

February 19, 2024

To: Worcester Zoning Board of Appeals

via E-Mail Delivery

RE: 98 Whitmarsh Avenue Zoning Enforcement Appeal of Lodging House Citation

The following information is being provided at the request of the Zoning Board to further clarify the existing conditions at 98 Whitmarsh and to illuminate the underlying factors that the Board should consider in their determination of the question at hand:

Are the current occupants of 98 Whitmarsh residing in the house as guests in a lodging house? The answer is NO, the current occupants are ordinary residential tenants and 98 Whitmarsh Ave. is not being operated as a lodging house for the following reasons inter alia:

- i. The relationship of the tenants does not meet the definition of four (4) or more unrelated parties;
- ii. The tenants are jointly and severally liable with full possession of the property under the lease, renting as one housekeeping unit with no indication of a lodging house; and
- iii. The application of the term “Lodging House” as defined in the City of Worcester Zoning Ordinance (the “Ordinance”) was previously challenged and overturned in 2013 via City of Worcester v. College Hill Properties. (City of Worcester v. College Hill Props., LLC, 465 Mass. 134).

I. Only three (3) unrelated “persons” currently reside at 98 Whitmarsh Ave. and they operate as one housekeeping unit.

The tenants at 98 Whitmarsh are friends, housemates, and consist of three groups of individuals, and each group comprises just one (1) person as defined by the Ordinance. Each of the three groups is unrelated from the other groups but the individuals in their respective groups are within a first degree of kinship. The three (3) persons are as follows:

- 1st Person: Anna, a single individual, and her registered service dog, Zeus;
- 2nd Person: Aubrey and Gabriel, a couple in a long-term domestic partnership; and
- 3rd Person: Ludjy and Ludny, a brother and sister, who have claimed refugee status from Haiti and who are in Worcester in pursuit of their education and a better life.

The Zoning Code defines “person” as follows, “Person shall include any individual, group of individuals, business organization, trust, estate, partnership, association, company, corporation, department, agency, group, society or other legal entity, public or private (including a city, town, county, state, or other governmental unit), its legal representative, agents or assigns responsible in any way for an activity subject to this Ordinance.

The Zoning Code also defines Family as, “one (1) or more persons occupying a dwelling unit and living as a single housekeeping unit, not including a group of more than three (3) persons who are not within the second degree of kinship.

The current tenants at 98 Whitmarsh reflect the type of diverse housekeeping unit that makes the City of Worcester such a vibrant community, and which the city has an interest in supporting and protecting.

Notwithstanding the fact that some of these tenants qualify as a protected class, we respectfully remind the Board that if they were to rule against the owners of 98 Whitmarsh, then the owners only avenue to compliance with the Board’s decision would be to evict ALL of the tenants.

The Building Commissioner’s citation was based exclusively upon the conclusion that there were “four (4) or more persons not within a second degree of kindred to the person conducting it...” occupying 98 Whitmarsh and it is therefore a lodging house in violation of the permitted use in the RL-7 zone. However, this is an impossible application of the ordinance’s language. *While it is our position that there are only three (3) unrelated persons residing at 98 Whitmarsh, it is important to note that it is impossible to make a lodging house finding on this condition alone. The language of the ordinance creates a nexus between the occupants and, “the person conducting it.” If the board were to decide that this condition is the only factor of determination, then under that definition a landlord renting to a family of four would also be conducting a lodging house simply because they aren’t related to the landlord (“the person conducting it”).* A finding by the Board based solely on occupancy and the relationship of the tenants would ignore the other distinctive features of a lodging house and would capriciously sweep into the definition of a lodging house virtually every other type of residential tenant. This abnormality exists in this case because the lodging house ordinance does not apply under these circumstances.

The question before the Board is not only merely whether there are four (4) or more unrelated persons residing at 98 Whitmarsh, there are multiple factors that go into the determination and operation of a lodging house. Occupancy conditions alone are not sufficient to find that 98 Whitmarsh is being operated as a lodging house.

II. As evidenced by the Lease, the tenants are jointly and severally liable with full possession of the property under the lease as one housekeeping unit, with no indication of a lodging house.

As requested, enclosed is a copy of the current lease for 98 Whitmarsh Road. The lease is a standard form, fixed term, residential lease published by the Massachusetts Association of Realtors. The existence of a written lease for a one-year term is in and of itself contrary to that of a lodging house.

Paragraph Seven (7) of the lease confers upon the tenants complete possessory interest in the premises and requires that the landlord deliver the premises to the tenant, **“free of all occupants and of all personal property.”** This is a fundamental component and a condition precedent of the lease, and grants the tenants complete control over all rooms, systems, and all other areas of premises. On this term alone, 98 Whitmarsh could not be operated as a lodging house because the landlord has no ability to rent any part of the property for any purpose whether or not it is for storage or for sleeping unless and until the current tenancy has been terminated.

Paragraph Eight (8) of the lease states inter alia that, **“Occupancy of any part of the Premises by any person, including a guest of Tenant, for a period of ten (10) or more consecutive days or for more than a total of fifteen (15) days in a sixty (60) day period shall require written permission of the LANDLORD.”** While this language alone might not be determinative, this language is instructive because it outlines a clear prohibition against short-term transient use and reinforces the possessory rights of the tenants by making it clear that it is the tenants who are in control of the persons that are present in the premises.

Paragraph Twenty-One (21) of the lease states, **“If two or more persons sign as TENANT their obligations are joint and several.”** Along with Paragraph Seven (7), this is critical to determining the question before the board. Joint and several liability requires that the tenants fulfill their obligations and pay the entire amount of the rent regardless of whether one of them is paying or all of them are paying. The implication of joint and several liability means that if the board were to rule against the owners of 98 Whitmarsh, then the only way that the owners could comply with such a decision would be to evict ALL the tenants.

Furthermore, in response to the Board’s inquiry at the previous hearing, a more precise breakdown of the “per-room” occupancy is listed on the lease addendum. The per-room breakdown was requested by the Tenants in order to facilitate a clearer living

arrangement among and between the tenants. This per-room assignment does not in any way diminish the joint and several liability of each tenant under the lease. It is important to distinguish that, even upon the vacancy of one or more of the tenants, the landlord cannot legally rent their room or any other room until ALL of the tenants have vacated, or a new lease has been executed.

A Lodging House, in layman's terms, is a room-for-rent arrangement where the person conducting it is renting out bedrooms, while at all times remaining in possession and control of the remainder of the property like in the case of a boarding house, hostel, or other sleeping-only accommodation.

III. Historical Applications and Definitions.

The application of the term “Lodging House” as defined in the Ordinance was previously challenged and overturned in 2013 via City of Worcester v. College Hill Properties. (City of Worcester v. College Hill Props., LLC, 465 Mass. 134).

