

CAMBRIDGE LICENSE COMMISSION

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NICOLE MURATI FERRER
CHAIRPERSON | BOARD MEMBER

BRANVILLE G. BARD, JR.
POLICE COMMISSIONER | BOARD MEMBER

GERARD E. MAHONEY
FIRE CHIEF | BOARD MEMBER

ELIZABETH Y. LINT
EXECUTIVE DIRECTOR

BOARD OF LICENSE COMMISSIONERS' MEETING MINUTES

Monday, March 1, 2021 at 1:00 p.m.

The meeting was held by remote participation through Zoom, pursuant to Governor Baker's Executive Order of March 12, 2020, suspending certain provisions of M.G.L. c. 30A, due to the COVID-19 Pandemic.

Meeting started at approximately 1:00 p.m.

Board members in attendance: Chair Nicole Murati Ferrer (present); Commissioner Branville Bard (present); and Chief Gerard Mahoney (present).

Staff member in attendance: Christopher O'Neil, Administrative Assistant.

Note: All decisions/votes were by roll call vote, and 3-0, unless otherwise specified.

ADMINISTRATIVE MATTER

The Board did not solicit or consider any public testimony at the meeting.

1) City Council's Order No. O-9 of 11/16/20, regarding a home rule petition to remove the statutory legal requirements to obtain a license to allow acoustical musical performances of five or fewer performers with no amplification, except for one microphone, at any retail business. Discussion of the City Council's February 22, 2021 responses, questions, and comments regarding the Board's communication dated February 12, 2021 and addressed to the City Manager and City Solicitor. Attached are various communications which may be addressed during the discussion.

Documents Considered: Documents attached to the agenda; notes distributed at meeting; and License Commission records.

Summary: The Board discussed its stance on whether licensing and the process currently in place for the licensing of acoustical music without amplification is still necessary. The Board's stance on licensing for businesses under c. 138 and 140 remains unchanged and as expressed during its meeting of February 10, 2021 and summarized in its communication of February 12, 2021.

The main issue of safety, including not blocking the ingress/egresses, pathways or minimal ADA space requirements, remain at the forefront and must be reviewed to ensure the safety of employees, patrons, public, and first responders.

Noise, especially in dense Cambridge where mixed-use and mixed-zoning are common, is of particular concern for the reasons previously stated. City residents already complain about church services at 3:00 p.m., background music on gasoline pumps, background music at grocery stores and restaurants, and acoustical music without amplification.

Zoning the main issue of zoning may no longer be a concern based on City Solicitor Glowa's responses to the City Councilors. This means that if this amenity will no longer be limited by zoning, then the roadblock of variances and accessory use may no longer exist.

Council raised a concern that this amenity is not accessible to businesses. The Board discussed how acoustical music with no amplification has always been accessible and something that the Board of License Commissioners has allowed when appropriate. The process to obtain a license, at least for the last 4+ years, has been incredibly accessible in that the application is online, it is streamlined so that the applicant does not have to go to multiple departments, and it is an open and transparent process. At least during this time, there have been no accessibility issues identified or an identification of the process being difficult or cumbersome.

The "issue" seen these last 4+ years is not based on accessibility or ease of obtaining a license but rather whether the location where the applicant is requesting acoustical music with no amplification is zoned for it. If what City Solicitor Glowa stated, that the current zoning changes being presented to the City Council may eliminate the issue of zoning, then the hurdle of zoning, which often times resulted in applicants not being able to obtain a license, would be eliminated. The Board could consider separating the acoustical music with no amplification from the current application online and make it a stand-alone application. This way the application would skip the zoning review and be streamlined directly to the Board upon completion by the applicant.

