: The median income for households within the metropolitan area that includes the City of Salem, as defined in the annual schedule of low-income limits published by the U.S. Department of Housing and Urban Development, adjusted for household size.

Assisted Living Residences: Offer a combination of housing, meals and personal service care to adults for a fee that includes room and board and services. Assisted living residences are intended for adults who may need some help with activities such as housekeeping, meals, bathing, dressing, and/or medication assistance and who like the security of having assistance available on a 24 hour basis in a home-like and non-institutional environment. Assisted living residences do not provide medical or nursing services and are not designed for people who need serious medical care on an ongoing basis.

Bed and breakfast establishment: Accommodations with not more than six (6) bedrooms occupied by bed and breakfast guests in which the owner of the establishment resides. Bed and breakfasts are intended for guest on intermittent visits, and shall not be used as long-term rental units or apartments. All parking for residents and guests shall be off-street.

Brewery, distillery, or winery with a tasting room: A business located in a building where the primary use is for the production and distribution of malt, spirituous, or vinous beverages with a tasting room as defined in [Section 10.0](#). Any such facility that only provides samples at no charge and limited in size as set forth in M.G.L. c. 138 shall have a Commonwealth of Massachusetts issued Farmer Series License and any such facility that sells alcoholic beverages to be consumed on the premises shall have a Commonwealth of Massachusetts issued Farmer Series Pouring License. The facility may host marketing events, special events, and/or factory tours. The facility may only sell beverages produced by, and commercial goods branded by, the brewery, distillery or winery. The facility may sell permitted beverages by the bottle to consumers for consumption off the brewery premises.

Building: Any structure used or intended for supporting or sheltering any use or occupancy.

Building, attached: A building, having one (1) portion completely separated from another portion by a division wall without openings.

Building, detached: A building, usually an accessory building, having no direct attachment to the principal building on the lot.

Salem, MA



Building line: The line of a building face, which face shall include cornices projecting more than twelve (12) inches, balconies, sun parlors, covered porches and entrances, whether enclosed or unenclosed, but shall not include steps.

Building, principal: A building in which is conducted the main or principal use of the lot on which said building is situated.

Building coverage: That percentage of the lot or plot area covered by the roof area of a building or buildings.

Building height: Building height shall be measured from the average elevation of the proposed finished grade at the front line of the building to the highest point of the roof for flat roofs, to the deck line for mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs. Fences and walls shall be measured from the Finished grade vertically to the highest point.

Business or professional office: A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage, or processing of merchandise.

Capital improvements program: The capital improvements program shall be prepared by the Planning Board, assisted by the planning department, and approved by the mayor and the City Council. This capital improvements program shall be in seven-year incremental periods of effectiveness, not to exceed a total of twenty-one (21) years, for the development of the City in accord with the master plan and official zoning map in order to provide for maximum orderly, adequate and economical provision of transportation, water, sewerage, drainage, parks and recreation, schools, municipal facilities and structures and other public requirements.

Carrier: Company that provides wireless services.

Child care facility: A day care center or school age child care program, as those terms are defined in G.L. c. 28A, s. 9.

City: The City of Salem.

Club or lodge, private: Buildings, structures and premises used by a nonprofit social or civic organization, or by an organization catering exclusively to members and their guests for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities except as may be required generally for the membership and purposes of such organization.

Salem, MA



Co-location: The use of a monopole by more than one (1) carrier (vertical co-location) and/or several mounts on an existing building or structure by more than one (1) carrier (horizontal co-location).

Coldframe: A Temporary Structure that is an accessory unheated outdoor Structure built close to the ground, no higher than thirty-six inches (36") typically consisting of, but not limited to, a wooden or concrete frame and a top of glass or clear plastic, used for protecting seedlings and plants from cold weather.

