

CAMBRIDGE LICENSE COMMISSION

License Commission General Hearing  
Thursday, November 8, 2012

in the

Michael J. Lombardi Building  
Basement Conference Room  
831 Massachusetts Avenue  
Cambridge, Massachusetts

6:05 p.m.

Michael P. Gardner, Chair  
Chief Gerald R. Reardon, Fire Department,  
Commissioner Robert C. Haas,  
Police Department

Elizabeth Y. Lint, Executive Director

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P R O C E E D I N G S

ELIZABETH LINT: License Commission  
general hearing, Thursday, November 8, 2012,  
6:05 p.m. We're in the Michael J. Lombardi  
Municipal Building, 831 Mass. Ave., basement  
conference room.

Before you are the Commissioners,  
Chairman Michael Gardner, Chief Gerald  
Reardon, and Commissioner Robert Haas.

First matter that we'll be taking  
tonight is informational Everest Crossing,  
LLC, doing business as OM Restaurant and  
Lounge, Bikram Yonjan, Manager, holder of an  
all alcoholic beverages as a restaurant  
license and entertainment license at 92  
Winthrop Street, due to an incident on August  
31, 2012 at one a.m. where a patron was  
allegedly struck with a glass bottle.

MICHAEL GARDNER: So why don't we  
have the officer step forward.

OFFICER PETER VELLUCCI: Mind if I

1 sit down, sir?

2 MICHAEL GARDNER: Oh, yes, please.

3 ELIZABETH LINT: The alleged victim  
4 may be here.

5 MICHAEL GARDNER: I'm sorry, you  
6 said?

7 ELIZABETH LINT: The second one  
8 down.

9 MICHAEL GARDNER: We're doing the  
10 second one first?

11 ELIZABETH LINT: Yes.

12 MICHAEL GARDNER: I just ask the  
13 parties here to state, spell your names for  
14 the record, and also briefly identify your  
15 affiliation.

16 OFFICER PETER VELLUCCI: Officer  
17 Peter Vellucci. Last name is  
18 V-e-l-l-u-c-c-i, Cambridge Police Department.

19 SOLMON CHOWDHURY: Solmon Chowdhury,  
20 C-h-o-w-d-h-u-r-y owner of OM Restaurant and  
21 Lounge, Everest Crossing, LLC.

1                   ANDREA BOYER: Andrea Boyer, chief  
2                   licensing investigator, B-o-y-e-r.

3                   MICHAEL GARDNER: So, Ms. Boyer,  
4                   would you begin and set the stage for us,  
5                   please.

6                   ANDREA BOYER: Yes, sir.

7                   This office received a complaint  
8                   pertaining to an alleged incident pertaining  
9                   with a bottle at OM establishment. The  
10                  alleged victim -- and I believe the father  
11                  were very concerned about this happening  
12                  while she was on premise. What we normally  
13                  do in that case is we get the -- we receive  
14                  the police report and then I asked OM for  
15                  their version of the story. There were two  
16                  different sides of the story so we usually  
17                  have an informational hearing to discuss the  
18                  discrepancies.

19                  MICHAEL GARDNER: All right.

20                  And if you could, Officer Vellucci,  
21                  would you explain your role in the matter?

1                   OFFICER PETER VELLUCCI: Yes, sir.  
2           I'll read my report.  
3           On August 31st at 1:03 a.m. a  
4           disturbance erupted inside. Excuse me, on  
5           the above date and time. Officer Mike  
6           Taylor, Ryan Callanan and I were patrolling  
7           Winter Street by JFK Street on foot for a  
8           visible presence. A female approached us  
9           from the entrance of OM with smeared blood  
10          down her left arm. She stated that her  
11          friend was covered in blood. As I notified  
12          ECC of the issue, the victim, Maria Valasio  
13          Garcia (phonetic) walked out of OM with a  
14          blood-soaked napkin covering her forehead.  
15          She had a large amount of blood on her face,  
16          arms, dress, and legs. I notified ECC of the  
17          injuries. She was calm and well spoken. She  
18          stated that there was a large group of girls  
19          that were arguing on the second floor of OM.  
20          When she turned around, a large female  
21          smashed a glass on her forehead. As she

1 looked down at the glass on the ground, she  
2 felt the warm blood drip down her face. She  
3 left the building. When Ms. Valasio Garcia  
4 fled the exit, she walked directly into us.  
5 She stated that she couldn't identify the  
6 girl. Officer R. Callanan retrieved his  
7 medical bag from the cruiser and administered  
8 medical attention to the victim. Due to the  
9 large crowd on Winthrop Street, Officer  
10 Taylor stayed with officer -- Officer  
11 Callanan and gathered information pertaining  
12 to the victim. I went up to the second floor  
13 of OM with the manager Ed Artie. As I walked  
14 up the stairs, there was a large group of  
15 people. Numerous women began to approach me  
16 and pointed to a small group of four females  
17 as they shouted, "They were the ones in the  
18 fight." As I approached the four females,  
19 they began to shout at another small group in  
20 front of them. I noticed the argument was  
21 increasing. I was there by myself. I

1 stepped in between the two groups, and  
2 informed them to come downstairs so we could  
3 discuss the matter outside. Due to the  
4 growing disturbance between the two girls, I  
5 told Ed Garrity to shut down the second  
6 floor. As the females exited the building  
7 with me, they began to berate me with racist  
8 remarks. Ms. Valasio Garcia was sitting down  
9 on a chair beside the other officer. She  
10 stated that, "That girl." And she pointed to  
11 Sandy Barboza. And I asked her how sure she  
12 was. She said, "That was the girl that hit  
13 with the me glass. I'm a hundred percent."  
14 As I tried to walk over and talk to  
15 Miss Barboza to hear her side, she became  
16 belligerent and called my a racist. And she  
17 said, "That bitch started it." And threw her  
18 high heels on the ground. Sergeant Carney,  
19 Lieutenant Steve Ahern arrived on scene. I  
20 explained the situation to them. Pro  
21 arrived, and informed us that she would need

1 numerous stitches because there was a deep  
2 laceration to her forehead. I placed Sandy  
3 Barboza under arrest and called for the  
4 patrol wagon. Officer R. Callanan was  
5 detaining Miss Barboza until I talked to the  
6 paramedics. Once she was transported in the  
7 patrol wagon, Officer R. Callanan informed me  
8 that Miss Barboza said, "Bitches wanted to  
9 start shit so I finished it." She was sent  
10 to the Mass. General, and the defendant was  
11 transported by Officer Jones to the station.

12 MICHAEL GARDNER: Did you make any  
13 observations of the defendant's apparent  
14 level of intoxication or non-intoxication?

15 OFFICER PETER VELLUCCI: She didn't  
16 appear to be inebriated. She was  
17 well-spoken. She was just very, very rude.  
18 She was very aggressive. She had her heels  
19 on. And then once she seen the other girl,  
20 she stood up, took her -- well, she was  
21 standing up, lifted her legs up, took her

1 heels off and threw them on the ground. And  
2 basically that was after the incident that  
3 already occurred, and she was involved in the  
4 fight on the second floor.

5 MICHAEL GARDNER: And did you form  
6 any impression as to whether or not there  
7 were any issues within the establishment with  
8 respect to, for example, overcrowding?

9 OFFICER PETER VELLUCCI: It was,  
10 very, very, very packed. I did not get a  
11 number of people in there, but it was very  
12 tight quarters. The place was filled up just  
13 as a walk-in, walk-in perspective, try to get  
14 through, try to get upstairs. I was in full  
15 uniform. I had a flashlight just trying to  
16 get people out of the way, but it was very  
17 busy. But at the same point I didn't get a  
18 count.

19 MICHAEL GARDNER: And could you  
20 describe in any detail the conversation you  
21 had with the general manager, and in

1 particular what the manager or any other  
2 staff knew about the incident or knew what  
3 had led up to the incident?

4 OFFICER PETER VELLUCCI: When I  
5 spoke to the girl that originally came over  
6 to me, she said, you know, the girls are  
7 upstairs that were in the fight. He came  
8 over to us and he goes, Are they upstairs?  
9 He goes, well, we'll go in. As far as I  
10 know, he didn't know anything about the  
11 fight, and anything that transpired prior to  
12 walking into the place, me and the other  
13 female. And then when I was upstairs, it  
14 was, it was even tough just to talk to the  
15 females. They were screaming at each other.  
16 So I had to go in there. The only way I got  
17 their attention was because I had a  
18 flashlight. And I told them we have to get  
19 this music off. We have to shut it down. He  
20 said no problem. At that point, and he went  
21 downstairs to talk to somebody. I think it

1           was about maybe 15, 20 minutes before  
2           everything started getting cleared out.  
3           There was just a lot of people there. Loud  
4           music was -- it was tough to talk.

5                       MICHAEL GARDNER: Did you have the  
6           opportunity to interview any of the staff who  
7           were in the location who may or may not have  
8           seen what happened?

9                       OFFICER PETER VELLUCCI: As far as I  
10          knew, there was no staff on that area that  
11          seen it. I asked, I tried to speak to  
12          anybody who seen any type of the fight.  
13          Nobody said that they seen it. They were  
14          helpful as far as shutting the -- trying to  
15          get everybody out off the second floor and  
16          stuff like that, but nobody that worked there  
17          in the establishment seen the actual, the  
18          physical altercation.

19                      MICHAEL GARDNER: Okay.

20                      Other questions for Ms. Boyer or  
21           Officer Vellucci?

1 ROBERT HAAS: So you couldn't gauge  
2 how many people were actually -- was it  
3 crowded on the second floor or the first  
4 floor?

5 OFFICER PETER VELLUCCI: It was, it  
6 was busy. The whole place was extremely,  
7 extremely bus.

8 ROBERT HAAS: So describe the  
9 activity that was taking place on the first  
10 floor versus the second floor.

11 OFFICER PETER VELLUCCI: It was  
12 mostly dancing. It looked pretty calm.  
13 People were dancing, you know, drinking, have  
14 a good time being sociable. But the music  
15 was really loud. As far as, like, me and  
16 Edgar were talking, and I had to pull him  
17 close to me just to shout out him so he can  
18 hear me. And I'm like there's too many  
19 people in here. We need to get the security  
20 guards and we need to start clearing out this  
21 floor. Which he did. But like there were

1 people on the stairs. Once I got up to the  
2 stairs, it was just -- they had a small bar  
3 in the corner. People were lined up to get  
4 the drinks, and that's right at the top of  
5 the stairs. So I had to go around. It would  
6 have been better if I had more officers  
7 there. But unfortunately given the situation  
8 we didn't. It was, it was very busy.

9 ROBERT HAAS: So people were  
10 actually physically standing on the stairs  
11 blocking the stairway?

12 OFFICER PETER VELLUCCI: There were  
13 people standing there talking, you know,  
14 because the bar was so busy that, you know,  
15 walking through, it was, it was pretty busy.

16 ROBERT HAAS: No other questions.

17 GERALD REARDON: Officer Vellucci,  
18 do you know if anyone ever approached you and  
19 indicated that they were the crowd manager as  
20 required by law in that particular  
21 establishment? Did anyone indicate that they

1           in fact were the crowd manager for that  
2           facility?

3                   OFFICER PETER VELLUCCI: A crowd  
4           manager? No. I know that Edgar already --  
5           I've seen and dealt with him before. I work  
6           Harvard Square mostly. I know that he is the  
7           manager of the premise, and if I have any  
8           issues or anything, I usually just talk to  
9           him. I usually don't talk to any of the  
10          other staff. I'm not too familiar with them.

11                  GERALD REARDON: Under the law, it  
12          goes back about a year, every establishment  
13          is required to have a crowd manager on duty  
14          at the time.

15                  OFFICER PETER VELLUCCI: Nobody  
16          identified themselves as a crowd manager.

17                  GERALD REARDON: Okay, thank you.

18                  MICHAEL GARDNER: And has there been  
19          a disposition of the criminal case if you  
20          know?

21                  OFFICER PETER VELLUCCI: There has

1 not.

2 MICHAEL GARDNER: All right.

3 Now, call to the audience as to whether  
4 or not there are any individuals here who  
5 have firsthand knowledge of the incident who  
6 would like to come forward, identify  
7 themselves, and state for the record.

8 Before I ask for the Sergeant, are  
9 there any actual witnesses to the events,  
10 civilian witnesses to the events or anyone  
11 who is involved in any way in the matter?

12 (No Response.)

13 MICHAEL GARDNER: Sergeant. If you  
14 could please state and spell your name for  
15 the record.

16 SERGEANT PATRICK CARNEY: It's  
17 Sergeant Patrick Carney, P-a-t-r-i-c-k  
18 C-a-r-n-e-y.

19 MICHAEL GARDNER: And if you  
20 describe your involvement with the matter,  
21 sir?

1                   SERGEANT PATRICK CARNEY: I  
2                   responded to the scene as Sergeant. A  
3                   Sergeant is supposed to respond whenever  
4                   there's a call to a licensed establishment.  
5                   I responded after the officers did. I was  
6                   there when they were placing the party under  
7                   arrest, and when the victim was being taken  
8                   in the ambulance to the hospital.

9                   MICHAEL GARDNER: And did you have  
10                  anything in addition to add to the  
11                  information provided by Officer Vellucci?

12                 SERGEANT PATRICK CARNEY: No. Just  
13                 that it appeared to be extremely crowded. A  
14                 lot of people poured out into the street  
15                 afterwards. There was problems later on.  
16                 There was a second incident. I don't know if  
17                 he spoke about that, where another party was  
18                 placed under arrest assaulting an officer.

19                 MICHAEL GARDNER: We're going to  
20                 just deal with this one now I believe. Okay?

21                 SERGEANT PATRICK CARNEY: Okay.

1           This was the same night, though, just later  
2           on in the evening.

3                   MICHAEL GARDNER:   Okay.

4                   And I'm sorry, approximately what time  
5           did this incident occur?

6                   OFFICER PETER VELLUCCI:   One a.m.

7                   SERGEANT PATRICK CARNEY:   Yes, one  
8           a.m.

9                   MICHAEL GARDNER:   Are you generally  
10          familiar with the crowd capacity limitations  
11          for this establishment?

12                  SERGEANT PATRICK CARNEY:   From what  
13          I understand it's around 200, around there  
14          somewhere.

15                  MICHAEL GARDNER:   Okay.   And did you  
16          make any effort to determine whether or not  
17          they were within their capacity?

18                  SERGEANT PATRICK CARNEY:   Just from  
19          an estimate it would -- it appeared to be a  
20          lot more than that when the people began to  
21          come out to the street afterwards.

1                   MICHAEL GARDNER: But you didn't  
2                   take a count?

3                   SERGEANT PATRICK CARNEY: I didn't  
4                   take a count, no.

5                   MICHAEL GARDNER: Thank you.  
6                   Other questions?

7                   ROBERT HAAS: No other questions.

8                   GERALD REARDON: No questions.

9                   MICHAEL GARDNER: If you like to  
10                  explain the position of the establishment.  
11                  Thanks.

12                  SOLMON CHOWDHURY: We do have about  
13                  six security that night that worked there.  
14                  We had three of them on the second floor,  
15                  three of them on the first floor. So I do  
16                  have a statement from the security guys. We  
17                  did have a manager who was at the restaurant  
18                  that night. Unfortunately, I wasn't there  
19                  that night. But as soon as I got a phone  
20                  call that there was an incident, I came over  
21                  there right away. I was actually at Central

1 Square. I went over there. Edgar is no  
2 longer working at the restaurant. I kind of  
3 left him in charge of the restaurant for a  
4 little while, and some of this incident  
5 started happening so we got rid of him and I  
6 -- I'm looking for someone else to replace  
7 him. But in the meantime I'm going to be  
8 there more often to make sure that everything  
9 is under control. And it's the right crowd  
10 that we have. In term of capacity, the  
11 security guys, as soon as I went there, I  
12 talked to everybody and everybody said we  
13 were under capacity, we were at capacity. We  
14 weren't over capacity. So I do have the  
15 statements from the security here.

16 MICHAEL GARDNER: If you can turn  
17 them in for the record.

18 With respect to Edgar's no longer  
19 working there or your stated concerns, please  
20 advise us as to, from your perspective, what  
21 you think went wrong that night or what

1           should have been done differently.

2                       SOLMON CHOWDHURY: From what I  
3           understand is that we had -- we have two  
4           different floor, and we had a birthday party  
5           that was booked downstairs. We have a small  
6           private room next to our lounge. I can give  
7           you our floor plan. So then there was a  
8           different group of people that was upstairs  
9           on the second floor. The party that was in  
10          the private room downstairs, apparently one  
11          of the girl from upstairs came downstairs  
12          trying to get into the private room, trying  
13          to talk to this girl that -- from what I  
14          understand, that they had issues before with  
15          each other. They knew from before. So, we  
16          -- security didn't let her into the private  
17          room, but then later on I guess the girl from  
18          downstairs ended up going upstairs and this  
19          is how it all started.

20                      MICHAEL GARDNER: So, what if  
21          anything do you think your staff could have

1           done differently to help alleviate the  
2           situation, if anything?

3                   SOLMON CHOWDHURY: They did talk to  
4           both of the girls and they -- they said that  
5           they're not gonna fight and they're okay.  
6           They know each other. And everything was  
7           fine until apparently 1:15 this is what  
8           happened when the girl was upstairs.  
9           Everybody was enjoying....

10                   MICHAEL GARDNER: And so I guess I'm  
11           not sure why Edgar lost his job.

12                   SOLMON CHOWDHURY: Well, it's, it's  
13           not that, you know, it's -- we are more of a  
14           restaurant/lounge, but he, you know, was more  
15           of a working thinking that he was more of a  
16           promoter and bringing in the wrong crowd.  
17           We'd have a line outside which is, you know,  
18           we want to make sure that we're at capacity  
19           so there would always be a lot of people  
20           outside waiting to get in. We don't want  
21           to....

1                   MICHAEL GARDNER: So we've heard  
2 references to dancing on the second floor.  
3 And you say it's sort of a restaurant, but in  
4 fact this was a dance facility in essence  
5 that evening?

6                   SOLMON CHOWDHURY: We do have a  
7 dancing license. We do have a DJ and dancing  
8 license.

9                   MICHAEL GARDNER: Any other  
10 questions?

11                  GERALD REARDON: So on the night in  
12 question, I've read the statements of the  
13 three security people, not one of them  
14 references anything about crowding or not  
15 overcrowding.

16                  SOLMON CHOWDHURY: Because we were  
17 at --

18                  GERALD REARDON: So what I need from  
19 you who was the crowd control manager --

20                  SOLMON CHOWDHURY: Right.

21                  GERALD REARDON: -- of record that

1 night.

2 SOLMON CHOWDHURY: We always have a  
3 crowd control manager.

4 GERALD REARDON: Who that was. That  
5 person has to be on the list of approved  
6 managers, take the training. And they should  
7 have a head count for you. That's their job.  
8 You should be able to walk in to that person  
9 and say what's our occupancy right now, and  
10 that's what they're there for.

11 SOLMON CHOWDHURY: Right.

12 GERALD REARDON: They're required to  
13 be there.

14 SOLMON CHOWDHURY: We print out the  
15 list from the website every night before we  
16 start our night, and we have it on file every  
17 night. And I apologize that I didn't bring  
18 it. It just didn't even cross my mind that  
19 -- but we do that every night we have  
20 entertainment. At the beginning of the night  
21 we print it out from the website, signs it,

1 we have certificates on file, and it's kept  
2 on file.

3 GERALD REARDON: What kind of  
4 certificates?

5 SOLMON CHOWDHURY: The crowd control  
6 manager certificate.

7 GERALD REARDON: Right. And the  
8 crowd control manager has to know what the  
9 occupancy is of the building. That's what  
10 their job is.

11 SOLMON CHOWDHURY: Right.

12 GERALD REARDON: So if I walked up  
13 to them at 10:30, they should be able to tell  
14 me that we have, you know, 135 people.

15 SOLMON CHOWDHURY: Exactly. We have  
16 somebody at the door. The crowd control  
17 manager is usually inside then she'll go in  
18 the front, or he or she will go in the front  
19 and ask the door person what is your count.  
20 And we have clickers that keep track of how  
21 many people.

1                   GERALD REARDON: So do you know who  
2 was the person of record that night?

3                   SOLMON CHOWDHURY: That night was  
4 Dejay Boston (phonetic). Dejay is her first  
5 name and Boston is her last name.

6                   GERALD REARDON: And she can provide  
7 the documentation of what she did that night?

8                   SOLMON CHOWDHURY: Exactly.

9                   MICHAEL GARDNER: So I think we  
10 would like a written statement from that  
11 individual along with a copy of whatever  
12 document of certification you have for that  
13 evening.

14                  SOLMON CHOWDHURY: Absolutely.

15                  MICHAEL GARDNER: And that should in  
16 particularly address for that time of night  
17 what the crowd was.

18                  SOLMON CHOWDHURY: Right. I'll  
19 provide that.

20                  MICHAEL GARDNER: You can supplement  
21 the record with that.

1 SOLMON CHOWDHURY: Okay.

2 ROBERT HAAS: So it's my  
3 understanding you still do physical counts of  
4 people coming and going out of the  
5 restaurant; right?

6 SOLMON CHOWDHURY: Absolutely.  
7 Every night we have, whoever is at the door  
8 checking ID, also has a clicker, two  
9 clickers; one is for in and one is for out.  
10 Every night we have that.

11 ROBERT HAAS: In the past you've had  
12 problems with the accuracy of those counts.  
13 I'm just wondering if we now are going back  
14 to a situation where we're now seeing this  
15 happening again.

16 SOLMON CHOWDHURY: Right. It  
17 becomes difficult because we have two  
18 different floors, so now, you know, we  
19 started having four counts; one will be at  
20 the front door, two will be -- I mean, the  
21 second two will be at the stairs to go

1           upstairs and downstairs.

2                   ROBERT HAAS:   Okay.   Do you keep a  
3           record of those counts at all or no?   Or just  
4           the clickers themselves?

5                   SOLMON CHOWDHURY:   It's just the  
6           clicker itself, yeah.

7                   MICHAEL GARDNER:   You didn't bring  
8           Edgar with you this evening?

9                   SOLMON CHOWDHURY:   No.

10                   MICHAEL GARDNER:   Anything else you  
11          want to add?

12                   SOLMON CHOWDHURY:   Um, no,  
13          that's....

14                   MICHAEL GARDNER:   In your opinion,  
15          what could have been done differently to  
16          prevent the assault or the seriousness of the  
17          assault?   I guess that includes the issue of  
18          the use of glass.

19                   SOLMON CHOWDHURY:   First thing we  
20          could have done is when we realized that it  
21          would have been an incident later on, we

1       could have got both of the parties out, but  
2       they kind of like promised us that wouldn't  
3       happen. And it also tough to say, you know,  
4       if they promising us that won't happen that  
5       it's really tough to say what they're going  
6       to do later on. But usually if any situation  
7       like that that we see that that might be a  
8       future threat, we'll take care of them.  
9       We'll take them out right away.

10               Second thing is maybe we can go into  
11       not using any bottles or go into plastic  
12       cups.

13               MICHAEL GARDNER: Well, there was  
14       some reference in the materials I reviewed in  
15       one of the cases where there appeared there  
16       was a substantial use of plastic. Just  
17       describe what your practice is with respect  
18       to that. You have both glass and plastic?

19               SOLMON CHOWDHURY: Right. If you  
20       are ordering a cocktail, we do give out a  
21       cocktail glass or rock glass. But if it's a

1 beer, then we'll put it in plastic cups.

2 MICHAEL GARDNER: And do you just  
3 serve bottles of beer?

4 SOLMON CHOWDHURY: No, we have draft  
5 beers. We do both, draft and bottle.

6 MICHAEL GARDNER: So you'll serve a  
7 bottle?

8 SOLMON CHOWDHURY: We'll pour it in  
9 the a cup then.

10 MICHAEL GARDNER: And then you'll  
11 retain the bottles as opposed to leaving them  
12 on the table or with the patron?

13 SOLMON CHOWDHURY: Yeah, we take the  
14 bottle away. We don't bring the bottles to  
15 the table. To get a drink you have to go to  
16 the bar. And, you know, bartender will serve  
17 it in a plastic cup.

18 MICHAEL GARDNER: Any other  
19 questions?

20 ROBERT HAAS: And you have a crowd  
21 control manager every time you have an event

1           there?

2                   SOLMON CHOWDHURY: Yes. Every night  
3 we open for business we always have a crowd  
4 control manager.

5                   MICHAEL GARDNER: Are there any  
6 other individuals here who have any personal  
7 knowledge about this particular incident who  
8 want to speak?

9                   (No Response.)

10                  MICHAEL GARDNER: Seeing none, we'll  
11 -- we also have on the agenda a separate  
12 incident later that evening. I'm just  
13 asking --

14                  ELIZABETH LINT: It's from -- we  
15 don't have something else from that evening.  
16 We have from three other dates.

17                  MICHAEL GARDNER: All right. Okay.

18                   And just describe for me, Ms. Lint, the  
19 purpose of -- you've listed this as  
20 informational.

21                  ELIZABETH LINT: As Ms. Boyer said

1 at the outset, that when she interviewed the  
2 establishment, she had one story. When she  
3 interviewed the alleged victim, it was  
4 something completely different. So in order  
5 to make a determination should we have a  
6 disciplinary hearing or what the  
7 circumstances would be, we schedule  
8 informational hearings.

9 MICHAEL GARDNER: Okay.

10 I'm not sure I understand, Ms. Boyer,  
11 the difference in the stories from what we've  
12 heard tonight. If you could --

13 ANDREA BOYER: Right. One of the  
14 main things we look for also is the fact that  
15 if we called the police and it was said at  
16 one time that the establishment did not call  
17 for the police to come in fact. So that was  
18 one of the main reasons we were having an  
19 informational hearing. And basically,  
20 though, the alleged victim is not here, there  
21 was a -- some discrepancies that were part of

1 the OM's report, but they're not here to  
2 verify that.

3 MICHAEL GARDNER: And what do the  
4 ECC records show with respect to the call?

5 ANDREA BOYER: I did not have an ECC  
6 record for that call.

7 MICHAEL GARDNER: I'm sorry,  
8 Mr. Vellucci, would you remind us again about  
9 how you became aware of it?

10 OFFICER PETER VELLUCCI: It was me  
11 and two other officers that were walking  
12 Winter Street for a visible presence. It was  
13 very busy. There were a lot of people there.  
14 We wanted a visible presence. We were  
15 standing there, and a female came up with  
16 blood on her and said that her friend  
17 basically --

18 MICHAEL GARDNER: Okay, so it was  
19 your self-observation because you were on  
20 scene?

21 OFFICER PETER VELLUCCI: Yes, sir.

1       The female came down the stairs and out the  
2       door. Nobody else came without her. It must  
3       have took her sometime to get through the  
4       crowd and left her friend upstairs and that's  
5       when she just happened to walk right into us.

6               MICHAEL GARDNER: All right.

7               At this point I'm not sure if there's  
8       other action to take with respect to this  
9       specific incident besides placing it on file.

10              Does anybody feel differently?

11              Obviously we have other issues to deal with  
12             later with respect to this institution.

13              ROBERT HAAS: I agree.

14              MICHAEL GARDNER: All right.

15              So I'll make a motion that this matter  
16             be placed on file with the annotation that we  
17             remain concerned as to the seriousness of the  
18             injury to the individual and we'd recommend  
19             that the establishment review their use of  
20             glass receptacles.

21              GERALD REARDON: Second.

1                   MICHAEL GARDNER: Motion having been  
2                   made and seconded, all those in favor signify  
3                   by saying "Aye."

4                   GERALD REARDON: Aye.

5                   ROBERT HAAS: Aye.

6                   MICHAEL GARDNER: Aye.

7                   None opposed.

8                   Thank you all for coming. To the  
9                   extent that you're here for this incident, I  
10                  don't think we need to keep you, and  
11                  appreciate that. In terms of the rest of the  
12                  agenda, I think we have an item on the agenda  
13                  that I think I would like to move forward at  
14                  this point, and that would be the policy  
15                  question of License Commission considering  
16                  further action. What further action to take  
17                  subsequent to its votes of September 27,  
18                  2011, concerning regulations of third-party  
19                  contracting within the hotel industry. So we  
20                  appreciate -- I understand you're here.  
21                  We'll just ask you to wait.

1 SOLMON CHOWDHURY: Sure.

2 MICHAEL GARDNER: With respect to  
3 this.

4 ELIZABETH LINT: We'll let the  
5 officers go.

6 OFFICER PETER VELLUCCI: Thank you  
7 very much.

8 MICHAEL GARDNER: Yeah, any officers  
9 -- I tried to make that clear I thought. So  
10 any officers who are only here for this,  
11 please, you're released.

12 So with respect to the regulations  
13 concerning the hotel industry, could I just  
14 have a show of hands as to the number of  
15 people who think they might like to testify  
16 on that matter?

17 (Raising hands).

18 MICHAEL GARDNER: Doesn't commit you  
19 to do it, but all right.

20 So seeing Councillor Decker here, I  
21 wonder if you'd be willing to come forward

1 now and have a seat.

2 COUNCILLOR MARJORIE DECKER: Sure,  
3 thank you.

4 MICHAEL GARDNER: Appreciate it if  
5 you could just state and spell your name for  
6 the record.

7 COUNCILLOR MARJORIE DECKER:  
8 Absolutely. Marjorie Decker, M-a-r-j-o-r-i-e  
9 D-e-c-k-e-r. We're good.

10 All right. Mr. Chairman and  
11 Commissioners, thank you for having us  
12 tonight. I guess I'm just really -- I'm  
13 looking forward to us moving on from here. A  
14 year ago almost we were here with you in this  
15 room and there was a clear 2 to 1 vote in  
16 support of this based on public health and  
17 public safety reasons after probably well  
18 over a year and a half of opportunities to  
19 hear from the public, from the business  
20 community, from researches on the merits of  
21 this, you should have in your hands as well a

1 legal briefing from Professor Enrich who is  
2 former general counsel for A&F to both  
3 Governor Weld and Dukakis who also  
4 extensively briefed myself and the City  
5 Manager and the City Solicitor on the legal  
6 merits of why in fact we have a strong legal  
7 grounding. I know that there has been some  
8 concern about whether or not a potential  
9 threat of a lawsuit would place any of us in  
10 a position of not being responsible  
11 fiduciaries of the city, and I would just,  
12 you know, go on to say that I think two  
13 things:

14 I think one, the legal briefing that  
15 he's provided, and I believe he's here  
16 tonight, also, if he has questions, makes it  
17 very, very clear we are on strong legal  
18 grounds to support the decision that you made  
19 last September. And I appreciate that.

20 And also I don't think the threat of a  
21 lawsuit has ever stopped the city from moving

1 forward with public policy that it's in its  
2 legal grounding to do. I won't go into all  
3 of the merits of this except to say that I  
4 think what this has done, what the Council,  
5 unanimously, the policy-making body of the  
6 city, has asked you to do, and I believe you  
7 have done that, is to look at the best  
8 practices that already exist. The majority  
9 of Cambridge hotels already see this as their  
10 best practice. And, in fact, have made very  
11 clear attempts to express that they, in fact,  
12 would never provide outsource their  
13 housecleaning staff for a variety of reasons.  
14 I also know that there's been concerns about  
15 sort of what does it mean for government  
16 regulation?

17 And I just remind all of us that a  
18 license is a privilege. It's a privilege to  
19 operate. And this license exists and it's on  
20 the books, and if people think it's symbolic,  
21 then there should be work to take it off the

1 books. At the moment it's not symbolic. You  
2 cannot operate a hotel or an inn without this  
3 innkeeper's license.

4 We also, I believe, encouraged you to  
5 not include operations that had less than 100  
6 employees believing that those were well  
7 managed, and that the opportunities to really  
8 understand who was in and out of guest rooms  
9 was far more manageable than larger  
10 operations would be.

11 And so, I guess I'm a little curious to  
12 see where we're going tonight. Based on my  
13 conversations with the Manager, our  
14 understanding is if this really is to move  
15 forward to promulgate language for the  
16 regulations, why it is taking this long is  
17 still a bit of a mystery to me, and -- but I  
18 really do appreciate the time and the effort  
19 that has gone into this. And, you know,  
20 Mr. Chairman, you've made your position very  
21 clear on this. And I'm sorry that you were

1 in the minority -- not sorry. Actually I'm  
2 happy. But, you know, I think it's been very  
3 clear that the policy-making body of the city  
4 has spoken, that there's been a clear 2 to 1  
5 vote on this, the legal grounds to stand on  
6 this is very clear, and I just look forward  
7 to seeing how we're going to move forward  
8 with actually coming up with the language.

9 Also, if it's of any help to you, since  
10 we've taken quite a while to get here, I'm  
11 also for the record, happy to provide you  
12 with language that would actually help you  
13 move along developing that regulation which I  
14 think is pretty straight forward. But I'm  
15 also happy to answer any questions that you  
16 might have.

17 MICHAEL GARDNER: Okay, thank you  
18 very much.

19 COUNCILLOR MARJORIE DECKER: Thank  
20 you for your time.

21 MICHAEL GARDNER: We'll take -- we

1 have had extensive testimony in this matter  
2 before, so I'd just appreciate it if there  
3 are any presenters, you could keep your  
4 remarks to a relatively modest limit, three  
5 minutes, five minutes, please.

6 If you could please state and spell  
7 your name for the record.

8 TERRENCE SMITH: Terrence Smith,  
9 T-e-r-r-e-n-c-e S-m-i-t-h. I'm the director  
10 of government affairs with the Cambridge  
11 Chamber of Commerce at 859 Massachusetts  
12 Avenue. I'm a Cambridge resident. I've  
13 spoken on this issue before. My members are  
14 very concerned that this is extending the  
15 regulatory authority of the License  
16 Commission beyond, beyond what was intended  
17 under state statute. I'm not an attorney,  
18 but that is a concern of my members who are  
19 licensed by the city to do many things.