We urge the board to review the findings of the court in City of Worcester v. College Hill Properties (City of Worcester v. College Hill Props., LLC, 465 Mass. 134). We acknowledge that the Board does not consider judicial ruling in their determination however we feel that the Board will find it informative. A copy of the decision is enclosed herewith.

Of particular relevance is the finding by the court as follows, *“this court concluded that the lodging house act, G. L. c. 140, §§ 22-32, did not apply in circumstances in which four unrelated adults, who were college students, occupied apartments leased from the defendant property owners, where the apartments as occupied were not “lodgings” so as to render the defendants’ properties “lodging houses” under the act [137-146]; further, this court concluded that judgments of contempt against the defendants were required to be vacated, where the judgments were civil in nature [146].”*

This case examines the differences between a lodging house and the type of residential rental arrangement existing at 98 Whitmarsh, stating as follows: *“Historically, the difference between ‘lodgings’ and apartments has been described in terms of differing legal interests of a lodger or a tenant in the property he or she occupies. During the term of a tenancy, a tenant has the exclusive legal right to occupy and use the entire property; the rooms within the apartment are not rooms ‘in the house of another.’ By contrast, a lodger occupies only specific rooms or rooms within a house or apartment that is itself owned or rented by someone else, where the owner, or another leasing form the owner is the primary occupant of the property.” (Id. at 140).*

Black's Law Dictionary defines a lodging house as, "*Habitation in another's house; apartments in another's house, furnished or unfurnished, occupied for habitation; the occupier being termed a "lodger;" and a "lodger" as, "one who occupies hired apartments in another's house; a tenant of part of another's house. A tenant, with the right of exclusive possession of a part of a house, the landlord, by himself or an agent, retaining general dominion over the house itself.*" (Black's Law Dictionary Online, 2024)

Mass Legal Practice differentiates a lodging house as follows, "*As a general rule, an agreement for board and lodging in a house under which agreement the owner retains legal possession, custody, supervision and control of every part of the entire premises precludes the relationship of landlord and tenant.*" [33 Mass. Prac., Landlord and Tenant Law § 1:8 (3d ed.)]

Additional definitions referenced in the aforementioned case include:

"A distinction between "lodgings" and "apartments" is also evident throughout the Massachusetts sanitary code and the Massachusetts fire safety code, which each define separately a "rooming unit" and a "dwelling unit," and then promulgate separate and distinct standards for rooming units and dwelling units. See, e.g., 105 Code Mass. Regs. §§ 410.100, 410.150, 410.550 (2005). This regulatory scheme evinces a legislative understanding that a rooming unit is not the same as a dwelling unit and, thus, that "lodgings," whether under Statewide regulations or under the lodging house act, are not the same as apartments.

"Under the State sanitary code, a "rooming unit" (which is located in "boarding houses, hotels, inns, lodging houses, dormitories and other similar dwelling places") is defined as "the room or group of rooms let to an individual or household for use as living and sleeping quarters but not for cooking, whether or not common facilities for cooking are made available." 105 Code Mass. Regs. § 410.020 (2005). By contrast, a "[d]welling [u]nit means the room or group of rooms within a dwelling used . . . by one family or household for living, sleeping, cooking and eating. Dwelling unit shall also mean a condominium unit." Id.

"The Massachusetts fire safety code defines "[b]oard[ing] or [l]odging [h]ouses" as "[b]uildings in which separate sleeping rooms are rented providing sleeping accommodations for persons on either a transient or a permanent basis, with or without meals." "Apartment [h]ouses," by contrast, are defined as "[b]uildings containing six or more dwelling units with independent cooking and bathroom facilities." 527 Code Mass. Regs. § 24.03 (1998). The Massachusetts lead poisoning prevention code adopts essentially identical definitions to those in the Massachusetts sanitary code. See 105 Code Mass. Regs. § 460.020 (2002)."

For the reasons set forth at the hearing and herein, we respectfully request that the Board find that 98 Whitmarsh is not being conducted as a lodging house and vote to vacate the cease-and-desist order issued by the Building Commission against the owners of 98 Whitmarsh and find in favor of the appellants.

Respectfully yours,

/s/ Andrew M. Pernokas, Esq.

/s/ Nicole Thaden, Esq.

Andrew M. Pernokas, Esq. (BBO# 707601) & Nicole Thaden, Esq. (BBO# 705860), Attorneys for Atebezi Fonge and Samuel Kayode, appellants and owners of 98 Whitmarsh Ave., Worcester, MA 01960.

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STANDARD RESIDENTIAL LEASE
(Fixed Term)



MASSACHUSETTS
ASSOCIATION OF REALTORS®

1. **Parties.** Atebezi Fonge
the "LANDLORD", whose address and telephone number are [REDACTED],
[REDACTED], [REDACTED], agrees to rent to
See Addendum - Jointly & Severally [REDACTED], the "TENANT",
whose current home address and telephone number are See Addendum
[REDACTED], the premises described in paragraph 2, below.

2. **Description Of Premises.** The premises (the "Premises") are described as [insert street address and
apartment no.] 98 Whitmarsh Ave, Worcester MA 01606
[REDACTED] and include
Assigned 2 Car Parking, Appliances, Storage, Outdoor Space [REDACTED], but exclude [REDACTED]
[REDACTED] [insert references to yard, attic/basement storage, refrigerator, washer, dryer, dishwasher etc., as appropriate]

3. **Lease Term.** The lease shall begin on 09/01/2023 and shall end on
08/31/2024 Delivery of keys to the LANDLORD or acceptance thereof shall not constitute
agreement of the LANDLORD to terminate.

4. **Rent.** The total rent for the Premises for the Lease Term is
Thirty Eight Thousand One Hundred [REDACTED] dollars (\$38,100), payable in monthly installments of
Three Thousand One Hundred Seventy Five [REDACTED] dollars (\$ 3175)
which are due in advance on the 1st day of each calendar month. Rent shall be paid to
Atebezi Fonge via Check or Digital Payment [REDACTED]. If a payment for a particular month
is made more than thirty (30) days after due date, a late fee of \$ 100 shall be due. **A security
deposit of \$ N/A was received and a copy of receipt is attached.**

5. **Time.** TIME IS OF THE ESSENCE as to each provision of the Lease.

6. **Utilities / Heating Fuel.** The LANDLORD shall pay all charges for water and shall reasonably supply hot
water and heat (except to the extent that fuel for heat is separately metered to the Premises) during heating
season, as required by applicable law or code. The TENANT agrees to act reasonably to avoid wasting of
water, heating fuel or other utilities for which LANDLORD has agreed to pay.