Commercial Farm, Exempt (noun): Protected by M.G.L.A. c. 40A, § 3- meaning the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities shall be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For the purposes of this definition, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof; provided, however, that the terms agriculture, aquaculture, floriculture and horticulture shall not include the growing, cultivation, distribution or dispensation of marijuana as defined in section 2 of chapter 369 of the acts of 2012, marijuana as defined in section 1 of chapter 94C or marijuana or marijuana as defined in section 1 of chapter 94G.

Commercial recreation, indoor: A structure for recreational, social or amusement purposes, which may include as an accessory use the consumption of food and drink, including all connected rooms or space with a common means of egress and entrance. Places of assembly

Salem, MA



shall include theatres, concert halls, dance halls, skating rinks, bowling alleys, health clubs, dance studios, amusement arcade, or other commercial recreational centers conducted for or not for profit.

Commercial recreation, outdoor: Drive-in theatre, driving range, miniature golf course, bathing beach, sports club, horseback riding stable, boathouse, game preserve, marina or other commercial recreation carried on in whole or in part outdoors, except those activities more specifically designated in this Ordinance.

Commuter rail station: Any Massachusetts Bay Transportation Authority (MBTA) commuter rail station with year-round, rather than intermittent, seasonal, or event-based, service.

Composting: A process of accelerated biodegradation and stabilization of organic material under controlled conditions yielding a product which can safely be used as fertilizer.

Contractor's yard: Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment.

Coop: An enclosed shelter that houses domestic fowl.

Domestic fowl: A breed of bird specialized for meat production and/or egg laying and specifically excluding roosters.

Drive-in restaurants or snack bars: Any eating establishment where commodities are consumed on the premises but outside the principal building.

Drive-through facility: A commercial facility which provides a service directly to a motor vehicle or where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is serviced without exiting the vehicle. This shall not include, for example, the selling of fuel at a motor fuel facility, quick-change oil automotive service stations, or the accessory functions of a car wash facility such as vacuum cleaning stations.

Drive-through facility—fast food: A drive-through facility that serves food or drink.

Drive-through facility—other: Drive-through facility that does not include food or drink; includes, banks, pharmacies and similar uses.

Dwelling, multifamily: A building designed for or occupied by three (3) or more families, with separate housekeeping and cooking facilities for each.

Dwelling, single-family: A detached building designed for or occupied by one (1) family only.

The logo for Salem, MA, featuring the city name in a serif font with a red and blue graphic element to the left.

Dwelling, two-family: A building designed for or occupied by two (2) families only, with separate housekeeping and cooking facilities for each. A so-called duplex dwelling, even though having two (2) separate entrances and street numbers, shall be construed as being a single building.

Dwelling unit: A building or portion thereof providing complete housekeeping and cooking facilities for one (1) family, as defined by the Commonwealth of Massachusetts State Building Code Regulations & Standards 780 CMR .

Educational use, nonexempt: Educational facilities not exempted from regulation by G.L. c. 40A, s. 3.

Eligible Buyer: An individual or household certified by the Monitoring Agent to have met all of the eligibility requirements set forth in the Affordable Housing Restriction and applicable Program Guidelines to buy an Affordable unit, including limits on income and assets, suitability of financing, etc.

Eligible Household: A household of one (1) or more persons whose maximum income does not exceed the income limits established in Section [5.4](#).

Essential services: Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overhand, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

FAA: The Federal Aviation Administration.

Fall zone: The area on the ground within the prescribed radius from the base of a personal wireless service facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

Family: One (1) or more persons occupying a dwelling unit and living together as a single nonprofit housekeeping unit; provided that a group of three (3) or more persons who are not within some degree of kinship shall not be deemed to constitute a family.

Family day care home: Any private residence operating a facility as defined in G.L. c. 28A, s. 9.

Farm Stand (Accessory): A Temporary Structure such as a table, stall or tent, operated by a sole vendor for the purpose of selling clean, whole, eggs, or honey, unprocessed produce and plants, all of which must be grown or produced on site.

Salem, MA



Farm Structures: Includes, but are not limited to, sheds, compost bins, shade pavilions, trellises or other vertical supports for growing crops, and structures used to extend the growing season such as Greenhouses, Hoop houses, Coops, Coldframes and similar structures.