20 We have a particular concern with the  
21 -- this particular decision in that at the

1 time of the September decision, the License  
2 Commission had received limited information  
3 from the hospitality industry, and that the  
4 hospitality industry and other businesses  
5 were not present when that decision was made.  
6 There has since been discussions with the  
7 industry, and it's not clear that that  
8 changes the need for extending the authority  
9 that the -- of the License Commission beyond  
10 the authority that the License Commission  
11 already has.

12 Also I want to remind the Commissioners  
13 that -- remind the members of the License  
14 Commission, that there has been limited  
15 complaints about health, safety or public  
16 welfare issues against -- around any of the  
17 hotels, inns, motels in Cambridge, and that  
18 none that we have been able to find and that  
19 I believe staff has been able to find were  
20 specific to housekeeping issues by the  
21 management of the hotels.

1           So I want to go on the record that we  
2           do believe that this is a -- that this is an  
3           overreach. We understand the reason that  
4           this is being asked for. We also, just one  
5           concern that I have raised before, and I will  
6           raise again, the limited staff and resources  
7           the License Commission adding a new wrinkle  
8           at this time it is not clear that the License  
9           Commission is in a position to extend the  
10          authority particularly given that the -- what  
11          would be regulated is so questionable in  
12          terms of legal standing and authority.

13                Thank you for the opportunity to speak  
14          to you.

15                MICHAEL GARDNER: Thank you.

16                Are there any other persons who'd like  
17          to speak? Please, again, if you could state  
18          and spell your name for the record and also  
19          briefly your affiliation.

20                PETER ENRICH: Certainly. My name  
21          is Peter Enrich, E-n-r-i-c-h. I'm professor

1 of law at Northeastern University School of  
2 Law, and I have sent you a fairly extensive  
3 memo addressing the legal issues that have  
4 been discussed in this matter. I'm not going  
5 to hold myself out as an expert on the  
6 substance of whether the regulation is  
7 advisable or not, but I do think that I can  
8 offer my expertise and the opinion that if  
9 the Commission chooses to enact the proposed  
10 type of regulation as you voted in your  
11 September hearing, you would be very well  
12 within your legal authority. You would be,  
13 the statements that were made by the two  
14 members of the Commission who voted in favor  
15 of the regulation at that time were amply  
16 justified under the statute that you are  
17 responsible for enforcing. And based on  
18 review of all of the case law in this area,  
19 I'm quite comfortable in stating that you  
20 would be thoroughly within your duties and  
21 rights to act.

1           I would be happy if you have any  
2           questions to respond to them, but I think  
3           otherwise my memo speaks for itself, but I  
4           did want to at least introduce myself to you  
5           and give you a chance if you do have any  
6           questions that I could help with.

7           MICHAEL GARDNER: I think in some of  
8           the correspondence I reviewed, the offer was  
9           made, although I'm not sure it was made by  
10          you, that you might be available to help in  
11          the drafting of regulations. And I was going  
12          to ask whether this might have been your work  
13          or just for you to follow up generally on the  
14          matter of your willingness involvement so  
15          far, that's okay.

16          PETER ENRICH: Councillor Decker did  
17          ask me just in the last few days whether I  
18          would be able to assist with the drafting. I  
19          said I would be happy to do so. I have not  
20          had the opportunity to do so and saw the  
21          draft about the same time that you did, and

1 I'm really not in a position to comment on  
2 it. I would be happy, if it would be helpful  
3 to the Commission, to work with the City  
4 Solicitor in reviewing the draft and assist  
5 on the draft.

6 MICHAEL GARDNER: Thank you very  
7 much for that offer.

8 Are there any other members of the  
9 public who would like to be heard? Please  
10 again, come forward, state and spell your  
11 name for the record, and briefly your  
12 affiliation.

13 DENISE JILLSON: Good evening.  
14 Denise Jillson, D-e-n-i-s-e J-i-l-l-s-o-n.  
15 I'm the Executive Director of the Harvard  
16 Square Business Association and I testified  
17 before so I will be very brief.

18 Our members are very concerned about  
19 this regulation. This is an industry that we  
20 feel is amply regulated, and this is just  
21 adding more burden particularly for two

1 reasons.

2 One is as Terry stated, there have been  
3 very few issues around public health and  
4 safety within our hotel industry here in  
5 Cambridge. I think the other thing that  
6 really concerns me, is that, you know, we  
7 just came off of one of the busiest summers  
8 in Cambridge. We know of the number of  
9 tourists in Cambridge particularly Harvard  
10 Square exceeded the number of people ever in  
11 history. The message that sends is that  
12 there's somehow a problem here. And there's  
13 not a problem. We know that. We know we  
14 have incredibly responsible hotel management.  
15 And the fact that we're creating regulation  
16 where there's really no need for it, sends a  
17 message to the rest of the country and  
18 frankly to the rest of the world, that there  
19 might be a problem here and that we should  
20 maybe think about going elsewhere. So those  
21 are my two concerns. Again, overregulation

1           and just the message that we're sending. We  
2           hope that you'll take those into  
3           consideration.

4           Thank you.

5           MICHAEL GARDNER: Thank you very  
6           much.

7           Are there any other members of the  
8           public who'd like to be heard in this matter?

9           MICHAEL MEDEIROS: Good evening.

10          MICHAEL GARDNER: State and spell  
11          your name for the record.

12          MICHAEL MEDEIROS: Mike Medeiros,  
13          general manager for the Royal Sonesta Hotel,  
14          Cambridge.

15          MICHAEL GARDNER: And just spell  
16          your last name, please.

17          MICHAEL MEDEIROS: M-e-d-e-i-r-o-s.  
18          And also I'll be brief. I just wanted to  
19          talk about -- I know that I've given  
20          statements before. I think it's unfair to  
21          target the hospitality industry. And I think

1 I agree with Denise what she says, I think it  
2 sends out the wrong message to any guest  
3 coming to Cambridge. I think we are sending  
4 the wrong message and it will affect the  
5 hospitality industry, but also the City of  
6 Cambridge. Now we all work hard everyday to  
7 expose what Cambridge is great about and what  
8 we offer. We all as general managers are  
9 responsible everyday to do training and make  
10 sure that the safety is there for all of our  
11 guests and our employees. And, you know, to  
12 me it's a big insult that it's brought to the  
13 table that we are not running operations like  
14 that, and we are. So, I just want to state  
15 on the record that there has been few  
16 complaints, and I think it's unfair. So  
17 that's it.

18 MICHAEL GARDNER: Thank you very  
19 much.

20 Are there any other members of the  
21 public who'd like to be heard on this matter?

(No Response.)

MICHAEL GARDNER: Seeing none, I'll give the Commissioners the opportunity to speak should they care to do so. Generally I would indicate that I believe that it is in fact well within the responsibility and authority of the License Commission to promulgate reasonable regulations as they relate to the health and safety of any citizens or visitors to Cambridge who may interact with the industries or institutions that we license. That certainly includes the travelling public. And in that regard I am pleased with the general view that the Commission does have broad authority to make such regulations. It is also my view that that authority should be exercised with discretion, and that we should be careful not to overreach into the individual operations or management of particular institutions, including procurement and employment

1 practices. And that if we, if we believe  
2 there are health or safety issues to address,  
3 I think the preferable way to do that is to  
4 deal directly with those issues and  
5 promulgate standards as needed regarding  
6 health and safety expectations as opposed to  
7 doing it indirectly through trying to effect,  
8 for example, employment practices. So that's  
9 my general view, I think I stated at a much  
10 greater length earlier.

11 I continue to believe that the  
12 appropriate and responsible way for the  
13 Commission to act in this matter is to have a  
14 narrow focussed approach to the issues as  
15 they relate to health and safety. And my own  
16 general view is that the record that we have  
17 established shows, in fact, very few, if any,  
18 problems with respect to either safety or  
19 health or cleanliness within our hotels, and  
20 that at the present time it is unnecessary  
21 for us to interfere with the employment

1 practices of the industry both because I  
2 don't see the level of problem as it relates  
3 to health and safety, and I don't necessarily  
4 see that the solution to any either actual or  
5 hypothetical health and safety problems is  
6 best handled by effecting employment  
7 practices as opposed to dealing with  
8 standards of cleanliness and training.

9 Do you have any comments?

10 ROBERT HAAS: Go ahead.

11 GERALD REARDON: Well, as I said all  
12 along during this I like to be proactive than  
13 reactive. There has been a change over the  
14 years in the type of infectious diseases and  
15 other things that probably weren't here that  
16 we didn't have to deal with on a regular  
17 basis say ten years ago. And I am concerned  
18 about some of the issues that have been  
19 brought up in terms of regulations, and that  
20 we make sure that the health and safety and  
21 welfare is being handled evenly and fairly at

1 all the locations. I don't know how we get  
2 to that particular point, but by making sure  
3 that the regulations include that the  
4 standards are met by all, and it's not a  
5 varying slide depending on which location you  
6 go to.

7 So as I said earlier, I would like to  
8 see something enacted to make sure that  
9 everything is on a level playing field in  
10 terms of the type of personnel that are  
11 servicing these rooms. And we don't want to  
12 pick out one particular thing, but all across  
13 the board, that all of the locations are  
14 having the same rules and regulations and  
15 minimal training to make sure that this is in  
16 fact being done on a regular basis.

17 MICHAEL GARDNER: Anything you wish  
18 to add?

19 ROBERT HAAS: So I would -- I concur  
20 with the professor's review of the law. We  
21 basically looked at this thoroughly. I think

1 the License Commission does have the  
2 authority to promulgate such regulations in  
3 the interest of the public good. It's a very  
4 low standard threshold with respect to being  
5 able to promulgate such regulations.

6 The question I have quite honestly is,  
7 and this has really surfaced since we've  
8 taken our last vote, is are we doing  
9 reputable harm to the industry? Are we  
10 sending the wrong message about the hotels  
11 within this community? And, you know, having  
12 heard those concerns and actually thinking  
13 that, you know, that may cause an adverse  
14 situation, I went back and looked at the data  
15 very closely. And over the last four year  
16 period I could not find, for all 20 hotels,  
17 any evidence of any consistent or problematic  
18 issues within the hotels within the City of  
19 Cambridge. So I want to be very clear that  
20 the actions that we're taking with respect to  
21 that vote are not a reflection on a view that

1       there's a problem with respect to how our  
2       hotels are being operated and managed within  
3       the city. And it's the last thing I want to  
4       do in terms of causing financial harm to the  
5       city or embarrassing the city or having  
6       anybody take a different view of the city  
7       because I think there are a lot of great  
8       things that go on in the city. And so I was  
9       quite taken back by the notion that that was  
10      the kind of reputation that was being  
11      portrayed, that the city needed to make this  
12      action because there was some problem it was  
13      trying to fix.

14               So that's my overriding concern with  
15      the respect to the promulgation of  
16      regulation, that now basically it's  
17      participatory since there is no physical  
18      evidence, it's just the fact that we need to  
19      take action because we're trying to correct a  
20      problem. A lot of it was I think speculative  
21      at best in terms of the concerns I had with

1       respect to the security and sanitation of the  
2       hotel rooms, and I think that was more of a  
3       reaction. But, you know, I'm also troubled  
4       by the fact that if I don't have physical  
5       evidence to suggest that I need to do a wide  
6       sweep with respect to a regulation that it  
7       may be overly burdensome for the industry and  
8       maybe too draconian in terms of taking that  
9       step as a first measure without really  
10      looking at the rules and regulations and the  
11      standards in which the hotels are abiding by,  
12      and is there a uniform application with those  
13      standards with respect to security and  
14      sanitation of the hotels and the management  
15      and operations of the hotels. And so I am  
16      troubled by the notion that it did create  
17      that impression, and I do not want that to be  
18      the view of the actions taken by the  
19      Commission a year ago.

20                   MICHAEL GARDNER: So in our meeting  
21      in September we took two votes, one was a 2

1 to 1 vote to prohibit under certain  
2 circumstances the contracting out of services  
3 for persons who have unfettered access to  
4 hotel rooms to third-party businesses.

5 The second was a vote which passed  
6 three to nothing to review training  
7 procedures and standards within the industry  
8 and to prepare regulations in that regard.

9 Councillor Decker is certainly right,  
10 it has taken us a long time to get to this  
11 point. And I am going to offer a motion for  
12 consideration of the Commission. This motion  
13 is intended to address both votes from the  
14 September 27, 2011, meeting. I am going to  
15 read the motion slowly and then if there is a  
16 second to the motion, to give the Commission  
17 the opportunity to discuss it, and I think I  
18 would also entertain if there are any  
19 interested parties here who would like to  
20 speak to it, to have -- give them the  
21 opportunity to do that. Again, I would urge

1           briefly.

2                       So, my motion to -- as the response to  
3           both of the votes on September 27, 2011, is  
4           that the staff of the Commission be  
5           instructed to draft regulations concerning  
6           health and safety issues in hotels. Such  
7           regulations should address the following  
8           points:

9                       Pursuant to the terms of the license  
10           granted by the License Commission and state  
11           law, the responsibility for insuring that  
12           guests have a safe and healthful stay and  
13           experience in local hotels rest squarely on  
14           the license holder and those managing the  
15           hotel.

16                      It is the responsibility of management  
17           to insure that guest rooms and common areas  
18           are clean, safe and healthful.

19                      New paragraph. It is the  
20           responsibility of the management of each  
21           hotel to organize, hire, train, and supervise

1 the staff and service providers of the hotel  
2 to insure that these functions are carried  
3 out consistent with the expectations of the  
4 travelling public, industry standards, and  
5 the requirements and expectations of federal,  
6 state, and local public health and public  
7 safety organizations.

8 New paragraph. Hotels must meet all  
9 Building Code, Fire Code, and Public Health  
10 Standards applicable to them, including OSHA  
11 regulations concerning toxic and hazardous  
12 substances, blood borne pathogens, and hazard  
13 communications.

14 New paragraph. Hotels must insure that  
15 all employees and service providers who have  
16 access to guest rooms are CORI screened.  
17 That's CORI is criminal offender information  
18 data.

19 New paragraph. Hotels should insure  
20 that all staff and service providers with  
21 responsibility for guest services are fully

1       trained on OSHA and other public health  
2       requirements, emergency procedures, including  
3       evacuation plans, and guest room security  
4       procedures and protocols.

5               New paragraph. Staff and service  
6       provider training should incorporate the  
7       recommendations outlined in the Cambridge  
8       Public Health Department letter of September  
9       14, 2011. A copy of which is in the record.  
10       Including, for example, use of language  
11       appropriate materials, use of high quality  
12       photographs useful in identifying various  
13       public health threats, including photographs  
14       of bedbugs in various development stages,  
15       room inspection procedures, linen handling  
16       procedures, procedures for dealing with blood  
17       borne pathogens, needles and other sharps,  
18       and environmentally appropriate cleaning  
19       fluids and materials. Periodic refresher  
20       training should be provided.

21              New paragraph. Room security

1 equipment, procedures, and training should be  
2 designed to insure maximum accountability and  
3 recordkeeping regarding staff and service  
4 provider access to guest rooms. Appropriate  
5 police department staff should be available  
6 for consultation as needed.

7 New paragraph. Bedbug control  
8 procedures outlined in the Cambridge Public  
9 Health Department letter of September 14,  
10 2011, should be implemented by all hotels;  
11 in the alternative hotels may submit their  
12 own bedbug control program to the License  
13 Commission for review and approval. Prior to  
14 acting on any such alternative plan, the  
15 License Commission will review the plan with  
16 appropriate staff at the Public Health  
17 Department.

18 New paragraph. The License Commission  
19 reserves the right to issue such additional  
20 regulations as may be necessary to protect  
21 the public health and safety of the

1 travelling public.

2 A couple of -- and that's the end of  
3 the motion. A couple of explanatory notes.

4 I have referenced the bedbugs in part  
5 because at least I'm a function of my own  
6 experience, and I know I'm an occasional  
7 traveller, and whenever I go to a hotel, the  
8 thing I worry about is, you know, have  
9 bedbugs reached this place? That's -- this  
10 comment has got nothing to do with Cambridge  
11 hotels. I have -- we have no information  
12 about complaints or evidence of infestation  
13 of bedbugs in any hotels in Cambridge.

14 I personally have, however, stayed at a  
15 hotel and had blood on my pillow the next  
16 morning and decided we were in a room with  
17 infestation. It's extremely upsetting and  
18 expensive in terms of the luggage and clothes  
19 we had to destroy before we got home. And it  
20 does seem to me that in terms of at least the  
21 challenges facing the industry, this is sort

1 of the cutting edge thing and a place at  
2 which the Public Health Commission saw fit to  
3 respond very directly and specifically with  
4 recommendations and in terms of our  
5 fulfilling our responsibility to deal with  
6 safety and health issues in the hospitality  
7 industry. It seems to me that that focus and  
8 the rest of this motion is the appropriate  
9 response for this Commission to take at this  
10 time.

11 Now the very last sentence of the  
12 motion that the License Commission reserves  
13 the right to issue such additional  
14 regulations as may be necessary to protect  
15 the public health and safety of the  
16 travelling public may go -- it may not need  
17 to be stated, but I wanted to explicitly  
18 state that if in my view and at any time in  
19 the future there are problems which indicate  
20 that the -- these regulations are  
21 insufficient or that there has been

1       insufficient management attention to quality  
2       control and to safety and health, then we put  
3       the industry on notice that we are prepared  
4       to consider other measures, ones which the  
5       industry might find in Commissioner Haas's  
6       word more draconian.

7               But I offer to the Commission this as a  
8       -- what I hope would be seen as a measured  
9       and considered approach to the potential for  
10      problems for safety and health in the  
11      hospitality industry, again, stressing that  
12      our review to date has not found there are  
13      particular issues in that area. We did have  
14      a quite serious incident at one of our hotels  
15      that we dealt with a few weeks ago. In that  
16      case it was really -- the problem had to do  
17      with staff who were employees of the hotel  
18      and their actions at a particular time. So  
19      that's I guess neither here nor there to  
20      this, but I think that I would recommend to  
21      my fellow Commissioners your consideration of

1           this outline for instruction to staff for the  
2           development of regulations as to the  
3           appropriate approach to take at this time.

4                     ROBERT HAAS: Can I have a copy of  
5           that?

6                     MICHAEL GARDNER: And I'm going to  
7           just ask to just see if I have a second for  
8           this motion and then I'll open it for public  
9           comment.

10                    Is there a second?

11                    GERALD REARDON: Well, there were  
12           two motions that were passed earlier. This  
13           deals with a lot of the minimum training and  
14           standard that I'm looking for in terms of  
15           making sure that it's -- so I do support the  
16           regulations that need to be promulgated to  
17           make sure that all of the facilities are  
18           working on the same basis in terms of health  
19           and safety throughout the hotels. So for  
20           that purpose I will second it. I do agree  
21           with this portion of it.

1                   MICHAEL GARDNER: So the motion  
2                   having been made and seconded, we'll open it  
3                   for public comment.

4                   Councillor Decker, go ahead, please.

5                   COUNCILLOR MARJORIE DECKER: Thank  
6                   you.

7                   So I guess I just I have a few  
8                   comments. I'm a little concerned as I've  
9                   been working on this for the last couple of  
10                  years, and the first thing that the  
11                  Commission wanted to know was what are the  
12                  potential problems? And I want to remind  
13                  people that when we talk about the fact that  
14                  for the last four years there have been no  
15                  significant problems, we're talking about one  
16                  hotel that has actually changed the rules.  
17                  One hotel that has outsourced its  
18                  housekeeping. And I want to remind you that,  
19                  in fact, they did have big troubles with the  
20                  first subcontractor and that's why the  
21                  Attorney General got involved.

1           And so then we spent a year and a half  
2           actually presenting to the Commission a  
3           variety of examples of where when  
4           subcontractors from -- of housekeeping comes  
5           in, there are a variety -- there are a number  
6           of problems. So I don't think it's fair or  
7           reflective to think about the last four years  
8           when the entire industry actually hasn't  
9           followed suit of those rules. And I think  
10          that's not -- I think that's a significant  
11          point to not have lost here.

12                 So the idea -- and, you know, Chief, I  
13          want to thank you for really wanting to be  
14          proactive, because that's what this is. It  
15          says that while certainly we can say these  
16          are the rules that have existed all these  
17          years and it's far reaching. Well, the  
18          industry itself, a member of the industry  
19          changed the rules. And so what this was,  
20          what the entire City Council said, was that  
21          we are concerned about the health and the

1        wellbeing of our guests and the health and  
2        the wellbeing of our community. That we the  
3        Council affirm the best practices that  
4        already exist in the hospitality industry.  
5        So there has not been significant problems  
6        because the truth is best practices have been  
7        to not outsource their housekeepers. What  
8        we've spent the last couple of years was  
9        talking about what happens when companies  
10       come in, supervisors are not on-site,  
11       housekeepers cannot always be tracked, keys  
12       cannot always be tracked to the housekeeper  
13       who had those keys. So it is really, it's  
14       just, it's not a -- I feel like there's two  
15       different conversations happening here that  
16       aren't related.

17                One is if the entire industry now had  
18       followed suit over the last four years and  
19       then we still said there were no problems,  
20       then we would be looking at a more accurate  
21       picture of that what means. But we're

1 talking one hotel.

2 And the other hotels have made it very  
3 clear, at least the ones I've talked to, most  
4 of them, that they would never follow in  
5 those footsteps because they do think the  
6 best practices for all of the reasons that  
7 have been put before you, including you also  
8 saw research from the industry itself saying  
9 why in fact outsourcing housekeepers is not a  
10 -- is not good for the industry and not good  
11 for the industry or for guests.

12 And I have to say I'm really surprised  
13 at this late date now to hear -- and I  
14 understand the hospitality industry that's  
15 opposing this making the argument that this  
16 is going to send the wrong message. I have  
17 to quite say quite frankly what you just laid  
18 out as a possibility here, I think that's a  
19 message that's saying we've got criminals who  
20 are working in our hotels, we've got bedbugs  
21 that are problems. That is far more of a

1 message of there are big problems here in  
2 Cambridge, whether intended or not, that's  
3 exactly what it says. So, this idea that  
4 somehow a year ago when I heard two of the  
5 members here talk about why in fact they  
6 would support this, walk away -- soundingly  
7 walk away from some of that because now the  
8 concerns are that a couple of members of the  
9 industry in Cambridge, including the Chamber,  
10 which is not a surprise, have said that this  
11 is the wrong message. Who says that the  
12 public and the community thinks that all of a  
13 sudden because the City of Cambridge is  
14 saying that in response to direct changes of  
15 one hotel in the industry, that has decided  
16 to subcontract out, that that means don't  
17 come to Cambridge because the hotels are in  
18 big trouble. The idea that somehow we  
19 believe that as a truth. Now, in the last  
20 hearing the Chairman did make it clear that  
21 the evidence that he was reading was based on

1       that one hotel. I mean, I think that's in  
2       the records as well. Well, you know, we've  
3       not seen any problems. And I said well, how  
4       do we know there haven't been any problems?  
5       Where are you getting that information from?  
6       And you were reading directly from that  
7       hotel's report on this. I'm a little  
8       flabbergasted here to say that somehow  
9       because a few members of the industry,  
10      including the Chamber, have said this is a  
11      bad public image, that that's somehow being  
12      accepted as the truth. Because I would  
13      counter that is not the truth. I don't think  
14      tourists around the country are saying, Wow,  
15      Cambridge has decided to affirm its best  
16      practices of its hotel industry, let's not go  
17      there, that must mean there's a problem.  
18      Because they have regulated its best  
19      practices, there really must be such a  
20      problem. There's such a disconnect there  
21      that I'm really just a little -- I'm just

1 taken aback that we could go from point A to  
2 this being the universal truth. That's just  
3 not clear.

4 And then I have to tell you that I do  
5 think that we will have a lot of public  
6 discussion moving forward if this issue of  
7 the CORI is left in this of what has just  
8 been presented. So you're 19-years-old and  
9 you steal someone's car because you just  
10 don't have your life together, and you're  
11 making really bad choices, and now you're 28,  
12 you're 34-years-old and you've gotten your  
13 life together. You've spent years really  
14 getting it right, and you fail a CORI  
15 background check because you stole a car when  
16 you were 19? You -- I will say very clearly  
17 the three of you -- at least two of you I  
18 think have been privy to many conversations  
19 that the Council has had over the years  
20 around our feelings of where CORI checks are  
21 helpful and where they actually in fact hurt

1 a group of marginalized people who've made  
2 mistakes, I'm not talking about people who  
3 have made life threatening mistakes, but have  
4 made mistakes that are not life threatening  
5 to other people, and now their opportunity to  
6 move forward in their life is completely --  
7 it's just not there. The obstacles -- there  
8 is CORI reform happening around the country  
9 and in this state to make sure we get it  
10 right, and we're going to take a step  
11 backwards and say people who are going into  
12 the lowest wage work are now not going to  
13 actually be eligible to do that work? And  
14 we're going to have to face new -- and,  
15 Mr. Chairman, in all fairness I really  
16 believe that was an issue that you raised in  
17 a rather hostile tone a year ago and I  
18 thought it was a red herring quite frankly.  
19 It was a way of ensuring that in fact maybe  
20 we didn't support this.

21 Now, you come from a labor background,

1       so I understand that as a former head of  
2       personnel in the city, you would not think  
3       that the city government should be far  
4       reaching into what your perception is, I  
5       believe, of employment practices. That is  
6       not what this has been about. And this is  
7       not ever been about the public image of the  
8       city being a -- it has been about a promise.  
9       When hotels are licensed in this city, the  
10      promise is you come in here, you will be --  
11      the license means that we believe that you  
12      are coming into a safe and healthy  
13      establishment. Those have been the best  
14      practices. The industry chose to change  
15      that. One hotel chose to change that. And  
16      if we don't all think that they're lining up  
17      right now to see what happens with this  
18      decision so that some of them, maybe not all  
19      of them, because we have extraordinary people  
20      in the city, and I'm not necessarily talking  
21      about the people today who own or manage our

1 hotels, I'm talking about the people in the  
2 future. And once this cat is out of the bag,  
3 it's gone. The train is gone. And the idea  
4 that people are concerned about government  
5 further regulating, what is the role of  
6 government? The role of government is to  
7 ensure that law and order is in place. That  
8 people are safe. We regulate people's lives  
9 all the time. We regulate how long you have  
10 to walk across the street safely.

11 So, the idea that somehow this is  
12 overreaching, that argument's lost on me  
13 because this is what government does. The  
14 social contract with government is when you  
15 are given the privilege to operate, you're  
16 expected to operate within the boundaries of  
17 that. The idea that somehow we're going to  
18 lose tourists in the City of Cambridge  
19 because now we're regulating in response to  
20 the changes that the industry made, that's  
21 just -- I don't believe it. I don't believe

1 someone's going into Boston to come visit  
2 Harvard Square because the City of Cambridge  
3 has affirmed best practices.

4 So, this is always been about ensuring  
5 -- and the research and the materials that  
6 were given to you were about what happens to  
7 these companies who come in and outsource and  
8 the lack of supervision and the lack of  
9 continuity around understanding where those  
10 workers are and how the training gets done.  
11 Quite frankly what you've laid out there with  
12 the exception of a couple things, it's  
13 already happens. It's already the law quite  
14 frankly from most of them. This is not  
15 profoundly big changes, because if it were,  
16 what you're offering is far more onerous, I  
17 believe, on the hotel industry than what  
18 we've been saying. What -- two, three of you  
19 voted on was to affirm best practices that  
20 are already in existence. So why we're going  
21 all the way out of our way to avoid affirming

1 best practices in the -- what is seemingly  
2 being coming across as a compromise that the  
3 Chairman is comfortable with, who clearly  
4 wasn't comfortable with this a year ago, I  
5 believe there was a threat to quit the  
6 position because the vote was so shocking and  
7 unacceptable. I'm flabbergasted. And I can  
8 just say that this does not speak to the  
9 issues that raised this to begin with. The  
10 issues were the license is a privilege, best  
11 practices abound in the city. We have  
12 extraordinary hotel years in the city who  
13 have said that they would never do what one  
14 hotel has done. But one hotel has done it.  
15 The industry has changed the laws. That is  
16 the only reason why we're looking at this.  
17 The City Council did not ask you to look at  
18 this out of the blue. It was not something  
19 we just sat there one day and said, Wow,  
20 let's just affirm these best practices by way  
21 of regulation. No, it was a direct response

1 to the -- a member of the industry changing  
2 the rules. And I think we can safely say at  
3 one point there will be other members of the  
4 industry who will want to follow suit. And I  
5 will ask you to think about the research and  
6 the testimony that you have been given that  
7 talks about what these outsourcing companies  
8 do. To think about what it is actually --  
9 when you have a housekeeper that now has to  
10 double the rooms that they have to clean  
11 because evidence has been given to you about  
12 what these outsourcing companies expect of  
13 their housekeepers, there's a reason why  
14 they're being outsourced and no longer the  
15 liability of the hotel. The expedience is  
16 also cost savings. And the problem is that  
17 that cost savings comes at a cost potentially  
18 to the health, the wellbeing, and the safety  
19 of guests in this community.

20 So do we want to be in a position  
21 where, you know, this ruse over here, I don't

1        need this because this doesn't speak to what  
2        the Council raised as a concern. It still  
3        comes down to the outsourcing, the lack of  
4        accountability of outsourcing, the history  
5        and the proof that you have. A year ago we  
6        were left with the decision was 2 to 1 and  
7        then what came as a reflection later was do  
8        we have the legal grounds to stand on that?  
9        You have been given that loudly and clearly.  
10       The idea that now somehow this is about our  
11       reputation, that is new and that's an  
12       argument that I've just seen surface tonight.  
13       Now if I, who have been working on this for  
14       many years, have not heard that as a real  
15       argument, this is reaching. This is far  
16       reaching at this point. And I can only  
17       imagine that the Council's going to want to  
18       have a lot of conversation -- and the Council  
19       doesn't have authority over you, that's very  
20       clear. But we are a community and we are a  
21       partnership that has dialogue about how our

1 community is best served. So I can imagine  
2 this will raise a lot of dialogue because it  
3 does not answer the original concern that we  
4 had to begin with. And, again, I will just  
5 leave you with it is not fair or accurate to  
6 say that there have not been any problems in  
7 the last four years when in fact one member  
8 of the industry has changed the rules. The  
9 whole point of this was to say if you're  
10 going change the rules, then we have an  
11 obligation, we have an obligation to ensure  
12 that the privilege you have of practicing and  
13 opening up your rooms to members of the  
14 world, that we can ensure that you are still  
15 safe and that you are still well taken care  
16 of. One member has changed that. So will we  
17 wait for the rest of the industry to follow  
18 suit and then 4, 10, 15 years from now go,  
19 wow, we had an opportunity to prevent that  
20 and really understand who those hotel keepers  
21 are and actually maintain best practices? We

1       blew it and something really, really big and  
2       bad happened. I wish we actually had  
3       responded to the changes that the industry  
4       had made and affirmed their best practices  
5       that they practiced as a majority already.

6               So, those are my thoughts for the  
7       moment and for the night and, you know, I  
8       have to say that, you know, what you're  
9       seeing is -- I'm baffled by this new argument  
10      and that somehow the concerns that have been  
11      raised and diligently worked on and given to  
12      you and researched now come down to a couple  
13      of people saying that the reputation of the  
14      city is going to implode and somehow tourists  
15      are no longer going to come here because the  
16      City of Cambridge is regulating best  
17      practices. That is just mind blowing to me.  
18      And that we're going to say well, there have  
19      been -- that everything's fine because -- but  
20      not in the context of the fact that  
21      everything's fine because best practices have

1        been the practice, that's why everything's  
2        fine. And the one opportunity that you have  
3        to look at what happened, you thought  
4        immediately that that hotel employed a  
5        company that is notoriously, notoriously in  
6        trouble with the law for their practices with  
7        their outsourced housekeepers that they run.  
8        And they're not accountable. They're out of  
9        state. They don't have local offices here  
10       that are accountable to them. That's what  
11       we're concerned about, and that's what the  
12       Council asked you to look at.

13                And I will just say again this CORI  
14       issue is going to be a much larger community  
15       conversation should this actually get adopted  
16       tonight. The idea that we are going to  
17       create greater obstacles for people who have  
18       made not the life threatening ones, but minor  
19       mistakes like larceny, that's not minor at  
20       the moment, but people have worked really  
21       hard to redeem themselves either because

1       they've served time, they've made amends,  
2       they have gone through a restorative justice  
3       program. There are lots of ways that people  
4       rebuild their lives that we're going to make  
5       it harder for those individuals who've worked  
6       so hard to redeem their lives and become  
7       productive members of our community, to not  
8       get one of the lowest wage working jobs in  
9       the city? That's, that's, that's not  
10      Cambridge.

11               GERALD REARDON: So, I guess you're  
12      opposed to the background checks? I'm not  
13      sure if we have to use CORI, but background  
14      checks for any employee in terms of before  
15      they hire them?

16               COUNCILLOR MARJORIE DECKER: I would  
17      say don't --

18               GERALD REARDON: I mean, we in fact  
19      use CORI on certain things, and there might  
20      be something in the background, and it's  
21      certainly with us, you know, if there's,

1 something that someone had an OUI when  
2 they're 17, and now presenting at  
3 27-years-old and they're clean, to me that  
4 doesn't necessary preclude that person from  
5 getting employment.

6 COUNCILLOR MARJORIE DECKER: And I  
7 would say as for an outsourcing company that  
8 is --

9 GERALD REARDON: I'm only speaking  
10 for myself and looking at the history to make  
11 sure.

12 COUNCILLOR MARJORIE DECKER: Right.  
13 And Chief Reardon, I have faith in the best  
14 practices of the City of Cambridge when it  
15 comes to looking at the necessity for CORI  
16 checks and how to use CORI check backgrounds.  
17 Outsourced companies that are not based in  
18 Massachusetts, that are now going to also  
19 have to look at this regulation, I don't know  
20 them and I don't trust them. So that's the  
21 issue there. And I would say that the hotels

1 I imagine already use in their current  
2 staffing, methods to ensure that background  
3 checks are met. So if it's the hotel  
4 directly employing the housekeepers, and they  
5 continue to use the methods that they use to  
6 ensure the backgrounds, there's no problem.  
7 And that goes to the argument of affirm the  
8 best practices that are currently already in  
9 place. But an outsourcing company that has  
10 no relationship to our city or to our state,  
11 and has a contract with a, for the most part,  
12 a large chain hotel, that I have very little  
13 faith in.