Payment for the utilities listed shall be made by:

Fuel For Heat	Landlord <input checked="" type="checkbox"/>	Tenant <input type="checkbox"/>	[check applicable box]
Fuel For Hot Water	Landlord <input checked="" type="checkbox"/>	Tenant <input type="checkbox"/>	[check applicable box]
Electricity	Landlord <input checked="" type="checkbox"/>	Tenant <input type="checkbox"/>	[check applicable box]
Gas	Landlord <input checked="" type="checkbox"/>	Tenant <input type="checkbox"/>	[check applicable box]
Water	Landlord <input checked="" type="checkbox"/>	Tenant <input type="checkbox"/>	[check applicable box]

[Note: fuel, electricity, gas, water and other utilities may be billed to TENANT only where separately metered]. If Tenant has agreed to
pay for water, a Water And Sewer Addendum shall be attached together with a copy of the Certificate filed by the Landlord with the
local Board of Health or department having authority to enforce the State Sanitary Code.

7. **Delivery Of Premises.** On the date the Lease begins the LANDLORD shall deliver full possession of the
Premises to the TENANT, free of all occupants and of all personal property, except property included in the
Lease. If despite reasonable efforts the LANDLORD is unable to deliver full possession of the Premises on the
date the Lease begins, the LANDLORD shall not be liable to TENANT for any loss or damage nor shall this
Lease be void or voidable, but the rent for the Lease Term shall be proportionally reduced and the TENANT
shall not be liable for any rent until possession is delivered. Either party may terminate this Lease by written
notice if possession is not delivered within thirty (30) days after the beginning date of the Lease Term. Upon

delivery of such notice all payments made by the TENANT pursuant to this Lease shall be immediately returned and all obligations of the TENANT and LANDLORD shall terminate and this Lease shall automatically become void and neither the TENANT nor LANDLORD shall have further recourse or remedy against the other. The TENANT authorizes the LANDLORD to commence any necessary proceedings in the name of the TENANT to recover possession.

8. Occupancy / Use / Assignment / Subletting. The Premises shall be used solely for residential purposes for occupancy of Add. _____ persons of whom Add. _____ are under six years of age, but shall not exceed limits established by law, regulation or ordinance. Should the TENANT desire or anticipate a change in occupancy of the Premises due to adoption, birth of a child or otherwise, the TENANT shall notify the LANDLORD at least sixty (60) days in advance. The TENANT shall not assign TENANT'S rights under this Lease and shall not sublet all or part of the Premises without prior written permission of the LANDLORD. Occupancy of any part of the Premises by any person, including a guest of TENANT, for a period of ten (10) or more consecutive days or for more than a total of fifteen (15) days in any sixty (60) day period shall require written permission of the LANDLORD. If the Premises are part of a condominium, apartment building or other multiple dwelling, the TENANT agrees to abide by all rules and regulations governing such dwelling. The TENANT agrees not to use or permit the Premises to be used for any improper or unlawful purpose and agrees to limit use of the Premises so that it does not disturb or interfere with comfort, safety or enjoyment of any person living nearby, including any occupant of the condominium, apartment building or multiple dwelling.

9. Cleanliness / Alterations / Repairs. The TENANT shall at all times maintain the Premises in a clean and sanitary condition and in the same condition as they were at the start of the tenancy, reasonable use and wear excepted. For other maintenance or repair of the Premises, the TENANT shall notify LANDLORD or Atebezi Fonge

[insert name, address, phone number] If the TENANT fails to maintain, as agreed, the LANDLORD shall have the option to make such repairs, whereupon the TENANT shall reimburse the LANDLORD upon demand. The TENANT shall not paint or wallpaper any part of the Premises without LANDLORD'S written permission nor shall the TENANT make any interior or exterior alteration or change in the Premises nor shall TENANT change any lock or re-key any lock without the written permission of the LANDLORD. Should a new lock be installed or an existing lock be altered or re-keyed, the TENANT shall immediately deliver a duplicate key to the LANDLORD at TENANT'S sole expense. The TENANT shall not install any washing machine, dryer, air conditioner, space heater, waterbed or fixture without written permission of the LANDLORD. Unless otherwise agreed, any lock or fixture installed in the Premises with permission of the LANDLORD shall become the property of the LANDLORD upon termination of the Lease. No object shall be thrown from any porch, balcony or window nor kept on any railing, fire escape or windowsill. The TENANT shall not place or store any property in any common area. The TENANT shall be liable for any misuse of any plumbing fixture or equipment, including disposal of rubbish or garbage that damages any fixture or clogs any pipe. The TENANT shall maintain any surrounding grounds for which TENANT is given exclusive use, including any trees and shrubbery, keeping same free of rubbish and weeds. At the termination of the Lease the TENANT shall surrender the Premises with all keys to LANDLORD in the same condition as they now are, reasonable use and wear excepted. Should the TENANT fail to turn over all keys at the end of the Lease, the LANDLORD shall be permitted to replace the locks and keys immediately at TENANT'S sole cost and expense. The TENANT shall be responsible for all damage or loss caused to the Premises during the Lease, whether by TENANT or by any invitee or guest of TENANT, excluding acts of God or any injury or loss caused by the LANDLORD or for which the LANDLORD is statutorily liable.

10. **Parking.** The TENANT shall not be permitted to park or store any vehicle on the Premises or on any other property of LANDLORD, except as follows; (a) it shall be at TENANT'S sole risk and expense and (b) restricted, as follows: # 2 vehicle(s) are permitted to park In driveway to the right of property, See Add. for Parking Assignment [insert location]

11. **Fire / Casualty.** If the Premises or any common area providing a necessary means of egress/access to the Premises are damaged by fire or other casualty which materially interferes with the TENANT'S use of or access to the Premises, the LANDLORD may terminate the Lease by giving the TENANT written notice to become effective at the end of the then current month. If the LANDLORD has not exercised the option to terminate, the rent shall be reduced to the fair rental value of the Premises until the Premises is restored to its former condition. If the LANDLORD has not restored the Premises or egress/access within thirty (30) days, the TENANT may give notice of termination of the Lease to become effective at the end of the then current month.

12. **Government Regulations / Eminent Domain.** The LANDLORD shall not be liable for any loss, injury or damage caused by the LANDLORD'S inability to satisfy LANDLORD'S obligations or delay in satisfying LANDLORD'S obligations under the Lease resulting from any governmental order, law, code, rule or regulation, including any taking by eminent domain. Should all or part of the Premises or any necessary access/egress be taken by eminent domain or be subject to an order of condemnation which materially impairs TENANT'S access to or use of the Premises, then either party may notify the other of termination of the Lease to take effect on the effective date of taking, by thirty (30) days' written notice. Failure of TENANT to give notice of termination within thirty (30) days after the effective date of taking shall constitute a waiver. Should all or part of the Premises be taken by eminent domain, the TENANT shall have no right to any part of a *pro tanto* or other payment and hereby assigns all claims to LANDLORD.

13. **Insurance.** The TENANT shall have the obligation to procure and maintain any insurance covering personal property of TENANT from fire or other casualty. If the Premises is in a multi-unit residential dwelling, the LANDLORD will provide insurance coverage of up to \$750 to cover the actual cost of relocation if the TENANT is displaced by fire or fire damage, pursuant to applicable law.