FCC: The Federal Communications Commission.

Floor area, gross: The total square feet of floor space within the outside dimensions of a building including each floor level, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features.

Floor area ratio (FAR): A mathematical expression determined by dividing total gross floor area of a building by the area of the lot on which it is located. For example, a one acre lot with a FAR of .75 could contain thirty-two thousand six hundred seventy (32,670) square feet of gross floor area ($43,560 \times .75 = 32,670$).

Funeral home: Facility for the conducting of funerals and related activities such as embalming.

Garden, home/yard: An accessory use on a residential lot to grow plants and produce for beautification, recreation, and personal consumption. The garden may be outdoors, in an accessory structure or on the roof of a structure. Sales are prohibited.

General service establishment: An establishment providing general services such as upholstery, appliance repair, and furniture refinishing.

Greenhouse: A Structure primarily constructed of a frame and transparent plastic material, in which temperature and humidity can be controlled for the cultivation or protection of plants or other agricultural products. All greenhouse structures are subject to setback and building code requirements.

Grocery store: An indoor retail operation selling groceries, produce, meat and fish, and baked goods, with only incidental or minor sales of other convenience and household goods, not exceeding fifteen thousand (15,000) square feet of gross floor area.

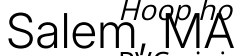
Guyed tower: A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

Ground structure: A wireless communications structure anchored to the ground.

Hens: Female chickens.

Historic carriage house: An accessory or outbuilding, originally built to house carriages, horses, or for use as a barn, that has been in existence since 1900 at its present location.

Honeybee: A common domestic bee, *Apis mellifera* species.

Salem, MA

Hoop house: An accessory Temporary Structure typically made of, but not limited to flexible PVC piping or other material covered with translucent plastic, constructed in a "half-round" or "hoop" shape, for the purposes of growing food or ornamental crops.

Hospital: A building in which physical and mental ailments of human beings are treated, including convalescent care, as differentiated from clinics.

Hotel, motel or inn: A building containing rooms rented or hired out, or designed to be rented or hired out, for sleeping purposes by guests. A general kitchen, dining room, drugstore or newsstand, intended primarily for serving the building's occupants and only incidentally the public, may be provided within the building or in an accessory building.

Impervious: Any area impenetrable by surface water.

Junk: Any article or material or collection thereof which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which, unaltered or unchanged and without further reconditioning cannot be used for its original purpose as readily as when new shall be considered junk.

Junkyard or automobile graveyard: The use of any area or any lot, whether inside or outside of a building, for the storage, keeping, or abandonment of junk, scrap or discarded materials, or the dismantling, demolition, or abandonment of automobiles, other vehicles, machinery, or parts thereof.

Kennel, commercial: A commercial establishment in which more than three (3) dogs or domesticated animals are housed, groomed, bred, boarded, trained or sold located on at least five (5) acres of land.

Lattice tower: A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.

Licensed carrier: A company authorized by the FCC to construct and operate a commercial mobile radio service system.

Light manufacturing: Fabrication, assembly, processing, finishing work or packaging.

Livestock: Any domestic animals raised for home use, consumption, or profit, such as horses, pigs, llamas, goats, fowl, sheep, buffalo, and cattle.

Local Action Unit: An Affordable Housing unit developed through a city's zoning or permit issuance process as part of the Local Initiative Program and eligible for inclusion on the Subsidized Housing Inventory.

Salem, MA



Local Initiative Program: A program administered by the Executive Office of Housing and Livable Communities (EOHLC), formerly the Massachusetts Department of Housing and Community Development (DHCD), pursuant to 760 CMR 56.00 to develop and implement local housing initiatives that produce low- and moderate-income housing, with or without a comprehensive permit as defined in Chapter 40B.

Lot: A parcel or adjacent parcels of land used or set aside and available for use as the site of one or more buildings and buildings accessory thereto or for any other definite purpose, in one (1) ownership and not divided by a street, not including any land within the limits of a public or private way upon which such lot abuts, even if the fee to such way is in the owner of the lot. Such lot shall have frontage on an improved public street.