14 GERALD REARDON: That was part of my  
15 concern on how do we regulate, especially  
16 third-party people coming in from out of  
17 state.

18 COUNCILLOR MARJORIE DECKER: You  
19 prohibit it and you have the local  
20 relationship. The local relationship with  
21 the local general managers who care just as

1 much about this community because they either  
2 live here, they work here, they're a part of  
3 the fabric, they're a part of the, you know,  
4 so many of the non-profit organizations that  
5 take place. Many of them in fact are working  
6 with those who have been mostly marginalized  
7 from mistakes they've made in the past made  
8 amends, and in fact brought those folks into  
9 their employment. I trust, I trust our hotel  
10 years. I trust our local hospitality  
11 industry to continue working with you to  
12 affirm their best practices that ensure that  
13 people who work in the hotels are in fact  
14 people who can be trusted to keep their  
15 guests safe. I don't trust outsourced  
16 companies in other states to filter and make  
17 sure that somebody who's committed a petty  
18 crime 20 years ago or 15 years ago and has --  
19 and I want to be clear, be clear so this  
20 doesn't get twisted. I'm talking about  
21 people who have made petty crimes who have

1       made serious amends in their lives and have  
2       worked to apologize and to recommit  
3       themselves to living honest, legal, law  
4       abiding lives. And that's what the CORI  
5       reform conversation has been about in  
6       Massachusetts.

7               MICHAEL GARDNER: Thank you very  
8       much.

9               COUNCILLOR MARJORIE DECKER: Thank  
10      you.

11              MICHAEL GARDNER: Other members of  
12      the public who would like to be heard?  
13      Please come forward and state and spell your  
14      name for the record, please, and identify  
15      your affiliation.

16              BRIAN LANG: My name's Brian Lang.  
17      I'm the President of Local 26. We represent  
18      hotel workers.

19              MICHAEL GARDNER: I just ask you for  
20      the record, sir, to please spell your last  
21      name.

1 BRIAN LANG: L-a-n-g.

2 MICHAEL GARDNER: Thank you.

3 BRIAN LANG: You know, I care a lot  
4 about this industry. I represent 6,000  
5 people who work in it in the Greater Boston  
6 area, and I'm very concerned that the  
7 industry be able to continue to be able to  
8 thrive, because as the industry thrives, the  
9 folks that are in our union thrive. I'm very  
10 concerned about the -- your proposal because  
11 as I heard it, and I haven't had a chance to  
12 really review it, it sounds much more onerous  
13 in terms of regulation on the whole industry.  
14 And I immediately go to the Guleserians who  
15 have run the Sheraton Commander for years and  
16 years. They have been great citizens. I  
17 have great relationships with their  
18 employees. Go over and above wages and  
19 benefits, and have for years. They -- the  
20 standard that they set is above any other  
21 hotelier in the city. And to think that a

1 hotelier who has gone over and above to  
2 provide for the community, because many of  
3 the people that work in that hotel, and have  
4 for years and years and years, are members of  
5 our community, is gonna have to expend  
6 additional resources to deal with the type of  
7 regulation that you're talking about. When  
8 on the other hand, there's a movement within  
9 our industry, you know, at one time 30 years  
10 ago most of the hoteliers were like the  
11 Guleserians. They were people that lived in  
12 and around our communities. Maybe a little  
13 richer than most of us, but they had a stake  
14 in the community. Today very few hotels are  
15 owned and operated by the same organization.  
16 For the most part the hotels are more and  
17 more being bought up as real estate  
18 investments controlled by private equity  
19 companies and real estate investment trust  
20 companies. Host who owns the Hyatt, it's a  
21 real estate trust investment company. The

1 largest owner of hotels in the world. And  
2 they're incorporated down in Delaware. They  
3 have maybe as many people as in this room  
4 sitting down there in front of computers  
5 looking at the bottom line. And what drove  
6 them to contract out, and in my opinion,  
7 jeopardize the quality, the safety, the  
8 cleanliness of that hotel and other hotels  
9 that they own is the bottom line. And the  
10 clearest and simplest way to deal with the  
11 issue of safety and health is to put the  
12 responsibility clearly on the operators of  
13 the hotel. How can you regulate, how can an  
14 operator of a hotel regulate a contractor  
15 like HSS for instance? We can provide for  
16 you reams of violations from all over the  
17 country that the subcontractors have been  
18 committing. And then sometimes they just  
19 close up shop, reincorporate under another  
20 name and reappear. Without dealing with  
21 that, we're never gonna get to what our

1 primary concern is, and that's the health and  
2 safety of the guests. By creating  
3 regulations that put a greater burden on the  
4 majority of the hoteliers who are doing the  
5 right thing anyway, I think it sends the  
6 wrong message. I think it sends the message  
7 to the public, it sends a message to the good  
8 actors in the industry that we think that  
9 they're doing something wrong.

10 Councillor Decker's right, there's one  
11 player in the city that has decided to try to  
12 change the rules to protect and grow their  
13 bottom line before they flip that hotel,  
14 because they'll flip it. That's what they  
15 do. You know, it's a seven, eight year cycle  
16 and then they flip them; right? And then the  
17 way that they can sell their real estate  
18 investment for a greater profit is by cutting  
19 back on services, cutting back on labor,  
20 because then they show their profit and loss  
21 to the potential buyer and say look, I've

1       increased our ability to make a profit here.  
2       Not by occupancy, not by creating better  
3       service, but by jeopardizing the health,  
4       safety of the public. So I'd ask you to  
5       reconsider.

6               MICHAEL GARDNER: Thank you very  
7       much.

8               BRIAN LANG: Thank you.

9               MICHAEL GARDNER: Are there any  
10       other members of the public who would like to  
11       be heard? Please come forward and identify  
12       yourself for the record again, please, and  
13       spell your name.

14              TERRENCE SMITH: Thank you again.  
15       Terrence Smith, T-e-r-r-e-n-c-e S-m-i-t-h.  
16       I'm the director of government affairs with  
17       the Cambridge Chamber of Commerce.

18              I first want to make a clarification.  
19       The issue of whether imposing regulations  
20       around health and safety in our hotels as  
21       somehow driving people potentially away from

1 Cambridge isn't a case that I made this  
2 evening, and I don't believe that I've made  
3 in other venues on this issue. So,  
4 Councillor Decker apparently misheard my  
5 statement earlier.

6 Again, the concern is whether this is  
7 necessary, given a clear record of  
8 outstanding performance by the hotel industry  
9 in Cambridge.

10 The motion made by the Chair, I have  
11 not had the opportunity to discuss with my  
12 members in the hotel industry, nor have I had  
13 the opportunity to have a discussion with  
14 others of our 1500 members. But what I can  
15 say is that what is contained in that motion  
16 sounds like the practices that are common in  
17 the hospitality industry. Mr. Lang just  
18 mentioned that we should put the  
19 responsibility on the operator of the hotel.  
20 That is what the license already does. That  
21 is the responsibility that every hotel owner

1 and operator I have talked to over the last  
2 several years here in Cambridge and in other  
3 places have been emphatic about. They are  
4 responsible for their hotels everyday. Every  
5 guest, everyday for their health, safety,  
6 their comfort, and that they have an  
7 enjoyable experience.

8 Again, I can't state whether the  
9 proposed motion by the Chair is something  
10 that our members could easily do. I think it  
11 is. Had the industry been invited to the  
12 September 2011 meeting where some of these  
13 issues were raised, they would have been in a  
14 position to ask some -- to answer some of  
15 those questions. Unfortunately that meeting  
16 did not include an invitation to the  
17 industry.

18 So I will leave my comments brief as  
19 requested and thank you for the opportunity.

20 MICHAEL GARDNER: Thank you very  
21 much.

1                   TERRENCE SMITH: If you have any  
2                   questions, I would be happy to answer them.

3                   MICHAEL GARDNER: Are there any  
4                   other members of the public who would like to  
5                   be heard? Why don't we hear from somebody  
6                   who we haven't heard from yet.

7                   STACEY NICHOLS: Stacey Nichols,  
8                   N-i-c-h-o-l-s, S-t-a-c-e-y.

9                   I'm the general manager at the Hyatt  
10                  Regency, Cambridge. I think I just want to  
11                  make some clarifications prior to you making  
12                  your decisions about the motion that's on the  
13                  floor. I would agree, the hotel industry  
14                  already has this responsibility and we as  
15                  hoteliers and operators take it extremely  
16                  seriously. Employing third-party companies  
17                  to supplement our own staffing has been an  
18                  industry practice for many, many years to  
19                  varying degrees. It addresses issues such as  
20                  seasonality. As you know, we're extremely  
21                  busy in the summer, but coming into the

1 winter months, we slow down a bit. So it  
2 helps us on he have heavy occasion weekends;  
3 the local graduations, Head of the Charles,  
4 and that type of things that come to our  
5 great city.

6 I think for that reason we take it very  
7 seriously regardless of who the service  
8 provider is. And that training is something  
9 that is required.

10 There was a statement earlier that only  
11 a couple of hotels opposed this and the  
12 industry at large does not oppose the  
13 regulations. I would disagree with that and  
14 I would tell you that it's in the public  
15 record that you have a letter signed by all  
16 of the hotels in the Cambridge Hotel  
17 Association along with the Harvard Square  
18 Business Association, the Central Square  
19 Business Association, the Chamber of Commerce  
20 for the City of Cambridge. So as business  
21 operators outside of the industry and inside

1 of the industry, we oppose this, the  
2 promulgation of a regulation restricting how  
3 the business is operated on a daily basis.

4 And I think the last thing I would like  
5 to leave you with is something also that's in  
6 the public record; that is, the public health  
7 commission's report that regardless of who  
8 the service provider is, there is no  
9 difference in the industry in terms of public  
10 health and safety which is paramount to what  
11 we do everyday. And we absolutely recognize  
12 and live by our responsibility to provide  
13 that for the travelling public and those of  
14 our guests in our hotels on a daily basis.

15 MICHAEL GARDNER: Thank you very  
16 much.

17 STACEY NICHOLS: Thank you.

18 MICHAEL GARDNER: Anyone else who  
19 would like to speak?

20 DENISE JILLSON: Thank you. Denise  
21 Jillson, Harvard Square Business Association.

1 Just a couple of issues.

2 One is I think the idea that somehow  
3 the train has left the station is unfounded.  
4 This is a regulatory agency, and at any time  
5 when you discover problems, you can regulate.  
6 That's what you do. So the idea that if  
7 something is coming down the pike in the  
8 future, you can address it. That's why we  
9 meet here. You guys meet a couple of times a  
10 months to regulate.

11 The other issue that I just wanted to  
12 mention is that there was one hotel, and one  
13 hotel does not make an industry. It's part  
14 of an industry. But when you have the entire  
15 industry who comes together as they have this  
16 evening, as they have in written form where  
17 everybody has signed a letter just explaining  
18 themselves, as well as the business  
19 associations, I just think that on those  
20 issues I just wanted to clarify that I think  
21 what you presented, and much like Terry, I

1 haven't had the opportunity to read it,  
2 having had an opportunity to discuss it with  
3 members, but fear that they would strongly  
4 support the compromise that you set forth.

5 Thank you.

6 MICHAEL GARDNER: Thank you very  
7 much.

8 We had somebody else? Please come  
9 forward and state and spell your name for the  
10 record. Thank you.

11 DRUPATTIE JUNJURE: My name is  
12 Drupattie Junjure, D-r-u-p-a-t-t-i-e  
13 J-u-n-j-u-r-e. I work for Hyatt Cambridge  
14 for 21 years. And we was not no part time or  
15 seasonal worker. We was full-time worker and  
16 well trained. If we wasn't good worker, I  
17 couldn't be there 21 years. And for what  
18 Hyatt did to us, he just fired us. At that  
19 time there was no subcontract worker. When  
20 they fired us and they bring in the  
21 subcontract worker, that was the first time

1 we heard about subcontractor. So about this  
2 hotel business, Hyatt, Hyatt Cambridge is the  
3 one who started first. And now that they're  
4 doing it, other hotels seeing the same thing  
5 and they go and doing the same thing. So, we  
6 was not no seasonal worker. We was full-time  
7 employee and Hyatt fired us for no reason. I  
8 was young. At that time I was 32-years-old.  
9 I give all my strength, my youth, my honesty,  
10 and I was working there and they fired us.  
11 For what reason? Cheap labor. And the  
12 guests know us because we was there for so  
13 long, and then now they have the subcontract,  
14 they change the workers on and off, on and  
15 off. So that's why I come here today to  
16 express my feeling that what Hyatt did to us  
17 wasn't right. And we was not no seasonal  
18 worker. They fired us for no reason, a  
19 hundred housekeepers.

20 Thank you very much.

21 MICHAEL GARDNER: Thank you very

1 much.

2 REBECCA BROWN: Hi, my name is  
3 Rebecca Brown. Would you like me to spell  
4 that for you?

5 So I'm speaking on behalf of hotel  
6 workers in the city and also in the City of  
7 Indianapolis where I worked -- where I  
8 started working when I was 16-years-old.  
9 I've worked in restaurants and hotel  
10 industries since I was a teenager. I'm 25  
11 now. And I started in the midwest where  
12 there are much less regulations in the state  
13 of Indiana where subcontracting is not, is  
14 the norm. Is the practice in all hotels.  
15 Any hotel that you go into in the city of  
16 Indianapolis has a subcontracting  
17 housekeeping department. And the room  
18 attendants in those rooms -- here in Boston,  
19 the union contract dictates around 15  
20 depending on the hotel. The non-union hotels  
21 try to fall in line with that. They might go

1 maybe up to 20 at the very most. And in  
2 Indianapolis the room attendants there,  
3 they'll clean in some cases 30 rooms or more.  
4 I've heard more. And I unfortunately, I did  
5 not know that I would be speaking tonight so  
6 I don't have, you know, those numbers in  
7 front of me to give to you, but being a hotel  
8 worker in the state of Indiana and then  
9 coming and being a hotel worker in the city,  
10 I worked in the Hilton in the financial  
11 district, I've seen that difference  
12 firsthand. I've seen how the rooms get  
13 cleaned there, how the health and safety of  
14 the guests is compromised by having people  
15 cleaning so many rooms, being so overworked.  
16 And I believe that in Boston the reason that,  
17 you know, even the City of Cambridge that we  
18 have such great reputation now is because of,  
19 you know, these government agencies and  
20 because of the City of, you know, Cambridge  
21 making regulations like this and saying we

1 want to take care of our guests and we want  
2 to make sure that the, you know, as Marjorie  
3 was saying, we want the best, to have the  
4 best practices in our hotels. And I'm  
5 horrified to think that, you know, this city  
6 that this state is -- could be open to going  
7 in the direction of the state where I came  
8 from, because I've seen it firsthand how  
9 disgusting that is. And, you know, just me  
10 personally I was working at the Hilton in the  
11 financial district here in Boston, and I  
12 worked directly for the Hilton and then was  
13 subjected to subcontracting in a food and  
14 beverage department. And, you know, we were  
15 Hilton employees. They decided to bring in a  
16 new company and say oh, well, here, here are  
17 your new bosses. Right? And I will tell you  
18 that my new bosses had no such stake in the  
19 guests' enjoyment other than how much money  
20 they were making, how much profit they were  
21 bringing in. They had no stake in the public

1 safety of, you know, in terms of making sure  
2 that, you know, foods were staying, like,  
3 dated correctly, that things weren't  
4 expiring. You know, they were a coalition  
5 of, you know, people who owned small  
6 businesses previous to that. You just kind  
7 of were like hey, we want to start, you know,  
8 doing hotel restaurants, so let's do that.  
9 They never done hotel restaurants before, and  
10 you know, they kind of come in and they had  
11 no understanding of how the hotel worked.  
12 They had no understanding of how to properly  
13 regulate our health and cleaning standards.  
14 And, you know, especially considering that  
15 they were further removed from the hotel  
16 previously, we had, you know, hotels -- the  
17 hotel overlooking how we were maintaining the  
18 cleanliness of the space. And once the  
19 subcontractor came in, there was no, there  
20 was no such oversight and things got, you  
21 know, pretty disgusting. And, you know,

1       luckily I do not work there anymore, but I'm  
2       someone who has been personally very affected  
3       by subcontracting seeing it in the room  
4       divisions, but also in food and beverage and  
5       I've seen what a difference it makes. And I  
6       believe that the City of Boston and the City  
7       of Cambridge can do much better than that and  
8       has in the past, and I believe that, you  
9       know, you should move forward with the  
10      previous agreement that you guys had set  
11      forth.

12               So, thank you.

13               MICHAEL GARDNER: Thank you very  
14      much.

15               Please step forward. Just identify  
16      yourself again for the record.

17               PETER ENRICH: I'm Peter Enrich,  
18      professor of law at the Northeastern  
19      University.

20               I just wanted to offer a brief  
21      observation as somebody who has had extensive

1 experience with regulation and has actually  
2 served on a License Commission in the  
3 neighboring committee where a was a selectman  
4 for a number of years. And as I watched this  
5 process, I would just remind you of the law  
6 of unintended consequences. The process  
7 that, as I understand it, having gone through  
8 the record of your previous hearings. You  
9 started off with a concern about the  
10 particular hazards that subcontracting of  
11 housekeeping posed to the ability of the  
12 hotel operators to control the quality of the  
13 services provided. You held an extensive  
14 hearing in which there was considerable  
15 evidence that that was a problem that limited  
16 the ability of the hotel operator licensee to  
17 exert control. At this stage the Chairman's  
18 motion suggests a very different approach, an  
19 approach which instead of cutting off the  
20 problem at its root by saying there can't be  
21 subcontracting of these services, instead

1        says let's develop an extensive detailed body  
2        of regulation of all of the things that we  
3        want to make sure that the hotel licensee  
4        oversees if it chooses to subcontract. That  
5        may be opening a Pandora's Box that you truly  
6        don't want to open, of having to write  
7        extensive detailed regulations about a whole  
8        series of issues and then asking how you're  
9        going to oversee whether particular licensees  
10       are actually exercising their responsibility  
11       and authority. My sense is you're stuck with  
12       one of two outcomes:

13                Either you do it in such a lacks way  
14       that you're really not doing anything at all,  
15       or you do it in such a rigorous way that  
16       you're going to pose serious problems for  
17       your hoteliers who are not engaging in the  
18       practice that led to this concern in the  
19       first place.

20                So, again, I should be very clear, I'm  
21       speaking here for no one but myself as an

1 interested observer. My sense is if you  
2 don't want to regulate the practice of  
3 subcontracting, you should decide that and  
4 say so. But it's not clear that it is an  
5 alternative or a compromise or a remedy to  
6 then in place of that put out a detailed body  
7 of code of conduct for your hotel operators.  
8 I think it may be a remedy which doesn't fit  
9 the problem.

10 MICHAEL GARDNER: Thank you very  
11 much.

12 Any other members of the public who  
13 would like to be heard? Please come forward  
14 and state and spell your name for the record.

15 ALEJANDRA DUARTE: Alejandra Duarte,  
16 A-l-e-j-a-n-d-r-a D-u-a-r-t-e.

17 I'm not a hotel worker. I never been.  
18 But what I can tell you it's hard how it is  
19 to work for an agency. I used to work for  
20 agencies between 2000 and 2004, an hour from  
21 here in Leominster and Fitchburg in plastic

1 factories. The way they used to hire us was  
2 a place where you go, you sign up paper and  
3 they put you in a van and they send you to  
4 work. The next day you do the same and the  
5 next day you do the same. There is no  
6 relationship with them. Sometimes you're  
7 lucky and they pay you with a check. Most of  
8 the time they used to pay us with an envelope  
9 with money in it. I used to work six days a  
10 week, twelve hours, seven days a week, twelve  
11 hours. So if you don't want to work that  
12 way, you lose your job. You have to work.  
13 And I never got paid overtime. I never got  
14 paid any other benefits.

15 And I had one time with one of my  
16 co-workers got burned by plastic, and we have  
17 to fight to get that person to the hospital  
18 because the manager on the floor didn't want  
19 to have any responsibilities. And at that  
20 time I didn't speak the language. I was new  
21 in this country, so I didn't say anything.

1        So the person who tried to get her to the  
2        hospital lose her job that night, and the  
3        person who had that accident lose her job  
4        that night. And like that, there are many  
5        other stories that can happen. So, I work in  
6        another place but it was -- we pack liquids  
7        for other products and they took us in the  
8        van. I didn't know what -- where I was  
9        going. I was brand new here. They drop us  
10       in the factory. They close the door, they  
11       locks the doors, and they pick us at the end  
12       of the shift. You cannot leave the place,  
13       not even in your breaks. And that is not  
14       history from a third world country. That's  
15       something that happens to me an hour from  
16       Cambridge. And I think agencies are very,  
17       very dangerous. They have ways to get out,  
18       to get away with the laws, and everybody  
19       think that are there to protect us. It's  
20       cheaper to get out, to try to get away and  
21       get caught broken a law for them, than to do

1 the right thing. And that's why they want,  
2 they want to have workers for agencies. And  
3 that's why I think it should be regulated and  
4 you should not allow the city to have this  
5 type of business here because they prey on  
6 workers and they prey on poor people and they  
7 are doing that in Cambridge and they will do  
8 that here the same way they do to me a few  
9 years ago.

10 MICHAEL GARDNER: Thank you very  
11 much for your testimony.

12 Any other members of the public that  
13 would like to be heard? Again, the question  
14 is about the proposed regulation. I please  
15 ask you to limit your comments to the  
16 proposed regulation. Please state and spell  
17 your name for the record, thank you.

18 RACHEL SOLEM: My name is Rachel  
19 Solem, S-o-l-e-m. I am the owner and general  
20 manager of Irving House and the owner of  
21 Harding House, two hotel properties in

1 Cambridge. I have been listening to all of  
2 this and I've wanted to keep silent because I  
3 don't want to become a target. I know there  
4 are a lot of people who would like me to be.  
5 But I do have concerns especially when fire  
6 chief Reardon says he -- I first of all,  
7 would like to say that I think that your  
8 proposal, your current motion is probably a  
9 very -- much more effective solution to  
10 whatever presenting problem there is. I  
11 believe there is no problem, and the reason  
12 it was raised has nothing to do with there  
13 being a problem. And that's, that's what  
14 concerns the hotels across Massachusetts and  
15 across the country. The hotel industry that  
16 says what's going on here? There has been a  
17 problem if Ms. Decker had actually talked to  
18 the hoteliers in Cambridge she would have  
19 known that.

20 But aside from the public perception,  
21 the real perception, the real issue you're

1        dressing is public health and safety, and  
2        your motion addresses that. Whether, you  
3        know, it applies to every single hotel, as  
4        you had suggested it should, or any  
5        regulation should, and whether outsourced  
6        employees who work clearly, I think, we all  
7        know under very, very difficult circumstances  
8        and probably cannot produce the best work, I  
9        would never hire an agency like that. They  
10       have come to me and asked if I could use  
11       their services, and I've always said no. And  
12       I do remain completely responsible for  
13       everything that goes on in my hotel 24/7 for  
14       the last 22 years. I have concerns about  
15       what the regulations -- how it -- how having  
16       outsourced employees solves the problems with  
17       public health and safety with regard to the  
18       responsibility of the manager of the hotel.  
19       If I remain responsible for what happens  
20       however I choose to hire or train or  
21       discipline or dismiss people, is all part of

1 the results. And you will -- if I ever have  
2 to face you with any problems in my hotel, I  
3 will be the one regardless of whether it's an  
4 employee or a contractor, I will still have  
5 to face you if there's a problem. If I have  
6 to hire people who are not employees during  
7 times when everyone's, you know, there's  
8 vacation or sick or high occupancy times, am  
9 I not allowed to do that? And what about  
10 other contractors? Because one piece of the  
11 Ordinance that I was reading earlier said  
12 that anyone who has access to guest rooms has  
13 to be an employee. So I'm still not clear  
14 about people who are washing windows,  
15 cleaning carpets, fixing the alarm system, I  
16 mean these are all contractors. So I think  
17 you should be -- if you're going to go down  
18 that road, you need to be very specific about  
19 that. And you need to be very specific I  
20 think -- I think the regulations they do  
21 propose in this current motion are a far more

1 effective way to address whatever the problem  
2 might be down the road than deciding how  
3 employees can be hired. And if you do go  
4 down that road of deciding whether it's  
5 employees or contracted labor, you're gonna  
6 have to think about hospitals and dormitories  
7 and offices and restaurants and every other  
8 industry in Cambridge which may or may not be  
9 using contracted employees accommodating the  
10 public. So please take that into account if  
11 that's where you want to go with how we hire  
12 people.

13 Thank you.

14 MICHAEL GARDNER: Thank you very  
15 much.

16 Are there any other members of the  
17 public who would like to be heard on this  
18 matter?

19 (No Response.)

20 MICHAEL GARDNER: Seeing none,  
21 pleasure of the Commission.

1                   GERALD REARDON: Well, Mr. Chair, I  
2                   still have the same concerns about the health  
3                   and safety and how we get to this point is  
4                   obviously the crux of the issue tonight. I  
5                   certainly would not like to see what started  
6                   here to continue. There's no disparagement  
7                   against outsourcing except for the fact that  
8                   I think the evidence is that they turn over a  
9                   number of rooms. I don't believe it's  
10                  probably doing the same old safety as those  
11                  in-house. The issue about subcontracting  
12                  would have to be narrow in scope in terms of  
13                  there are a number of outsourced, as was  
14                  mentioned services, HVAC, heating, and so  
15                  forth that we don't want to get too wide  
16                  sweeping in this. But I guess I'll be  
17                  looking at something. And I guess the other  
18                  issue is that, you know, the hotels who do do  
19                  an admirable job with in-house staff is a  
20                  disadvantage to them of their overhead costs  
21                  versus hotels who would choose to outsource

1 and, therefore, have a competitive advantage  
2 over their type of operation. I think that's  
3 something to consider as well. And how do we  
4 get to this point? And I understand seasonal  
5 staff. I don't think anyone probably here on  
6 either side would suggest that retail store  
7 would have to have the same amount of  
8 employees for the Christmas holiday rush as  
9 they do on a regular.... So I guess how do  
10 we augment those in terms of regular forces  
11 versus seasonal. It's challenging in terms  
12 of to come up with something on how we do  
13 this, but I personally would not like to see  
14 the trend that's going this way right now.  
15 It's one hotel. It's not a trend. I think  
16 we're better off protecting those hotels who  
17 do it the way they're doing it I think all  
18 hotels out there right now. So I would be  
19 interested in coming up with some sort of a  
20 regulation that satisfies some of all of the  
21 competing interests that here and doesn't

1       become counterproductive to what we're trying  
2       to do because the hotel and tourism in  
3       Cambridge is a big part of our economy. It  
4       employees a lot of people and it's something  
5       we want to make preserve and make sure that  
6       it flourishes for everyone involved. So  
7       there are a lot of questions of how we  
8       actually get to that point I guess.

9               MICHAEL GARDNER: All right.  
10       Anything else?

11              ROBERT HAAS: No.

12              MICHAEL GARDNER: All right. Motion  
13       having been made and seconded, all those in  
14       favor signify by saying "Aye."

15              Aye.

16              MICHAEL GARDNER: Those opposed?

17              ROBERT HAAS: Aye.

18              MICHAEL GARDNER: All right. I'm  
19       going to call for a roll call. Let's do it  
20       by seniority on the Commission. I believe  
21       that's you, Chief.

1                   GERALD REARDON: It is. And I'm  
2                   going to -- I am going to vote no. I  
3                   don't -- I'm not sure that this is going to  
4                   get to the point where we need to get it to.  
5                   I agree with and seconded it, and I'm not  
6                   sure this actually gets us to the point where  
7                   we need to solve this issue.

8                   MICHAEL GARDNER: Commissioner Haas.

9                   ROBERT HAAS: I vote no.

10                  MICHAEL GARDNER: Michael Gardner  
11                  yes. So the motion fails 2 to 1.

12                  GERALD REARDON: I guess the  
13                  alternative motion would be that we come up  
14                  with some draft language that would get us to  
15                  a point where we believe it solves some of  
16                  the issues in terms of the competitiveness,  
17                  safety, health. And I don't know what that  
18                  language right is. I guess I try to make a  
19                  motion that if we could work with something  
20                  collaboratively that it would possibly  
21                  satisfy the industry and those who are

1 interested in the health and safety as well,  
2 but I don't think I come up with a motion  
3 tonight that clearly can cover all of the  
4 Variances that we need it to.

5 COUNCILLOR MARJORIE DECKER: Can the  
6 professor be of assistance to you, Chief?

7 PETER ENRICH: Would you like to  
8 comment on that?

9 GERALD REARDON: Certainly,  
10 Professor, you can comment since you were  
11 volunteered.

12 PETER ENRICH: My only comment would  
13 be that there are clearly competing interests  
14 here. The Commission took a vote over a year  
15 ago to follow one course. I haven't heard  
16 the Commission change that that provides  
17 guidance that would enable drafting  
18 regulations that addressed at least some of  
19 the concerns, concerns about types of  
20 employees other than housekeeping. And I  
21 think those would clearly be within the scope

1 of last year's motion. If what you're  
2 looking for is something that both forbids  
3 outsourcing and allows it, I can't draft a  
4 regulation that does that.

5 MICHAEL GARDNER: Okay, I'm going to  
6 take control of the meeting again.

7 PETER ENRICH: Sorry.

8 MICHAEL GARDNER: And I think we've  
9 heard from the fire chief. He doesn't have a  
10 particular motion for the this evening.

11 Commissioner Haas, do you have a motion  
12 for this evening?

13 ROBERT HAAS: I have to tell you I'm  
14 truly perplexed by this whole thing, and I'm  
15 really not sure at this point I can offer a  
16 motion at this point that would be well  
17 informed.

18 MICHAEL GARDNER: All right. Well,  
19 then I will offer one.

20 I will make the motion that the  
21 Commission staff be instructed to draft

1 regulations concerning implementing  
2 restrictions on the contracting out to third  
3 parties for employees who have unfettered  
4 access to guest rooms in hotels. And I would  
5 propose that the those regulations follow the  
6 following guidelines:

7 That any prohibitions on contracting  
8 out to third parties or employees who may  
9 have unfettered access to guest rooms, be  
10 dealt with on a case-by-case basis.

11 That the reason or the trigger for  
12 making an inquiry in a particular case be  
13 based upon guest complaints or inspections.

14 That prior to acting, the Commission  
15 would be required to hold a hearing with  
16 respect to the specifics of the case.

17 That the Commission would be required  
18 to make detailed findings of fact showing  
19 harm to public safety or health.

20 That the Commission procedures allow a  
21 three to six-month period of self-correction

1 unless there is a finding of imminent danger  
2 to public safety or health, and that these  
3 regulations apply to all in holders in the  
4 city, whether they currently or subsequently  
5 provide for contracting out the third parties  
6 for employees who have unfettered access to  
7 guest rooms in hotels, which I will submit to  
8 you is a substantially larger number than  
9 one.

10 So that's the motion. Does it have a  
11 second?

12 GERALD REARDON: Do you have a  
13 number on that note, are we limiting this to  
14 hotels over a certain size?

15 MICHAEL GARDNER: My proposal was  
16 that it apply to hotels, all hotels who  
17 implement, who have contracting out to third  
18 parties to -- for employees who have  
19 unfettered access to guest rooms in hotels.  
20 You know, clearly it would apply to security  
21 staff, housekeeping staff. Depending on

1 operations, may or may not apply to  
2 specialized cleaning services.

3 COUNCILLOR MARJORIE DECKER: Are you  
4 going to allow comments on this motion, too?

5 MICHAEL GARDNER: Only if there is a  
6 second.

7 GERALD REARDON: And I guess can I  
8 read this one more time real quickly?

9 So this would be to draw up regulations  
10 for us to further enact?

11 MICHAEL GARDNER: Right. I mean,  
12 this is -- I'm -- to the professor's point, I  
13 myself did not feel comfortable in drawing up  
14 a detailed set of regulations that is  
15 typically not how this Commission works. In  
16 any event, we give instructions to the staff  
17 with respect to the general guidelines we're  
18 interested in having them follow. They give  
19 us draft regulations, we review them in the  
20 public hearing, make such amendments as we  
21 deem appropriate or send the matter back to

1 the staff for further re-drafting as we've  
2 done recently with respect to some matters  
3 involving the Hackney industry, and then  
4 ultimately we vote on the regulations.

5 I think that what I'm attempting to  
6 address here is the view that before we  
7 should in fact tell a hotel how to organize  
8 its business, again, given that it is the  
9 hotel, no matter how they organize their  
10 business or the management of the hotel or  
11 the license holder, no matter how they  
12 organize their business, who is responsible  
13 directly to us for health and safety issues,  
14 that before we would interfere with any hotel  
15 in how they organize that business, we would  
16 require an actual detailed hearing to find  
17 out what the issues are in the same way that  
18 we do when we've got a complaint about  
19 overcrowding. Hotelier allows a party with  
20 the 30, 40 people in a room without notifying  
21 the police department of either the noise or

1 public safety danger, any kind of problems  
2 that come up that we deal with it on a  
3 case-by-case basis, that that would come from  
4 both guest complaints and/or inspections of  
5 the hotels. We have a hearing. We actually  
6 make findings of fact. I am proposing that  
7 if we find that there are problems, we will,  
8 as a norm, we would allow a three to  
9 six-month period of self-correction as we  
10 often do now with respect to the license  
11 holders that are operating in a manner that's  
12 consistent with safety and health. And that  
13 although obviously we would reserve the  
14 authority to eliminate the contracting out  
15 immediately if we felt there was an imminent  
16 danger to public safety or health, I would  
17 submit to you that this is the responsible  
18 and principal way to deal with the issue if  
19 the Commission is of the view that the  
20 problem for health and safety in the City of  
21 Cambridge relates directly to how the

1 hotelier chooses to organize house services  
2 are provided. Including do they contract out  
3 security or do they hire their own security  
4 guards?

