

# Boston's Local Ordinance: Boston's "Five or More" Rule

Are you a student living in an apartment where the landlord is violating Boston's 5 or more rule?

It has come to the attention of authorities and the Supreme Justice Court that many students are finding themselves taken advantage of, in cases where the landlord is not adhering to Boston's Local Ordinance and the "5 or more rule."

It is very important to be aware of your rights as a student apartment tenant. Clarify whether your landlord is following regulations, and know what to do if your landlord is violating the rules.

## Boston's Local Ordinance

Local ordinance in the United States refers to laws which are enforced in different states, cities, and towns, in addition to federal and state laws. These laws are developed at the local legislative level. Local ordinances also cover tenant rights and landlord obligations. The City of Boston's [Municipal Code](#) can be found on the American Legal Publishing Corporation Website.

## What is the "Five or More" Rule?

The "five or more" rule refers to the number of students permissible for a landlord to house one unit. The rule came into effect [in 2008, when an amendment](#) to the City of Boston's Zoning Code stated that a group of five or more students sharing an apartment, campus housing, or any other dwelling unit, would be in violation of the Zoning Code.

Following the amendment, all schools operating under the City of Boston had to report the number of students residing in off-campus units, and any of which contained more than four students would be subject to inspection from the Inspectional Services Department. In the case of violations, the property owner would be deemed responsible for compliance, and charges issued against them.

## The “Lodging House” Dispute

In 2013, [a case arose](#) involving rental properties in Worcester, where the defendant was leasing dwelling units in their properties to groups of four adult college students. At the time, the inspectional services department classed the dwelling unit as a “lodging,” and that the defendants were operating a lodging without a special licence required under the [Massachusetts lodging housing law](#).

The main question posed by the case was whether the units in question should belong under the lodging house act, which [defines a “lodging” as](#) “a house 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.”

The case concluded that the class of unit in question, which also contained a living room, bathroom, kitchen, dining room and kitchen, was not a lodging, and did not fall under the lodging house act. Going forward, this would apply to all student housing, meaning that landlords would not not require the lodgings licence.

The decision was reached by Justice Lenk’s reasoning that lodging houses are temporary rentals which do not include amenities, and were therefore different to modern day apartment units rented to students.

However, certain code standards would still need to be met, including:

- Sanitary standards.
- 150 s.f. of living space for the first occupancy, and 100 s.f. for each additional person.
- 70 s.f. of bedroom space for the 1st person, plus 50 s.f. for additional person.

## Problems with the “Five or More” Zoning Ordinance

Despite the attention these cases and ordinances have raised surrounding overcrowding in student accommodation, in 2015 the head of Boston’s Inspectional Services Department William Christopher noted that the city rule of barring more than 5 undergraduates from living together in off-campus apartments was rarely enforced. Furthermore, he pointed out that the ordinance needed to be rewritten, and [testified that](#) “The way the statute exists, we cannot enforce it,” and that the rule wasn’t tailored to address student crowding problems.

The case of the Worcester properties, and the alterations made to lodging house licence parameters, also brought into question whether the “5 or more” ordinance would be overruled as a result. The rule was expected to be challenged in court.

Between the enforcement of the rule in 2008 and the time of Christopher’s comments in 2015, the city had never cited any violations of the rule. This is partly because city inspectors have no legal authority to gain access to an apartment which they suspect is overcrowded. There is also no requirement for landlords to list whether their tenants are undergraduate students.

[The Globe Spotlight report](#) of 2014 revealed that landlords were also neglecting to fix unit problems, and profiting from cramming students together who could not afford to pay higher rent, and were not inclined to report violation of the ordinance.

However, many parties have disagreed that the law is unenforceable, including Councilors representing the the areas of Boston with the largest number of students, and local residents. They argue that violations should be written out and tested in court, and that The City Council should “not take no for an answer” when it comes to enforcing the rule. According to local attorneys, the ordinance “is not rocket science,” and can be enforced “if the people at City Hall think strategically and develop a smart plan.”

## Advice for Students

If you are a student in Boston and believe that your landlord is in violation of the “5 or more” rule, you are within your rights to bring it to the attention of The City Council and inspectional services.

To ensure that your situation is evaluated and resolved successfully, it is advisable to seek professional and legal help. Richard D. Vetstein is an experienced Greater Boston landlord tenant attorney, who represents rental property owners throughout Boston and Massachusetts. Vetstein is a nationally recognized real estate attorney, and past Chair of the Boston Bar Association's Title & Conveyancing Committee.

You can contact Attorney Vetstein at [rvetstein@vetsteinlawgroup.com](mailto:rvetstein@vetsteinlawgroup.com), or on 508-620-5352.