Lot, corner: A lot which has an interior angle of less than one hundred thirty-five (135) degrees at the intersection of two (2) streets. A lot abutting a curved street or streets shall be considered a corner lot if straight lines tangent to the foremost points of the side lot lines intersect at an interior angle of less than one hundred thirty-five (135) degrees.

Lot of record: A lot which is part of a subdivision recorded in the registry of deeds or the land court or a lot or parcel described by metes and bounds, the description of which has been so recorded.

Lot, through: A lot other than a corner lot with frontage on more than one (1) street.

Lot, frontage of: A lot line coinciding with the sideline of a street which provides both legal rights of vehicular access and physical vehicular access to the lot, said line to be measured continuously along a single street or along two (2) intersecting streets if their angle of intersection is greater than one hundred and twenty (120) degrees. Vehicular access to a building site on the lot shall be exclusively through the frontage of the lot.

Lot line: A line dividing one lot from another, or from a street or any public place.

Lot width: The minimum lot width required shall be measured at the rear of the required front yard depth and on a line parallel to the right-of-way line where a plan of the right-of-way is on file with the registry of deeds or, in the absence of such a plan, from a line twenty-five (25) feet from and parallel with the centerline of the traveled way.

Low- or moderate-income Household: A household with income at or below eighty (80) percent of area median income, adjusted for household size, for the metropolitan area that includes the City of Salem, as determined annually by the United States Department of Housing and Urban Development (HUD).

Salem, MA



Manufacturing: A use engaged in the basic processing and manufacturing of materials, or the manufacture from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products, but excluding the following: Acid manufacture; cement, lime, gypsum or plaster of Paris manufacture; production of chlorine or similar noxious gases; distillation of bones; drop-forge industries manufacturing forging with power hammers; manufacture or storage of explosives in bulk quantities; fertilizer manufacture; garbage, offal, or dead animal reduction or dumping; glue manufacture; hair manufacture; petroleum refining; processing of sauerkraut, vinegar or yeast; rendering or refining of fats or oils; smelting of tin, copper, zinc or iron ore, including blast furnace or blooming mill; stockyard or feeding pen; slaughter of animals, not including the killing of fowl.

Marijuana or *marihuana*: All parts of any plant of the genus Cannabis, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin including tetrahydrocannabinol as defined in M.G.L.A. c. 94C § 1; provided that "Marijuana" shall not include: the mature stalks, fiber, oil, or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination;

1. Hemp; or
2. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

Marijuana accessories: Equipment, products, devices or materials of any kind that are intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling or otherwise introducing marijuana into the human body.

Marijuana cultivator: An entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers.

Marijuana establishment: A marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

Marijuana manufacturing: To compound, blend, extract, infuse or otherwise make or prepare a marijuana product.

Marijuana processing: To harvest, dry, cure, trim and separate parts of the marijuana plant by manual or mechanical means.

Salem, MA



Marijuana products: Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Marijuana product manufacturer: An entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

Marijuana retailer: An entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

Marijuana testing facility: An entity licensed to test marijuana and marijuana products, including certification for potency and the presence of contaminants.

Marina: A waterfront area having a dock or mooring facilities for boats for rental purposes; fuel and oil for boats only may be sold on the premises. Shore facilities similar to motels may occupy contiguous land areas.

Market Rate Unit: All dwelling units in a development subject to Section [5.4](#) that are not Affordable Housing Units as defined therein.

Maximum Affordable Purchase Price or Rent: A selling price or monthly rent that does not exceed the maximum purchase price or rent guidelines of the program used to qualify Affordable Housing Units for inclusion on the Massachusetts Chapter 40B Subsidized Housing Inventory. For homeownership units, the maximum affordable purchase price shall account for the monthly cost of a mortgage payment, property taxes, insurance, and condominium fees where applicable. For rental units, the maximum affordable rent shall account for the monthly cost of rent and utilities. The household income used to compute the maximum affordable purchase price or rent shall be adjusted for household size, considering the household size for which a proposed affordable unit would be suitable under guidelines of the Local Initiative Program or any successor affordable housing program established by the state.

