

Offered by Councillor Salvatore LaMattina

CITY OF BOSTON



IN THE YEAR TWO THOUSAND TWELVE

**AN ORDINANCE REGARDING
NUISANCE CONTROL**

WHEREAS, Excessive and unnecessary noise is a significant threat to the health, safety, and quality of life for residents of the City of Boston; and,

WHEREAS, Loud parties and gatherings cause disruptive behavior leading to sleep disturbances and anxiety creating a substantial disturbance of the quiet enjoyment of the neighborhood; and,

WHEREAS, Residents of the City have a right to be free from excessive and unnecessary noise; and persons creating the excessive noise and disturbances as well as property owners should be held accountable for their actions; and,

WHEREAS, The City of Boston has an interest in maintaining the integrity and safety of its neighborhoods and has an interest in ensuring that neighborhoods are free from excessive noise and disruptive behavior.

NOW, THEREFORE

Be it ordained by the City Council of Boston, as follows:

CBC Chapter XVI is hereby amended by adding the new sections and subsections.

Section 1.

16-27 Nuisance Control

16-27.1 Purpose

In order to protect the health, safety, and welfare of the inhabitants of the City of Boston, this ordinance shall permit the City to impose liability on property owners and other responsible persons for the nuisances and harm caused by unruly gatherings on private property and shall prohibit the consumption of alcoholic beverages by underage persons at such gatherings.

16-27.2 Definitions

“Eviction” shall mean actively trying to evict a tenant from a premise by delivery of a notice to quit and subsequent court proceedings, if a tenant fails to vacate the premises.

“Gathering” shall mean a party or event where two or more persons have assembled for a social occasion or social activity.

“Premises” shall mean any residence or other private property, place or location, including any commercial or business property.

“Property Owner” shall mean the legal owner of record of a premises as listed by the tax assessor’s records.

“Public Nuisance” shall mean a gathering of persons on any premises in a manner which constitutes a violation of law or creates a substantial disturbance of the quiet enjoyment of private or public property in a neighborhood. Behavior constituting a public nuisance includes, but is not limited to excessive noise, obstruction of public ways by crowds or vehicles, illegal parking, the service of alcohol to underage persons, fights, and disturbances of the peace.

16-27.3 Mailing of Notice to Property Owners and Others

If a police officer or other local officials have responded to a gathering constituting a public nuisance as defined pursuant to subsection 16-27.2, the Commissioner of the Boston Police Department or designee shall inform the Inspectional Services Department. The Commissioner of the Inspectional Services Department or his designee shall cause a notice of response to be made within thirty days of the gathering as follows:

- (a) Notice of response shall be mailed by certified mail to the property owner(s) of the premises where the gathering occurred as listed on the property tax assessment records. The notice shall advise the property owner(s) that the second response on the same premises within a one year period, as measured from the date of the first notice, shall result in liability of the property owner.
- (b) Notice of response shall be sent by mail or other appropriate means to any person who was personally cited at the time of the offense. The notice shall be sent to the address stated on the individuals’ government issued identification.
- (c) Notice of response shall be sent to the president/headmaster or his/her designee of an educational institution if the persons who are liable under 16-27.4 and 16-27.5 are students at such educational institution. The notice shall be sent by mail or other appropriate means.

16-27.4 Liability for a First Response to a Gathering

If the police department or other local officials have responded to a gathering constituting a public nuisance on a premises under the provisions of this section or subsections, the following persons shall be jointly or severally liable for fines as set forth below, provided that no previous

gathering constituting a public nuisance has occurred at the premises within the previous one year period.

- (a) The person or persons residing on or otherwise in control of the premises where such gathering took place whether present or not.
- (b) The person or persons who organized or sponsored such gathering.
- (c) All persons attending such gatherings who engage in any activity resulting in the public nuisance as defined pursuant to subsection 16-27.2.

In lieu of issuing a fine(s), a police officer may issue a written warning if the response to the complaint occurs prior to 10:00 PM.

16-27.5 Liability for a Second or Subsequent Response to a Gathering Constituting a Public Nuisance

If the police department is required to respond to a gathering constituting a public nuisance pursuant to subsection 16-27.2 more than once in any one year period, as measured from the date of the first response, the following persons shall be jointly and severally liable for fines as set forth below.

- (a) The person or persons residing on or otherwise in control of the premises where such gathering took place whether present or not.
- (b) The person or persons who organized or sponsored such gathering.
- (c) All persons attending such gathering who engage in any activity resulting in a public nuisance pursuant to subsection 16-27.2.
- (d) The person, persons or business entity which at the time of the gathering owned the premises where the gathering constituting the public nuisance pursuant to subsection 16-27.2 occurred, provided that notice of the first and subsequent responses has been mailed to the property owner of the premises as set forth herein and the gathering occurs at least fourteen (14) days after the mailing of the first notice. The property owner of the premises shall not be held responsible for any violation and penalties if the property owner is employing reasonable efforts to cooperate with the police department or other local officials. "Reasonable efforts" shall include but not be limited to the following: notifying the Commissioner or his designee in writing of the owner's willingness to cooperate with the police or other local officials; returning all telephonic and written inquiries from the police department or other local officials in a timely manner; retention of a security service or a police detail; issuance of written warning(s) to the occupants of the owner's intention to seek eviction for further public nuisances; and, the inclusion of a security rider in a lease agreement. The property owner of the premises shall not be held responsible for any violation and penalties if the property owner is actively pursuing eviction from the premises of a tenant who controlled, organized, sponsored or attended the gathering. The one year time period for violations for a premises shall pertain only to the same residents occupying the premises who have had prior violation(s). New residents shall start a new time cycle of one year.

16-27.6 Enforcement

The provisions of CBC 16-27.4 and 16- 27.5 may be enforced in accordance with the noncriminal disposition process of M.G.L. c. 40 § 21D. The provisions of this ordinance may also be enforced according to Chapter 40U of the Massachusetts General Laws as accepted by the City of Boston, also known as the "Green Ticket" law. The enforcing persons shall be any authorized law enforcement officer of the Boston Police Department. A fine of \$100.00 (one hundred dollars) for the first response shall be imposed to such person(s) cited; and, a fine of \$300.00 (three hundred dollars) for the second and subsequent response(s) shall be imposed to such person or persons cited.

Such person(s) or a business entity cited pursuant to these provisions shall have 14 days to request a hearing to contest violations of these sections.

The provisions of this section are enforceable without reference to the provisions of CBC 16-26.6, disturbing the peace, and without reference to the fact that the police officer issuing a citation has not obtained a scientific noise measurement prior to issuing the citation. No such scientific noise measurement is required under the provisions of this section and the lack of a noise measurement shall not constitute a defense.

16-27.7 Severability

If any provision of these sections shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

16-27.8 Effective Date

The provisions of these sections shall be effective immediately upon passage.