5 ROBERT HAAS: I'll second the  
6 motion.

7 MICHAEL GARDNER: Motion having been  
8 made and seconded, it being 8:15, I'm going  
9 to ask that we limit public comment to 10  
10 minutes total, and I'll leave the proponents  
11 to decide who would speak. But of course,  
12 Councillor Decker, please go first.

13 COUNCILLOR MARJORIE DECKER: Thank  
14 you.

15 So, Mr. Chairman, I just want to  
16 commend you. I think your point of view has  
17 been consistent, and I think you've made  
18 really interesting attempts at trying to  
19 maintain your point of view through both  
20 motions. This motion is already what's in  
21 place. If there's a problem, a violation,

1       somebody has the opportunity to complain to  
2       the License Commission. And so I think in  
3       your attempts here -- and I think, I  
4       understand nobody else is offering language  
5       here, so your point of view is the point of  
6       view that keeps getting put out here. What  
7       I'm going to ask the two who seem to be in  
8       favor of and understanding what's at stake  
9       here, you have language that I submitted to  
10      you. I'm going to ask one of you to forward  
11      a motion to look at that language as a basis  
12      to start the promulgation of a regulation.  
13      What Mr. Gardner, Chairman Gardner just  
14      offered is what's already available. It does  
15      not get to the heart -- it says if there's he  
16      a -- I would be curious, you know, Chairman  
17      Gardner, when you had bedbugs did you go  
18      before the License Commission at that town  
19      and go before them at a hearing?

20                   MICHAEL GARDNER: I got out of that  
21      room as fast as I could and I got out of

1 town.

2 COUNCILLOR MARJORIE DECKER:

3 Exactly. And I think that could not be more  
4 my point. Most people don't know the License  
5 Commission actually oversees a hotel. I had  
6 that issue in a hotel. I did not -- I  
7 complained to the hotel. The hotel was  
8 hostile to me. It was not in this country.  
9 It was in another country. It didn't even  
10 occur to me to go find the mayor of that  
11 hotel and find the Licensing Commission. And  
12 people are always in a hurry to get out of  
13 here. It just means they won't come back to  
14 that hotel.

15 The difference of this, to say that you  
16 don't want to interfere with the labor  
17 practices, we're not doing that. I want to  
18 remind both Commissioners that Council did  
19 not ask you to do this because it just was  
20 sitting there thinking what can we interfere  
21 with. There was a change in practice, and in

1       its own self-regulations implemented by the  
2       industry. You have heard this happens around  
3       the country. You have been submitted  
4       examples and research about why it is a bad  
5       practice, and it is not in the best interest.  
6       What you are being asked to do and what you  
7       have been asked to do is to promulgate  
8       language that would allow a regulation that  
9       says due to a systemic change and a change in  
10      the way in which one member in the industry  
11      has decided to do business, we in fact are  
12      going to affirm the best practice that is  
13      currently in existence right now, and I  
14      submit that I promise that's why we have such  
15      a great hospitality industry. And you heard  
16      from one of the opponents of this who would  
17      the not be affected in the original language  
18      that I also asked you to say let's eliminate  
19      people under 100 rooms, who said she would  
20      never do this. She would never hire these  
21      outsourced workers herself, and actually gave

1 very good reasons of why. But that's all the  
2 research you've been given.

3 You both know that the Chairman has a  
4 very pointed point of view on this. And it's  
5 consistent with his professional experience  
6 and history, and I commend you on that. But  
7 nobody else is putting forward a point of  
8 view that allows the two of you to get moving  
9 forward on what it is that we, you have  
10 supported. He is going to keep, I think, and  
11 I don't fault you for this, keep putting  
12 forward regulation that skirts around the  
13 issue. And so you have language that I  
14 submitted. I would ask you please take that  
15 and start, start with that. And then as  
16 you're looking at that and you want to change  
17 it, have further conversations and then  
18 change it.

19 I would also suggest that you do -- I  
20 don't think you need to include inns and  
21 smaller hotels that have less than 100 units

1       because they do have their hands -- the  
2       likelihood of them subcontracting to their  
3       housekeeping rooms is very small. Even if  
4       they do, it's a very small organization that  
5       they actually do know who's coming in and  
6       out. This is really at the larger chain  
7       organizations that do not have control and  
8       this is what you've been given, the research  
9       of you've been given, what happens when  
10      outsourcing companies mostly and in this  
11      example of the current one has come from out  
12      of state. I heard one person who spoke  
13      earlier from the industry say I think I won  
14      this. This is not about winning or losing.  
15      And this is not about asking you to protect  
16      the tourism industry. You have a great  
17      responsibility in field because you feel you  
18      commit to the city, you love the city. I do,  
19      too. Nobody loves this city more than I do  
20      or feels a greater commitment to ensuring  
21      that we've got a great reputation. But this

1 is about best practices that are being  
2 deviated and saying please don't let that  
3 happen. Affirm those best practices so that  
4 things can continue as they are. Take the  
5 language that I've submitted, please consider  
6 moving that forward as a motion, and then if  
7 you have to have further conversation, go  
8 ahead and have further conversations. But  
9 the Chairman is going to keep putting forward  
10 motions that continue to, in very clever ways  
11 I think, put forward his point of view that  
12 in fact does not get to the heart of the  
13 issues that I've asked you to that you have  
14 supported because he doesn't support it. So,  
15 that that's all I have to say. And I thank  
16 you for your time. I do.

17 MICHAEL GARDNER: Thank you.

18 Okay, I ask you please come forward  
19 state and spell your name for the record.  
20 Again, we've got five minutes left.

21 MICHAEL MEDEIROS: Mide Medeiros,

1 M-e-d-e-i-r-o-s, general manager, again,  
2 Royal Sonesta. I just want to say public and  
3 safety is not important for hotels under 100?  
4 So I'm really confused by --

5 COUNCILLOR MARJORIE DECKER: I'm  
6 happy to answer a question if you're asking  
7 that.

8 MICHAEL GARDNER: Please, please  
9 direct all of your comments to the Chair.

10 MICHAEL MEDEIROS: Okay.

11 MICHAEL GARDNER: And we won't have  
12 a discussion or debate among audience members  
13 as part of the record.

14 MICHAEL MEDEIROS: Okay. That's not  
15 my intent. My intent is that I want to make  
16 sure that people understand that public and  
17 safety is important to all hotels. And as  
18 you can see by the statements and the letters  
19 that were submitted before, we have a support  
20 of all the general managers in Cambridge.

21 MICHAEL GARDNER: Thank you very

1 much.

2 MICHAEL MEDEIROS: Thank you.

3 MICHAEL GARDNER: Are there any  
4 other members of the public who'd like to be  
5 heard on this proposed motion? Please come  
6 forward and identify yourself again for the  
7 record.

8 TERRENCE SMITH: Terrence Smith,  
9 T-e-r-r-e-n-c-e S-m-i-t-h. Just one point.  
10 If we are going to move forward from the  
11 motion on from September of last year, this  
12 sounds like a way to start. There could be  
13 other motions. I would ask that the  
14 industry, a prominent member of the legal  
15 community has been volunteered to participate  
16 in writing the regulations. I would also  
17 suggest as the License Commission has done  
18 with the taxi industry and other industries,  
19 that the hospitality industry, should the  
20 staff be asked to, write regulations be  
21 involved in that discussion. I also which

1 deviates a little bit from this, the  
2 discussion on a previous motion regarding  
3 CORI shows that the great difficulty of the  
4 License Commission will have in defining  
5 employment practices of this or any other  
6 industry.

7 Thank you.

8 MICHAEL GARDNER: Thank you very  
9 much.

10 Are there any other members of the  
11 public who would like to speak in the next  
12 two minutes?

13 (No Response.)

14 MICHAEL GARDNER: Seeing none, any  
15 further comments by the Commissioners prior  
16 to a vote on the motion for this set of  
17 guidelines to direct the staff with respect  
18 to developing regulations?

19 ROBERT HAAS: I'm wondering if there  
20 is an opportunity to sit down and have a  
21 conversation as suggested with respect to

1       trying to find a regulation that really truly  
2       gets to making sure we do provide and  
3       maintain the best practices that already  
4       exist in the city. And I'm just wondering  
5       if, you know, having doing this in a vacuum  
6       if that's really the best way to go at this  
7       point in time.

8               MICHAEL GARDNER: Yes, well, I guess  
9       I would say that in the context of the staff  
10      drafting regulations, it has been the  
11      practice in the past, at least on occasion,  
12      to seek comment and advice from interested  
13      parties prior to -- in the drafting stage,  
14      prior to the matters coming before the  
15      Commission for consideration. We recently  
16      sent the staff back and asked them to in fact  
17      do more information gathering from one of the  
18      industries that we regulate prior to our  
19      considering the proposed regulations. And my  
20      purpose in offering this motion tonight is to  
21      not shut out any interested parties from

1 further comment or participation, but simply  
2 to move the matter along and give the staff a  
3 set of general guidelines in which to deal  
4 with the regulations to implement  
5 restrictions on contracting out to third  
6 parties for employees who may have unfettered  
7 access to guest rooms in hotels. So I  
8 certainly would envision there be the  
9 opportunity for further discussion among the  
10 interested parties.

11 ROBERT HAAS: So are you proposing  
12 stop at that first point and then I can  
13 answer those other issues at this point?

14 MICHAEL GARDNER: Well, I think the  
15 motion as I made it, again, to summarize it,  
16 that any effort to or any action by us to  
17 restrict the use of third-party contracting  
18 would be done on a case-by-case basis. It  
19 would be done on guest complaints or  
20 inspections. And we could certainly talk  
21 about whether or not we think that the

1 industry requires more intensive inspection  
2 schedule or practice than we currently  
3 follow. Before we took an action it would  
4 require a hearing. I think that is a due  
5 process requirement that we would be very  
6 wise to implement before we interfered with  
7 contractual relations between a hotel and any  
8 companies they may have contracted with.  
9 That we would require detailed findings of  
10 facts showing harm to public safety or  
11 health, and that as a general matter, we  
12 would allow up to three to six-month period  
13 for self-correction as we do with virtually  
14 every other type of license that we regulate.  
15 Unless of course there was a finding by the  
16 Commission of an imminent danger to public  
17 safety or health. And I would -- my sense  
18 about this regulation or this proposed  
19 guideline is that it would apply to all of  
20 the hotels in the city. It is definitely not  
21 directed just at housekeeping, because from

1 my point of view, if the arguments have  
2 merits, they have merits for all of the other  
3 third-party contractors who have unfettered  
4 access to rooms. It would apply to all the  
5 hotels. And it would apply to the hotels who  
6 are now contracting out for housekeeping.  
7 Who are now contracting out for security.  
8 Who are now contracting out for specialized  
9 cleaning. If those persons have unfettered  
10 access to the rooms, and there may be ways in  
11 which the hotel could arrange so they didn't  
12 have unfettered access, I don't know, but it  
13 would apply to what I understand to be the  
14 problem, which is that employees who don't  
15 work for the hotel have unfettered access to  
16 rooms. And I don't -- I believe that  
17 applies, if there is a problem, certainly to  
18 more than just housekeeping. So it is as  
19 broad as that, it would clearly affect all  
20 the hotels in the city, including the one  
21 that now contracts out for hospitality -- for

1       -- I'm sorry, for housekeeping as well as any  
2       who may contract out for security, services,  
3       or any other services that would fit the  
4       unfettered access to guest rooms.

5               Any other comments?

6               GERALD REARDON: I for one would  
7       like to get this right and I don't want it to  
8       be too far reaching. I don't want it to be  
9       overarching. I don't want it to be onerous.  
10       I don't want it to hurt our industry. I want  
11       to solve the problem without going too far.  
12       And subcontracting on a personal note, I  
13       would rather go to a hotel that didn't  
14       subcontract necessarily. It depends. I'm  
15       not saying that any subcontractor is as good  
16       as the other one or not. I think the model  
17       we have here has worked. As we mentioned  
18       earlier, there are a number of family  
19       businesses that have been here all their  
20       lives and have done a phenomenal job. And  
21       we're very tourism industry here. And we've

1       supplied a lot of jobs to people as part of  
2       that. And it's part of the economic engine  
3       of Cambridge. So I want to make sure  
4       whatever we do here deals with the health,  
5       safety, welfare and at the same time does not  
6       do undue harm by being over regulatory and  
7       having this too far reaching. And I don't  
8       know how we come up with a motion tonight,  
9       but it certainly does -- and I also agree  
10      with the pact that it should be hotels with  
11      hotels over 100 rooms. I think the a smaller  
12      ones that I'm familiar with, there are a  
13      number of bed and breakfasts and small hotels  
14      and you can't get in and out without seeing  
15      people, people know you face to face for the  
16      most part. They have conversation. It's  
17      simply different from a very, very large  
18      scale operation. So I would like to keep it  
19      at that scale and not the local inns which  
20      are far more intimate in terms of their  
21      dealing with their guests on a daily basis.

1           I also want to deal with the issue  
2           about not restricting it for seasonal,  
3           because I don't believe that it's fair that  
4           you have the same amount necessarily for  
5           seasonal. And I guess I'm trying to get to a  
6           regulation that we come up with that will  
7           deal with some of these issues that are on  
8           both sides of the aisle. I think we're all  
9           at heart would like to get to the same point  
10          but we don't want to over regulate, and we  
11          don't want the License Commission and others  
12          getting too far into the hotel business.

13               MICHAEL GARDNER: So I'll call for a  
14          vote.

15               All those in favor of the motion having  
16          been made and seconded, signify by saying  
17          "Aye."

18               MICHAEL GARDNER: Aye.

19               Those opposed?

20               GERALD REARDON: No.

21               ROBERT HAAS: No.

1                   MICHAEL GARDNER: I'll offer a third  
2                   proposal which is that the motion I made  
3                   previously be adopted with the additional  
4                   provision that it apply only to hotels with  
5                   100 guest rooms or more.

6                   Is there a second for that motion?

7                   (No Response.)

8                   MICHAEL GARDNER: Seeing none, are  
9                   there any other motions anyone's prepared to  
10                  make this evening?

11                  (No Response.)

12                  MICHAEL GARDNER: Seeing none, we'll  
13                  send this matter back to the staff or I'll  
14                  make the motion to send the matter -- rather,  
15                  I'll make the motion to send the matter back  
16                  to the staff until such time as one of the  
17                  Commissioners calls it off the table.

18                  That's the motion. Is there a second?

19                  GERALD REARDON: I'd like to just  
20                  amend that and say that we turn around and  
21                  work together to try to come up with language

1           regarding the outsourcing.

2                   MICHAEL GARDNER: Just for point of  
3 information, Chief, I'd ask you to define  
4 together or who you mean. I've used the  
5 language before of interested parties.

6                   GERALD REARDON: Interested parties  
7 that may be preferable.

8                   MICHAEL GARDNER: So is that an  
9 amendment to the motion?

10                  GERALD REARDON: A friendly  
11 amendment to your motion.

12                  MICHAEL GARDNER: I'll accept the  
13 amendment.

14                   Is there a second to the amendment?  
15 I'm sorry, don't we have to vote on the  
16 amendment first? Well, we don't have a  
17 second for the proposal, so sorry.

18                  GERALD REARDON: What was the  
19 proposal again, please?

20                  MICHAEL GARDNER: Sorry. I don't do  
21 this a lot.

1 I'll withdraw the prior motion and I  
2 will offer this motion.

3 I move that the matter be tabled until  
4 it is brought forward by one or more  
5 Commissioners, and that while it is on the  
6 table, the Commission and Commission staff  
7 are urged to seek further comment and advice  
8 and opinion from interested parties in the  
9 matter.

10 Is there a second to that motion?

11 ROBERT HAAS: Second.

12 MICHAEL GARDNER: The debate having  
13 gone on as long as it has and the business  
14 before us remaining large, I'll call for a  
15 vote.

16 All those in favor of the motion,  
17 please signify by saying "Aye."

18 GERALD REARDON: Aye.

19 ROBERT HAAS: Aye.

20 MICHAEL GARDNER: Aye.

21 Those opposed?

1 (No Response.)

2 MICHAEL GARDNER: The motion carries  
3 three to nothing.

4 And let's see I'm interested in whether  
5 we have some disciplinary things that are  
6 going to take quite a while. I wonder if  
7 there are a couple of smaller items we could  
8 deal with first, Ms. Lint.

9 ANDREA BOYER: The officers have to  
10 get back on duty.

11 ELIZABETH LINT: The officers are on  
12 duty.

13 MICHAEL GARDNER: I'll defer to the  
14 Commissioner on that question. Do you want  
15 to deal with the matters dealing with the  
16 police officers now?

17 ROBERT HAAS: I would like to.

18 MICHAEL GARDNER: All right. Let's  
19 do that. So, Ms. Lint, please call the next  
20 matter.

21 Before we do that. I thank all of you

1 for your participation this evening and your  
2 patience.

3 ELIZABETH LINT: I'm sorry, can you  
4 take the conversation outside? We're trying  
5 to get going here.

6 Disciplinary matter, Everest Crossing,  
7 LLC, doing business as OM Restaurant and  
8 Lounge, Bikram Yonjan, Manager, holder of an  
9 all alcoholic beverages as a restaurant  
10 license and entertainment license at 92  
11 Winthrop Street, due to OM over capacity on  
12 September 30, 2012; October 4, 2012; and  
13 October 5, 2012.

14 ANDREA BOYER: I don't have any  
15 preface for the September 30th or October 4th  
16 one.

17 MICHAEL GARDNER: So, Commissioner,  
18 if you're willing, I would like to ask you to  
19 lead the questioning on this matter?

20 ROBERT HAAS: Sure.

21 Let's take the matter that's stated for

1           September 30, 2012. And, Officer Brooks,  
2           that has the testimony on that.

3                   OFFICER DEVON BROOKS: Yes. Officer  
4           Devon Brooks. D-e-v-o-n, last name Brooks,  
5           B-r-o-o-k-s.

6                   ROBERT HAAS: Could you just give us  
7           the background on this case, please.

8                   OFFICER DEVON BROOKS: Okay. On  
9           September 30th I was working a paid detail at  
10          the OM Restaurant. Approximately one a.m., a  
11          little bit after one a.m., there was a fight  
12          between two females in the back of the  
13          restaurant. I called for additional units to  
14          come and assist me to break up the fight.

15                   When I approached the fight, it was  
16          already over. The involved parties did not  
17          want to have any conversations with me.  
18          Security and one of the party's friends  
19          removed her to the front outside of the  
20          restaurant. And her boyfriend removed one of  
21          the second parties to the rear, out the back

1 door. At that time I had told the DJ to shut  
2 the music off and we were attempting to move  
3 everyone out of the restaurant to close down  
4 the party on the first floor at that point.  
5 There were two birthday parties going on at  
6 the same time; one on the upper level and one  
7 on the lower level. At the time I believe  
8 the fight occurred with someone on the lower  
9 level. I'm not sure where the second girl  
10 came from. No one would talk to me about it.  
11 But I know one of them that was involved, she  
12 was on the first level at the time.

13 At the time that the incident occurred,  
14 I believe that the club was at true capacity  
15 and we weren't letting anyone else in. I was  
16 at the door the entire night with the doorman  
17 and the person collecting the money. And we  
18 had stopped letting people inside at that  
19 point. There were still a large crowd  
20 outside waiting to get in. But we didn't let  
21 anyone else in. When I came back outside

1 after the incident, there were a lot of  
2 people outside. That's when I believe  
3 Sergeant Carney came up and had discussions  
4 with the manager of the restaurant, of the  
5 club that night.

6 ROBERT HAAS: So it was your best,  
7 to your best knowledge you think the fight  
8 took place at the first floor of the party,  
9 and there was no activity upstairs with  
10 respect to any kind of discord or conduct?

11 OFFICER DEVON BROOKS: There was no  
12 activity upstairs. This all occurred  
13 downstairs in the back of the restaurant  
14 where the restrooms were.

15 ROBERT HAAS: Were you satisfied  
16 that the restaurant was at its legal capacity  
17 or over?

18 OFFICER DEVON BROOKS: I'm satisfied  
19 that they were at capacity. Only that they  
20 were -- it was -- I believe it's small, and  
21 for the amount of people in there, it might

1        seem like it was overcrowded, but I made sure  
2        I walked through a few times, and then to me  
3        I was able to walk through without having to  
4        bump my way around at the time. But there  
5        were just a lot of people waiting to get in.  
6        Because what I saw was there were two  
7        different parties, two different guest lists.  
8        And you had two different sets of people  
9        trying to get in. And at one point that's  
10       when I said, I cut it and I said no one else  
11       is coming in. Because I believe that  
12       we're -- the manager said I think we're to  
13       capacity. So we're doing one for one. If  
14       you left, then they would let one person in.  
15       So to my estimation, inside was not  
16       overcrowded. I mean, there were a lot of  
17       people outside waiting to get in.

18                ROBERT HAAS: How many people would  
19       you estimate were outside waiting to get?

20                OFFICER DEVON BROOKS: Probably  
21       about 150 people.

1 ROBERT HAAS: What time was this?

2 OFFICER DEVON BROOKS: Still at one  
3 a.m.

4 ROBERT HAAS: One a.m.?

5 What was the stairway like inside the  
6 establishment; were there people standing on  
7 the stairway or was the stairway cleared?

8 OFFICER DEVON BROOKS: When I went  
9 in, the stairway was clear. When I went into  
10 -- when I went to break up the fight, the  
11 stay way was clear.

12 ROBERT HAAS: Did anybody identify  
13 themselves as a crowd manager to you while  
14 you were working the detail?

15 OFFICER DEVON BROOKS: No. I'm  
16 sorry, this is the first time I ever heard  
17 that that there's supposed to be a crowd  
18 manager on scene. Thanks, Chief.

19 MICHAEL GARDNER: Anything else?

20 ROBERT HAAS: No other questions.

21 GERALD REARDON: So you saw them

1 with the clickers and they seemed to be --

2 OFFICER DEVON BROOKS: Yes, the  
3 gentleman had the clicker.

4 GERALD REARDON: We know it's not a  
5 hundred percent exact science, but I mean to  
6 the best of your ability it appears they were  
7 doing what they were supposed be doing,  
8 monitoring the crowd?

9 OFFICER DEVON BROOKS: Yes. They  
10 had two clickers, they were taped together.  
11 One -- every time I saw someone go in, he  
12 would click. And I wasn't watching him all  
13 the time to see if he was doing it every  
14 time. And when I first got there, he was --  
15 my detail started at 10:30 when I got there,  
16 and he was doing it at the time.

17 GERALD REARDON: Thank you.

18 MICHAEL GARDNER: Officer, thank you  
19 for your waiting so long tonight. We never  
20 quite know how long these are going to go so  
21 we appreciate your patience and the patience

1 of everybody else who has been waiting to  
2 deal with either this or other business  
3 pending before the Commission this evening.

4 OFFICER DEVON BROOKS: Thank you.

5 MICHAEL GARDNER: In your  
6 observations did you observe that any of the  
7 principals or the participants in this were  
8 intoxicated?

9 OFFICER DEVON BROOKS: No. I  
10 believe -- and the reason I say no is one of  
11 the girls that was involved, she got in there  
12 probably around -- I remember her  
13 specifically when she walked in which was  
14 about quarter to one when she went in. And I  
15 don't believe that she was -- and like  
16 everything else, one thing I heard someone  
17 say was the reason why this occurred was  
18 because one person was in the bathroom for  
19 too long. And I just found that to be kind  
20 of farfetched. But, no, I don't believe that  
21 they were.

1                   MICHAEL GARDNER: Okay. Thank you  
2                   very much.

3                   ROBERT HAAS: Sergeant Carney, were  
4                   you there that evening?

5                   SERGEANT PATRICK CARNEY: I was.

6                   ROBERT HAAS: And do you have any  
7                   additional information?

8                   SERGEANT PATRICK CARNEY: It  
9                   appeared to me to be overcrowded. I mean, I  
10                  was there -- I got there right at the tail  
11                  end of the fight. Pushed my way through a  
12                  big crowd to get to where the fight was.  
13                  Once the music was shut down and basically  
14                  they shut the club down, a large, large group  
15                  of people came out Winthrop Street. There  
16                  were numerous fights that we had to break up.  
17                  We placed one girl in protective custody. I  
18                  guess she was one of the birthday girls. She  
19                  was extremely intoxicated. We had a lot of  
20                  overtime thankfully that was working that  
21                  night in Harvard Square. I think we would

1           have been in trouble with all the fights that  
2           we had if it weren't for having the extra  
3           officers on hand.

4                   ROBERT HAAS:   How many fights would  
5           you estimate broke out when people were  
6           coming out of the restaurant?

7                   SERGEANT PATRICK CARNEY:   At least  
8           seven or eight.   We would break up a fight  
9           and another one would start over here, and  
10          we'd break that up and another one would  
11          start over here.

12                   ROBERT HAAS:   And these are people  
13          coming out of the OM Restaurant?

14                   SERGEANT PATRICK CARNEY:   All coming  
15          out of the OM.

16                   ROBERT HAAS:   And you believe that  
17          the woman you placed in protective custody  
18          was intoxicated?

19                   SERGEANT PATRICK CARNEY:   Highly  
20          intoxicated.

21                   MICHAEL GARDNER:   Did you have any

1           conversations with any of the staff on duty  
2           that evening?

3                       SERGEANT PATRICK CARNEY: I spoke  
4           with one gentleman, I don't think he was the  
5           manager. I didn't get his name, but he  
6           insisted that it wasn't overcrowded, that  
7           they were keeping count. But to my  
8           observation it looked to be extremely  
9           overcrowded.

10                      MICHAEL GARDNER: Did you make any  
11           observations with respect to the number of  
12           people who were on the upper level compared  
13           to the lower level?

14                      SERGEANT PATRICK CARNEY: I didn't,  
15           I didn't go upstairs. The fight was  
16           downstairs. I went to the fight and  
17           immediately after they started having people  
18           leave the club.

19                      MICHAEL GARDNER: Ms. Lint, can you  
20           remind us what the capacity for the lower  
21           level is?

1                   ANDREA BOYER: First floor is 118  
2 patrons, and the second floor is 76 patrons.

3                   MICHAEL GARDNER: Okay.

4                   Did you reach an opinion as to whether  
5 you observed 111?

6                   ANDREA BOYER: 118.

7                   MICHAEL GARDNER: 118 or more people  
8 on the first floor?

9                   SERGEANT PATRICK CARNEY: It looked.  
10 I mean, this is just an estimate, but it  
11 appeared to be more than that to me.

12                  MICHAEL GARDNER: Did you come up  
13 with a number?

14                  SERGEANT PATRICK CARNEY: I guess --  
15 just for the first floor?

16                  MICHAEL GARDNER: First floor.

17                  SERGEANT PATRICK CARNEY: I'd say  
18 150, 200 if I had to guess.

19                  MICHAEL GARDNER: Thank you.

20                  In your report or in any other report  
21 was there an estimate of the number of

1 occupants of the building for this incident?

2 SERGEANT PATRICK CARNEY: I didn't  
3 do an official report. I just sent an e-mail  
4 to the deputy which is the procedure, and I  
5 estimated total, talking about the people on  
6 Winthrop Street after the club closed and  
7 everyone came out in the street, I estimated  
8 three to four hundred people.

9 MICHAEL GARDNER: And are you saying  
10 that these are people that came out of OM?

11 SERGEANT PATRICK CARNEY: Came out  
12 of OM, yeah.

13 MICHAEL GARDNER: Thank you.  
14 Chief?

15 GERALD REARDON: Nothing further  
16 right now.

17 ROBERT HAAS: So, Sergeant, when you  
18 got there, was the premises evacuating at  
19 that time or were there still people inside  
20 the premises when you got there?

21 SERGEANT PATRICK CARNEY: I got

1           there just before they closed it down.

2                       ROBERT HAAS:   So you could  
3           distinguish between who was waiting outside  
4           and who was actually inside the restaurant at  
5           the time?

6                       SERGEANT PATRICK CARNEY:   I was  
7           there earlier and there was a large line  
8           outside.  I don't remember when I got there  
9           for the fight because I went right in because  
10          of the fight.  I don't remember if people  
11          waiting outside or not.

12                      ROBERT HAAS:   How many people  
13          responded to the scene that night.

14                      SERGEANT PATRICK CARNEY:   We had  
15          close to 20 officers.  Car 4, car 5.  Walking  
16          officers.  Four or five Cambridge overtime  
17          officer, another four Harvard overtime  
18          officers.  Myself, car 15.

19                      ROBERT HAAS:   How long were the  
20          officers tied up at the scene?

21                      SERGEANT PATRICK CARNEY:   Probably

1           about two hours.

2                   ROBERT HAAS: Two hours?

3                   SERGEANT PATRICK CARNEY: Yeah.

4                   MICHAEL GARDNER: Were there any  
5           serious injuries?

6                   SERGEANT PATRICK CARNEY: No.

7                   MICHAEL GARDNER: Did you make any  
8           observations of other patrons, whether they  
9           were involved in this incident or not, who  
10          appeared to be intoxicated?

11                   SERGEANT PATRICK CARNEY: I never --  
12          I saw, I believe I saw one party from the  
13          initial fight that we originally respond --  
14          she was, she was upset, she was crying. I  
15          didn't really sense that she was intoxicated  
16          though.

17                   MICHAEL GARDNER: Thank you.

18                   ROBERT HAAS: No other questions.

19                   MICHAEL GARDNER: I'm not sure if  
20          there's, if Officer you had any involvement  
21          in this?

MICHAEL GARDNER: Okay.

ROBERT HAAS: Oh, you were?

PATROLMAN BATES: Patrolman Bates,

B-a-t-e-s, 547, Cambridge Police. I was working that night of this incident. I believe I was one of the first officers on scene after the fight call came out. As soon as I got there, I ran to the premises immediately. My only priority was to get eyes on the detail officer to make sure he was all right. Being familiar with the atmosphere that seems to be common at OM lately, I didn't know where he was. The club was pretty packed with people shoulder to shoulder on the first floor. It was very

1       difficult to push my way through. And  
2       someone yelled about upstairs, so I actually  
3       went upstairs. And at that time the stairs  
4       were actually packed wall to wall with  
5       people. It was very difficult to push my way  
6       up the stairs. When I got up to the second  
7       floor, I found it was about half full. I  
8       didn't see any officers up there or fighting.  
9       I went back downstairs and I was later able  
10      to find Officer Brooks. He was okay.

11             More officers had arrived. We were  
12      trying to usher people out because a lot of  
13      people were coming out as we got there. And  
14      as the Sergeant said, there were several  
15      fights. I had two girls start fighting right  
16      in front of me. And I actually grabbed one  
17      of them to pull them apart. And then I was  
18      still by myself at this point surrounded.  
19      And the crowd closed in. The crowd closed in  
20      around her and started to try to pull her  
21      away from me. I was holding on to her. I

1 was yelling for help from other officers.  
2 The crowd just kept at it. A couple other  
3 officers came over, and I yelled to get these  
4 people off of me. I was still able to hold  
5 on to this girl. We actually ended up having  
6 to get about half a dozen police officers to  
7 have her up against the wall and put a circle  
8 around her and keep her there but also keep  
9 the crowd off of her. But at this point it  
10 was so chaotic, the other girl had just  
11 completely disappeared. And at that point I  
12 didn't effect an arrest to her. There was no  
13 victim. There was no -- we were outnumbered  
14 15 or 20 to one at that point, and it was  
15 still pretty volatile. So there wasn't  
16 really much to proceed with as far as  
17 detaining her. So we ended up sending her on  
18 her way with some of her friends. She was  
19 intoxicated. Some of her friends were going  
20 to take charge of her and get her away from  
21 the scene in the other direction that the

1 other girl had went. As the Sergeant said,  
2 probably 20 of us were there for an extended  
3 time trying to just get the crowd to leave.

4 ROBERT HAAS: Officer Bates, when  
5 you went into the restaurant, how many people  
6 would you estimate were in the first floor?

7 PATROLMAN BATES: It was pretty  
8 packed, sir. In my estimation it would have  
9 been well in excess of 114.

10 ROBERT HAAS: And when you say --

11 MICHAEL GARDNER: Or 118?

12 PATROLMAN BATES: I'm sorry, 118  
13 rather.

14 ROBERT HAAS: And when you say the  
15 people were packed on the stairs, is that  
16 because people were trying to get off the  
17 second floor or that's where they were  
18 standing because all the room was allowing  
19 for?

20 PATROLMAN BATES: They didn't seem  
21 to be really moving, sir. So, I mean they

1           might have been slowly meandering, but it  
2           wasn't like a rush down the stairs. They  
3           were in my way. I had some -- as I said, I  
4           was kind of urgently trying to find Officer  
5           Brooks. So I was really shoving my way  
6           through them.

7                       ROBERT HAAS: So from your  
8           experience you initially indicated that this  
9           has been a condition that you've now become  
10          accustomed to at OM. Can you give us more  
11          detail on that, please?

12                     PATROLMAN BATES: Yes, sir. I work  
13          Harvard Square 50 percent of my work nights  
14          pretty steady now for over a couple years,  
15          and just lately this is on Friday and  
16          Saturday nights this seems to be the climate.

17                     ROBERT HAAS: When you say lately,  
18          what are you talking about in terms of time  
19          frame?

20                     PATROLMAN BATES: Maybe the past six  
21          months, maybe a little better.

1 ROBERT HAAS: Okay. Go ahead.

2 PATROLMAN BATES: And it's just as  
3 Officer Vellucci mentioned earlier, a lot of  
4 us will self-initiate just being around  
5 there. There's obviously several two a.m.  
6 licensed establishments there so obviously  
7 there's a lot of boozing going on and things  
8 that come with that. But a lot of us will  
9 just make it a point to be in that area at  
10 closing time. I mean, I've been aware that  
11 other officers have been assaulted. There's  
12 been other arrests. I was aware of the  
13 earlier incident with the girl struck with  
14 the bottle. It just seems to be a pattern,  
15 sir. So I've been directing attention  
16 towards it.

17 ROBERT HAAS: So based on your  
18 observations, when you say directing it  
19 towards it, particularly to OM or the  
20 Winthrop Street area?