Medical Clinic: Any entity, however organized, whether conducted for profit or not for profit, which is advertised, announced, established, or maintained for the purpose of providing ambulatory, out-patient medical, surgical, physical, mental health or addictive relief services for human beings. In addition, clinic Shall include any entity, however organized, whether conducted for profit or not for profit, which is advertised, announced, established, or maintained under a name which includes the word clinic, "dispensary", or "institute", and which

Salem, MA



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suggests that the organization is formed for the dispensing of medication or providing ambulatory, out-patient medical, surgical, physical, mental health or addictive relief services. Clinic shall not include dental clinics operated by local school and health departments for the sole purpose of providing education and dental hygiene services including routine examinations, cleaning and topical fluoride applications. Clinic shall not include ad hoc health promotions, screenings or wellness programs.

Medical or dental office: An office building or part thereof not a "Medical Clinic", "dispensary", or "institute" but rather one or more practitioners engaged in a solo or group practice, whether conducted for profit or not for profit, and however organized, wholly owned and controlled by one or more of the practitioners.

Mini-storage storage facility: A facility for the self-storage of personal or business related items or goods.

Mobile home: A dwelling built upon a chassis, containing complete electrical, plumbing and sanitary facilities, and designed without necessity of a permanent foundation for year-round living, irrespective of whether actually attached to a foundation or otherwise permanently located.

Monitoring Agent: The Monitoring Agent is a qualified individual or agency for the purposes of administration, monitoring and enforcement of the Affordability Requirement for a Project pursuant to the Affordability Monitoring Services Agreement.

Monopole: A type of mount that's self-supporting with a single shaft of steel or concrete and a platform (or racks) for panel antennas arrayed at the top.

Motor vehicle body repair: An establishment, garage or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers and similar components of motor vehicle bodies, but does not include the storage vehicles for the cannibalization of parts.

Motor vehicle general repairs: Premises for the servicing and repair of autos, but not to include fuel sales.

Motor vehicle light service: Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs.

Mount: The structure or surface upon which antennas are mounted, including the following four (4) types of mounts: roof-mounted, side mounted (side of a building), ground-mounted, structure mounted (structure other than a building).

Salem, MA

Municipal facilities: Facilities and buildings owned or operated by the City of Salem.



Municipal Code *Net-zero energy site:* A site that is optimally efficient, and over the course of a year, generates energy onsite, using clean renewable resources, in a quantity equal to or greater than the total amount of energy consumed onsite.

Net-zero-energy plan: A document outlining a development's energy sources, locations (on or off-site), and consumption. The Plan outlines how the development can become a net-zero energy site, as defined above; or, why achieving net-zero energy site is not possible through renewable resources on-site, given site or other constraints.

Non-owner-occupied short-term rental: A dwelling unit where the owner does not live in either the unit, the building, or otherwise on the property and which was being used as a short-term rental prior to the date the general ordinance, Chapter 15 Short-Term Rentals, was filed with the City Clerk for consideration by the City Council.

Nonresidential structure: Such structures as buildings, garages, steeples, and water towers, but does not include houses or apartments.

Nursing or convalescent home: As defined by Section 71 of Chapter 111 of the General Laws: A convalescent or nursing home is defined as any institution, however named, whether conducted for charity or profit, which is advertised, announced or maintained for the express or implied purpose of caring for three (3) or more persons admitted thereto for purposes of nursing or convalescent care

Open air motion picture theater: An open air (covered or uncovered with no sidewalls) parking area for vehicles where motion pictures are projected onto a large uncovered screen. The projection and sound equipment shall be housed in an enclosed structure.

Parking garage: A structure which is accessory to a commercial or industrial establishment and is primarily for the parking and storage of vehicles operated by the customers, visitors and employees of such an establishment.