14. **Animals / Pets.** The Tenant shall be permitted to bring a service animal into the Premises according to the provisions of state and federal anti-discrimination laws. Except as provided above, the Tenant shall shall not [check one] be permitted to bring a live animal, bird, reptile, or pet into the Premises. If permitted, describe restrictions:

With written permission from the Owner. See Add.

15. **Lead Paint.** For premises built before 1978 TENANT acknowledges receipt of the "Tenant Lead Law Notification" regarding Massachusetts and federal lead laws and regulations, including notice of lead hazards and the possible presence of dangerous levels of lead. The TENANT further acknowledges that neither the LANDLORD nor any representative of LANDLORD has made any representation, express or implied, regarding the absence of lead paint or compliance with any lead law, except as set forth in writing.

16. **Entry And Inspection.** The LANDLORD or his agents or designees shall be permitted to enter the Premises at reasonable times and upon reasonable notice to TENANT for the purpose of inspecting the Premises; for the purpose of maintaining or repairing the Premises; to ensure compliance with any statute, code or regulation; or for the purpose of showing the Premises to any real estate agent, appraiser, mortgagee, prospective buyer or prospective tenant or inspector/contractor for prospective buyer/tenant.

17. **Indemnification.** The TENANT agrees to indemnify, defend and hold the LANDLORD harmless from any injury, loss or damage suffered by TENANT or by any person or property that occurs at the Premises or in any common area during the Lease, except for any injury, loss or damages caused by the negligence or unlawful act of the LANDLORD or for which the LANDLORD is statutorily liable.

18. **Breach / Abandonment.** If the TENANT breaches the Lease by failure to pay rent when due, the LANDLORD may terminate the Lease by giving the TENANT a fourteen (14) day Notice To Quit for nonpayment of rent, pursuant to applicable law. If the TENANT breaches any other term or provision of the Lease or made a misstatement in any rental application or is declared bankrupt or the Premises reasonably appear to have been abandoned, the LANDLORD may terminate the Lease by giving the TENANT a seven (7) day notice to vacate, upon the expiration of which the Lease shall terminate. Entry by the LANDLORD shall not be required before termination. Issuance of a notice pursuant to this paragraph shall be without waiver or prejudice to any other right or remedy of LANDLORD. In the event of such termination the TENANT shall be obligated to pay the LANDLORD a sum equal to the balance of the rent due under the remainder of the Lease until the date of commencement of the tenancy of a new tenant for the Premises together with: a) all costs and expenses reasonably incurred by LANDLORD to restore the Premises to the same condition as they were at the beginning of the Lease, including cleaning and painting; b) moving and storage charges for any personal property of TENANT either required by law to be moved and stored or in the discretion of the LANDLORD to be moved and stored; c) any costs reasonably incurred to advertise and locate a new tenant, including broker's fees; and d) any other damages permitted to be recovered; and e) interest at the legal rate from the date of breach, costs and attorneys' fees. Delay or failure of LANDLORD to commence legal proceedings shall not constitute a waiver of any right or remedy.

19. **Attorneys' Fees.** In the event that the LANDLORD reasonably requires services of an attorney to enforce the terms of the Lease or to seek to recover possession or damages, the TENANT shall pay the LANDLORD the reasonable attorneys' fee incurred and all costs, whether or not a summary process action or other civil action is commenced or judgment is obtained.

20. **Notices.** All notices required or permitted to be made under this Lease, including any notice of violation of law or the need for care maintenance or repair, shall be in writing and may be delivered in hand, sent by certified mail, return receipt requested or sent by United States Postal Service overnight Express Mail or other overnight delivery service, addressed to the LANDLORD or TENANT or their authorized representative at the address set forth in this paragraph or to the TENANT at the Premises during the term of the Lease. Such notice shall be deemed to have been given upon delivery or, if sent by certified mail on the date of delivery set forth in the receipt or in the absence of a receipt three business days after deposited or, if sent by Express Mail or other overnight mail or delivery, the next business day after deposited with the overnight mail or delivery service, whether or not a signature is required or received. Acceptance of any notice, whether by delivery or mail, shall be sufficient if accepted or signed by a person having express or implied authority to receive same. Notice shall also be deemed adequate if given in any other form permitted by law.

LANDLORD		TENANT	
<i>[print name]</i>	Atebezi Fonge	<i>[print name]</i>	See Addendum
<i>[address]</i>		<i>[address]</i>	
<i>[telephone]</i>		<i>[telephone]</i>	

21. **Counterparts / Electronic Delivery / Construction Of Agreement.** This Lease may be executed in counterparts. All documents related to this rental may be delivered electronically, including by encrypted or unencrypted email or facsimile, and shall have the same effect as delivery of an original.

The TENANT warrants under the penalty of perjury that TENANT is at least 18 years of age. If two or more persons sign as TENANT their obligations are joint and several. If any term or provision in the Lease is declared invalid, the remainder of the Lease shall not be affected. If the LANDLORD is a trust, corporation, limited liability company or entity whose representative executes this Lease in a representative or fiduciary capacity, only the principal or the trust or estate represented shall be bound, and neither the trustee, officer, shareholder or beneficiary shall be personally liable for any obligation, express or implied. This Lease shall be construed as a Massachusetts contract; is to take effect as a sealed instrument; sets forth the entire agreement between the parties; and may be canceled, modified or amended only by a writing signed by both the LANDLORD and the TENANT. Within thirty (30) days after the Lease has been signed by LANDLORD and TENANT the LANDLORD shall deliver a copy to TENANT.

22. Additional Provisions.

Grounds Maintenance is Tenant Responsibility, This includes Snow Removal and Salting in Winter. A Lawn Mower will be provided in Rear Shed. 2 Shovels and Salt will also be provided prior to the commencement of Winter.

UPON SIGNING, THIS DOCUMENT WILL BECOME A LEGALLY BINDING AGREEMENT. IF NOT UNDERSTOOD, SEEK ADVICE FROM AN ATTORNEY.

Aubrey [Redacted] dotloop verified
08/23/23 7:19 PM EDT
F0SK-C4AD-F86B-KHLM

Gabriel [Redacted] dotloop verified
08/23/23 7:23 PM EDT
5XC9-2UMW-J1CZ-SVAH

Ludny [Redacted] dotloop verified
08/27/23 11:11 AM EDT
04L4-KLRH-8PPT-8C4U

TENANT Date

Ludny [Redacted] dotloop verified
08/27/23 11:05 AM EDT
ADGZ-WAMO-6L1T-SZYN

TENANT Date

Anna [Redacted] dotloop verified
08/29/23 7:16 PM EDT
X9GH-DU0B-K8SM-ACTP

TENANT Date

Atebezi Fonge dotloop verified
08/24/23 7:47 PM EDT
HHMO-WYIZ-CSAG-CO8A

LANDLORD or authorized agent Date

AF
08/27/23
2:40 PM EDT
dotloop verified

AF
08/31/23
9:07 AM EDT
dotloop verified

In consideration of the sum of one dollar (\$1.00) and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the undersigned guarantor ("Guarantor") hereby guarantees all obligations of TENANT in the Lease. All suretyship defenses and notice of default and demand are each waived.