21 PATROLMAN BATES: Well, the area in

1       general, sir. Like I said, there are several  
2       establishments right concentrated right  
3       there. But the trouble spot there would be  
4       the OM.

5               ROBERT HAAS: So you believe the OM  
6       restaurant is the one --

7               PATROLMAN BATES: Sorry, sir.

8               ROBERT HAAS: Do you believe the OM  
9       Restaurant is creating the problems based on  
10      your experience?

11              PATROLMAN BATES: That's been my  
12      experience, sir.

13              MICHAEL GARDNER: I would ask any of  
14      the officers the question as to if what --  
15      whether or not you agree with Officer Bates's  
16      assessment, and also for all three of you if  
17      you have any, from your professional police  
18      experience, any opinions as to sort of what  
19      it is which has led to this assessment of OM  
20      being the trouble spot, either overcrowding,  
21      over serving, the nature of the clientele,

1 anything at all that you might attribute it  
2 to? I ask the other two officers if you  
3 agree with assessment that OM has been in  
4 fact a particular source of difficulty in  
5 recent months?

6 SERGEANT PATRICK CARNEY: The times  
7 I've been there always appear to be very,  
8 very crowded. And I don't know about over  
9 serving, but I've definitely seen several  
10 intoxicated people come out of there. I  
11 don't know if it was brought up or if you  
12 even want to get into the earlier case with  
13 the girl that got hit with the glass. Later  
14 that night an officer was assaulted after the  
15 club let out, and apparently there was some  
16 people who were involved in the initial  
17 fight. People maybe not involved with the  
18 fight, but with the two groups that were  
19 fighting.

20 MICHAEL GARDNER: My belief is that  
21 we are going to talk about that because we

1 have several incidents; right?

2 ROBERT HAAS: Yes, but I don't think  
3 I've included -- I think Sergeant Carney is  
4 going back to the August 31st date.

5 SERGEANT PATRICK CARNEY: Yeah,  
6 right.

7 MICHAEL GARDNER: No, I understand,  
8 but we hadn't dealt with what happened later  
9 that night because --

10 ELIZABETH LINT: No, because we  
11 don't have that. We didn't have information  
12 about that.

13 SERGEANT PATRICK CARNEY: I put it  
14 in.

15 MICHAEL GARDNER: So we'll ask you  
16 to volunteer what information you do have  
17 about that.

18 SERGEANT PATRICK CARNEY: Okay. I  
19 was on another call at the time. I did hear  
20 it on the radio. Apparently after closing  
21 time when the crowd was coming out, again, it

1       was different scuffles that were happening.  
2       They tried to put someone in protective  
3       custody. He was resistant, and when they  
4       were trying to get him onto the wagon,  
5       another party came up and punched the officer  
6       and that person was placed under arrest.

7               ROBERT HAAS: Sergeant Carney, when  
8       you say they were placing him into protective  
9       custody, the reason you put somebody into  
10      protective custody is why?

11             SERGEANT PATRICK CARNEY: Because he  
12      was intoxicated.

13             ROBERT HAAS: And where do you  
14      believe he consumed the alcohol to become  
15      intoxicated?

16             SERGEANT PATRICK CARNEY: I believe  
17      out of the OM club.

18             ROBERT HAAS: And so when the  
19      officer was trying to deal with that  
20      gentleman, he was assaulted by other patrons,  
21      his friends?

1                   SERGEANT PATRICK CARNEY: From the  
2                   guy who was getting placed into protective  
3                   custody, punched Officer Callanan. And he  
4                   was placed under arrest.

5                   MICHAEL GARDNER: Officer Brooks,  
6                   did you reach any conclusions yourself as to  
7                   whether or not Officer Bates's assessment of  
8                   the OM is a particularly troublesome space  
9                   within the last six months is correct?

10                  OFFICER DEVON BROOKS: Due to my  
11                  capacity currently within the Cambridge  
12                  Police Department, I'm not privy to a lot of  
13                  the goings-on in Central, Harvard, and the  
14                  squares because I'm not really around that  
15                  much. I have no comment on that. I haven't  
16                  been working the squares.

17                  ROBERT HAAS: Officer Brooks has  
18                  been assigned to the academy so he wouldn't  
19                  be able to make those observations.

20                  MICHAEL GARDNER: Unless you've been  
21                  doing a detail?

1                   OFFICER DEVON BROOKS: I was on a  
2 detail.

3                   MICHAEL GARDNER: How about when  
4 you've been doing details, have you made any  
5 observations?

6                   OFFICER DEVON BROOKS: No, because I  
7 enjoy the music that they're playing. And I  
8 think people are just coming out to have a  
9 good time. I find that when I'm doing these  
10 details, I kind of make that put it right out  
11 to people when they first come in that hey,  
12 I'm here, and this is not the place to come  
13 and start anything. I've never had any  
14 problems except for that one night I worked  
15 details. There used to be a detail that OM,  
16 Charlie's -- Tommy Doyle's used to have in  
17 that area, and I used to do it. Last summer  
18 I did that detail a lot of times and they've  
19 always had crowds and never had any problems  
20 before. It's just that this seems to be this  
21 one time I had detail and there was a fight

1           and the incident occurred. Other than that I  
2           have no other knowledge of anything else.

3                   ROBERT HAAS: So in your view given  
4           the experience you had last summer where  
5           there were officers hired to work for a  
6           variety of establishments versus working for  
7           a single establishment, which was the better  
8           arrangement in your estimation?

9                   OFFICER DEVON BROOKS: I think they  
10          were all the same. It's just that all the  
11          other times there were no problems. Just  
12          that this time there was a fight that  
13          occurred that brought this whole thing. I  
14          think the problem this time was that I think  
15          that it might have been rival groups because  
16          of the two different parties going on within  
17          the same establishment, one up and one down.  
18          And to go to the restrooms you had to come  
19          downstairs and to pass. And it could have  
20          been -- and the downstairs they had a lot of  
21          females. It was a girl's birthday party.

1 And maybe upstairs was a gentleman's party.  
2 And I think that there was just some kind of  
3 -- between the girls, and that's what started  
4 the whole thing. In my experience there were  
5 more females at this establishment that night  
6 than there were males.

7 ROBERT HAAS: Who was the manager  
8 that night, do you know?

9 OFFICER DEVON BROOKS: That night?

10 ROBERT HAAS: Yes.

11 OFFICER DEVON BROOKS: Edgar. I  
12 have it in my report.

13 ROBERT HAAS: Edgar Artie?

14 OFFICER DEVON BROOKS: Yes.

15 ROBERT HAAS: And this took place on  
16 September 30th. And we had gotten testimony  
17 earlier that he was dismissed as a result  
18 from the August 30th incident.

19 MICHAEL GARDNER: Yes, I'm not  
20 exactly sure it was directly linked -- the  
21 testimony was directly linked to August 31st.

1           Why don't -- any other questions for the  
2           officers at this point?

3                   ROBERT HAAS:  So all we've dealt  
4           with so far is September 30th?

5                   MICHAEL GARDNER:  Yes, right.

6                   ROBERT HAAS:  Okay.

7                   MICHAEL GARDNER:  Right.  Right.  
8           Well, I asked you to sort of take the lead on  
9           this.

10                  ROBERT HAAS:  Okay.

11                  MICHAEL GARDNER:  So I'll leave it  
12           to you as to whether you want to deal with  
13           all of them.

14                  ROBERT HAAS:  No, I think we'll give  
15           Mr. Chowdhury a chance to respond to this one  
16           incident.

17                  SOLMON CHOWDHURY:  Um, Edgar was the  
18           manager that night.  I was working in Central  
19           Square, but as soon as I heard that there was  
20           an incident, I left Central Square to go to  
21           Harvard Square.  And same thing, I did

1 interview every single security person that  
2 we had, and everybody said that we were at  
3 crowd. There was a lot of people outside  
4 that they made sure that -- we usually have  
5 one person at the door, one person at the  
6 stairs, but at that time we actually put two  
7 people at the door because we wanted to make  
8 sure that nobody else comes in that's waiting  
9 outside because there was a lot of people.  
10 So they did make sure that there was, we are  
11 at capacity in terms of the capacity issue.  
12 If you're claiming that there was 400 people  
13 outside, and we did have about, according to  
14 him, about 150 or 100 people on each line  
15 that's waiting outside, and if our capacity  
16 is about 200, that's -- at the end of the  
17 night that's total of about three to four  
18 hundred people outside.

19 ROBERT HAAS: What's your closing  
20 time again?

21 SOLMON CHOWDHURY: We close Thursday

1 to -- weekends two o'clock. Weeknights one.

2 ROBERT HAAS: And at one o'clock you  
3 have a line of 150 people still trying to get  
4 in?

5 SOLMON CHOWDHURY: Apparently that  
6 night we had a couple of big birthday parties  
7 that a lot of people just showed up. And we  
8 did have a famous DJ that night that brought  
9 in a lot more people. And this is all, to be  
10 honest with you, all Cambridge people that  
11 came in. It wasn't anybody from outside that  
12 came in that night. It was mostly the  
13 Cambridge crowd.

14 SERGEANT PATRICK CARNEY: They had a  
15 tour bus that took a large group, a big  
16 Greyhound type bus that took -- do you  
17 remember where they were going?

18 PATROLMAN BATES: No. But we were  
19 trying to move them along. And a whole bunch  
20 of them said they were waiting for a bus.  
21 And, what bus? And this big motor coach came

1 in.

2 SERGEANT PATRICK CARNEY: Big motor  
3 coach type bus came and picked them up.

4 PATROLMAN BATES: And that wasn't a  
5 bus that came from Cambridge.

6 SOLMON CHOWDHURY: I didn't hear  
7 about any bus or anything. We do stay away  
8 from parties that comes in busses because,  
9 you know, they also serve --

10 SERGEANT PATRICK CARNEY: These  
11 people definitely came in a bus.

12 SOLMON CHOWDHURY: We do stay away  
13 from it because they do serve alcohol on the  
14 bus, you know, for us to have them in our  
15 establishment, it doesn't benefit us because  
16 they're already drinking all night. We're  
17 not going to be able to sell them anything.

18 ROBERT HAAS: So how do you account  
19 for the instance at least in one night we're  
20 talking about that they had a person that was  
21 so intoxicated that had to be placed in

1 protective custody?

2 SOLMON CHOWDHURY: I'm not sure if  
3 that person came from -- I talked to all the  
4 security and they said we didn't have anybody  
5 that's over served. All of our guys are --  
6 takes the 21-Proof class. We do that once  
7 every six month for both of our  
8 establishments.

9 ROBERT HAAS: Who was the crowd  
10 manager that night?

11 SOLMON CHOWDHURY: That night I  
12 believe Johnny was the crowd manager.

13 ROBERT HAAS: Officer Brooks, are  
14 you familiar with Johnny?

15 OFFICER DEVON BROOKS: I'm not sure  
16 who Johnny is.

17 SOLMON CHOWDHURY: He's one of  
18 the -- Edgar was the manager. Edgar was also  
19 there, but he's also the -- he's also crowd  
20 control certified. That's one of the thing I  
21 make sure that they're all crowd control

1 certified.

2 MICHAEL GARDNER: So, I believe when  
3 you were -- appeared before us relatively  
4 early in my tenure with the Commission and  
5 about opening a place in Central Square, you  
6 gave us every assurance that you would be  
7 able to, in fact, manage the two places  
8 without any difficulty. And I think you've  
9 heard the officers, at least Officer Bates  
10 and to some extent corroborated by the  
11 Sergeant tell us that their perception is  
12 that OM is the source of trouble on a street  
13 which is already very crowded, and to some  
14 people's view an eyesore in the community of  
15 vomit and whatever we have heard before. But  
16 a location which has involved a substantial  
17 challenges to the police department and  
18 others in terms of trying to manage it.

19 You've also heard the opinion that  
20 there appear to be substantially more people  
21 on the first floor than the license allows,

1 and that there were intoxicated persons  
2 coming out of the building. And some  
3 testimony that the way the space is  
4 structured, typically with respect to where  
5 the bathrooms are, that if there are rival  
6 groups or different groups or competing  
7 groups or people who know each other or don't  
8 like each other, it's a general source for  
9 friction. I guess I'm wondering both when  
10 you let Edgar go -- I think I take it you  
11 haven't hired a replacement yet? What are  
12 you doing about that? And might it be that  
13 you really are spread too thin?

14 SOLMON CHOWDHURY: If I may, OM has  
15 been open for it's over eight years now. And  
16 we, we ran OM very nicely for the longest  
17 time with very little incident.

18 MICHAEL GARDNER: Well, you had  
19 disciplinary decisions against you at least  
20 on a couple of occasions.

21 SOLMON CHOWDHURY: Once.

1                   MICHAEL GARDNER: Not twice? One  
2 held in abeyance.

3                   ELIZABETH LINT: Twice.

4                   MICHAEL GARDNER: Well that's  
5 disturbing that you don't remember how many  
6 times you've been before us for discipline I  
7 must say.

8                   ELIZABETH LINT: I can -- there was  
9 a three-day suspension of the alcohol and  
10 entertainment license for being overcapacity  
11 and serving to minors in 2008.

12                   A three-day suspension held in abeyance  
13 for six months in 2009 for being  
14 overcapacity.

15                   MICHAEL GARDNER: Ring a bell?

16                   SOLMON CHOWDHURY: Right, but that  
17 was the same incident, but it just got -- by  
18 the time that the suspension took place, it  
19 was just in 2009.

20                   ELIZABETH LINT: I don't -- I would  
21 have to review that.

1                   MICHAEL GARDNER: Well, we can  
2 review that. Let's go back to what's going  
3 on now.

4                   SOLMON CHOWDHURY: Right. So other  
5 than that incident, I might be wrong, but I  
6 pretty sure that I think that was the only  
7 incident that we had.

8                   But since we open the new place in  
9 Central Square, I thought I hired the right  
10 manager for OM, and that's when I think some  
11 of this incident started happening. I spend  
12 a lot of time still there, but it's -- he's,  
13 he's not doing his job. Then, you know, I  
14 did replace him. But I don't think I'm  
15 spread too thin. It just -- he was the  
16 manager. You know, he was running the  
17 nightlife promotions and he was probably  
18 bringing in the wrong crowd that, you know,  
19 we didn't have two years, three years ago.  
20 Or even last year. He didn't come on board  
21 about six months ago.

1                   ROBERT HAAS: So is he a promoter or  
2                   is he a manager of record?

3                   SOLMON CHOWDHURY: He's basically a  
4                   manager -- he's not manager of record. He's  
5                   basically the manager for the restaurant for  
6                   the -- promotes the nightlife and stuff.

7                   ROBERT HAAS: Who's the manager of  
8                   record?

9                   SOLMON CHOWDHURY: My business  
10                  partner Bik.

11                  ROBERT HAAS: Where is he that  
12                  night?

13                  SOLMON CHOWDHURY: He wasn't there.  
14                  But I was in Central Square, but I went over  
15                  there.

16                  ROBERT HAAS: So you weren't present  
17                  either?

18                  MICHAEL GARDNER: The Commissioner's  
19                  question was where was he? Which I didn't  
20                  think you answered.

21                  SOLMON CHOWDHURY: The manager --

1 ROBERT HAAS: Your partner.

2 SOLMON CHOWDHURY: Right. He wasn't  
3 there that night.

4 ROBERT HAAS: He just was off or was  
5 he someplace else?

6 SOLMON CHOWDHURY: He was off. He  
7 had the night off.

8 ROBERT HAAS: So you left the  
9 establishment in control of your promoter is  
10 what you're telling us.

11 SOLMON CHOWDHURY: No, no, no. He's  
12 the manager of the restaurant. Not the  
13 manager of record for the license, but you  
14 know, we have three, four managers in the  
15 restaurant.

16 ROBERT HAAS: Who does, who brings  
17 the DJ's in and the entertainment for the  
18 night? Mr. Artie or --

19 SOLMON CHOWDHURY: No, Artie.

20 ROBERT HAAS: Or somebody else? So  
21 he's doing both jobs, then. You're telling

1           us he's the manager of the establishment, the  
2           restaurant, and he's also your promoter?

3                   SOLMON CHOWDHURY: Right. He's in  
4           charge of basically booking the stuff for the  
5           nightlife.

6                   ROBERT HAAS: Is he here tonight?

7                   SOLMON CHOWDHURY: No, he's no  
8           longer with us. I had to let him go.

9                   ROBERT HAAS: So tell us when you  
10          let him go. Because now I'm confused.

11                   SOLMON CHOWDHURY: I let him go  
12          about beginning of this week because I did  
13          some homework. I had some people go over  
14          there and, you know, I was there checking up  
15          on things, and I did talk to some of the  
16          other employees, the securities, and, you  
17          know, things that happened there that, you  
18          know, he didn't, he didn't have OM as his  
19          best interest. But he was doing other stuff  
20          that, you know, led me to believe that he's  
21          not the right fit for the restaurant so we

1           let him go.

2                   ROBERT HAAS:  So if he's not there  
3           and you're looking for a replacement, is your  
4           partner now there --

5                   SOLMON CHOWDHURY:  Yeah.

6                   ROBERT HAAS:  -- every night that the  
7           restaurant's open?

8                   SOLMON CHOWDHURY:  Well, he's not  
9           there every night.  He can't be there seven  
10          days a week.

11                  ROBERT HAAS:  Well, who's running it  
12          when he's not there?

13                  SOLMON CHOWDHURY:  I have two other  
14          managers.  Dejay Boston, she's -- that's her  
15          last name.  She's also there.  And Johnny.  
16          He's also there.  There's two other managers.  
17          I interviewed --

18                  ROBERT HAAS:  What's Johnny's last  
19          name?

20                  SOLMON CHOWDHURY:  I'm having a  
21          blank.

1 ROBERT HAAS: But he's your manager?

2 SOLMON CHOWDHURY: Jonathan Hiro  
3 (phonetic). I'm sorry, I just -- I always  
4 call him Johnny. He's been working me for  
5 six years now.

6 ROBERT HAAS: So tell me about your  
7 management arrangements. So you have manager  
8 for the restaurant. You have crowd control  
9 when you have large events. Or is that one  
10 in the same person?

11 SOLMON CHOWDHURY: No, I mean, I  
12 have all our securities that work in the  
13 restaurant.

14 ROBERT HAAS: So who does your crowd  
15 control manager?

16 SOLMON CHOWDHURY: We have -- all  
17 our securities are crowd control certified.

18 ROBERT HAAS: Yes, but you need to  
19 have one person designated as your crowd  
20 control manager. Who is that?

21 SOLMON CHOWDHURY: So we basically

1           -- the team leader, whoever the security team  
2 leader for the night is the crowd control  
3 manager.

4           GERALD REARDON: And that person's  
5 going to have a valid certificate?

6           SOLMON CHOWDHURY: Yes.

7           GERALD REARDON: And valid  
8 certificate means he's gone to training,  
9 he'll have a valid certificate. And we'll  
10 look their name up and find out that they're  
11 certified in crowd control?

12          SOLMON CHOWDHURY: Yeah.

13          ROBERT HAAS: So Johnny that night  
14 was the crowd control manager on the night of  
15 this event; right?

16          SOLMON CHOWDHURY: Right.

17          MICHAEL GARDNER: I wonder if it  
18 might be reasonable, Ms. Boyer, to ask you to  
19 make an on-site inspection and obtain copies  
20 of the records, the certifications as to who  
21 the crowd control managers were going back to

1 the middle of August?

2 ANDREA BOYER: Yes. And I do  
3 believe under the crowd control manager and  
4 maybe you can help me, Chief, is -- I thought  
5 that it's a test you have to take online. I  
6 don't know if --

7 GERALD REARDON: Right.

8 ANDREA BOYER: I don't know if -- I  
9 know some establishments have -- they usually  
10 have, you know, their manager or the owner  
11 take it. And I've not known for five or six  
12 people to take it for an establishment. So  
13 I'd like to definitely see the names on the  
14 list.

15 MICHAEL GARDNER: So that's not a  
16 problem for you --

17 ANDREA BOYER: It's dated.

18 MICHAEL GARDNER: -- to go back and  
19 to check day by day?

20 ANDREA BOYER: Yes, I can do that.

21 SOLMON CHOWDHURY: Even at Naga we

1 have all of our security, everybody before  
2 they even start working they have to take the  
3 online course. It takes about 45 minutes.  
4 Print the certificate right away and we have  
5 it on file.

6 MICHAEL GARDNER: Your security your  
7 actual employees or do you use a third-party  
8 contractor?

9 SOLMON CHOWDHURY: Some of them are  
10 actual employees, some of them are third  
11 party.

12 MICHAEL GARDNER: You find it makes  
13 any difference?

14 SOLMON CHOWDHURY: Even though if  
15 it's third party, we interview them before we  
16 have them come in and, you know, it has to  
17 come from a reliable source. But most of  
18 them are our regular employees.

19 MICHAEL GARDNER: So you deny any  
20 overcrowding. You deny any over serving.  
21 Your sense about what happened is that the

1 manager/promoter that you've recently fired  
2 was promoting sort of the wrong kind of  
3 nightlife and you got the, I think wrong  
4 crowd or the wrong people coming as patrons,  
5 is that -- have I fairly summarized your  
6 position?

7 SOLMON CHOWDHURY: Yeah. It's,  
8 it's -- I realize that having Edgar over  
9 there, the crowd kind of turned more into  
10 urban crowd. Nothing against it, but, you  
11 know, it seems like nobody likes them, so  
12 that's what happened. And there is -- we  
13 didn't have that type of crowd before.

14 GERALD REARDON: So did you change  
15 the format of the music and so forth with  
16 Edgar? I mean, generally there's a  
17 correlation to the type of venue that's there  
18 and the type of crowd you get, and some of  
19 the levels of problems you get, and it's like  
20 a risk management deal. You kind of know in  
21 certain venues they're more risky than

1 others.

2 SOLMON CHOWDHURY: We mostly, most  
3 of the time we play similar type of music  
4 which is Top 40's and commercial music that  
5 everybody listens to. But it's, it's, you  
6 know, who is inviting them I guess is the  
7 difference.

8 GERALD REARDON: I've never Officer  
9 Brooks listen to Top 40's before.

10 ROBERT HAAS: So the other thing I  
11 would just point out is something that, the  
12 whole notion of the bus, and you're telling  
13 us it's a Cambridge crowd. I'm trying to  
14 figure out what that's all about. And --

15 MICHAEL GARDNER: Well, what it's  
16 about is you weren't there; isn't that right?

17 SOLMON CHOWDHURY: Well, I came over  
18 there right away. I mean, I'm only like  
19 seven minutes away from Central Square. As  
20 soon as -- as a matter of fact, we had detail  
21 that night.

1                   MICHAEL GARDNER: So but did you  
2 know about the bus before he said it?

3                   SOLMON CHOWDHURY: No. But every  
4 time I meet with our marketing team and  
5 everybody, we -- I always make sure that even  
6 at Naga, you know, we had this companies that  
7 came in approached us to have these special  
8 deals with them, and right away I decline  
9 that because --

10                  MICHAEL GARDNER: But I take it you  
11 don't have a capacity to refuse somebody  
12 entrance because they got off a bus or do  
13 you?

14                  SOLMON CHOWDHURY: No, we don't.  
15 But --

16                  MICHAEL GARDNER: So that night you  
17 told us that it was a Cambridge crowd, and  
18 then we heard that they had a hard time  
19 clearing the streets because they had 80 or  
20 so people saying I'm waiting for the bus, and  
21 it was a big Greyhound Peter Pan which was

1 not delivering people to neighborhoods in  
2 Cambridge. And you're saying that's news to  
3 you, you didn't know about the bus.

4 SOLMON CHOWDHURY: If I may correct  
5 my statement, when I meant a bus, is a party  
6 bus. We do -- because we are in Harvard  
7 Square, we do have parties that -- we book  
8 private parties that we book with Bentley or  
9 Lesley College and stuff. They will send all  
10 their group in a bus to come in and, you  
11 know, they'll book out the whole place.  
12 They'll come in and party. When I meant was  
13 that, you know, we don't deal with any --  
14 what I meant was we don't deal with the party  
15 bus because they are already serving alcohol  
16 in their bus, that if they are at OM or any  
17 other establishment, then we don't really  
18 have any financial benefit.

19 MICHAEL GARDNER: You don't have any  
20 promotional deals with them?

21 SOLMON CHOWDHURY: Right, yeah,

1 exactly.

2 MICHAEL GARDNER: I got that. And  
3 I'm still trying to understand -- and he said  
4 that lots of people that were there that  
5 night were waiting to get on a Peter Pan bus,  
6 and I think I've heard you say whether it's a  
7 Bentley bus or a Springfield, Mass., bus or a  
8 Springfield, Ohio, bus, you didn't know about  
9 any bus that night?

10 SOLMON CHOWDHURY: Right. I didn't  
11 know anything about that bus that night.

12 ROBERT HAAS: So that night, where  
13 was the -- I guess you wouldn't know where  
14 the parties were booked from.

15 SOLMON CHOWDHURY: It was just two  
16 birthday parties.

17 ROBERT HAAS: Yes. But where were  
18 they -- I mean it looks like at least one of  
19 them was using a bus to get back and forth.

20 SOLMON CHOWDHURY: Right. I didn't  
21 know anything about a bus. And even when I

1           went there -- did I talk to you?

2                   MICHAEL GARDNER: I'm going to not  
3           ask you to do that.

4                   SOLMON CHOWDHURY: Right.

5                   But when I went there, I was there  
6           probably at like 1:15, you know, and I was  
7           there until 2:30, 3:00. And I rarely see  
8           any --

9                   ROBERT HAAS: So from your  
10          perspective as an owner of OM Restaurant, do  
11          you think it's acceptable to have 20 officers  
12          tied up for two hours to try to manage your  
13          crowds coming out of your business?

14                   SOLMON CHOWDHURY: Absolutely not.

15                   ROBERT HAAS: So what are you going  
16          to do to make sure that that doesn't happen  
17          again?

18                   SOLMON CHOWDHURY: I will be there.  
19          I mean I hired someone else who -- and to  
20          oversee this also, and I'm going to go ahead  
21          and apply for change of manager also. We'll

1           make sure that we don't have the similar  
2           parties booking anymore.

3                   ROBERT HAAS:  So if you're there,  
4           how are you going to manage the other  
5           property in Central Square?

6                   SOLMON CHOWDHURY:  Well, I have  
7           manager there we hired, we've been training  
8           also.  So I will be in both places back and  
9           forth.  I'm here six, seven days a week.  
10          Seven nights a week.

11                  MICHAEL GARDNER:  Should we move to  
12          the other incidents now?

13                  ROBERT HAAS:  Yes, why don't we move  
14          to the next night?  So we're going to look at  
15          October -- 4th and 5th are connected, right?

16                  ANDREA BOYER:  It's October 4th into  
17          the 5th.  So that's Officer Bates's case.

18                  ROBERT HAAS:  You're done?

19                  OFFICER DEVON BROOKS:  I'm done.  
20          Thank you.

21                  MICHAEL GARDNER:  Thank you very

1 much for your patience this evening.

2 SERGEANT PATRICK CARNEY: That's my  
3 shift.

4 ROBERT HAAS: You're all done?  
5 Officer Bates, were you involved in the  
6 October 4th?

7 PATROLMAN BATES: The last half of  
8 the 4th into the 5th, sir.

9 ROBERT HAAS: Okay. So you're  
10 involved in this as well.

11 And Ms. Boyer?

12 ANDREA BOYER: I'm not, no. I am on  
13 the 5th.

14 MICHAEL GARDNER: So the 5th is  
15 different from the 4th, it's not the 4th/5th?

16 ANDREA BOYER: It's 4th/5th and I'm  
17 actually --

18 MICHAEL GARDNER: There's the  
19 4th/5th and then the 5th?

20 ANDREA BOYER: He's Thursday into  
21 Friday morning, and I'm Friday evening.

1                   MICHAEL GARDNER: Okay, well, why  
2                   don't we do 4/5.

3                   ROBERT HAAS: So you're 4/5; right?

4                   PATROLMAN BATES: Yes, sir.

5                   ROBERT HAAS: Okay.

6                   PATROLMAN BATES: So that night I  
7                   was working my regular assignment which was  
8                   the Harvard Square walking route, and this  
9                   was coming on the heels of the other incident  
10                  that I had spoken about. And I actually had  
11                  recently, on a prior shift, went in and  
12                  looked at their license and their occupancy.  
13                  It was, it was the morning after one of our  
14                  officers was assaulted there. I wanted to  
15                  know what the occupancy was. So I  
16                  actually -- at the point of this incident I  
17                  was familiar with it. That night Sergeant  
18                  Dave Brown was the supervisor and we could  
19                  see early on that OM was pretty hopping, and  
20                  given the recent circumstances I had  
21                  mentioned, Sergeant Brown directed me to go

1 by a few times during the night and keep an  
2 eye on it.

3 At 1:30 I did a walkthrough inspection  
4 to look for occupancy and kind of get a gauge  
5 of it. I noted that the premises was at or  
6 near or at capacity. What I put down is that  
7 the first floor was packed literally shoulder  
8 to shoulder with patrons at that time. So at  
9 closing time which was two a.m. that night,  
10 Sergeant Brown and I actually both  
11 self-initiated calling off in the area. We  
12 call it an 86, which is a directed patrol,  
13 and they have one in there specifically for  
14 bar closings.

15 So OM began to empty out, and the crowd  
16 within a couple of minutes filled Winthrop  
17 Street wall to wall halfway up the street.  
18 So it was a pretty large crowd. And within a  
19 couple of minutes the fight started breaking  
20 out. I was standing at JFK speaking to  
21 Sergeant Brown and he said, well, here we go.

1       Here's the first one. So I ran into the  
2       crowd. The fight kind of broke up on its  
3       own, and the people, again, it's -- it's hard  
4       to describe here in this atmosphere, but  
5       being surrounded by several hundred people  
6       when it's kind of boisterous and chaotic and  
7       you're vastly outnumbered.

8               MICHAEL GARDNER: And enclosed?

9               PATROLMAN BATES: Well, this was  
10       outside, sir. I only went inside about a  
11       half hour before closing time. This was out  
12       in the street. So the combatants kind of  
13       melted into the crowd. Sergeant Brown  
14       radioed for additional units and numerous  
15       other officers, and another police supervisor  
16       came to the scene. We were all tied up there  
17       for an extended time. I noted further that  
18       all the combatants kind of stayed in the area  
19       and they kept mouthing off to each other and  
20       almost fighting. So some strong presence was  
21       necessary just to keep fights from happening.

1 I noted during this time I had to separate  
2 people several times, and numerous other  
3 officers were trying to get people to leave.  
4 The street actually reopens as a public way  
5 at two a.m. for --

6 MICHAEL GARDNER: At two?

7 PATROLMAN BATES: Yes, sir. It's  
8 open from two a.m. to eleven a.m. It's a  
9 public way. It's actually open for  
10 deliveries and so forth. It's a closed  
11 pedestrian arcade from eleven a.m. to closing  
12 time.

13 So none of them would clear the street.  
14 I mean, we were driving cruisers up and down  
15 with the lights and siren and ordering people  
16 to leave. After about maybe about 20 minutes  
17 -- or actually when I noted on here is by  
18 2:15 about, I'd say probably a little less  
19 than half of the crowd had cleared. There  
20 were still approximately 100 patrons in the  
21 street that were making the area very loud.

1        So all of us were still there trying to move  
2        them along. And for whatever reason this  
3        crowd just seems to like to loiter for an  
4        extended time after closing. I'm not sure  
5        why. I heard a disturbance a distance up the  
6        street, and I looked up and I saw Officer Tim  
7        Laughton of the Cambridge Police was involved  
8        in some sort of fight or altercation with a  
9        group of about 10 people. I was on foot so I  
10       ran across the square over to him, and there  
11       was these two groups facing off, and Officer  
12       Laughton was in the middle. Again, just  
13       trying to get them separated. I think a  
14       couple of girls had been fighting. And while  
15       he -- and then I actually called -- we called  
16       off that. I brought in a separate -- there's  
17       an incident report I authored based on the  
18       closing. This is the CAD report for the  
19       fight call which is sort of concurrent with a  
20       separate incident because it was down the  
21       street. So then when he was trying to do

1       that, another girl tried to jump him from  
2       behind. I had to kind of pull her off. And  
3       then we managed to get some of them into the  
4       car, and then one got out, and then a girl  
5       literally we were standing in front of her,  
6       actually she sort of jumped on me to try to  
7       get to another girl. This is how much they  
8       don't care about the police presence with me  
9       standing in front of her. She jumped on me  
10      over my shoulders trying to get to the other  
11      girl. I had to bodily pick her up and kind  
12      of just broom her out of there. And then we  
13      finally got them to leave after a few  
14      minutes. And then as I was a walking route,  
15      I actually hopped in an officer's car because  
16      Sergeant Brown directed me to author this  
17      report and so I said let me just do it now so  
18      I'm going to go sit in the car. As I'm  
19      typing this report up, I can still hear and  
20      see multiple other groups around the area  
21      carrying on and making it loud. And I

1 completed this report here and still stayed  
2 in the area. And I actually ended up calling  
3 another CAD call for JFK and Mt. Auburn. And  
4 the time of this call was 2:39 a.m., that  
5 there was a group of about six or eight  
6 people screaming crossing the street and then  
7 three of them decided to just stop and stand  
8 in the street and scream for some reason that  
9 made sense to them. To the point that I was  
10 standing there and get out of the street, and  
11 they didn't want to move. And I got into a  
12 little bit of a -- not an altercation, but it  
13 was a bit of an exchange with them. And  
14 explaining to them maybe that the fact that  
15 it's a public street wouldn't carry much  
16 weight with the judge of them standing in the  
17 middle of the street screaming at three a.m.  
18 And I cleared this call -- actually another  
19 officer jumped on this call with me because I  
20 was by myself. Again, so this call was  
21 cleared at 2:49 a.m. And within a few

1 minutes after that, so by about three is what  
2 it took to really quiet the square down. And  
3 so that was -- this was the incident from the  
4 last half or the midnight shift starting at  
5 eleven p.m. on the 4th into the morning. So  
6 this incident was the wee hours of the  
7 morning of the 5th from basically between two  
8 and three a.m.