Personal service establishment: A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, and the like.

Photovoltaic System (also referred to as Photovoltaic Installation): An active solar energy system that converts solar energy directly into electricity.

Planning Board: The Planning Board of the City of Salem as established by Chapter 41, Section 70 of the General Laws.

Planning Department: The Planning Department of the City of Salem.

Salem, MA



Preliminary application: An application which may be submitted by a developer prior to formal application for a development permit in order that a given parcel can be reviewed in relation to the standards of issuance for residential development contained herein.

Raised Bed: Method of cultivation in which soil is placed over a geotextile barrier, raised and ordinarily formed into three (3) to four (4) foot wide mounds. The soil may be enclosed by a frame generally made of untreated wood. Raised beds are not considered a Structure.

Radio frequency radiation (RFR): The emissions from personal wireless service facilities.

Rated Nameplate Capacity: The maximum rated output of electric power production of the photovoltaic system in watts of Direct Current (DC).

Repairs: Work of a reconstruction or renewal nature on any existing part of a building or structure but excluding a structural alteration.

Restaurant: A building, or portion thereof, containing tables and/or booths for at least two-thirds ($\frac{2}{3}$) of its legal capacity, which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include "fast food establishments."

Restaurant, fast-food: An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready to consume state for consumption either within the restaurant building or off premises and usually requires ordering food at a counter.

Retail: A facility selling goods but not specifically listed in the Table of Use Regulations.

Right-of-way line: A line separating a public street or way from a lot.

Roof Farm: Urban agriculture, on a roof of a principal or accessory structure with the intent to make personal use of or to sell whole, unprocessed produce, honey and/or eggs as an accessory use or, in the case of a commercial use, to be used in products sold on-site. All sales are subject to compliance with local, state and federal regulations.

Roof structure: A wireless communication structure mounted on a roof of a building or the top of a water tower.

Rooming, boarding or lodging house: A house where lodgings are let to four (4) or more persons not within second degree of kindred to the person conducting it, and shall include collegiate Greek system residencies and dormitories of educational institutions, but shall not

Salem, MA



include dormitories of charitable or philanthropic institutions or convalescent or nursing homes licensed under section seventy-one of chapter one hundred eleven or rest homes so licensed, or group residences licensed or regulated by agencies of the Commonwealth.

Run: An outdoor enclosure generally made of wire mesh.

Salem Affordable Housing Trust Fund: A fund established by the City of Salem pursuant to Massachusetts General Laws, Chapter 44, Section 55C, for the purpose of creating or preserving Affordable Housing in the City of Salem for the benefit of low- and moderate-income households.

Security barrier: A locked, impenetrable wall, fence or berm that completely conceals an area from unauthorized entry or trespass.

Separation: The distance between one (1) carrier's array of antennas and another carrier's array.

Short-term rental: A short-term rental is the use of a dwelling unit for residential occupancy for a period of fewer than thirty (30) consecutive calendar days for a fee. A short-term rental may or may not be facilitated through an online booking agent.

Sign: Any device designed to inform or attract the attention of persons not on the premises on which such device is located, whether such device is a separate structure or object or attached to or painted on another structure or object.

Sign area: The area of the smallest horizontally or vertically oriented rectangle which could enclose all the display area of the sign, together with any backing different in color or material from the finish material of the building face, without deduction for open space or other irregularities. Structural members not bearing advertising matters shall not be included unless internally or decoratively lighted. Only one side of flat, back-to-back signs need be included in calculating sign area.

Site Plan Review: Site plan review is a review process established by the City to protect and promote health, safety, convenience and general welfare of the residents of Salem. Site plan review establishes criteria for the layout, scale, appearance, safety, and environmental impacts of development. Site plan review focuses on parking, traffic, drainage, utilities, landscaping, lighting and other aspects of the proposal to arrive at the best possible design for the location.

Solar Access: The access of a solar energy system to direct sunlight.