WITNESS

[Redacted Signature Box]

GUARANTOR

[Redacted Signature Box]

Date

Print Name _____

Address _____

Telephone _____



ADDENDUM

DATE: 08/23/2023

Property Address:

98 Whitmarsh Ave, Worcester MA 01606

8/23/23 : This Addendum May Be Updated During Lease Term to Add or Subtract Relevant Information, with a corresponding dated signature or initial by the owner to confirm any change made. Tenants are responsible for their respective portion of rent detailed below and to share in property upkeep and responsibilities in a mutually agreeable fashion.

**8/23/23 : "Blue" Room - Aubrey [REDACTED] & Gabriel [REDACTED] - Rent \$1175 Occupying: 9/1/23-8/31/24
Assigned 2 Car Parking Off Street Contact: Aubrey [REDACTED] & Gabriel [REDACTED]**

**8/27/23 : "Purple" Room - Ludjy [REDACTED] & Ludny [REDACTED] - Rent \$1150 Occupying 8/27/23-5/12/24
: Ludjy [REDACTED] Ludny [REDACTED] Guarantor: [REDACTED]**

**8/29/23 : "Gray" Room - Anna [REDACTED] & Registered Support Animal: Zeus (Dog) - Rent \$850 Occupying 9/1/23-8/31/24
:Anna [REDACTED]**

Aubrey [REDACTED]

dotloop verified
08/24/23 1:45 PM EDT
NAUQ-RUVE-UZFZ-MW0V

Atbasi Fong

dotloop verified
08/24/23 7:47 PM EDT
PKAJ-OZZD-VLZ1-PM19

Gabriel [REDACTED]

dotloop verified
08/23/23 7:24 PM EDT
OCFO-OLHO-GGGP-YOVI

Seller/Landlord

Date

Ludjy [REDACTED]

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CITY OF WORCESTER *vs.* COLLEGE HILL PROPERTIES, LLC,
& another¹ (and four companion cases²).

Worcester. January 7, 2013. - May 15, 2013.

Present: IRELAND, C.J., SPINA, CORDY, BOTSFORD, GANTS, DUFFLY, & LENK, JJ.

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Gary S. Brackett for the defendants.
Ann S. Refolo, Assistant City Solicitor, for the plaintiff.
Philip S. Lapatin & Nathaniel F. Hulme, for Greater Boston Real Estate Board, amicus curiae, submitted a brief.

LENK, J. The defendants own two-family and three-family rental properties in Worcester. They leased dwelling units in these properties to groups of four unrelated adult college students. Each such dwelling unit contained a living room and dining room, kitchen, bathroom, and bedrooms. The inspectional services department of the city of Worcester (city) determined that,

¹Paul F. Giorgio.
²City of Worcester *vs.* Paul F. Giorgio & another (two cases); and City of Worcester *vs.* Michele Meaney & another (two cases).

where such a dwelling unit is occupied by four or more unrelated adults, “not within the second degree of kindred” to each other, the dwelling unit is a “lodging” for purposes of G. L. c. 140, §§ 22-32 (lodging house act or act), and that each of the defendants was accordingly operating a lodging house without a license. See G. L. c. 140, § 24. This case presents the question whether such dwelling units as occupied constitute lodgings so as to render the subject properties lodging houses under the lodging house act. We conclude that the dwelling units are not lodgings and the properties are not lodging houses under the act.

1. *Background.* The essential facts are undisputed. The defendants own two-family and three-family rental properties in the city.³ The properties contain dwelling units commonly referred to as apartments, consisting of a living room and dining room, a kitchen, a bathroom, and an unspecified number of bedrooms. Each apartment at issue here was leased to four local college students for a twelve-month period. The students, all adults, were not related to each other or to the defendant lessors.⁴ The students sharing an apartment each had access to the entire apartment and the use of all common areas, such as the kitchen and living room.

Following an investigation, the city issued citations to the defendants on November 18 and 24, 2009, ordering them to cease and desist from operating unlicensed lodging houses. In January, 2010, when the defendants had not complied with the city’s orders to reduce the number of occupants to no more than three unrelated adults in any one apartment, the city filed complaints in the Housing Court, seeking preliminary injunctions enjoining the defendants from failing to comply with the city’s administrative orders, and from operating unlicensed lodging houses. Although there were no asserted violations of the sanitary or building codes, or of the zoning ordinance, the

³Paul F. and Diana H. Giorgio own the properties at 7 Clay Street and 13 Boyden Street; College Hill Properties, LLC, an entity controlled by Paul F. Giorgio, is the owner of the property at 11 Boyden Street; and Michele and Paul J. Meaney are the owners of the properties at 21 and 23 Caro Street.

⁴Although the record does not contain copies of any leases, the parties do not dispute that each of the students had a signed, twelve-month lease with one of the defendants.

city's stated basis for bringing the enforcement actions was its concern for fire safety and overcrowding.⁵ Evidentiary hearings followed on the five individual complaints. Concluding that the apartments as occupied constituted "lodgings" under the act, the judge issued the requested preliminary injunctions and denied the defendants' motions to stay.

When the defendants did not comply with the temporary injunctions by reducing the number of occupants in each apartment, the city filed complaints for civil contempt. At that point, the students, some of whom were seniors, were preparing for final examinations and graduation. Their leases were due to expire on May 31, 2010, and they would not leave voluntarily in response to notices to quit dated March 31, 2010. Show cause hearings were conducted concerning each of the five properties on April 14, 2010.⁶ The judge found the defendants in contempt and imposed monetary fines.⁷ The defendants' motions to stay were denied. Judgments of contempt issued on April 26, 2010. Final judgments entered thereafter, permanently enjoining the defendants from "allowing more than three unrelated adults to reside in each legal dwelling unit." The defendants filed notices of appeal.⁸

At the defendants' request, the cases were consolidated for purposes of appeal. The Appeals Court affirmed the judgments, *Worcester v. College Hill Props., LLC*, 80 Mass. App. Ct. 757 (2011), and denied the defendant's petition for rehearing. We granted the defendants' application for further appellate review. Because we conclude that the dwelling units at issue do not

⁵Lodging houses are required, inter alia, to have sprinkler systems. See G. L. c. 148, § 26H.

⁶The defendants explained that, even where students had been offered dormitory placement, the college's housing administrator estimated that transition from an off-campus apartment to a dormitory room generally required at least one week to put in place. The judge suggested placing the students in a hotel; counsel sought a stay pending the end of the examination period on May 15.

⁷The calculated fine was based on a fine for each day that the defendants failed to reduce the number of occupants per apartment, pursuant to the preliminary injunction; the total amount of the fines for all of the properties was \$17,900.