9 ROBERT HAAS: So, Officer Bates, you  
10 indicated you walked through the  
11 establishments to get a sense of how many  
12 people were there. Did you identify who the  
13 manager was?

14 PATROLMAN BATES: No.

15 ROBERT HAAS: Did anybody identify  
16 themselves as the crowd control manager while  
17 you were there?

18 PATROLMAN BATES: No.

19 ROBERT HAAS: When you talked about  
20 several units responding, how many officers  
21 responded that night, do you recall?

15 PATROLMAN BATES: I'm sure there's  
16 at least a dozen of us there, probably were  
17 some more. Because where Harvard Square is  
18 kind of in the middle, some of the lower  
19 units would come up, too.

20 ROBERT HAAS: Yes, sure.

21 So how long do you think the officers

1       were tied up on this incident, this first  
2       incident besides the other two fights that  
3       were going on? This first incident when  
4       people were coming out from OM?

5               PATROLMAN BATES: It was ongoing.  
6       It was kind of concurrent, sir. There were  
7       still officers there on Winthrop Street when  
8       I ran up to Officer Laughton. And, you know,  
9       probably the better part of the hour anyways.  
10      I think we -- this was started a little  
11      before two.

12             ROBERT HAAS: In your view all these  
13      groups that you were dealing with all during  
14      the course of the night, were they all people  
15      coming out of OM or was it a mixture of other  
16      people coming from the other restaurants?

17             PATROLMAN BATES: No, it was all  
18      from OM, sir.

19             ROBERT HAAS: How could you tell  
20      that?

21             PATROLMAN BATES: They were just all

1           -- they were coming from that direction.  
2           They all seemed to know each other. They  
3           were all the same kind of party type, party  
4           type outfits. And it was just, it was  
5           obvious.

6                     ROBERT HAAS: Okay.

7                     PATROLMAN BATES: Plus it's all  
8           within arm's reach of OM as well.

9                     MICHAEL GARDNER: You say you work  
10          about, I think if I got this right, you work  
11          about 50 percent of your tours in the Harvard  
12          Square area?

13                    PATROLMAN BATES: Yes, sir, yeah.  
14          Half of my work nights are scheduled to work  
15          Harvard.

16                    MICHAEL GARDNER: Right. So that  
17          would include other days of the week besides  
18          Thursday, Friday, Saturday?

19                    PATROLMAN BATES: Yes. We work a  
20          rotating schedule, sir.

21                    MICHAEL GARDNER: Right. So do you

1       have an impression as to whether there's  
2       either a difference in atmosphere, a  
3       difference in public safety, a difference in  
4       police demand on the nights that the  
5       establishment closes at one?

6               PATROLMAN BATES:  It's much  
7       different, sir.  The other nights, the other  
8       nights of the week when this type of crowd  
9       isn't there, it's very quiet or just  
10      non-existent.

11             MICHAEL GARDNER:  Thank you.  
12             Is there any reason we shouldn't move  
13      your license back to one a.m. for all nights  
14      of the week?

15             SOLMON CHOWDHURY:  It's gonna hurt  
16      our business tremendously.  It's -- we --  
17      it's the weekend is where we make most of our  
18      businesses.  And on Winthrop Street maybe we  
19      can go -- we do call in for detail every  
20      Friday and Saturday.  If it gets filled or  
21      not, I'm not -- you know.

1                   MICHAEL GARDNER: You don't really  
2                   know that because you're down at Naga?

3                   SOLMON CHOWDHURY: No, no, it's --  
4                   we call it in all the time. I call it in for  
5                   Naga and for OM every weekend.

6                   ROBERT HAAS: I can tell you,  
7                   though, from my experience officers finding  
8                   that detail is less appealing because of the  
9                   situation that Officer Bates has described  
10                  continually over the weekend nights. Just  
11                  calling in for a detail is not going to solve  
12                  your problem. And, again, it goes back to  
13                  the next question, is it acceptable for 12  
14                  officers to be tied up for a greater part of  
15                  a half hour trying to deal with your clients  
16                  and patrons coming out of your restaurant?

17                  SOLMON CHOWDHURY: Right. But at  
18                  two o'clock there is about a thousand people  
19                  on Winthrop Street. So we have 200 people  
20                  and if you include our patio and our garden,  
21                  that's 60 people. Then Tommy Doyle's, I

1 think their capacity is another 250. I'm not  
2 exactly sure. And then Charlie's Kitchen,  
3 including their beer garden, there's another  
4 three, four hundred people.

5 ROBERT HAAS: Well, you have two  
6 incidents here where people are clearing your  
7 restaurant and then there's a series of  
8 fights that break out on Winthrop Street,  
9 your patrons; right, that requires officers  
10 to call for assistance to try to break up  
11 that group on two separate instances now, on  
12 two instances and possibly three if we count  
13 August 31st or not. I'm just trying to  
14 figure out why it's taking you so long that  
15 whatever is going on there in your opinion is  
16 not acceptable, but you've not done anything  
17 to correct the situation.

18 SOLMON CHOWDHURY: Right. I think  
19 most of this started maybe about a month,  
20 month and a half ago as our --

21 ROBERT HAAS: I've heard officers

1 say it's been going on for six months now.

2 SOLMON CHOWDHURY: But we didn't  
3 really, maybe we were busy but we didn't  
4 really have any incident, but we started  
5 having incident like maybe a month and a  
6 half, two months ago. Before we -- I don't  
7 think we ever had any incidents. So it's  
8 probably certain crowd that's started coming  
9 in lately.

10 ROBERT HAAS: What do you account  
11 for that to be?

12 SOLMON CHOWDHURY: I'm assuming it's  
13 the promoter that or, you know.

14 MICHAEL GARDNER: It's Edgar's  
15 fault? It's Edgar's fault?

16 SOLMON CHOWDHURY: So, I mean I  
17 already fixed that problem. We, you know,  
18 when I'm doing the hiring and, you know,  
19 between OM and Naga I have about 80  
20 employees. I do my best not only do they  
21 have to go to interview with me, my business

1 partner, but also the second manager or third  
2 manager. We doing our best to hire the right  
3 fit, but once in a while I guess, you know,  
4 this wasn't the right fit. He didn't have OM  
5 or our best interest in his mind. Like I can  
6 assure you --

7 ROBERT HAAS: A bad fit is  
8 potentially disastrous. I mean, you hear  
9 officers potentially fighting with people out  
10 in the street trying to clear people because  
11 they're attracted by your promoter who is  
12 basically the manager of the establishment.  
13 Public safety is put into jeopardy and  
14 basically it turns into a melee. And you've  
15 had now at least three instances we talked  
16 about where we've had a reoccurring theme  
17 where people come out of your restaurant,  
18 it's turned into a series of fights. A  
19 number of officers have to respond to try to  
20 break break it up.

21 SOLMON CHOWDHURY: I took the first

1 step to fix that problem in getting rid of  
2 Edgar and, you know, just have to cancel that  
3 parties and make sure that it's not the crowd  
4 that creates that type of atmosphere.

5 MICHAEL GARDNER: Officer Bates, do  
6 I understand you to believe that you thought  
7 that on the first floor they were at or near  
8 capacity, but you did not -- contrary to the  
9 earlier incident you did not see them as  
10 clearly overcrowded.

11 PATROLMAN BATES: Yes, sir.

12 MICHAEL GARDNER: Is that a fair  
13 summary of what you said?

14 PATROLMAN BATES: Yeah, it felt a  
15 little uncomfortably close, but I didn't feel  
16 on the morning of the 5th that they were  
17 over. I felt that they were right up there.

18 GERALD REARDON: Officer Bates, when  
19 you went in and made those couple of quick  
20 looks earlier in the evening, did you notice  
21 anyone at the door with a counter or any

1 security at the door counting heads that you  
2 were aware of?

3 PATROLMAN BATES: On this night  
4 there was actually someone there with the  
5 clicker.

6 GERALD REARDON: There was, okay.

7 MICHAEL GARDNER: Want to deal  
8 with --

9 ROBERT HAAS: And this is around one  
10 o'clock again; right?

11 PATROLMAN BATES: This was at 1:30  
12 time, sir.

13 ROBERT HAAS: Were there people  
14 waiting outside to get in?

15 PATROLMAN BATES: There were some.

16 MICHAEL GARDNER: Want to deal with  
17 the 5th?

18 ROBERT HAAS: Ready.

19 MICHAEL GARDNER: It's been so long  
20 perhaps we've all forgotten maybe you should  
21 state your name for the record again.

1                   ANDREA BOYER: Andrea Boyer,  
2                   investigator for the City of Cambridge  
3                   License Commission, B-o-y-e-r.

4                   PATROLMAN BATES: Are you all set  
5                   with me, sir?

6                   ROBERT HAAS: Do you need him for  
7                   this one?

8                   ANDREA BOYER: I don't think so.

9                   PATROLMAN BATES: Do you want the  
10                  reports?

11                  ANDREA BOYER: We did an  
12                  investigation on Thursday that evening --

13                  MICHAEL GARDNER: Thank you very  
14                  much.

15                  ANDREA BOYER: -- prior to. I'd  
16                  like to indicate we did a capacity check  
17                  prior to that incident transpiring so it was  
18                  in the same evening that we just did an  
19                  inspection.

20                  MICHAEL GARDNER: The evening of the  
21                  4th?

1                   ANDREA BOYER: Correct.

2                   GERALD REARDON: Was that task  
3 force?

4                   ANDREA BOYER: No, that was actually  
5 the report I'm going to give, sir.

6                   So based on advice -- oh, do you want  
7 to introduce yourself?

8                   DETECTIVE KEVIN DONOFRIO: Kevin  
9 Donofrio. I'm a detective with the Cambridge  
10 Police. D-o-n-o-f-r-i-o.

11                  ANDREA BOYER: Based on police  
12 reports submitted to our office and alleged  
13 fights and alleged overcapacity issues, an  
14 investigation of OM Restaurant located at 92  
15 Winthrop Street was performed.

16                  The investigation took place on October  
17 4th, 5th, and 6th, 2012. On October 4th and  
18 5th I worked with Kevin Donofrio and  
19 Detective Hussy. And on October 6th just  
20 Detective Donofrio and I worked together.

21                  On Thursday, October 4, 2012, we

1 bypassed the line that was at the door to  
2 enter OM Restaurant at approximately 12:30  
3 a.m. to count the number of patrons to see if  
4 they were in compliance with the allowable  
5 capacity number which are as follows: The  
6 first floor is 118 patrons, and the second  
7 floor 76 patrons. It was difficult to  
8 navigate through the establishment. We were  
9 able to count the patrons. This showed there  
10 were 110 patrons on the first floor and 68 on  
11 the second floor. The detectives and I also  
12 entered the kitchen area to see if food was  
13 available. I noted that the last item  
14 ordered through the kitchen remote printer  
15 was 9:11 p.m.

16 Based on being close to the capacity,  
17 allowable capacity, we asked to speak with a  
18 manager to address our concerns of becoming  
19 overcapacity. The manager, Mr. Edgar Artie  
20 met us at the top of the stairs and I asked  
21 to speak with him outside. As we exited, we

1 noticed that the door staff still had a line  
2 of patrons waiting to enter the  
3 establishment. I explained to the manager  
4 that they are close to full capacity, and Mr.  
5 Artie stated that they are only allowing  
6 people in as patrons exit.

7 Detective Donofrio inquired of Mr.  
8 Artie as to how they maintained the correct  
9 capacity on each floor, and Mr. Artie  
10 explained that they have a staff member at  
11 the bottom of the stairs and one at the top  
12 to keep count. We reiterated the importance  
13 of watching the patron capacity and numbers  
14 and left. So that was the 4th.

15 On Friday, October 5, 2012, Detective  
16 Donofrio informed me that an alleged incident  
17 at OM Restaurant had transpired after we had  
18 finished our investigation the evening before.  
19 Based on the police report which indicated  
20 the alleged incident took place closer to the  
21 closing hour, we decided to check the

1 establishment later in the evening. Excuse  
2 me.

3 We arrived at OM Restaurant at  
4 approximately 1:15 a.m. As we approached the  
5 establishment, Detective Hussy noted that the  
6 upstairs seemed very busy based on the number  
7 of customers pressed against the upstairs  
8 window glass. When we entered the  
9 establishment, the downstairs did not have  
10 many customer so we left to go upstairs. I  
11 stayed by the stairs to count how many people  
12 left the upstairs to be able to adjust the  
13 count that Detective Donofrio and Detective  
14 Hussy performed. While waiting, the upstairs  
15 security gentleman asked me if I was counting  
16 the capacity. I informed him that we were.  
17 He asked me if I knew what the capacity was  
18 and I told him I did. And in return I asked  
19 him if he knew what the allowable capacity is  
20 and he shrugged. I asked him a second time  
21 and when he didn't answer, I told him that he

1       should know so that he doesn't allow too many  
2       people upstairs.

3               When Detective Hussy and Detective  
4       Donofrio finished their count, the patron  
5       total on the second floor was 119 patrons.  
6       While I was standing with the security man,  
7       five people went downstairs so the adjusted  
8       total patrons on the second floor totalled  
9       114 patrons.

10              When we went outside, the owner Solmon  
11       Chowdhury was present and he explained -- and  
12       we explained that the second floor was  
13       overcapacity. He stated that he had just  
14       arrived, and it was then the manager  
15       Mr. Edgar Artie joined us and explained after  
16       hearing of the overcapacity that there was a  
17       song that was played and the patrons rushed  
18       from the first floor to the second floor to  
19       hear and dance to the song. I stated that  
20       their allowable capacity is 76 on the second  
21       floor, and if over 30 people stampeded to the

1 second floor to hear a song, they should have  
2 been stopped by the security staff. I  
3 explained that the incident would be written  
4 up and given to the Executive Director for  
5 review.

6 On Saturday, October 6th Detective  
7 Donofrio and I checked the OM establishment  
8 at 12:40 a.m. It was noted that there were  
9 minimal patrons on premise and that they were  
10 not overcapacity. It was a slow night you  
11 could tell.

12 MICHAEL GARDNER: I would be  
13 interested in how long a time period it was  
14 in your estimate of either of you from the  
15 time that you were outside and noticed or --  
16 you thought that the upstairs might have been  
17 crowded because you saw all the people pushed  
18 against the window, and the time that the  
19 count was actually completed.

20 ANDREA BOYER: Probably within --

21 DETECTIVE KEVIN DONOFRIO: Maybe

1 five minutes. We went up immediately. You  
2 could see bodies physically pressed against  
3 the glass, the back sides of them pressed  
4 against the glass.

5 ROBERT HAAS: That's when you first  
6 arrived there?

7 DETECTIVE KEVIN DONOFRIO: When we  
8 first arrived.

9 ROBERT HAAS: All right, so you  
10 couldn't tell how long that condition had  
11 been like that?

12 DETECTIVE KEVIN DONOFRIO: No. But  
13 I would note that the windows up there were  
14 heavily fogged over on the second floor while  
15 we observed that.

16 MICHAEL GARDNER: Did you form any  
17 impressions about a particularly popular  
18 dance tune being played?

19 ANDREA BOYER: Actually, you could,  
20 you could hear the music that was downstairs.  
21 And also when you were upstairs -- when you

1       were downstairs, you couldn't hear whether --  
2       to my impression I couldn't hear what the  
3       song was upstairs. So when they had given me  
4       that as an explanation, it didn't quite make  
5       sense to me that people from downstairs heard  
6       the song, because there was a DJ downstairs  
7       also. So it wasn't as if there was  
8       downstairs it was quiet and you hear a song  
9       and then you run upstairs because it's the  
10      song you wanted to hear. So it just seemed  
11      it wasn't a possible explanation at the time.

12               MICHAEL GARDNER: And were you  
13      persuaded that the security guard you spoke  
14      to did know what the capacity of the upstairs  
15      was?

16               ANDREA BOYER: That is true. I did  
17      not think he knew what it was.

18               GERALD REARDON: Mr. Chowdhury, is  
19      that place a hundred percent sprinklered?

20               SOLMON CHOWDHURY: Yes, uh-huh.

21               ROBERT HAAS: So you, I just missed

1           it. Did you say there was over 100 people on  
2           the second floor when you got there?

3                   ANDREA BOYER: Yes, there were.

4                   MICHAEL GARDNER: 114 adjusted  
5           count.

6                   ANDREA BOYER: Correct.

7                   MICHAEL GARDNER: And capacity 79.

8                   ANDREA BOYER: 76.

9                   MICHAEL GARDNER: 76.

10                  ROBERT HAAS: And Mr. Artie was the  
11           manager?

12                  ANDREA BOYER: He was.

13                  ROBERT HAAS: Do you know who the  
14           crowd control manager was?

15                  ANDREA BOYER: I do not.

16                  ROBERT HAAS: Mr. Chowdhury, who was  
17           the crowd control manager at that night, do  
18           you know?

19                  SOLMON CHOWDHURY: I believe Edgar  
20           was the crowd control manager.

21                  ROBERT HAAS: So he was the manager,

1 the crowd control manager, and the promoter?

2 SOLMON CHOWDHURY: Right, he was  
3 there that night.

4 ROBERT HAAS: Okay.

5 SOLMON CHOWDHURY: I don't, I might  
6 be wrong on this, but you maybe you can  
7 correct me, do you need to have -- as long as  
8 one of the manager is crowd control certified  
9 or do you --

10 GERALD REARDON: But that person,  
11 that individual's job --

12 SOLMON CHOWDHURY: Right.

13 GERALD REARDON: -- is to make sure  
14 that they know that they're not overcrowded  
15 at any time. Whether that's the person  
16 responsible for the actual enforcement and  
17 the counts.

18 SOLMON CHOWDHURY: Right.

19 GERALD REARDON: If they need five  
20 other people to effect that count, then  
21 that's what they need to do.

1 SOLMON CHOWDHURY: Right.

2 GERALD REARDON: But you should be  
3 able to go to that crowd manager and ask what  
4 the capacity is and they should be able to  
5 tell you within reason. Obviously if it's 76  
6 and you may have 77, 78, I mean we understand  
7 a couple here and there could have gotten by.

8 SOLMON CHOWDHURY: Right.

9 GERALD REARDON: But to be off by a  
10 vast number -- and the other thing, you're  
11 lucky our code enforcements weren't there,  
12 because they could write tickets on the spot  
13 at a thousand dollars a shot. And after  
14 three of them we take your license.

15 MICHAEL GARDNER: My calculator says  
16 that if your capacity was 76 and you had 114,  
17 that's an overcapacity of 38 which is an  
18 overcapacity of 50 percent of your stated  
19 capacity.

20 SOLMON CHOWDHURY: Right.

21 MICHAEL GARDNER: 50 percent. You

1           were 50 percent over stated capacity. How  
2           could that happen?

3                       SOLMON CHOWDHURY: I, I just went  
4           over there. I was in Central Square and then  
5           I went over there and I was just walking in  
6           and I saw her outside.

7                       GERALD REARDON: With all due  
8           respect, this is getting old. All right?  
9           This is getting very old with me right now.  
10          It's not a good path to go down. Someone has  
11          to accept the responsibility or I'll take  
12          care of the responsibility. Please don't  
13          give me the same song that, you know, you're  
14          down at the -- you can't have any -- you  
15          can't be the owner and be responsible and  
16          then claim you're not there so you're not  
17          responsible and nothing happened. I mean,  
18          this is inconsistent with common sense.

19                      MICHAEL GARDNER: I guess I would  
20          ask again how could it happen that you could  
21          be 50 percent overcapacity? Doesn't the

1       staff know what they're supposed to do? If  
2       you're there or not there. I mean, you're  
3       not there a lot of the time, so how, so  
4       that's the given, that's the norm. So how  
5       could it happen that they could be 50 percent  
6       overcapacity?

7               SOLMON CHOWDHURY: I, I pulled  
8       everybody aside that night right away. As  
9       soon as she left, I took everybody, I had  
10      conversation with everyone individually. One  
11      of the excuse they had is they weren't busy,  
12      our capacity is 200. But we only had 130  
13      people in the whole place. So they basically  
14      said that they weren't as careful because we  
15      weren't at full capacity so they didn't have  
16      anybody waiting outside.

17             MICHAEL GARDNER: What's your  
18      understanding of the reasons, including any  
19      public safety reasons, why the place you own  
20      and are responsible for has in fact two  
21      separate capacities on two floors? Why do we

1 have that arrangement in your understanding?

2 SOLMON CHOWDHURY: Right, if I may  
3 explain.

4 MICHAEL GARDNER: No, no, I just ask  
5 you to explain my question. Answer my  
6 question.

7 SOLMON CHOWDHURY: To make sure that  
8 we are not overcapacity and public health is  
9 not at risk. Publics not at risk.

10 MICHAEL GARDNER: Well, why don't we  
11 just have a single capacity of 114 plus 76 if  
12 I remember the numbers, or what is that 190?

13 SOLMON CHOWDHURY: 193.

14 MICHAEL GARDNER: Yes. So I mean  
15 why, why did we or why did you propose and we  
16 agreed to have a two tier capacity? What's  
17 the public safety or health reason why that  
18 was done? If you know.

19 SOLMON CHOWDHURY: Well, may I  
20 explain --

21 MICHAEL GARDNER: Yes.

1 SOLMON CHOWDHURY: -- what happened  
2 actually?

3 MICHAEL GARDNER: No. I want to  
4 know about why it's set up that way. I don't  
5 want to know about that night right now. I  
6 want to know why it was set up that way in  
7 the first place.

8 SOLMON CHOWDHURY: Exactly. The  
9 reason why this was done, set up that way,  
10 our square footage on the second floor is  
11 1140 square foot total. The reason our  
12 capacity is 76 on the second floor is I don't  
13 know if you remember, first when we purchased  
14 our liquor license, there was a seating cap  
15 seating. We purchased our liquor license  
16 from TGIFriday that had 93 seats. Then we  
17 came back about a year or two years later, we  
18 purchased additional 100 seats from Z-Square  
19 and then we increased our capacity.

20 And so then our capacity on the first  
21 floor is 118 with allowable space of 590. On

1           the other hand, our capacity on the second  
2           floor is 76 with the allowable space of about  
3           1200 square foot.

4                   MICHAEL GARDNER: So the short  
5           answer is that the second floor has such a  
6           much smaller floor space?

7                   SOLMON CHOWDHURY: No. Much bigger  
8           space but much less capacity.

9                   MICHAEL GARDNER: And the reason for  
10          that is?

11                   SOLMON CHOWDHURY: Is we didn't --  
12          there wasn't any more seats available for us  
13          to purchase back then.

14                   MICHAEL GARDNER: So it's really got  
15          no public safety purpose at all. It's just a  
16          function of your license. Of how your seats  
17          got set up. Nobody here said it's better to  
18          have fewer people on the second floor than  
19          the first floor?

20                   SOLMON CHOWDHURY: At the beginning  
21          when we got our license, it was set up that

1 way. If you follow our licenses, we started  
2 with 93 seats because that was the seating  
3 capacity on our license. Then we purchased,  
4 you know, we were told that you can increase  
5 your capacity as long as you purchase bank  
6 seats from other establishment. So we went  
7 out and bought 100 bank seats from Z-Square  
8 and then we increased our capacity to 193.  
9 And we tried to purchase other seats from  
10 other establishment and I negotiated with  
11 Cafe of India to purchase 50 more seats from  
12 them, but they wouldn't sell it to us. I  
13 also negotiated with the restaurant on  
14 Winthrop Street, Tamarind Bay also to  
15 purchase some seats from that --

16 MICHAEL GARDNER: Okay.

17 SOLMON CHOWDHURY: -- to increase  
18 our capacity. But that didn't happen. And  
19 back then every seats were selling for a  
20 thousand dollar.

21 MICHAEL GARDNER: So is it -- I mean

1 I think you told us that while the people you  
2 had in charge of the place didn't really  
3 think it was a very big deal in terms of you  
4 were under total capacity so it didn't matter  
5 that you overcapacity on the license from  
6 upstairs from downstairs. And there's really  
7 no public safety rhyme or reason to those  
8 numbers, those numbers are there because that  
9 happened to be the history of your purchases?  
10 Did I explain that right?

11 SOLMON CHOWDHURY: In term of --

12 MICHAEL GARDNER: No public safety  
13 reason to have fewer people upstairs?

14 SOLMON CHOWDHURY: I think our  
15 seating capacity was set up according to what  
16 our license would allow, not what public  
17 safety or what -- how many people we can have  
18 in there.

19 MICHAEL GARDNER: Okay. So the  
20 License Commission split your numbers in ways  
21 that don't even follow the tracking of your

1           purposes. The License Commission put the  
2           bottom at 114 and the top at -- I'm sorry,  
3           118 and the top at 76?

4                   SOLMON CHOWDHURY: No, it's our  
5           architect who did the design according to how  
6           many seats we had on our license, not  
7           according to how big our space was. So we  
8           had -- first when we started the restaurant,  
9           was 93 seats. So we had 45 people  
10          downstairs, 45 people upstairs. Or I might  
11          be confusing with the numbers, but we started  
12          with 93 seats. We bought 100 seats. We  
13          redid the drawing. The architect redid the  
14          drawing saying you could have 118 people  
15          downstairs, and because you only limited to  
16          200, we'll put the remaining 76 on the second  
17          floor. But if I were able to buy 100 more  
18          seats or 50 more seats from somebody else,  
19          then they could have gone into the second  
20          floor by increasing the seating capacity.

21                   MICHAEL GARDNER: Okay. So how is

1           it that your staff felt that it didn't matter  
2           since you were under 200 you could have all  
3           those people upstairs?

4                   SOLMON CHOWDHURY: They, they are  
5           not as knowledgeable as I am or the manager  
6           was, so the security guy that was on the  
7           stairs, he automatically assumed that, you  
8           know, it's okay as long as we're not over 200  
9           people. He just, you know.

10                   MICHAEL GARDNER: And how long has  
11           he provided services to you?

12                   SOLMON CHOWDHURY: The gentleman on  
13           the stairs he's actually just came on board  
14           recently. He wasn't there for that long.

15                   MICHAEL GARDNER: On October the  
16           5th?

17                   SOLMON CHOWDHURY: Right. I believe  
18           he started maybe a month before that.

19                   MICHAEL GARDNER: So you never saw  
20           it as part of your responsibility as the  
21           holder of the license to make sure that the

1 person who was responsible for counting the  
2 people who went upstairs and controlling  
3 access to upstairs understood what the number  
4 he was supposed to be limiting his people to?  
5 You didn't see -- you didn't make sure he  
6 knew that in a month's time of working for  
7 you?

8 SOLMON CHOWDHURY: No, I did. And  
9 that's, that's his responsibility as being on  
10 the stairs, to make sure that we keep the  
11 crowd, crowd in control.

12 MICHAEL GARDNER: So you made sure,  
13 did you think that he just forgot and didn't  
14 do it that night and then couldn't tell  
15 Ms. Boyer what the number was?

16 SOLMON CHOWDHURY: I'm assuming  
17 that's what happened. He just thought maybe  
18 because we don't have too many people, he  
19 didn't have to check the crowd maybe.  
20 But....

21 MICHAEL GARDNER: You're assuming

1           that?

2                   SOLMON CHOWDHURY: That's what I'm  
3           assuming.

4                   MICHAEL GARDNER: You didn't  
5           investigate that when you found out about  
6           this 50 percent overcrowd?

7                   SOLMON CHOWDHURY: Right. That's  
8           what he basically told me that night that I  
9           talked to him. I thought we don't have too  
10          many people in the restaurant, so that's what  
11          basically he told me.

12                   I have the floor plan that was done  
13          previously, and if you can see on the second  
14          floor we have close to 1200 square foot with  
15          76 seating capacity.

16                   MICHAEL GARDNER: So you use it as a  
17          dance floor? You use the extra space as a  
18          dance floor; right?

19                   SOLMON CHOWDHURY: No. I mean, we  
20          don't use it as a dance floor, but it's the  
21          space is there. We use most of the --

1                   MICHAEL GARDNER: Yes, and people  
2 dance there.

3                   SOLMON CHOWDHURY: The space we use  
4 mostly for dancing is downstairs. Upstairs  
5 we use mostly for lounging and we have a DJ.  
6 We don't have the music too loud upstairs.  
7 But we do have a DJ. And I mean if they want  
8 to get up and dance, they can. But it's most  
9 of the dancing is done on the first floor.

10                  MICHAEL GARDNER: Okay.

11                  ROBERT HAAS: Do you remember, let's  
12 go back. When we had this conversation about  
13 having a dual design; right?

14                  SOLMON CHOWDHURY: Right.

15                  ROBERT HAAS: And we really  
16 struggled about it. It was an attractive  
17 conversation, and you gave us assurances that  
18 you could manage that configuration because  
19 we had some doubts and skepticism that you  
20 could maintain two separate operations. And  
21 you continued to reassure us that you could

1 do that. Do you remember that?

2 SOLMON CHOWDHURY: Yes, I do.

3 ROBERT HAAS: All right.

4 So I'm just trying to figure out what  
5 happened? Because it looks like --  
6 everything we were concerned about back then  
7 when we gave you this license hasn't hold  
8 true; right? I mean, we've now had four  
9 instances where there's been some variation  
10 of violations with respect to the capacity,  
11 with respect to who's coming and going out of  
12 the restaurant with respect to the volatility  
13 of the crowd that's coming and going from  
14 your restaurant. So I'm just trying to  
15 figure why all of a sudden did everything  
16 fall apart? Is it because you're going to  
17 venture in Central Square, you're not paying  
18 attention to this one or what's the story?

19 SOLMON CHOWDHURY: I don't think --  
20 as you remember this was approved by about  
21 four years ago.

1 ROBERT HAAS: Yes, I was here.

2 SOLMON CHOWDHURY: Exactly. We  
3 haven't had any incident -- we haven't had  
4 any of this situation --

5 ROBERT HAAS: Do you remember we had  
6 a lot of concerns about it, though; right?

7 SOLMON CHOWDHURY: Exactly. And it  
8 hasn't happened. It just all of a sudden it  
9 happened like in the last two, three weeks.

10 MICHAEL GARDNER: Four years ago,  
11 four years ago is 2008. And we know you had  
12 an incident in 2008. You may or may not have  
13 had a different incident in 2009. And now  
14 you have this sort of horrific public safety  
15 nightmare sort of over and over again. And  
16 no?

17 SOLMON CHOWDHURY: Most of this  
18 incident happened within month and a half  
19 period, but since our capacity was increased,  
20 we had to alternate floor plan, we haven't  
21 had any other issue until now.

1                   ROBERT HAAS: Can you describe what  
2                   it looked like up on the second floor when  
3                   you got there? When you talk about people  
4                   pressed up against the window, can you just  
5                   describe what they were doing and what it  
6                   looked like and what they were doing when you  
7                   got up there?

8                   DETECTIVE KEVIN DONOFRIO: There was  
9                   a large group, probably 50 or 60 people in  
10                  front of the DJ dancing, and then there was  
11                  another group completely surrounding them,  
12                  watching. There was, as you approached the  
13                  DJ, there was probably 20 or 30 people  
14                  dancing in that group before you got to the  
15                  main dance area. It was, it was noticeably  
16                  overcrowded and dangerous up there from our  
17                  inspection the night before. So it took  
18                  quite a bit for us to -- we kind of split the  
19                  room in half. It took a little bit of effort  
20                  for me to get through that room to midway  
21                  point just to count farther in. Just, it was

1 an overwhelming crowd up there.

2 ROBERT HAAS: So in your estimation  
3 it was very clear to somebody that the  
4 situation there was really to a point of  
5 being overcrowded?

6 DETECTIVE KEVIN DONOFRIO: Well  
7 having been there less than 24 hours before  
8 when they were almost at capacity on the  
9 second floor, and there were two people below  
10 capacity, I think the night before on the  
11 second floor. And then having gone up there  
12 then and seeing the difference, it was  
13 overwhelming the amount of people there.

14 GERALD REARDON: So you think if the  
15 licensee was able to get another 100 liquor  
16 seats he could put them on the second floor?

17 DETECTIVE KEVIN DONOFRIO:  
18 Absolutely not.

19 MICHAEL GARDNER: So I'm interested  
20 in, and I think it was Ms. Boyer's comment,  
21 that when they checked the kitchen receipts

1 the last ticket was at 9:20 p.m. I don't  
2 know, can you tell us when you typically  
3 close the kitchen and why you would be almost  
4 more than four and a half hours from closing  
5 without selling any food?

6 SOLMON CHOWDHURY: We keep our full  
7 menu available until eleven o'clock. Then we  
8 have a lounge menu that's available until  
9 twelve.

10 ROBERT HAAS: And nobody's taking  
11 advantage of it?

12 SOLMON CHOWDHURY: Exactly.

13 MICHAEL GARDNER: So tell us about  
14 your business flow. I mean is this a place  
15 to drink and dance after nine o'clock? No  
16 matter what you say your kitchen's open to.

17 SOLMON CHOWDHURY: We haven't had a  
18 lot of diners at late night.

19 MICHAEL GARDNER: What do you define  
20 as late night?

21 SOLMON CHOWDHURY: Between 12 to 2.

1                   MICHAEL GARDNER: Well, that's when  
2                   the lounge menu's open. So you're, you're  
3                   running -- generally you're running quite a  
4                   bit of restaurant business up until midnight?

5                   SOLMON CHOWDHURY: Our business is  
6                   extremely slow. Restaurant, our restaurant  
7                   business is extremely slow right now.

8                   MICHAEL GARDNER: Okay. So I asked  
9                   you a question and it sounds to me like you  
10                  told me something that at least might lead me  
11                  to believe completely opposite of what you  
12                  just said. When I pressed you, you said  
13                  well, the business is slow, but that was not  
14                  at all the impression I got from your first  
15                  answer. And, you know, we can read the  
16                  transcript back to see what was it was, but  
17                  I'm concerned that I'm getting a full and  
18                  accurate accounting.

19                  SOLMON CHOWDHURY: We used to do  
20                  about \$4 million in sales. Right now we're  
21                  doing one and a half million in sales. We do

1 have our price --

2 MICHAEL GARDNER: Total sales?

3 SOLMON CHOWDHURY: Total sales.

4 Less than one and a half million in sales.

5 So we do have the menu available. Full

6 dinner menu until eleven o'clock. Then we

7 have a lounge menu which consists of a lot of

8 appetizer and stuff until midnight that

9 people can order until midnight and they can

10 have it until 12:30, 1:00.