Salem, MA



Solar Collector: A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into thermal, mechanical, chemical, or electrical energy.

Solar Energy: Radiant energy received from the sun that can be collected in the form of heat or light by a solar collector.

Solar Energy System: A device or structural design feature, a substantial purpose of which is to provide daylight for interior lighting or provide for the collection, storage and distribution of solar energy for space heating or cooling, electricity generation, or water heating.

Solar Energy System, Active: A solar energy system whose primary purpose is to harvest energy by transforming solar energy into another form of energy or transferring heat from a collector to another medium using mechanical, electrical, or chemical means.

Solar Energy System, Canopy-Mounted: An active solar energy system that creates a roof over an existing parking lot; may be of any size (small, medium, large), so long as it complies with Section 3.2.4 Accessory Buildings and Structures.

Solar Energy System, Grid-Intertie: A photovoltaic system that is connected to an electric circuit served by an electric utility.

Solar Energy System, Ground-Mounted: An Active Solar Energy System that is structurally mounted to the ground and is not roof-mounted; may be of any size (small-, medium- or large-scale).

Solar Energy System, Large-Scale: An Active Solar Energy System that occupies more than 20,001 square feet of surface area (equivalent to a rated nameplate capacity of about 250kW DC or greater).

Solar Energy System, Medium-Scale: An Active Solar Energy System that occupies more than 1,751 but less than 20,000 square feet of surface area (equivalent to a rated nameplate capacity of about 10 - 250 kW DC).

Solar Energy System, Off-Grid: A photovoltaic solar energy system in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility.

Solar Energy System, Passive: A solar energy system that captures solar light or heat without transforming it to another form of energy or transferring the energy via a heat exchanger.

Salem, MA

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scale).

Solar Energy System, Roof-Mounted: An Active Solar Energy System that is structurally mounted to the roof of a building or structure; may be of any size (small-, medium- or large-scale).

Solar Energy System, Small-Scale: An Active Solar Energy System that occupies 1,750 square feet of surface area or less (equivalent to a rated nameplate capacity of about 10 kW DC or less).

Solar Thermal System: An Active Solar Energy System that uses collectors to convert the sun's rays into useful forms of energy for water heating, space heating, or space cooling.

Special permit use: A use which would not be appropriate generally or without restriction throughout the district but which, if controlled in a neighborhood, would promote the public health, safety, convenience, morals and welfare of the City's inhabitants.

Stacking lane: An area of stacking spaces and driving lanes provided for vehicles waiting for drive-through service. *Stacking space:* An area within a stacking lane for vehicles waiting to order and/or finish a drive-through transaction.

Story: As defined in the State Building Code.

Story, half: A story under a gable or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two (2) feet above the floor of such story.

Street: A public or private way which affords the principal means of access to abutting properties.

Structure: Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

Subsidized Housing Inventory (SHI): The Executive Office of Housing and Livable Communities (formerly the Department of Housing and Community Development) Chapter 40B Subsidized Housing Inventory as provided in 760 CMR 31.04.

Supermarket: An indoor retail operation selling primarily groceries, produce, meat and fish, baked goods, and other convenience and household goods exceeding fifteen thousand (15,000) square feet of gross floor area.

Swimming pool: An artificial pool, uncovered or enclosed, used for recreational swimming and not less than twenty-four (24) inches deep nor having a surface area of less than two hundred fifty (250) square feet.

Salem, MA



Municode Codification

Tasting room: A room attached to either a brewery, distillery or winery that allows patrons to sample or consume wine, beer, and other alcoholic beverages that are produced on-site in accordance with M.G.L. c. 138. A tasting room may not be greater than fifty (50) percent of the main building's gross square footage. A seasonal tasting area is permissible, e.g. patio or deck, but shall not be included in calculating the tasting room's square footage for purposes of zoning compliance; however, the square footage of a seasonal tasting area is applicable to building, plumbing and other relevant codes.

Temporary structure: A structure without any foundation or footings to be removed within a twelve-month time period. Said structure shall conform to the requirements of the Table of Dimensional Requirements and shall receive a permit from the Building Commissioner.