⁸At oral argument, counsel for the defendants represented that the defendants did not subsequently rent any of the apartments to four or more individuals.

meet the definition of "lodgings" under the lodging house act, the injunctions ordering the defendants to "reduce the number of unrelated adult occupants at the premises to no more than three in each legal dwelling unit" must be vacated.

2. *Discussion.* This case turns entirely on the meaning of the word "lodgings" under the lodging house act. The lodging house act was enacted approximately one hundred years ago, during World War I, largely in response to concerns about immoral conduct and the spread of venereal disease. *Newbury Jr. College v. Brookline*, 19 Mass. App. Ct. 197, 203-204 (1985); St. 1918, c. 259. See *Maher v. Brookline*, 339 Mass. 209, 215 (1959); G. L. c. 140, § 26. The act requires that a lodging house keeper obtain a license in order to operate a "lodging house." G. L. c. 140, § 24. General Laws c. 140, § 22, defines a "lodging house" as

"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."⁹

Although the act provides a definition of a "lodging house," the word "lodgings" is not itself defined, either in that section

⁹"Fraternity houses and dormitories of educational institutions" were added to the definition on March 18, 1965, apparently in response to legislative concerns about college student unrest. St. 1965, c. 171. "The mid-1960's was a period of student radicalism, and it is not unreasonable to infer, given the historic purpose of the lodging house laws, that the legislative concern dwelt on what was going on inside college dormitories and who was supervising them. There is, thus, some support for the ruling of the trial judge that the purpose of the lodging house laws is to assure that the facilities defined in G. L. c. 140, § 22, will be orderly, law abiding operations, responsibly managed by appropriate persons, and that the facilities are safe, sanitary, and suitable for human habitation." *Newbury Jr. College v. Brookline*, 19 Mass. App. Ct. 197, 204 (1985). See St. 1965, c. 171. Prior to the 1965 amendments, the definition excluded "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." St. 1965, c. 171.

or anywhere else in the act. The city takes the view that the dwelling units in question are “lodgings” let to four or more unrelated adults, and that the two-family and three-family apartment buildings in which those dwelling units are located “have been adapted for use as lodging houses and fit into the plain meanings of the words ‘house,’ ‘lodging’ and ‘let.’ ” In arriving at this interpretation, which the city contends is clearly and unambiguously apparent in the statute, the city relies primarily on the dictionary definitions of the words “house,” “lodging,” and “let,” each considered separately.¹⁰ It construes “a house in which lodgings are let” to mean any place to live in any house.

The defendants contend that this view is in essence myopic. The meaning accorded by the city to the terms “lodgings” and “lodging house” flies in the face of common understanding of the words as well as of an “apartment” within an “apartment building.” The city, they maintain, ignores the historic distinction between lodging houses and apartments, the specific purposes for which the lodging house act was adopted, and the difference between lodgers and tenants long recognized in our statutory and case law. Adopting the city’s interpretation would, the defendants argue, lead to absurd results and selective enforcement never envisioned or intended by the Legislature.

We review questions of statutory interpretation de novo. *Massachusetts Insurers Insolvency Fund v. Smith*, 458 Mass. 561, 564-565 (2010), quoting *Atlanticare Med. Ctr. v. Commissioner of the Div. of Med. Assistance*, 439 Mass. 1, 6 (2003). In interpreting the meaning of a statute, we look first to the plain statutory language. “ ‘Where the language of a statute is clear and unambiguous, it is conclusive as to legislative intent . . . ’ and ‘the courts enforce the statute according to its plain wording . . . so long as its application would not lead to an absurd result.’ ” *Martha’s Vineyard Land Bank Comm’n v. Assessors of W. Tisbury*, 62 Mass. App. Ct. 25, 27-28 (2004), quoting *Pyle*

¹⁰The city relies also upon *Worcester v. Bonaventura*, 56 Mass. App. Ct. 166, 169 (2002), in which the Appeals Court held that “a lodging house is clearly defined as a dwelling unit that is rented to four or more persons not constituting a family.” That case, however, construed the Worcester zoning ordinance, which contained distinctive definitions of “dwelling” and “family” not found in the language of G. L. c. 140, §§ 22-32 (lodging house act).

v. *School Comm. of S. Hadley*, 423 Mass. 283, 285 (1996), and *Weitzel v. Travelers Ins. Co.*, 417 Mass. 149, 153 (1994). “All the words of a statute are to be given their ordinary and usual meaning, and each clause or phrase is to be construed with reference to every other clause or phrase without giving undue emphasis to any one group of words, so that, if reasonably possible, all parts shall be construed as consistent with each other so as to form a harmonious enactment effectual to accomplish its manifest purpose.” *Selectmen of Topsfield v. State Racing Comm’n*, 324 Mass. 309, 312-313 (1949), and cases cited. “The Legislature must be assumed to know the preexisting law and the decisions of this court.” *Id.*

“Where we are unable to ascertain the intent of the Legislature from the words of a statute, we look to external sources, including the legislative history of the statute, its development, its progression through the Legislature, prior legislation on the same subject, and the history of the times.” *81 Spooner Rd. LLC v. Brookline*, 452 Mass. 109, 115 (2008). “[A] statute must be interpreted according to the intent of the Legislature ascertained from all its 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, to the end that the purpose of its framers may be effectuated.’ . . . Courts must ascertain the intent of a statute from all its parts and from the subject matter to which it relates, and must interpret the statute so as to render the legislation effective, consonant with sound reason and common sense.” *Harvard Crimson, Inc. v. President & Fellows of Harvard College*, 445 Mass. 745, 749 (2006), quoting *Hanlon v. Rollins*, 286 Mass. 444, 447 (1934).

Because the word “lodgings” is not defined in the lodging house act, we look first to the common meaning of that term in ordinary usage. See *Harvard Crimson, Inc. v. President & Fellows of Harvard College*, *supra*; G. L. c. 4, § 6, Third. “A dictionary definition of ‘lodging’ is ‘accommodation in a house, esp[ecially] in rooms for rent’ and of ‘lodging house,’ ‘a house in which lodgings are let, esp[ecially] a house other than an inn or hotel.’ ” *Selvetti v. Building Inspector of Revere*, 353 Mass.

645, 646 (1968), S.C., 356 Mass. 720 (1969).¹¹ See Webster's New Universal Unabridged Dictionary 1129 (2003) (defining lodgings as "a room or rooms rented for residence in another's house"). "[A] mere lodger in the house of another is not a tenant. . . . [A] man who let rooms to lodgers was still the sole occupier of the house." *White v. Maynard*, 111 Mass. 250, 253 (1872).

