



## CITY OF SOMERVILLE, MASSACHUSETTS LAW DEPARTMENT

March 30, 2015

Honorable Board of Aldermen  
City Hall  
93 Highland Avenue  
Somerville, MA 02143

RE: Board Order #198641, Unrelated Adults Residing in Dwelling Unit

Dear Honorable Board Members:

You have asked whether the proposed zoning complies with state law regarding the co-habitation of 4 unrelated adults and how much authority a municipality has in this regard.

In my opinion, the proposed zoning complies with applicable law regarding the co-habitation of 4 unrelated adults because it is a reasonable exercise of police power. With respect to authority of a municipality, in my opinion, the Court will likely sustain such a restriction as a reasonable exercise of police power.

According to the proposed zoning ordinance, no more than four unrelated individuals are permitted to occupy a dwelling unit. See 01/23/15 draft ordinance, page 168 attached.

In Village of Belle Terre et.al. v. Boraas et.al., 416 U.S. 1 (1974), the United States Supreme Court considered the constitutionality of a zoning ordinance which prevented more than two unrelated persons from living together in the same household within particular zoning districts. The Supreme Court upheld the validity of the ordinance as a reasonable exercise of the police power. Id. at 7-9.

In my opinion, City of Worcester v. College Hill Properties, 465 Mass. 134 (2013), is inapplicable because that case presented the question whether dwelling units occupied by four or more unrelated adults constituted a lodging house. The Court concluded that the dwelling units were not lodgings and the properties were not lodging houses under G.L. c. 140, s. 24. Id. The Court said "while we recognize that the city seeks to protect student safety ... such concerns are better addressed through enforcement of applicable zoning ordinances and provisions of the sanitary and fire safety codes." Id. at 145.

With respect to the state sanitary code, the regulations at 105 Code of Massachusetts Regulations provide as follows:





410.400: Minimum Square Footage

(A) Every dwelling unit shall contain at least 150 square feet of floor space for its first occupant, and at least 100 square feet of floor space for each additional occupant, the floor space to be calculated on the basis of total habitable room area.

(B) In a dwelling unit, every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor space for each occupant.

(C) In a rooming unit, every room occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space; every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet for each occupant.

For your additional information, the Land Court has upheld the validity of a City of Boston ordinance providing that no more than four unrelated undergraduate college students are permitted to reside in a dwelling unit. Rosenberg v. City of Boston, 18 LCR 253 (2010).

Please contact me if you have any additional questions.

Very truly yours,

David P. Shapiro  
Assistant City Solicitor

cc: Francis X. Wright, Jr., City Solicitor  
George Proakis, Planning Director

products is permitted so long as the total floor area devoted to their fabrication or assembly is limited to twenty-five percent (25%) to the gross floor area occupied by the use.

## 10. RESIDENTIAL USE CATEGORY

The residential principal use category includes uses that provide living accommodations for one or more persons in a principal building type. Residential use of an accessory structure is prohibited. The residential principal use subcategories are:

- a. Household Living
 

Residential occupancy of a building in dwelling units by a individual or two (2) or more persons related by blood, marriage, or adoption and no more than four (4) unrelated persons, where tenancy is either by ownership or rented on a month-to-month basis or longer. Uses where tenancy is arranged for time periods shorter than one month are considered Lodging uses. See §5.B.8. Lodging Use Category and §5.C.3. Lodging Accessory Use Category for more information.
- b. Group Living
 

Residential occupancy of a building that is not categorized as household living and that typically provides shared or communal kitchen, dining, or bathroom facilities. The following group living specific use types are regulated differently than other uses classified within the group living subcategory:

  - i. Community or Group Residence: A residential use of four (4) or more unrelated individuals occupying a dwelling unit and living as a single housekeeping unit, if said occupants are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988. This act defines "handicap," with respect to a person, as: 1) a physical or mental impairment which substantially limits one (1) or more of such person's major life activities, 2) a record of having such an impairment, or 3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.
  - ii. Dormitory, Fraternity, or Sorority: Residential housing exclusively occupied by full- or part-time students and/or educational staff and/or group living facilities owned or operated by an educational institution.
    - a). In its discretion to approve or deny a special permit authorizing a dormitory, fraternity, or sorority use, the review board shall consider the following:
      - i). The review considerations for all Special Permits as specified in §10.D.1.e. Review Criteria.
      - ii). Proximity of the primary educational institution to the site.
      - iii). Concentration of dormitories, fraternities, or sororities in the neighborhood.
    - iii. Homeless Shelter: A facility that has a primary function of providing overnight sleeping accommodations for homeless people.
    - iv. Nursing Home/Assisted Living: An establishment

which maintains and operates continuous day and night facilities providing room and board, personal services, and skilled nursing care. Nursing homes include hospice care, but specifically exclude hospitals.

- a). In its discretion to approve or deny a special permit authorizing a nursing home use, the review board shall consider the following:
  - i). The review considerations for all Special Permits as specified in §10.D.1.e. Review Criteria.
  - ii). Characteristics of the local thoroughfare network in providing a walkable environment and access for emergency vehicles.
  - iii). Location, visibility, and design of the principal entrance, resident drop-off area, and outdoor amenity spaces.
  - iv). Provision of communal indoor seating areas with a direct line of site to the outdoors.
- v. Single Room Occupancy Housing (SRO): A residential use that provides four (4) or more rental boarding rooms for four (4) or more unrelated individuals for occupancy longer than a 14-day period. Single room occupancy housing includes boarding houses, lodging houses, and rooming houses. The following standards apply:
  - a). A license from the Board of Aldermen is required.
  - b). The unit must be provided with the following:
    - i). House rules establishing quiet hours, the maximum number of guests, and clean-up requirements for guest pets, if allowed.
    - ii). A functioning fire extinguisher.
    - iii). Child-proofed electrical outlets.
    - iv). A map identifying fire escape routes.
    - v). Directions for operating the temperature control system.
    - vi). Emergency contact information.
  - c). In its discretion to approve or deny a special permit authorizing the short term rental of a dwelling unit, the review board shall consider the following:
    - i). The review considerations for all Special Permits as specified in §10.D.1.e. Review Criteria.
    - ii). Path of access to the unit and the privacy of residents and neighboring properties.
    - iii). Location of designated outdoor smoking areas.
    - iv). Operations plan for maintaining the unit, including the inspection schedule for smoke and carbon monoxide detectors and the hours of operation for cleaning services.

## 11. RETAIL USE CATEGORY

The retail principal use category includes activities involving the sale, lease, or rental of new or used goods to the ultimate consumer. The retail principal use subcategories are:

- a. Building/Home Supplies & Equipment