11 ROBERT HAAS: So would you describe

12 your business model as late in the evening,

13 is it still a restaurant or has it now become

14 something different?

15 SOLMON CHOWDHURY: It is a

16 restaurant.

17 ROBERT HAAS: But you're not serving

18 any food.

19 SOLMON CHOWDHURY: Well, we are

20 serving food.

21 ROBERT HAAS: You're making food

1 available.

2 SOLMON CHOWDHURY: Right.

3 ROBERT HAAS: Are you selling food  
4 late in the evening? You just got finished  
5 saying no, not typically.

6 SOLMON CHOWDHURY: We're selling a  
7 lot more food until 10:30, but we haven't  
8 been selling a lot of food late night.

9 ROBERT HAAS: So would you describe  
10 your late night business as more of a  
11 nightclub than a restaurant?

12 SOLMON CHOWDHURY: On the first  
13 floor we have more of -- a lot more of a  
14 nightclub scene, bar scene, but on the second  
15 floor it's more of a loungey that people can  
16 sit at the table --

17 ROBERT HAAS: I don't know how  
18 people are eating if you've got a hundred  
19 some odd people on the second floor.

20 SOLMON CHOWDHURY: We do have 1200  
21 square foot on the second floor.

1                   ROBERT HAAS: I don't think anybody  
2                   was eating that night, were they, based on  
3                   what you saw?

4                   DETECTIVE KEVIN DONOFRIO: Not that  
5                   I saw, no.

6                   GERALD REARDON: It would seem as  
7                   though your food business is down and that  
8                   your dance atmosphere is up. And that  
9                   sometimes, one would logically conclude that  
10                  the reason that some of these patrons are  
11                  becoming intoxicated is because they're  
12                  drinking and not eating anything, which is a  
13                  completely different dynamic than people who  
14                  are eating food and drinking. Not that that  
15                  let's them overdrink at that point. But if  
16                  they're not eating food and just drinking and  
17                  dancing and stuff, that lends it to that type  
18                  of crowd. And depending on what your venue  
19                  is, it probably has enhanced the type of  
20                  crowd and atmosphere you have. So I mean  
21                  whether you blame Edgar or not, it seems some

1 of these are self-inflicted wounds here to  
2 keep the place populated with the restaurant  
3 business being down.

4 SOLMON CHOWDHURY: Our food sale  
5 kind of went down also recently. So it's  
6 when we have our patio -- last -- since  
7 actually about a month, whenever we have our  
8 patio open, there's a lot more people sitting  
9 outside and having food. Upstairs, also,  
10 people sitting and having food. Since the  
11 weather kind of cooled down, there's not a  
12 lot of people in Harvard Square also later on  
13 to have food, but we do have the food  
14 available if anybody orders it.

15 MICHAEL GARDNER: I wonder if  
16 Ms. Boyer or Officer Donofrio have anything  
17 else they want to add, any other information  
18 they think we should know?

19 ANDREA BOYER: Not in these  
20 particular incidents, no. I wonder if Edgar  
21 is no longer there, are they just going to

1        get another promoter in would be a concern of  
2        mine. That, you know, that same thing could  
3        happen depending on who is the new hire. So  
4        I would be....

5                MICHAEL GARDNER: Just I was going  
6        to offer if there are any members of the  
7        public here who either have any specific  
8        information about this incident or have  
9        comments, please come forward.

10               DENISE JILLSON: Thank you. Denise  
11        Jillson with the Harvard Square Business  
12        Association. So, boy, where do I start?  
13        This is so distressing because this has not  
14        been for six weeks. The issues have been  
15        going on for a couple of years. And we  
16        actually worked very closely last year with  
17        Commissioner Haas, with Solmon, with other  
18        people on Winthrop Street because the concern  
19        that the neighborhood has around what -- just  
20        the activity, the general activity on  
21        Winthrop Street. So, you know, over a year

1           ago we met and met with all of the owners  
2           from Upstairs on the Square, Grendel's Den,  
3           Tommy Doyle's, and Charlie's Kitchen as well  
4           the Red Kitchen which is Paul Overgaag. And  
5           the Commissioner was very concerned that the  
6           number of people on Winthrop Street when all  
7           of the businesses were letting out was, you  
8           know, rising, and now we have another  
9           restaurant coming very soon Oh, Sushi, and  
10          just, you know, again increasing the  
11          capacity. For a little while the Bombay Club  
12          was closed. Maharaja is up there now. You  
13          know, the intensity and the vibrancy is just  
14          it's increasing all of the time.

15                So last year we had an agreement with  
16                the owners on Winthrop Street that they would  
17                contribute to a fund and hire a detail police  
18                officer. And I think Officer Brooks spoke to  
19                that a little bit earlier this evening.  
20                Because we were getting many complaints from,  
21                you know, people that live on Winthrop

1 Street. There's actually a condominium  
2 across the street from OM and people are  
3 living there. And they have to put up with  
4 this every single night with the noise and,  
5 you know, and people vomiting and just  
6 misbehaving in general. So we put this  
7 together and it worked pretty effectively  
8 last summer. When we approached the owners  
9 on Winthrop Street, the property, the  
10 restaurateurs on Winthrop Street earlier  
11 this year and said we would like to do it  
12 again, that it was highly recommended and  
13 that it was something that the Police  
14 Commissioner thought was pretty effective.  
15 It was found that, you know, OM and Tommy  
16 Doyle's in particular that, you know, that we  
17 had trouble getting funds from them to  
18 continue. Since that time we've had numerous  
19 complaints not only from the residents but  
20 from other businesses with the noise level  
21 coming from OM in particular. The noise

1       bleeding out from the restaurant to the other  
2       patios. So what in turn the other patios  
3       have done is, you know, they've -- in  
4       particular the Red House, they had music so  
5       their music went louder. You know, it's like  
6       the whole volume has just increased. This  
7       business, this business over the passed six  
8       weeks is beyond, beyond just understanding.  
9       It's simply outrageous. When you think that  
10      we have 90 eateries in Harvard Square, the  
11      number of people that come to dine there, and  
12      you know, when you have one incident, it puts  
13      a black mark. When you have two, it's like,  
14      you know, people just -- the whole buzz is  
15      like what the hell is going on over there?  
16      It's out of control and it needs to be, it  
17      needs to be stopped because we cannot  
18      tolerate it. Everybody is working so hard to  
19      keep the square safe, to have public safety  
20      as the primary concern. You know, we spend  
21      our days, every single, you know, restaurant

1 and every retailer and service organization  
2 we spend, you know, every part of their day  
3 making sure that the standard is high. We  
4 have a tremendous infrastructure to support,  
5 and people will just stay away. So, I, you  
6 know, we're intolerant of this. We won't  
7 accept it, and we're glad that we're here  
8 this evening talking about it because it's  
9 been a concern and we want it addressed.

10 MICHAEL GARDNER: Thank you.

11 DENISE JILLSON: Thank you.

12 MICHAEL GARDNER: Are there any  
13 other members of the public who would like to  
14 be heard? I would ask you to again, state  
15 and your spell your name for the record.

16 ALEX PEREZ: Sure. My name's Alex  
17 Perez, A-l-e-x P-e-r-e-z. I'm a good friend  
18 of Solmon. I also help out with his new  
19 establishment. What I can say is something  
20 that he didn't mention was that Edgar was on  
21 his way out regardless of this incident. He

1        was just investigating a little further, had  
2        to find the right thing to kind of let him  
3        go. I've noticed on multiple occasions where  
4        he had side deals with promoters that were  
5        promoting the events. I'd go in and just see  
6        things that didn't make sense, report back to  
7        Solmon. And Solmon said okay, we'll let's  
8        keep investigating, and because, you know, I  
9        need a reason to let him go. And that's the  
10       path that he was on. And along with this  
11       just made it even more of a reason to let him  
12       go. But that's something that he didn't  
13       mention that I wanted to.

14                MICHAEL GARDNER: Did any of these  
15        issues that you were investigating involve  
16        illegal drug sales?

17                ALEX PEREZ: I didn't notice any  
18        illegal drug sales personally. What I  
19        noticed is him taking a cut from the  
20        promoters, their agreement with collecting  
21        funds at the door. So I, you know, in my

1 opinion that was double dipping because he's  
2 getting paid from him and then he's also  
3 getting paid a side, you know, a side  
4 commission from the promoters. And I didn't  
5 think that was something -- I didn't think  
6 that he would have his, the business's best  
7 interest if he's doing things like that. So  
8 other things outside of that, it could be or  
9 it could not be, but that's something that  
10 I'm not privy to.

11 MICHAEL GARDNER: Okay. Although  
12 Mr. Chowdhury represented he let Edgar go  
13 because of dissatisfaction, revolving out of  
14 these incidents, in fact, there were other  
15 things going on.

16 ALEX PEREZ: It was something that  
17 was going to happen regardless of this  
18 situation, so it wasn't like Solmon noticed  
19 -- didn't notice that his business is taking  
20 a decline.

21 GERALD REARDON: So if I could ask

1           you, it would be in Edgar's best interest to  
2           put more people in that place because he was  
3           getting a take?

4                   ALEX PEREZ: Yes, with the promoters  
5           that he was bringing in, yes. Absolutely.  
6           He didn't have OM's best interest. He had  
7           his own.

8                   MICHAEL GARDNER: Are there any  
9           other members of the public who would like to  
10          be heard on this matter?

11                   (No Response.)

12                   MICHAEL GARDNER: Is there anything  
13          else you'd like to say, Mr. Chowdhury?

14                   SOLMON CHOWDHURY: I run a really  
15          great business in Harvard Square for a long  
16          time. It's, it's a lot of things happened in  
17          that location. I have a very aggressive  
18          landlord that I haven't been able to work  
19          with him. I spend \$400,000 in legal fees in  
20          like last five years trying to protect my  
21          lease. I'm doing my best to make sure if I

1 can stay. He won't even let me get out the  
2 lease but then, you know, he wants to take  
3 over the license basically because end of the  
4 day that's all he wants is control of liquor  
5 license. One of the main reason why I have  
6 to spend \$400,000 in legal fees, my liquor  
7 license is tied with my lease and which I  
8 have a note on the liquor license. It's just  
9 a big mess and it's taking a lot of my energy  
10 and effort just trying to fight a legal  
11 battle with him. But in eight years, I  
12 believe I run a great restaurant over there.  
13 If you recall OM was named top 25 restaurant  
14 in the world. And so far nobody got that.  
15 There's not another restaurant in  
16 Massachusetts that ever got that type of  
17 claim. Nobody did. So we run a great  
18 business. We have a great model. And just  
19 that a lot of things happen in like last  
20 three, four years of purchasing more seats,  
21 that cost me more money. Trying to defend my

1        lease, that cost -- you know, \$400,000 is in  
2        legal fees because my license is tied with my  
3        lease. I can't even take the license and put  
4        somewhere else. He's not letting me do that.  
5        Then, you know, I thought I did my part, you  
6        know, when I interviewed Edgar, but he didn't  
7        have the best interest of OM in his mind but,  
8        you know, I'm fixing all those issues.

9                ROBERT HAAS: It strikes me that  
10        given your relatively recent complications  
11        you've changed your business model to a point  
12        now where you are trying to survive. I get  
13        that. But at what cost? And it sounds to me  
14        that it's a very significant cost if you  
15        listen to these last couple of incidences  
16        we've had. And you're just lucky that it  
17        didn't get worse. I mean one of the things  
18        that Ms. Jillson points out is that if  
19        something happens at your establishment, it  
20        impacts every one of those businesses around  
21        there because people are going to be afraid

1           to come there. And we can't afford to have  
2           that happen. So, and it sounds like you were  
3           trying to get this guy out of there, but you  
4           weren't there. And your partner wasn't  
5           there. So I'm trying to figure out who's  
6           watching him if you already had concerns  
7           about him.

8                       SOLMON CHOWDHURY: I'm -- I am there  
9           a lot actually, more than everybody thinks.  
10          But just that --

11                     ROBERT HAAS: But every time you had  
12          an incident you weren't there; right?

13                     SOLMON CHOWDHURY: Well, I think the  
14          night previous to that when you went  
15          upstairs, I was already upstairs. And  
16          following the night, you know, I wasn't  
17          there, but I was just there, like, I could  
18          have taken a coffee break.

19                     MICHAEL GARDNER: So you were just  
20          there on the 5th? If I'm following it,  
21          you're talking about the next night would

1           have within the 5th? You were just there?

2                   SOLMON CHOWDHURY: No, the night  
3           they went there that we were at capacity I  
4           was there.

5                   ANDREA BOYER: You arrived.

6                   SOLMON CHOWDHURY: Right. And then  
7           the following night, that was the night  
8           somebody ran over the outside in the patio  
9           and over the table.

10                  ANDREA BOYER: The first night, yes.

11                  SOLMON CHOWDHURY: Right.

12                  MICHAEL GARDNER: You were there the  
13           first night 5/6.

14                  SOLMON CHOWDHURY: Right.

15                  MICHAEL GARDNER: I'm sorry, 4/5.

16           Not the evening of the 5th.

17                  SOLMON CHOWDHURY: Right.

18           So two days in a row I was there.

19                  MICHAEL GARDNER: Well, you weren't  
20           there on the 5th.

21                  ANDREA BOYER: He arrived at the

1 end.

2 MICHAEL GARDNER: After.

3 ANDREA BOYER: Yeah.

4 GERALD REARDON: Someone called him.

5 SOLMON CHOWDHURY: Right. So  
6 basically I was on my way there, but I was  
7 there.

8 ROBERT HAAS: But you had over 100  
9 people up on the second floor when you got  
10 there.

11 MICHAEL GARDNER: Let the record  
12 indicate that Mr. Chowdhury nodded his head  
13 yes. Is that fair?

14 SOLMON CHOWDHURY: That was the  
15 count on upstairs was a hundred people. The  
16 security that was on the stairs that didn't  
17 do his job that he was paid to do.

18 MICHAEL GARDNER: Let's see,  
19 pleasure of the Commission? We can consider  
20 this at our decision hearing which is  
21 scheduled for when? 29th? Or no, it's a

1 December date, isn't it?

2 ELIZABETH LINT: I don't seem to  
3 have it.

4 MICHAEL GARDNER: Okay.

5 ELIZABETH LINT: I think that it's  
6 November 29th.

7 MICHAEL GARDNER: Okay.

8 ELIZABETH LINT: Do you have it?

9 GERALD REARDON: No.

10 MICHAEL GARDNER: Or we can deal  
11 with it this evening.

12 ROBERT HAAS: I have it on the 29th.

13 ELIZABETH LINT: Okay.

14 MICHAEL GARDNER: We'll say that my  
15 inclination is to issue a suspension of some  
16 amount larger than the three days in the  
17 five, ten area, and to move the closing time  
18 for all evenings back to one o'clock. I'm  
19 not sure that I know if there's anything that  
20 should be done with respect to the  
21 configuration between the second floor and

1       the first floor because I have gotten  
2       conflicting information on impressions with  
3       respect to just how many people it is safe to  
4       have on the second floor. But for those of  
5       you who are much more familiar with that  
6       conversation than I am, since you were on the  
7       Commission when the decision to split the  
8       license to two levels was made, I would defer  
9       to your thinking of that.

10               ROBERT HAAS: I would defer to  
11       Ms. Boyer. She's been in there.

12               ANDREA BOYER: It's an alternate  
13       floor plan where before ten o'clock there's  
14       seating and then after ten o'clock they  
15       remove the seats to make it larger space. I  
16       would have to refer to certificate of  
17       occupancy from Inspectional Services to see  
18       what the safe level that's given to them.

19               ROBERT HAAS: I'm just wondering,  
20       and I appreciate the fact that you're not  
21       getting into food sales late in the evening

1           and you need to go to this nightclub  
2           atmosphere. I'm just trying to figure out if  
3           we want to continue that kind of operation  
4           given the kind of activity we've been seeing  
5           as a result. That's my concern about that  
6           dual configuration. Because it really  
7           changes the configuration. What was a  
8           restaurant now becomes a lounge or a  
9           nightclub.

10                   MICHAEL GARDNER: Well, that helps  
11           me. I'll offer the motion because I think it  
12           is worth deciding rather than waiting and  
13           I'll see if I get a second or if I get any  
14           support. But I will make the motion for a  
15           ten day suspension, five of which will be  
16           held abeyance for two years. If there were  
17           no further problems within the two years,  
18           that additional five days would be determined  
19           to be served. If there were additional  
20           complaints that the License Commission felt  
21           were justified, the additional five days

1 would be implemented immediately. Plus any  
2 other action that the License Commission at  
3 that point deemed fit.

4 I would also make the motion that  
5 closing time for all nights be one o'clock in  
6 the morning. That the closing time from  
7 Thursday through Saturday could be reviewed  
8 in six months to see whether that closing  
9 should continue or should be liberalized, and  
10 I would make the recommendation that the  
11 seating on the second floor not change. That  
12 the pre-ten p.m. or whatever the change time  
13 you said was, would continue through closing  
14 and that we not open it up as a lounge  
15 nightclub.

16 ROBERT HAAS: So it would remain as  
17 a restaurant?

18 MICHAEL GARDNER: Remain as a --

19 ROBERT HAAS: A restaurant  
20 arrangement?

21 MICHAEL GARDNER: Right. Whatever

1 the closing is until one o'clock. That's my  
2 motion. I don't think that there's been any  
3 demonstration that the owner of the  
4 establishment has dealt with the continuing  
5 problems quickly or decisively. A statement  
6 that it's paraphrasing, really it's been  
7 Edgar's fault and I dealt with that problem,  
8 and we find out the security guard didn't  
9 know the rules. That might partly be Edgar's  
10 fault, but it's not at all entirely Edgar's  
11 fault, and it's the owner's fault. And then  
12 we find out that Edgar was let go for a more  
13 complicated set of reasons than the analysis  
14 of what was presented to us. This guy was  
15 bringing in the wrong crowds and I got rid of  
16 him. I'm very disappointed in the  
17 explanation and the performance of the  
18 license holder over the last -- during the  
19 time that these incidents, at least and also  
20 very concerned of the impressions of people  
21 who are truly our eyes and ears; police

1 officers and committed citizens like  
2 Ms. Jillson advising us as to what's going  
3 on. I think we've dealt with -- when we've  
4 had problems with establishments in the past,  
5 we have dealt with them by in part on  
6 occasions changing the hours. I think that  
7 it sounds like there are too many places  
8 closing at two o'clock on the weekends, for  
9 common sense or public safety, and in terms  
10 of who should be asked or told to roll back,  
11 this is the establishment which has been  
12 identified as a trouble spot both by  
13 impressions of police officers and also by  
14 the record that's before us this evening. So  
15 I broach my fellow Commissioners to support  
16 this motion.

17 GERALD REARDON: Second.

18 MICHAEL GARDNER: The motion's been  
19 made and seconded, and we'll now open it up  
20 to discussion for Ms. Boyer.

21 ANDREA BOYER: Thank you very much.

1 I just wanted to point out that I just wanted  
2 to double check. I think when you say -- I  
3 just wanted to see what, the patrons on the  
4 second floor is actually 76 before ten p.m.  
5 and after ten p.m. So it won't change at  
6 all.

7 ROBERT HAAS: No, but I think what  
8 we're saying is we don't want the chairs to  
9 be moved off and then become a dance floor  
10 again. We're saying we want it to be a  
11 restaurant configuration during the entire  
12 time it's open.

13 MICHAEL GARDNER: Yes, that's the  
14 sense of my motion. That was my  
15 understanding of what the alternative floor  
16 plan idea meant.

17 ANDREA BOYER: Some alternative  
18 floor plans change the capacity. I just  
19 wanted to check to see what that one is. As  
20 in like the first floor is 99 before they  
21 take the tables and chairs out, then it's

1           118. The second floor stays at 76 whether  
2           the chairs are there or not.

3                   MICHAEL GARDNER: Oh. So there's an  
4           alternative floor plan for the first floor as  
5           well?

6                   ELIZABETH LINT: Only the first  
7           floor.

8                   ANDREA BOYER: Well, it's just the  
9           way it was written. That's the whole thing  
10          that happened the few years ago, too.

11                  GERALD REARDON: Is that the patio  
12          or inside?

13                  ANDREA BOYER: The patio is  
14          irrelevant now because he bought more seats  
15          so it gave him more seats.

16                  ROBERT HAAS: So your question is?

17                  ANDREA BOYER: I'm just making a  
18          statement that the second floor remains with  
19          seats, it stays the same in some ways. It's  
20          76. I don't know if it would -- it may  
21          change the dynamic that's going on.

1                   MICHAEL GARDNER: It keeps it a  
2 restaurant doesn't it or does it not?

3                   ANDREA BOYER: If he serves food it  
4 will, yes. Hopefully. I haven't really been  
5 able to witness the seating part of OM  
6 upstairs to make sure that it would make a  
7 change.

8                   ROBERT HAAS: It sounds to me you  
9 wouldn't be able to get a hundred some odd  
10 people upstairs if you had tables and chairs  
11 there on the floor; right?

12                  ANDREA BOYER: Exactly.

13                  MICHAEL GARDNER: Motion having been  
14 made and seconded -- Mr. Chowdhury, I'll give  
15 you an opportunity to react if you want.

16                  SOLMON CHOWDHURY: We actually have  
17 a lot of fixed banquettes and booths that we  
18 can't actually move on the second floor.  
19 Which we never had an alternate floor plan  
20 for the second floor. Second floor always  
21 stayed the same. It always just again,

1       because of the amount of seat that we  
2       purchased, it only allowed us to do  
3       alternative seating plan just on the first  
4       floor and the patio. And one of the main  
5       reason why we did that is Harvard Square, the  
6       rent is extremely high and we have to have  
7       different revenue stream to justify that  
8       rent.

9               And if you roll back my hours by one  
10       hour not only it hurts, it's going to hurt  
11       our business extremely. It's almost same as  
12       saying just taking my license away. Also not  
13       only -- it also decreases the value of my  
14       license which is, I'm into that license for  
15       \$450,000. And I had it on the market trying  
16       to sell it for even 300. Nobody would even  
17       make an offer.

18               ROBERT HAAS: I think the Chairman's  
19       motion, though, is offering you an  
20       opportunity to demonstrate to us that we --  
21       after a period of time we would reconsider

1       that one o'clock rollback. But it's up to  
2       you whether to not you can get to a place  
3       where we're confident enough that it's worth  
4       rolling it back to two o'clock.

5               So, you know, I think there's been  
6       enough evidence to suggest that the late  
7       night crowd is the one that's problematic and  
8       I think you have an obligation to show to us  
9       that you can manage these things effectively  
10      which you hadn't been able to do with these  
11      last couple of instances.

12             SOLMON CHOWDHURY: If we can keep  
13      the two o'clock license and give me a  
14      six-month maybe trial to see how things goes  
15      and maybe can have another hearing in six  
16      month. But rolling back our license for --  
17      by an hour, it affects -- it's almost just  
18      taking away my license. It's -- I won't have  
19      any business at all even later at night,  
20      but --

21             MICHAEL GARDNER: Even with one of

1 the 25 best restaurants in the world?

2 SOLMON CHOWDHURY: Well, we got that  
3 in 2006/2007. And since then, you know, a  
4 lot of things happened. My landlord tried to  
5 sell the restaurant to somebody using that  
6 name. You know, he signed an agreement for  
7 \$1.4 million to sell the restaurant. But,  
8 you know, a lot of things happens and  
9 happened, it's eight years later. I am  
10 capable of -- I demonstrated that before, and  
11 I am capable of running a very high end  
12 restaurant, but it's --

13 MICHAEL GARDNER: Thank you.

14 The motion's having been made and  
15 seconded, including rollback of the hours and  
16 including what may perhaps may be puric  
17 action with respect to the alternative floor  
18 plan arrangement, nonetheless I would press  
19 the motion for a vote.

20 Any further discussion?

21 ROBERT HAAS: No.

1                   MICHAEL GARDNER: All those in favor  
2 signify by saying "Aye."

3                   ROBERT HAAS: Aye.

4                   GERALD REARDON: Aye.

5                   MICHAEL GARDNER: Aye.

6                   Those opposed?

7                   (No Response.)

8                   MICHAEL GARDNER: None. So the  
9 motion passes.

10                  I don't think I said that, so I'll make  
11 a subsequent motion that the period of the  
12 suspension be worked out with the staff, but  
13 that the change in hours take effect on  
14 November the 29th.

15                  ELIZABETH LINT: Mr. Chair, actually  
16 I was just thinking about that. He has  
17 appeal rights to Superior Court within 60  
18 days.

19                  MICHAEL GARDNER: Okay. I'm sure he  
20 can appeal. I would say my motion is that we  
21 make the change in hours in three weeks,

1 Thursday, November the 29th. That's my  
2 motion.

3 Is there a second.

4 ROBERT HAAS: Second.

5 MICHAEL GARDNER: Motion having been  
6 made and seconded, all those in favor signify  
7 by saying "Aye."

8 ROBERT HAAS: Aye.

9 GERALD REARDON: Aye.

10 MICHAEL GARDNER: Aye.

11 None opposed.

12 We'll put this in after the  
13 Thanksgiving weekend and give you three weeks  
14 to decide what actions you want to take and  
15 make your arrangements. Sorry that this  
16 happened.

17 I will only say one other concern I  
18 have is when you came for the Central Square  
19 restaurant, Commissioner Haas asked you very  
20 specifically if you intended to keep OM open  
21 and you gave us every assurance that you did.

1       Very shortly thereafter we learned that you  
2       were trying to sell the license. And, you  
3       know, I understand things can change, but the  
4       time interval was so short, I really didn't  
5       think we got an honest answer.

6               SOLMON CHOWDHURY: If I may, I get a  
7       chance to clarify the purchase sale of the  
8       license? That was my -- I been trying to do  
9       that because my license is tied with the  
10      lease. So my goal was to sell the license,  
11      and I actually came by and had a couple of  
12      conversation with Ms. Lint about how to make  
13      that happen. One of the reason was I was  
14      going to try to sell that license and  
15      purchase another license and come in there so  
16      I'm not controlled by the landlord.

17             ROBERT HAAS: Why didn't you say  
18      that I asked the question? When I asked you  
19      the question whether or not you intend to  
20      sell the OM Restaurant, and you said no, I'm  
21      going to keep it. Why didn't you just tell

1           us that I'm having these financial  
2           difficulties, it's my intent to sell the  
3           restaurant?

4                   ELIZABETH LINT: No, the intent was  
5           to just try to sell the license to get out of  
6           the problems with the landlord and then  
7           obtain another license to continue to operate  
8           the restaurant. The intent was always to  
9           continue -- we've had numerous discussions  
10          about it. There was no intent to try to get  
11          out of the restaurant.

12                   MICHAEL GARDNER: Well, I'm sorry to  
13          have raised it, but it had no impact on my  
14          thinking this evening and I would stand by  
15          the decision.

16                   Thank you very much.

17                   ELIZABETH LINT: And I do have an  
18          unpaid personal property tax statement from  
19          the Assessor, so you might want to take this  
20          and go see them tomorrow.

21                   SOLMON CHOWDHURY: Okay. I'll take

1 care of it right away.

2 MICHAEL GARDNER: Thank you very  
3 much. Officer.

4 DETECTIVE KEVIN DONOFRIO: Thank  
5 you.

6 MICHAEL GARDNER: Ms. Boyer, all of  
7 you who stayed and participated in this, we  
8 appreciate your time. We don't have anything  
9 else with Officer Donofrio, do we?

10 ANDREA BOYER: No, we don't.

11 DETECTIVE KEVIN DONOFRIO: Thank  
12 you.

13 MICHAEL GARDNER: Good.

14 ELIZABETH LINT: Informational,  
15 National Tire and Battery, 2501 Mass. Avenue,  
16 due to report from Chief Licensing  
17 Investigator, Andrea Boyer, alleging that NTB  
18 is in violation with the City of Cambridge  
19 Noise Ordinance while performing work with  
20 the garage bay doors open.

21 MICHAEL GARDNER: Again, my

1           apologies for the late hour. We may set a  
2           record this evening. And I would just ask  
3           each of you to, for the record, to state your  
4           names and if you could spell yours for the  
5           stenographer, sir.

6                    RICHARD PLANTE: Sure. My name is  
7           Richard Plante, R-i-c-h-a-r-d P-l-a-n-t-e.  
8           I'm the area director for National Tire and  
9           Battery for New England.

10                   MICHAEL GARDNER: And Ms. Boyer's  
11           here.

12                   ANDREA BOYER: Yes, Boyer,  
13           B-o-y-e-r. So this is an informational  
14           hearing to discuss National Tire and Battery  
15           hours of operations and the noise problems  
16           they've been having.

17                   In a letter sent to the License  
18           Commission office from a resident in  
19           Cambridge regarding the issues they've been  
20           having with NTB. That letter was sent to you  
21           along with the packet that was sent in

1       October 17th. The resident's main concern  
2       are the hours of operation and the days that  
3       the business is open. Allegedly the previous  
4       business, Midas Corporation was not open  
5       passed seven p.m. and was not open on  
6       Sundays. Based on said information, I  
7       started an investigation on the Midas Corp.  
8       license transfer to see if the business hours  
9       were discussed. We actually -- the transfer  
10      of the license, I apologize, was not  
11      something that was discussed at the License  
12      Commission hearing. We also tried to find  
13      any of the information that was on the tape  
14      that would have been from the transcript, but  
15      we didn't have the transcript tape for that  
16      particular hearing. I attempted to reach the  
17      Midas Corp. by using contact information that  
18      was in the dead file. I left a message for  
19      the corporate office but did not receive a  
20      call back. I checked the Inspectional  
21      Services file to see if there was any

1 information that would assist me. In the  
2 interim I contacted NTB and spoke with  
3 Mr. Ken Korizinski (phonetic). Do you know  
4 how he pronounces his name?

5 RICHARD PLANTE: I think that's Ken  
6 Korizinski.

7 ANDREA BOYER: Ken Korizinski?

8 RICHARD PLANTE: Yeah.

9 ANDREA BOYER: I've explained to him  
10 my role at the License Commission that I had  
11 been receiving complaints regarding the noise  
12 due to the bay doors being open at the NTB  
13 store located at 2501 Mass. Ave..  
14 Mr. Korizinski stated that he would call me  
15 with representative contact info to discuss  
16 the issue further. I continued to try to and  
17 find information regarding the hours of the  
18 Midas Corp. I located a number and left a  
19 message specifically asking for someone if  
20 they had information regarding the Midas at  
21 the address and the hours of operation.

1 Mr. Korizinski called me back and said they  
2 owned Midas and the message got routed back  
3 to him and that he would be the NTB contact.

4 On June 6, 2012, I e-mailed  
5 Mr. Korizinski information regarding the  
6 complaints I received, and he stated he would  
7 forward the e-mail to the proper person.  
8 That was also an e-mail that I sent to you.

9 Mr. Korizinski forwarded the  
10 information to the senior director of  
11 facilities operation, Mr. Ted Barker.  
12 Mr. Barker stated that he would keep the  
13 service doors down whenever possible to  
14 mitigate the noise level. The only times the  
15 doors would be open is for the transfer of  
16 the vehicles. I informed the complainant of  
17 the agreement.

18 On June 27, 2012, I received a call  
19 from the complainant stating the doors were  
20 being left open continuously while work is  
21 being performed. I went to the location on

1        June 28, 2012. That e-mail is also attached.  
2        And noted that the bay doors were being left  
3        work while no work was being performed and  
4        the compressor drill was audible across Mass.  
5        Avenue where the complainant is located.

6                I informed Mr. Korizinski that a  
7        hearing would be held to discuss the problems  
8        if the doors did not remain closed.

9                On October 3, 2012, I received a call  
10       from the complainant stating that there were  
11       some incidents regarding NTB. He stated for  
12       a few nights that the bay doors had been open  
13       until eleven p.m. and work on motorcycles  
14       were being done. The complainant went to the  
15       store and explained the business should not  
16       be open this late, and even when open, the  
17       bay doors were to be closed when working.  
18       The employee on premise replied to the  
19       complainant that it was not business but  
20       personal motorcycles being worked on.

21               I informed Mr. Korizinski that based on

1 the complaints, concerns, and based on the  
2 history of the case, a hearing would be held  
3 to discuss to schedule and discuss the  
4 problems.

5 MICHAEL GARDNER: So I'm not sure  
6 that I understand what the staff means by an  
7 informational hearing.

8 ANDREA BOYER: We have so many --  
9 it's not disciplinary per se. So we either  
10 have disciplinary or informational hearings  
11 to collect the information to discuss in  
12 front of the Board to try to find solutions  
13 sometimes when establishments, because we  
14 don't have the hours of operation that were  
15 ever solidified on the license, it was  
16 transferred from the Midas to NTB. Seemingly  
17 NTB has nationwide stores that are open on  
18 Sundays, but the previous license was not  
19 open on Midas. So I'm not sure if the  
20 residents had a chance to actually come  
21 forward and discuss any future problems that

1           NTB may have. So these are the problems that  
2           we're having based on NTB being there.

3                   MICHAEL GARDNER: Thank you. That's  
4           helpful to me.

5                   ANDREA BOYER: Okay.

6                   MICHAEL GARDNER: Did you take any  
7           sound level readings?

8                   ANDREA BOYER: It's not based on  
9           that. It's 50-foot rule. So as long as it  
10          plainly audible from a distance of 50 feet,  
11          it's a violation of the Cambridge Noise  
12          Ordinance which it was that day.

13                  MICHAEL GARDNER: So the sound of  
14          the compressor was with the doors open, was  
15          in violation?

16                  ANDREA BOYER: Yes. Plainly  
17          audible.

18                  MICHAEL GARDNER: And I thought I  
19          understood you to say there was no work being  
20          done but the compressor was on.