Historically, the difference between "lodgings" and apartments has been described in terms of the differing legal interests of a lodger or a tenant in the property he or she occupies. During the term of a tenancy, a tenant has the exclusive legal right to occupy and use the entirety of the property; the rooms within the apartment are not rooms "in the house of another." By contrast, a lodger occupies only a specific room or rooms within a house or apartment that is itself owned or rented by someone else, where the owner, or another leasing from the owner, is the primary occupant of the property. See *White v. Maynard, supra* at 253, 255, quoting *Wilson v. Martin*, 1 Denio 602 (N.Y. Sup. Ct. 1845), where we explained:

"[T]he owner or tenant of a dwelling-house was not a joint occupier with a lodger to whom he let the exclusive use of a bed-room and the joint use of a sitting-room 'This was nothing more than an agreement for board and lodging, with a designation of the particular rooms which the defendant was to occupy. It was not a contract for the

¹¹In *Sang Vo vs. Boston*, U.S. Dist. Ct., No. OO CV-11733-RWZ, slip op. at 19 (D. Mass. Sept. 22, 2003), the United States District Court for the District of Massachusetts, in addressing the meaning of "lodgings" under the lodging house act, observed that, contrary to the city of Boston's view, "a rooming unit is not a dwelling unit, which is to say, an apartment is not synonymous with 'lodgings.' "

" 'A house where lodgings are let' simply mirrors the dictionary definition of 'lodging house.' See, e.g., Webster's New Collegiate Dictionary 670 (1979) ('a house where lodgings are provided and let'); Oxford English Dictionary Online (2003) (from the second print edition, 1989) ('A house, other than an inn or hotel, in which lodgings are let.') 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. See also Webster's II New College Dictionary 644 (2001) ('[s]leeping accommodations' and 'rented rooms'); Oxford English Dictionary Online, *supra* ('A room or rooms hired for accommodation and residence in the house of another') *Id.* at 17.

hiring and letting of real estate. When one contracts with the keeper of a hotel or boarding-house for rooms and board, whether for a week or a year, the technical relation of landlord and tenant is not created between the parties. The lodger acquires no interest in the real estate.' . . . [It was] an ordinary agreement for board and lodging in the plaintiff's boarding-house, by which the plaintiff, as keeper of the boarding-house, retained the legal possession, custody and care of the whole house and of every room therein."

That the Legislature has, in recent years, afforded lodgers certain additional rights, G. L. c. 186, § 17,¹² does not in any way alter the essential difference between a lodger and a tenant, the former having only a contractual interest, while the latter has a property interest. *Hall v. Zoning Bd. of Appeals of Edgartown*, 28 Mass. App. Ct. 249, 254 (1990), quoting Webster's Third New Int'l Dictionary 1329 (1971) ("A 'lodger' . . . 'acquires no property interest, or possession [in housing accommodations,] but only the right in accordance with the agreement to live in and occupy a room or other designated portion therein that still remains in the owner's legal possession.' . . . [T]he critical distinguishing feature of a 'lodger' is his lack of interest in real property and his contractual relationship with the owner"). See *Bech v. Cuevas*, 404 Mass. 249, 253-254 (1989) (noting that lodgers granted tenant-at-will status by virtue of G. L. c. 186, § 17, do not have rights coextensive with those of other tenants at will under G. L. c. 186, § 12). See also *Massachusetts Sober Hous. Corp. v. Automatic Sprinkler Appeals Bd.*, 66 Mass. App. Ct. 701, 708 (2006) (group home meets

¹²General Laws c. 186, § 17, provides, in relevant part:

"occupancy of a dwelling unit within premises licensed as a rooming house or lodging house, except for fraternities, sororities and dormitories of educational institutions, for three consecutive months shall constitute a tenancy at will; provided, however, that if the rent for occupancy in such premises is payable either daily or weekly, seven days written notice to the occupant shall be sufficient to terminate the tenancy where the tenant is committing or permitting to exist a nuisance in or is causing substantial damage to the rental unit, or is creating substantial damage to the rental unit, or is creating a substantial interference with the comfort, safety, or enjoyment of the landlord or other occupants of the accommodation."

definition of lodging house because, “[l]ike a traditional lodging or boarding house, it proposes to house a good number of unrelated men in a noninstitutional setting, in a residential neighborhood, in a large house with many bedrooms”).

A distinction between “lodgings” and “apartments” is also evident throughout the Massachusetts sanitary code and the Massachusetts fire safety code, which each define separately a “rooming unit” and a “dwelling unit,” and then promulgate separate and distinct standards for rooming units and dwelling units. See, e.g., 105 Code Mass. Regs. §§ 410.100, 410.150, 410.550 (2005). This regulatory scheme evinces a legislative understanding that a rooming unit is not the same as a dwelling unit and, thus, that “lodgings,” whether under Statewide regulations or under the lodging house act, are not the same as apartments.

Under the State sanitary code, a “rooming unit” (which is located in “[b]oard[ing] houses, hotels, inns, lodging houses, dormitories and other similar dwelling places”) is defined as “the room or group of rooms let to an individual or household for use as living and sleeping quarters but not for cooking, whether or not common facilities for cooking are made available.” 105 Code Mass. Regs. § 410.020 (2005). By contrast, a “[d]welling [u]nit means the room or group of rooms within a dwelling used . . . by one family or household for living, sleeping, cooking and eating. Dwelling unit shall also mean a condominium unit.” *Id.*

The Massachusetts fire safety code defines “[b]oard[ing] or [l]odging [h]ouses” as “[b]uildings in which separate sleeping rooms are rented providing sleeping accommodations for persons on either a transient or a permanent basis, with or without meals.” “Apartment [h]ouses,” by contrast, are defined as “[b]uildings containing six or more dwelling units with independent cooking and bathroom facilities.” 527 Code Mass. Regs. § 24.03 (1998). The Massachusetts lead poisoning prevention code adopts essentially identical definitions to those in the Massachusetts sanitary code. See 105 Code Mass. Regs. § 460.020 (2002).

The distinction between “lodgings” and rental apartments is consistent with the definition of “lodging house” in G. L. c. 140, § 22, and with the role that a “lodging house” plays in the

over-all statutory structure. See *Massachusetts Hosp. Ass'n v. Department of Med. Sec.*, 412 Mass. 340, 346 (1992) (“We interpret the words used in a statute with regard to both their literal meaning and the purpose and history of the statute within which they appear”).

The statutory definition of “lodging house” expressly includes “fraternity houses and dormitories of educational institutions.” In fraternity houses and school dormitories, students by agreement, and without acquiring any property interest therein, occupy specific rooms with sleeping accommodations, much akin to a lodger in a traditional lodging house; in each instance, someone else has primary possession of, and a property interest in, the premises.

The expectation that “lodgings” consist of a specific room or rooms, and that the “lodging house” remains under the control and oversight of the person conducting it, is fundamental to the statutory scheme. Those conducting a “lodging house” must maintain a register containing the name of each person “engaging or occupying a private room,” the room assigned to the occupant, and the date and time the room was assigned. G. L. c. 140, § 27. One who conducts a “lodging house” must obtain a license and comply with a substantial number of additional monitoring and reporting requirements.¹³ Failure to do so may subject the person conducting the lodging house to both fines and criminal penalties.¹⁴ See G. L. c. 140, §§ 24, 26, 27.