Trailer: A vehicle used or designed to be used for living purposes. The terms "travel trailer," "pickup coach," "pickup camper," "motorized camper," "tent trailer," "mobile home," etc., or terms of similar import shall be interpreted as having the same meaning as the term "trailer."

Transportation terminal: Terminal facilities for handling freight with or without maintenance facilities.

Use: The specific purpose for which land, or a building and land, is designed, arranged intended, or for which it is or may be occupied or maintained.

Variance: A relaxation of the terms of this Ordinance where such relaxation will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Ordinance would result in unnecessary and undue hardship.

Veterinary hospital (animal clinic): A building whose sole use will be the medical or surgical treatment of animals, reptiles or birds. Patients may be boarded on the premises not longer than twenty (20) days. The building shall not be used for breeding purposes or as a kennel.

Warehouse, wholesale, or distribution facility: A building used primarily for the storage of goods and materials intended for distribution, but not for sale on the premises to the general public.

Waterfront boat yard: An open area where boats may be stored and/or repaired. Appurtenant structures for housing repair shops and general storage may be allowed. Painting materials may be stored and sold in the yard. No fuel or oil shall be stored or sold. The yard must have direct frontage on navigable waterways.

Waterfront yacht club (clubhouse): A structure housing facilities for a nonprofit club whose members are primarily interested in recreational yachting activities. The clubhouse shall occupy land directly fronting on the waterfront. The structure may have general recreational facilities,

Salem, MA



Municode Codification

toilet rooms, kitchen, dining room and general storage rooms. There shall be no bedrooms or sleeping accommodations in the building. Fuel and oil may be sold from dockside facilities, for use on boats only.

Way: A street or alley or other thoroughfare or easement permanently established for passage of persons or vehicles.

Wireless communication building (WCB): Any building or shelter used to house equipment used primarily for the installation and operation of equipment for generating and detecting electromagnetic radiation and is an accessory to a wireless communication structure.

Wireless communication device (WCD): Antenna, appurtenance, wiring, or equipment used in connection with the reception or transmission of electromagnetic radiation which is attached to a structure.

Wireless communication facility (WCF): Shall be used as a general term to include wireless communication building, wireless communication device, and wireless communication structure.

Wireless communication structure (WCS): Shall mean a monopole intended to support equipment used for the transmission and reception of electromagnetic radiation, including antennas, wiring or other devices attached thereto.

Yard: An open space unoccupied and unobstructed by any structure or portion of a structure from the ground upward, provided, however, that fences and walls may be permitted in any yard subject to height limitations as indicated herein.

Yard Farm: Urban agriculture on a residential Lot with intent to make personal use of or to sell whole, unprocessed produce, honey and/or eggs as an accessory use. All sales are subject to compliance with local, state and federal regulations including Board of Health soil testing requirements.

Yard, front: An open unoccupied space on the same lot with the principal building between the front line of the building and the right-of-way line and extending the full width of the lot.

Yard, rear: An open unoccupied space on the same lot with the principal building between the rear line of the building and the rear line of the lot and extending the full width of the lot.

Yard, side: An open unoccupied space on the same lot with the principal building and extending from the front yard to the rear yard.

Zoning Board of Appeals: The Zoning Board of Appeals as established by Chapter 40A, Section 12 of the Massachusetts General Laws.

(Ord. No. 9-9-10, § IV; Ord. of 9-11-14, § I; Ord. of 12-11-14(3); Ord. of 5-12-16(1), § 1; Ord. of 1-11-18(2), § 2; Ord. of 2-22-18(1); Ord. of 6-28-18, § 1; Ord. of 11-15-18; Ord. of 5-27-21(1), § 2; Ord. of 9-9-21, § 20; Ord. of 5-26-22(2), § 11; Ord. of 12-21-23, § 2)

< [9.5 - SITE PLAN REVIEW](#)

[TABLE OF AMENDMENTS](#) >