The intent of the Council's proposal is to bring this amenity to businesses which would not necessarily apply for this type of license, i.e. bookstores, markets, etc. Even considering that type of business, the considerations of safety and noise remain. However, these are businesses not generally licensed by the Board and are of different character than hotels, alcohol, common victuallers or entertainment venues. If the intent is to host a program where live acoustical music is provided at a, for example, clothing boutique store while people shop but not allowing congregating (meaning, setting up a separate space for people to sit or stand and "watch the show") then the question of safety could be deferred to Inspectional Services Department and Fire Department. Chief Mahoney expressed that in terms of fire safety and fire prevention a review would have to be conducted; there has to be some type of review to ensure the safety of the public and staff. ISD could also want to conduct a review in terms of building code and safety. Provided these types of businesses and their plan is reviewed by Fire and ISD for safety, then the Board could consider making the issuance of the license for these businesses administratively.

Noise clearly remains an issue regardless of the type of business. However, the character of businesses not under c. 138 or 140 is different. The matter could be addressed by either making these non-actionable under the Noise Ordinance or if the Noise Ordinance applies, make a recommendation for changes to the ordinance to a streamlined mechanism, i.e. ticketing, by responding police officers, license commission investigators, Fire, ISD or designees. Keeping the matter actionable under the Noise Ordinance may be better since otherwise there would be no consequence or teeth to the matter and no way for the City to control the Noise.

In terms of the ones we already addressed – hotels, restaurants, bars, entertainment venues, the Board remains on the same page in terms of the need for a public process, license and enforcement in the manner which is currently in place. The one change the Board proposed was to eliminate the need to advertise the application on the newspaper prior to the hearing. The abutter notification would be replaced with a notice to abutters and an affidavit of notice.

The other change discussed by the Board to make the amenity more accessible would be to change the one-day entertainment license fee from the flat rate one day fee. Although the current fee is nominal and does not cover current costs, see August 2018 response, it could be changed to \$25.00/3months, regardless of how many times it is used. In that same vein, the annual license for this particular amenity in retail businesses not licensed under c. 138 & 140 would be \$100.00. The Board committed into looking whether the annual fee could also be changed for those licensed under c. 138 & 140 although the matter was addressed extensively on March 22, 2017 and June 19, 2017.

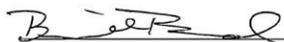
Decision: (1) The concerns raised on February 10, 2021 and memorialized in the February 12, 2021 memorandum remain and are unchanged as to businesses required to be licensed under c. 138 & 140. (2) Board eliminated the requirement for advertising on the newspaper applications for annual entertainment licenses, including live entertainment. (This will eliminate the delay caused by having these advertised but still allow for the public process). Notification will now be to abutters 7 days prior to the hearing (to allow abutters to attend or submit comments to the Board prior to the hearing) and an affidavit of notice to abutters will be submitted for with the application. This is for annual applications only. (3) Chair will meet with ISD to ask whether they see a concern (safety wise) with regard to allowing businesses (not licensed under c. 138/140) to add entertainment. If yes [and provided the zoning issues are no longer a consideration based on changes to zoning], an application will be created just for this type of amenity and these types of retailers and have them reviewed by Fire & ISD for safety (or just Fire, if ISD sees no safety issue). If they get approved by the department(s), the license will issue administratively (after payment of a nominal fee, \$25.00/3 months, \$100.00/annually). (4) Chair will submit a response to the City Manager and City Council that includes a recommendation for the City Council to amend the Noise Ordinance to either (a) make the noise non-actionable when issued for this type of entertainment; or (b) actionable but in a more streamlined process (i.e. ticketing system – tickets that can be issued by ISD, Fire, Police, License Investigators, or designees – rather than having the matters have to be presented to the Board before a hearing). (5) Chair will request a legal opinion from the City Solicitor in terms of the annual license fee currently set for live acoustical music with no entertainment (right now it is \$500.00/annually for businesses that require a license pursuant to c. 138 or 140). The question is whether we can change it now to \$100.00/annually without running into legal problems for those who have renewed their license and already paid the fee for 2021.

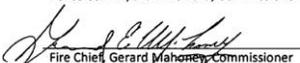
Minutes Approved: March 9, 2021

Minutes Posted: March 15, 2021

By the Board of License Commissioners


Nicole Murati Ferrer, Esq., Chair


Police Comm., Branville Bard, Commissioner


Fire Chief, Gerard Mahoney, Commissioner