These licensing requirements, and the accompanying monitoring and recordkeeping, are consistent with the statutory purposes for which the lodging house act was adopted. The lodging house act, enacted during World War I, in conjunction with the war effort, was intended to address the Legislature’s concerns with

¹³Pursuant to the State fire safety code, lodging and boarding houses with six or more occupants “not within the second degree of kindred” are also required to install “an adequate system of automatic sprinklers.” G. L. c. 148, § 26H.

¹⁴Licensed lodging houses are “subject to inspection by the licensing authorities and their authorized agents, and by the police on request from the licensing authorities.” G. L. c. 140, § 25. Lodging house keepers are also subject to a fine or imprisonment if they “knowingly permit[] the property under [their] control to be used for the purpose of immoral solicitation, immoral bargaining or immoral conduct.” G. L. c. 140, § 26.

the use of lodging houses as a venue for immoral solicitation and to prevent other immoral conduct.

“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.” (Footnote omitted.)

Newbury Jr. College v. Brookline, 19 Mass. App. Ct. 197, 203-204 (1985). See *Maher v. Brookline*, 339 Mass. 209, 215 (1959).

The lodging house act clearly intends persons conducting a lodging house to be of good moral character, and gives licensing authorities broad discretion in issuing lodging house licenses. It permits “licensing authorities” to suspend a lodging house keeper’s license “for any cause deemed satisfactory to them,” and to revoke a license if they “are satisfied that the licensee is unfit to hold the license.” G. L. c. 140, § 30. See *Newbury Jr. College v. Brookline*, *supra* at 204 (noting with approval suggestion “that the purpose of the lodging house laws is to assure that the facilities defined in G. L. c. 140, § 22, will be orderly, law abiding operations, responsibly managed by appropriate persons, and that the facilities are safe, sanitary, and suitable for human habitation”). See also *Sang Vo vs. Boston*, U.S. Dist. Ct., No. OO-CV-11733-RWZ, slip op. at 21-22 (D. Mass. Sept. 22, 2003), citing *Newbury Jr. College v. Brookline*, *supra* at 203 (“The Lodging House Statute was enacted out of concern that the masses of young and unmarried people powering Boston’s economy, many from the country or overseas and without family connections, were leading lonely, antisocial, sexually loose, or otherwise unhealthy lives”).

Construing “lodgings” as the city suggests would lead to

absurd results and selective enforcement. The city argued during a hearing before the Housing Court judge, as it did before us, that a building with three dwelling units could contain some units that are “lodgings” and others that are apartments. Under the city’s view, a three-unit building with four unrelated students in the first-floor apartment, five siblings of the lessor in the second-floor apartment, and seven children of the lessor in the third-floor apartment, would contain “lodgings” requiring a “lodging house” license only as to the first-floor dwelling unit, the unit housing the fewest occupants.¹⁵ If the four students moved out, and a family of three moved in, the first-floor dwelling unit would transform from “lodgings” to a dwelling unit no longer subject to the lodging house act. This is an absurd result. “[B]y-laws must be construed reasonably [They] should not be so interpreted as to cause absurd or unreasonable results when the language is susceptible of a sensible meaning.” (Citations omitted.) *North Shore Realty Trust v. Commonwealth*, 434 Mass. 109, 112 (2001), quoting *Green v. Board of Appeal of Norwood*, 358 Mass. 253, 258 (1970). See *Lexington v. Bedford*, 378 Mass. 562, 570 (1979).

Moreover, during argument before us, the city acknowledged that, under its interpretation of “lodgings,” the lodging house act would apply to a family of seven renting an apartment from an unrelated landlord, and would apply if a new baby were added to a family of three, but asserted that the city would not enforce the statutory provisions in those circumstances. We will not adopt an interpretation of a statute which relies upon selective enforcement of the statutory provisions. Cf. *Commonwealth v. Lora*, 451 Mass. 425, 439-440 & n.27 (2008); *Cote-Whitacre v. Department of Pub. Health*, 446 Mass. 350, 376-377 (2006) (Spina, J. concurring).

While we recognize that the city seeks to protect student safety, and apparently regards the apartments at issue here as

¹⁵At a hearing before the Housing Court judge, the city’s expert was pressed repeatedly to state whether, where all three units were “lodgings,” a lodging house license would be required for each unit or if a single license for the building would suffice. He declined to respond, stating that he merely enforced the code and did not interpret it. He emphasized that, where one or more violations of the lodging house act exist in a building, the enforcement action is directed to the property address, rather than to a specific unit.

being the equivalent of dormitories, such concerns are better addressed through enforcement of applicable zoning ordinances and provisions of the sanitary and fire safety codes. The lodging house act, however, has no application in these circumstances. The apartments as occupied are not "lodgings" so as to render the defendants' properties lodging houses under G. L. c. 140, § 22, and the judgments enjoining the defendants from allowing four unrelated adults to occupy each of the apartments cannot stand.

The defendants argue also that the judgments of contempt should be reversed. "When it is decided by appellate reversal that the plaintiff was not originally entitled to any equitable relief, civil contempt adjudications fall with the orders violated." *Fitchburg v. 707 Main Corp.*, 369 Mass. 748, 754 (1976). Because the city was not entitled to equitable relief, whether the contempt orders may be set aside thus turns on whether they were criminal or civil. See *id.*

Each of the city's complaints for contempt was styled, "Complaint for Civil Contempt." The judgments of contempt imposed a daily fine on the defendants for each day that they failed to comply with the injunctions. "[T]he purpose of civil contempt is remedial: its aim is to coerce the performance of a required act by the disobedient party for the benefit of the aggrieved complainant." *Sodones v. Sodones*, 366 Mass. 121, 129-130 (1974). By contrast, "[t]he purpose of criminal contempt . . . is punitive: its aim is to vindicate the court's authority and to punish the contemnor for doing a forbidden act or for failing to act as ordered." *Matter of Birchall*, 454 Mass. 837, 848 (2009), quoting *Sodones v. Sodones*, *supra* at 130.

Here, the fines were intended to coerce the defendants into complying with the court's orders to reduce the number of occupants in each unit, and to pay for the costs of enforcement of those orders. "The primary objective of an order imposing a prospective daily fine is to coerce and, as such, it relates to civil contempt." *Labor Relations Comm'n v. Fall River Educators' Ass'n*, 382 Mass. 465, 476 (1981). Accordingly, the judgments of contempt here were clearly civil in nature, and must be vacated.

3. *Conclusion.* The judgments enjoining the defendants from allowing four unrelated adults to occupy each of the apartments

are vacated and set aside. The judgments of contempt are vacated, and judgment shall enter for the defendants on the plaintiff's complaints for contempt.

So ordered.