21                  ANDREA BOYER: No. There was --

1           there was not all --

2                   MICHAEL GARDNER: This is when you  
3           were there?

4                   ANDREA BOYER: Yes, three of the  
5           doors or whatever I have in my report. Three  
6           doors that were open didn't have cars in  
7           those bays. So there were two other cars  
8           that were being worked on. So it showed to  
9           me that bay doors are being left opened even  
10          when there were no cars were in the stalls or  
11          in the bays.

12                   MICHAEL GARDNER: I wonder, sir, is  
13          this an air-conditioned facility?

14                   RICHARD PLANTE: No. Since the  
15          initial contact back in June we've actually  
16          put \$50,000 worth of cool mist sprayers in  
17          the facility because it's shaped like an L,  
18          so it's quite large. So we got them in each  
19          corner. I just inherited the group I want to  
20          say in August, and I would like to say since  
21          then the complaints have dropped. I did have

1 an issue at the motorcycles at night. I did  
2 investigate it, and there was obviously a  
3 disciplinary actions that took place on my  
4 end just because I wasn't even notified that  
5 the store was even open that late. I guess  
6 what happened is they had a big spill on the  
7 ground, they stayed late and cleaned it up.  
8 One of the gentlemen had his motorcycle  
9 parked in front of the park. There's a  
10 little park right next-door with the condo  
11 association or whatever that is there. When  
12 he went to go leave at the end of the night,  
13 there was a bunch of bird droppings all over  
14 it. He supposedly walked it over to the  
15 facility because he didn't want to sit on it,  
16 and it will obviously take the paint off. It  
17 was a nice bike. And he dumped it going up  
18 the incline. The store manager supposedly  
19 went over and helped him get it up. They  
20 brought it into the shop. They did clean it  
21 up because they already had the hose and

1       cleaning stuff already out. The work that  
2       was getting done, he was trying to put the  
3       side-view mirror back on and the plastics  
4       back, and also had to bend back the shifter  
5       because it bent when it dropped. Since then  
6       I haven't had any problem. I've been calling  
7       the Guardian, Guardian Protection. I get  
8       alarm reports. I make sure it's been closed.  
9       The latest it gets closed around ten because  
10      obviously we close at nine. And let's be  
11      real, if one of us had our car there, we'd  
12      want to make sure we got our car by the end  
13      of the night. You know, sometimes the work  
14      does go a little longer. But I am making  
15      sure those doors are being closed. Just  
16      recently we actually had a door fall off the  
17      hinge and so I've been there a lot more  
18      because of that, and we're getting some  
19      maintenance done going on the facility. We  
20      are keeping doors closed. We did have a  
21      problem during the summer, it was hot. We

1        didn't have any AC in there at all. And I've  
2        been in that store. It's like a sauna. And,  
3        you know, I feel bad for those guys and I  
4        feel bad for the town because I understand  
5        the noises. I've been in shops for 18 years.  
6        It's all I've ever done. It is noisy and  
7        loud in there. I do have new management in  
8        there and they're trying to take, you know,  
9        better precautions on making sure that  
10       they're a good neighbor in the, you know, in  
11       the town. I'm sorry that, you know, I even  
12       have to be here for something like this and  
13       that this is happening. But rest assured we  
14       are taking the right action to make sure it  
15       doesn't happen.

16                MICHAEL GARDNER: Has there been any  
17       outreach to the particular complainant in  
18       this case that Ms. Boyer's been dealing with?

19                RICHARD PLANTE: I don't know. It's  
20       not been subjected to me so I couldn't do  
21       anything about that. I just know about the

1 claim.

2 MICHAEL GARDNER: Okay.

3 ANDREA BOYER: It was not that you  
4 could have. It was part of the packet that  
5 was sent to NTB representatives, they have  
6 that.

7 MICHAEL GARDNER: And so could you  
8 review for us what your understanding of the  
9 hours of operation and the days of week are?

10 RICHARD PLANET: Sure. All my  
11 stores in New England open from seven in the  
12 morning, a.m., Monday through Friday to nine  
13 p.m. and night. Saturday and Sunday we're  
14 open from seven to seven. And Sundays nine  
15 to six. And we're located all through  
16 Massachusetts. All through the state.

17 MICHAEL GARDNER: And what's the  
18 work that typically is done there?

19 RICHARD PLANTE: Automotive repair,  
20 tires, mounting, balancing, you know, brakes,  
21 struts. You name it. We're a one stop shop.

1           We bought Midas out so we're the largest  
2           independent tire retailer in the world right  
3           now.

4                   MICHAEL GARDNER: So you do tires,  
5           you do mufflers, you do other kinds of  
6           general repairs to vehicles?

7                   RICHARD PLANET: We're a one stop  
8           shop. Whatever you need we're here for you.

9                   MICHAEL GARDNER: Do you understand  
10          what Ms. Boyer said that a compressor running  
11          with a couple of bays open and some other  
12          bays closed still is a violation of our Noise  
13          Ordinance in terms of the loudness being  
14          heard from 50 --

15                   ANDREA BOYER: 50. At least 50 feet  
16          away, correct.

17                   MICHAEL GARDNER: 50. Which means  
18          you sort of have a structural problem doing  
19          business in that location in the city  
20          whatever the internal acoustics are, and the  
21          lack of baffles or whatever there might be on

1 the equipment you're using at least if the  
2 doors are opened.

3 Do you have an impression, Ms. Boyer,  
4 if the doors are closed, do they have a  
5 problem?

6 ANDREA BOYER: If the doors are  
7 closed, there are no problems.

8 MICHAEL GARDNER: So the solution so  
9 far is the cool misting?

10 RICHARD PLANTE: Correct. Which we  
11 invested the money in that and they're there.  
12 And they do use them obviously. I don't even  
13 know this they could stand even being in  
14 there if they didn't use them.

15 I guess my question was these  
16 compressors are the same compressors Midas  
17 had when we bought them. We haven't done  
18 anything with the building but change the  
19 sign. So, was it an issue then or is it just  
20 an issue now because maybe the prime  
21 management had a few altercations with some

1 people in the neighborhood and we have some  
2 bad blood?

3 ANDREA BOYER: I can't answer that  
4 obviously to its full extent. I'm not sure  
5 if the residents are here. They said that  
6 they wanted to come to the hearing. Maybe  
7 they can explain that better.

8 MICHAEL GARDNER: All right.

9 ANDREA BOYER: If not, I do have a  
10 sense of what they had said to me previously  
11 about Midas comparative to NTB.

12 GERALD REARDON: Is this actually  
13 the compressor or the air hammers or the air  
14 wrenches.

15 ANDREA BOYER: Yes, I mean it's the  
16 (audible gesture). You know.

17 Did you get that?

18 MICHAEL GARDNER: These are  
19 compressors turning tools that like --

20 ROBERT HAAS: Hydraulics.

21 MICHAEL GARDNER: Open lug nuts.

1                   RICHARD PLANTE: Yeah, to take off  
2                   the lug nuts make sure we're safe, exactly.

3                   MICHAEL GARDNER: Are there members  
4                   of the public who would like to be heard on  
5                   this matter?

6                   (No Response.)

7                   MICHAEL GARDNER: At 10:38 I guess  
8                   not.

9                   ANDREA BOYER: I would like to  
10                  address what they had said to me, why they  
11                  brought this to my attention. It's different  
12                  hours. I think with Midas they were kind  
13                  of -- they worked during most of that time  
14                  frame. It was seven to seven. You know, so  
15                  that's what they explained, because I did ask  
16                  that obviously. It was there, you know, and  
17                  what was the prior thing. And then so one of  
18                  the issues, and I know you said nine. I  
19                  think they're under the impression that you  
20                  may be there until 9:30. So there's a  
21                  difference in hours. So when they get home,

1       they're still there and they're still hearing  
2       the work, and so I think that bothersome.  
3       And also Sundays from nine a.m. to six p.m.  
4       and Midas was not open on Sundays. So I  
5       think what has -- it's just become a little  
6       bit more in their house when it wasn't there  
7       previously. They said that they kind of knew  
8       that was happening, that's what was  
9       allowable, but the extra hours on the Sundays  
10      is what's most bothersome.

11               MICHAEL GARDNER: Thank you for the  
12      explanation.

13               RICHARD PLANTE: And if I may, the  
14      extra hours is what makes us who we are.  
15      That's why we are the best and the biggest  
16      because we're there when somebody needs us  
17      most. When somebody breaks down, that mother  
18      and daughter stuck on the side of the road at  
19      8:30, 9:00 at night we're there to get it  
20      fixed.

21               MICHAEL GARDNER: If that's your

1       business model, then you need to make doubly  
2       sure that you're not making noise beyond the  
3       limitations of our Ordinance because --

4               RICHARD PLANTE:  You're absolutely  
5       right.

6               MICHAEL GARDNER:  -- to be a good  
7       neighbor.

8               RICHARD PLANTE:  Correct.  And we're  
9       doing our best at it.  I don't have an issue  
10       anywhere in New England with that.  Just this  
11       is the only -- the only town that I have an  
12       issue with.  And because I just inherited  
13       this store.  I didn't have this part of the  
14       city, I'm on it.

15              MICHAEL GARDNER:  Do you have other  
16       stores in Cambridge?

17              RICHARD PLANTE:  We have one.

18              MICHAEL GARDNER:  Just one.

19              RICHARD PLANTE:  The next one would  
20       be Allston.  Allston/Brighton and they just  
21       go across the city all the way down.

1                   MICHAEL GARDNER: Okay, thank you.

2                   Any questions?

3                   ROBERT HAAS: No questions.

4                   GERALD REARDON: No questions.

5                   MICHAEL GARDNER: Pleasure of the  
6 Commission?

7                   ROBERT HAAS: So I do have one  
8 question. So you initially said you  
9 qualified your answer by the complaints have  
10 going down. Have they been zero or are you  
11 just getting fewer complaints?

12                  RICHARD PLANTE: I haven't had any  
13 low complaints at all with the location --

14                  ROBERT HAAS: Since you've taken  
15 over?

16                  RICHARD PLANTE: Correct. Because,  
17 you know, people have this 1-800 number for  
18 them to call in and complain if there's an  
19 issue. We have our NTB hotline that you can  
20 also call, instead of the corporate line. We  
21 also have the NTB website you can put in a

1 complaint. There's TBC cares survey that you  
2 can go on. There are many ways for a  
3 customer -- you know, you can go on the NTB  
4 website, you know, and you can make a  
5 complaint about anybody even if you weren't  
6 there. You can go on Yelp. You can go on  
7 Google and all that stuff.

8 MICHAEL GARDNER: So, it seems to be  
9 my habit tonight, I'll make a motion, see if  
10 I get a second, which is that the matter be  
11 placed on file. But that Ms. Boyer be  
12 directed to periodically do noise  
13 assessments. And that those assessments  
14 continue both in the upcoming season, but  
15 also in warmer weather. And that November,  
16 so in six months Ms. Boyer could submit a  
17 report to the Commission on the status of  
18 things. Obviously if there are violations,  
19 we would expect to hear about those in any  
20 event. But in six months we'll get some  
21 assessment from Ms. Boyer and then we'll make

1 a decision as to whether or not we'd like to  
2 ask you to come back in.

3 RICHARD PLANTE: Sure.

4 MICHAEL GARDNER: All right? So  
5 that's not exactly framed in my usual crisp  
6 motion style but that's the motion.

7 GERALD REARDON: Second.

8 MICHAEL GARDNER: Discussion?

9 (No Response.)

10 MICHAEL GARDNER: Hearing none, all  
11 those in favor signify by saying "Aye."

12 ROBERT HAAS: Aye.

13 GERALD REARDON: Aye.

14 MICHAEL GARDNER: So the motion  
15 carries three to nothing. And thank you for  
16 coming in. We're very encouraged by the  
17 misting and I guess that's the thing to do.  
18 I don't know. Whether that's better than AC  
19 or not, I don't know.

20 RICHARD PLANTE: It's like going to  
21 Disney World and the mist, it's like one of

1           those --

2                   MICHAEL GARDNER: But, okay, just  
3           for us to reemphasize that it's very  
4           important whatever your command and control  
5           system is, you make sure those doors stay  
6           closed.

7                   RICHARD PLANTE: Correct. And I  
8           think Ms. Boyer probably knows most of the  
9           problems were in the summer when it was the  
10          most hot.

11                  ANDREA BOYER: Winter is going to be  
12          fine.

13                  RICHARD PLANTE: Those doors aren't  
14          opening. We'll make sure we're doing  
15          everything in our power to make sure we're  
16          never in this situation again.

17                  MICHAEL GARDNER: Use your  
18          discretion as to when to go.

19                  ANDREA BOYER: I am. Thank you.

20                  MICHAEL GARDNER: Thank you very  
21          much.

1                   ELIZABETH LINT: Application,  
2           A.A.M., Incorporated doing business as  
3           Beauty's Pizza, Nader Michael, Manager, hold  
4           of a common victualer license at 228A --  
5           should be Cambridge Street? Broadway. Has  
6           applied for a wine and malt beverages as a  
7           restaurant license at said address. Hours  
8           and capacity are staying the same.

9                   MICHAEL GARDNER: Good evening.  
10          State and spell your names for the record.

11                 NECHETT MICHAEL: Nechett Michael,  
12          N-e-c-h-e-t-t.

13                 NADER MICHAEL: Nader Michael,  
14          N-a-d-e-r.

15                 MICHAEL GARDNER: So, again, our  
16          apologies for the late hour. If you could  
17          describe what the business has been so far.  
18          How long you've been in it, and what leads  
19          you to make this request for a change.

20                 NADER MICHAEL: Okay. We came to  
21          Cambridge in February 2008. We took over

1 Beauty's Pizza. We change a lot. We had --  
2 it was only mainly delivery and takeout. We  
3 now have nice dining room. We have nice  
4 customer, nice crowd in there. We don't have  
5 any complaint. We came in front of you to be  
6 here, and we had seating capacity, and we've  
7 been running very nice and smooth business.  
8 We won best of WBZ in the first year we took  
9 over, and we been adding a few spaces, a few  
10 items for the people work and the company  
11 that owned us; MIT, the residents, and we've  
12 been having good time with the customer in  
13 the area, and the neighbor in Cambridge and  
14 we very happy we did this decision coming to  
15 Cambridge. And lately we've been having a  
16 lot of requests for beer and wine from the  
17 customer. We wish to have it so we can sit  
18 down like lunch and have a couple of beer  
19 after we work and have a good beer and we  
20 have all of the customer.

21 MICHAEL GARDNER: Do you have a

1 current menu that you could show us?

2 NADER MICHAEL: Yes.

3 MICHAEL GARDNER: And what are your  
4 current hours of operation?

5 NADER MICHAEL: We are there at 9:30  
6 in the morning until 10:00 everyday, Monday  
7 through Saturday. Sunday we open five to  
8 ten.

9 MICHAEL GARDNER: Five p.m. to ten  
10 p.m.

11 ROBERT HAAS: So you said ten  
12 o'clock to --

13 MICHAEL GARDNER: 9:30.

14 ROBERT HAAS: Oh, 9:30? Okay.

15 MICHAEL GARDNER: When did you want  
16 to start selling beer and wine?

17 NADER MICHAEL: Whatever according  
18 to your regulation. We don't want to change  
19 anything. According to your regulation like  
20 lunchtime, eleven o'clock would be fine when  
21 we have the lunch and for during the week.

1                   MICHAEL GARDNER: Have you had any  
2                   experience in operating a business that sells  
3                   alcohol?

4                   NADER MICHAEL: Yes. I used to  
5                   manage, that was long time ago, Pizzeria  
6                   Regina in Harvard Square.

7                   MICHAEL GARDNER: Regina Pizza?

8                   NADER MICHAEL: Yeah. I used to  
9                   manage that store for about a year. And I  
10                  left the company. I worked for Pizza Hut but  
11                  we didn't beer and wine.

12                 MICHAEL GARDNER: Did Regina's have  
13                 beer and wine?

14                 NADER MICHAEL: Yeah. We had beer  
15                 and wine. We had a bar upstairs, and the  
16                 kitchen and the dining room was downstairs.  
17                 When you come into the store, it was a bar,  
18                 and the kitchen behind the bar, and you go  
19                 downstairs and we had the dining room.

20                 MICHAEL GARDNER: Was it just beer  
21                 and wine?

1 NADER MICHAEL: Just beer and wine.

2 MICHAEL GARDNER: Not all alcohol?

3 NADER MICHAEL: No, no. Beer and  
4 wine. We looking for beer and wine. Plus I  
5 have a degree in hotel management. And of  
6 course we can be taking courses necessary and  
7 to comply with the regulation for the  
8 license.

9 MICHAEL GARDNER: So you said that  
10 you -- you're open, I thought I said 9:30  
11 a.m. --

12 NADER MICHAEL: We are there.

13 MICHAEL GARDNER: You're there doing  
14 the work.

15 NADER MICHAEL: Yeah.

16 MICHAEL GARDNER: You open for  
17 customers --

18 NADER MICHAEL: Yeah, between  
19 eleven.

20 MICHAEL GARDNER: -- at eleven. I  
21 kind of thought that's what it was.

1                   NADER MICHAEL: Eleven o'clock we  
2                   are --

3                   MICHAEL GARDNER: So your menu  
4                   correctly states your hours that you're open  
5                   to the public?

6                   NADER MICHAEL: Yes.

7                   ROBERT HAAS: What's your seating  
8                   capacity?

9                   NADER MICHAEL: We have about 45  
10                  seats.

11                  ROBERT HAAS: Is it? So what is the  
12                  seating capacity? You should know.

13                  NADER MICHAEL: 45.

14                  ROBERT HAAS: 45?

15                  NADER MICHAEL: Yeah.

16                  MICHAEL GARDNER: No patio?

17                  NADER MICHAEL: No patios, no.

18                  ROBERT HAAS: Do you plan on opening  
19                  a bar associated with this beer and wine  
20                  license or is it strictly going to be table  
21                  service?

1                   NADER MICHAEL: We looking to have a  
2                   bar, not to sit on, but we would have a bar  
3                   and we'd have like the display of wine,  
4                   whatever wine we have select.

5                   ROBERT HAAS: So would you serve bar  
6                   at that --

7                   NADER MICHAEL: But I'm not going to  
8                   have people sitting at the bar, no.

9                   ROBERT HAAS: It's table service?

10                  NADER MICHAEL: Table service, yes.

11                  MICHAEL GARDNER: So what's the  
12                  function of the bar to place orders?

13                  NECHETT MICHAEL: Display.

14                  NADER MICHAEL: Display and to let  
15                  people know that we have it. And we're doing  
16                  the takeout and taking over the counter  
17                  itself. But we would have display. Just as  
18                  a display.

19                  NECHETT MICHAEL: Lined the counter  
20                  and the cooler with cold beer and behind the  
21                  counter at the request of the customer.

1                   MICHAEL GARDNER: So did I  
2                   understand you to say something about  
3                   specialty beers? Or perhaps I misunderstood.

4                   NADER MICHAEL: No. Just beer and  
5                   wine. We talk with or customer and we said  
6                   if we get approved, we'll have a selection  
7                   for you to see what you guys like to be  
8                   served. And most of my customer are likely  
9                   repeated customer. I don't get like a lot of  
10                  new customer. That my everyday customer is  
11                  he comes everyday. So I said well, if we get  
12                  it, we use what you like and we have it for  
13                  you.

14                  MICHAEL GARDNER: This would be a no  
15                  value, non-transferable?

16                  ELIZABETH LINT: Yes.

17                  MICHAEL GARDNER: You understand if  
18                  we grant a license, it wouldn't have any  
19                  value, you couldn't sell it, you couldn't  
20                  sell it as part of the business. You  
21                  couldn't pledge it or for a loan. It has no

1 value. You understand that?

2 NADER MICHAEL: Yeah, okay.

3 MICHAEL GARDNER: Other questions?

4 NADER MICHAEL: One question. But  
5 if I, if I move my store, like, from one --  
6 because there's a lot of building coming in  
7 Cambridge, and if I like to move from like  
8 one place to another, maybe a bigger --

9 NECHETT MICHAEL: Location.

10 NADER MICHAEL: -- location. Can we  
11 transfer to my new location? It could be  
12 like attached to my company? If I move from  
13 one location to another location?

14 ROBERT HAAS: So it would go with  
15 the business.

16 MICHAEL GARDNER: Yes, if you move  
17 the location and it's still the same  
18 business, you would keep it. But you keep  
19 the some number of seats unless you came to  
20 us and asked for more.

21 NADER MICHAEL: Yes, that's fair.

1                   MICHAEL GARDNER: Did I say that  
2                   right, Ms. Lint?

3                   ELIZABETH LINT: Yes.

4                   ROBERT HAAS: If you open a  
5                   subsequent business, you'd have to get  
6                   another license; right?

7                   NADER MICHAEL: Okay.

8                   ROBERT HAAS: So if you open a  
9                   second site, let's say you keep this one and  
10                  you open another one, you have to still come  
11                  back and get another license. If you want to  
12                  serve beer and alcohol at that location.

13                  NADER MICHAEL: We'll see how it's  
14                  working here.

15                  ELIZABETH LINT: The Disabilities  
16                  Commission went down to view the location and  
17                  they came up with recommended readily  
18                  achievable accommodations. The ramp was  
19                  longer than six feet so there needs to be  
20                  handrails on the ramp and there's no  
21                  accessible -- there's no handicap parking

1 spot. There needs to be a handicap parking  
2 spot there.

3 NADER MICHAEL: There's spot in lot  
4 we have, it's small, it's not small, but it  
5 is like that we share with the Dunkin' Donut,  
6 and us. And we, we never have problem since  
7 we went before the ZBA, they gave us like one  
8 year. And we came before the ZBA again and  
9 they extend it for another year. And last  
10 year we came before them for another hearing  
11 and they give it to us for permanently to --  
12 because we open for the dining room, and this  
13 parking lot, we had it like was like for  
14 shared between the other establishment with  
15 us and Dunkin' Donut and the restaurant.

16 NECHETT MICHAEL: And the handicap  
17 room. We all of us I mean we --

18 NADER MICHAEL: Us and we usually to  
19 help with customer -- usually we run either  
20 from us or we like we have like view of the  
21 whole parking lot from behind the counter so

1 usually to like is me or my brother or one of  
2 the driver we learn, and the same thing we do  
3 the Chinese Mulan Restaurant because they  
4 coming for us so we try to do the whatever  
5 necessity to accommodate the customer.

6 MICHAEL GARDNER: Do you know if  
7 Mulan has any -- sells any alcohol?

8 NADER MICHAEL: Yes.

9 ELIZABETH LINT: I believe they do.

10 NECHETT MICHAEL: Beer and wine.

11 ELIZABETH LINT: I would just they  
12 recommend that perhaps they contact Mr. Muehe  
13 and see if there's something reasonable that  
14 can be done.

15 MICHAEL GARDNER: Do you have any  
16 problems with putting in the rails for the  
17 ramp? He's suggesting that for your handicap  
18 ramp that you put in rails to assist a  
19 mobility.

20 NADER MICHAEL: Sure.

21 MICHAEL GARDNER: You don't have a

1           problem with that?

2                   NADER MICHAEL:   No.

3                   NECHETT MICHAEL:   No.

4                   MICHAEL GARDNER:   You think that you  
5           just have some practical issues with being  
6           able to designate the handicap spot?

7                   NADER MICHAEL:   Yes, because the  
8           landlord he already have his hand already to  
9           be done even like for the handicap rail I  
10          have to go back to him because he's the one.  
11          And he wasn't happy to do it.

12                  ELIZABETH LINT:   And plus I have a  
13          personal property tax bill so....

14                  NADER MICHAEL:   Yeah, thank you.

15                  MICHAEL GARDNER:   And any problems  
16          or difficulties with Beauty's Pizza operating  
17          so far?

18                  ELIZABETH LINT:   Not at all.   In  
19          fact, our office frequently orders lunch from  
20          there.

21                  NECHETT MICHAEL:   It's a family

1 business.

2 NADER MICHAEL: And we're there  
3 everyday. And even if one of us cannot be  
4 there, he's the second one, he's there.

5 MICHAEL GARDNER: Other questions?

6 GERALD REARDON: No slices.

7 NADER MICHAEL: If I know I'm going  
8 to be that late.

9 GERALD REARDON: No, no questions.

10 NADER MICHAEL: Thank you.

11 MICHAEL GARDNER: Are there any  
12 members of the public who would like to be  
13 heard on this matter?

14 (No Response.)

15 MICHAEL GARDNER: If so, I'll never  
16 get it right. Are you TIPS certified?  
17 21-Proof. See, I won't ever get it right.  
18 Are you 21-Proof certified yet? We have a  
19 special system for --

20 NADER MICHAEL: Not yet. Not yet.  
21 I was waiting until I get --

1                   NECHETT MICHAEL: I done it years  
2                   ago. Like ten years ago when I used to work  
3                   with the liquor store.

4                   MICHAEL GARDNER: You worked in a  
5                   liquor store?

6                   NECHETT MICHAEL: Beer and mine was  
7                   my cousin and big venue. So he teach me the  
8                   ID and everything.

9                   NADER MICHAEL: We were --

10                  MICHAEL GARDNER: So I'll make the  
11                  motion that we approve the wine and malt  
12                  beverages, no value license for Beauty's  
13                  Pizza with the same hours of operation. The  
14                  same capacity. Subject to the 21-Proof  
15                  training, the paying of any outstanding  
16                  obligations to the city, and an honest good  
17                  faith engagement with Mr. Muehe from the  
18                  Commission on persons with disabilities and  
19                  your landlord so see if you can achieve one  
20                  or both of the recommendations of Mr. Muehe.

21                  NADER MICHAEL: Thank you.

1                   MICHAEL GARDNER: That's my motion.

2                   GERALD REARDON: Second.

3                   MICHAEL GARDNER: Motion having been  
4                   made and seconded, all those in favor signify  
5                   by saying "Aye."

6                   ROBERT HAAS: Aye.

7                   GERALD REARDON: Aye.

8                   MICHAEL GARDNER: Aye.

9                   None opposed.

10                  Good luck. Always glad to support  
11                  businesses which are contributing to the  
12                  community and we wish you well.

13                  NADER MICHAEL: We appreciate it.  
14                  Thank you. We glad to be here.

15                  NECHETT MICHAEL: Good night.

16                  ELIZABETH LINT: Application,  
17                  Voltmeter, LLC, doing business as Voltage  
18                  Coffee and Art, Lucy Valena, Manager, holder  
19                  of a common victualer license at 295 Third  
20                  Street has applied for a new wine and malt  
21                  beverages as a restaurant at said address.

1       The proposed occupancy is 125 seats (75 seats  
2       inside, 30 standing, and 20 patio seats  
3       without alcohol service). The hours of  
4       operation would be seven a.m. to nine p.m.  
5       seven days per week with alcohol service  
6       starting at eight a.m. on Monday through  
7       Saturday, and ten a.m. on Sundays.

8               MICHAEL GARDNER: So again if you  
9       would state and spell your name for the  
10      record and identify your affiliation.

11              LUCY VALENA: Lucy Valena,  
12      V-a-l-e-n-a. I'm the owner of Voltage Coffee  
13      and Art. We've been in business for two  
14      years now. And since we opened our doors  
15      Kendall Square has become more and more  
16      wonderful and vibrant community. I like to  
17      think that we had a little bit to do with  
18      that. We really -- we opened it was really  
19      felt like kind of a shot in the dark, but  
20      it's been a really amazing thing to see grow.  
21      And I would really like to expand my business

1 to accommodate the growing neighborhood.

2 MICHAEL GARDNER: So is this an  
3 application to increase occupancy as well as  
4 to add the beer and wine?

5 LUCY VALENA: It is.

6 MICHAEL GARDNER: So just remind us  
7 what the increase in occupancy proposal is.

8 LUCY VALENA: I would like to  
9 increase my occupancy in seating so that  
10 there are 75 seats.

11 MICHAEL GARDNER: And I'm sorry, how  
12 many are there now?

13 LUCY VALENA: 36.

14 MICHAEL GARDNER: And how are you  
15 going is to achieve that increase?

16 LUCY VALENA: I'm sorry?

17 MICHAEL GARDNER: How are you going  
18 to be able to fit another, I can't do it, 39  
19 seats in?

20 LUCY VALENA: I frankly had my  
21 architect draw as many as he could in for the

1 amount that would be allowed with the  
2 bathrooms that I have. So if -- I mean if  
3 they don't, I don't expect necessarily to put  
4 that many in. We're going to see what feels  
5 comfortable.

6 MICHAEL GARDNER: Yes. We like you  
7 to -- and I understand it's a chicken and egg  
8 problem and all that.

9 LUCY VALENA: Yeah, I know.

10 MICHAEL GARDNER: And I also  
11 understand the hour. But I mean, we like you  
12 to come to us with a business plan that's the  
13 real plan that you're wanting to do.

14 LUCY VALENA: Okay.

15 MICHAEL GARDNER: And because we  
16 definitely don't want to issue a license for  
17 more seats than you need intend to fill or  
18 can actually fit.

19 LUCY VALENA: Okay. Well, if the  
20 seating is an issue right now and we can  
21 perhaps deal with all the other things that

1 I'm asking for, and I can -- we can just save  
2 the seating for another time, that's fine  
3 with me.

4 MICHAEL GARDNER: What's your vision  
5 of 30 standing?

6 LUCY VALENA: Sorry, this is my  
7 landlord.

8 LINDA CUSTER: I'm Linda Custer with  
9 Equity Residential.

10 LUCY VALENA: I'm saying the wrong  
11 things right now.

12 MICHAEL GARDNER: I know you've been  
13 here all night, too. I ask you to just spell  
14 your name for the record.

15 LINDA CUSTER: Linda Custer,  
16 C-u-s-t-e-r.

17 MICHAEL GARDNER: And you're the  
18 landlord?

19 LINDA CUSTER: Yes.

20 MICHAEL GARDNER: So I'm not, I  
21 don't understand what the purpose of 30

1 capacity standing is? What's your vision of  
2 what 30 people are going to be doing standing  
3 up.

4 LUCY VALENA: Well, if you came to  
5 my place on a Thursday morning, you would see  
6 that there's a group that meets, for example,  
7 on Thursday mornings. It's an entrepreneurs  
8 group VC, various peoples from the business  
9 development community come and they do, they  
10 mingle with each other in the morning.  
11 There's also like a bar area in the front, or  
12 a counter area I should say. There is a line  
13 that forms so I mean there's -- there  
14 definitely are people standing most of the  
15 day.

16 LINDA CUSTER: You have a  
17 certificate of occupancy?

18 LUCY VALENA: Yes.

19 LINDA CUSTER: And what's the count  
20 on that?

21 LUCY VALENA: It's 105.

1                   LINDA CUSTER: So 105. And you're  
2 going higher than that?

3                   LUCY VALENA: I think I screwed  
4 something up.

5                   LINDA CUSTER: Yeah, I don't think  
6 you are. You aren't changing the number of  
7 seats.

8                   LUCY VALENA: No.

9                   LINDA CUSTER: You weren't changing  
10 the number of occupants? You were just  
11 changing your layout of the way the  
12 restaurant, and you're adding additional  
13 seats because before you had a lot of walking  
14 around area.

15                  LUCY VALENA: Right, and we are  
16 always running out of seats.

17                  LINDA CUSTER: And did you submit a  
18 plan with your seating plan with your  
19 application?

20                  LUCY VALENA: Yes, I did. Sorry.  
21 Cafe operator.

1                   MICHAEL GARDNER: But your current  
2 seating is 36?

3                   LUCY VALENA: Yes. And then 10  
4 outside.

5                   LINDA CUSTER: And one of the things  
6 we think -- when Lucy first opened, like, I  
7 can maybe speak for her just as the  
8 landlord's rep. Her first business  
9 entrepreneur, start up, at Third Square. I  
10 don't know if you guys are familiar with the  
11 building on Third Street, the residential  
12 building with the coffee shop, Abigail's and  
13 Xylem. So that we're like almost one of the  
14 first groups of retailers to open on that  
15 street. And I think what happened is in her  
16 non-experience when she filed for her first  
17 application, she didn't actually file the way  
18 she should have, which would have been to  
19 have the same amount of seats that she, that  
20 you know, the required amount of seats or say  
21 shy was allowed to have 75 seats by the

1 architect, because she was only able to  
2 afford 36 seats, I think she put 36 seats on  
3 her plan. The same thing in her lease, where  
4 she was allowed -- we also as a landlord we  
5 say we want you to be open a minimum amount  
6 of hours. Her lease says seven to seven. So  
7 she filled out seven to seven in the  
8 application. That's just the minimum time we  
9 want her to be open. We're actually okay for  
10 her to be open to nine or ten o'clock at  
11 night. So what happened was she didn't show  
12 her application to me until after. She said  
13 well, when I'm ready to go from beer and  
14 wine, we'll fix all of that. And I think  
15 what we're here to do today is to fix the  
16 occupancy and her layout of her store showing  
17 what she could actually have by law and what  
18 is on your certificate of occupancy, which is  
19 105, right? And 75 seats, and so many  
20 standing and so many people working there.  
21 Just a different layout of where the seats

1           are.

2                   And you have submitted that with your  
3           application. So we're not really changing  
4           the occupancy.

5                   LUCY VALENA: Right.

6                   GERALD REARDON: So does that sound  
7           right, Mrs. Lint?

8                   ELIZABETH LINT: That sounds right.

9                   LUCY VALENA: Thank you very much.

10                  GERALD REARDON: So it's 105  
11           occupancy in this space as it exists  
12           presently?

13                  ELIZABETH LINT: And I have signoff  
14           also.

15                  GERALD REARDON: Okay.

16                   And what you're looking for really is a  
17           change of premise design versus increase of  
18           seats so to speak?

19                  LINDA CUSTER: Correct.

20                  MICHAEL GARDNER: Well, except  
21           there's only -- you're only licensed for 36

1           seats.

2                   LINDA CUSTER: Right. Well, I don't  
3           know the difference legally on that end of  
4           it. I'm not that experienced with that part.

5                   LUCY VALENA: Putting more chairs  
6           in.

7                   ELIZABETH LINT: It's an increase in  
8           seats.

9                   LINDA CUSTER: Yes, exactly.

10                  MICHAEL GARDNER: So tell us about  
11          what happened on October 28, 2011.

12                  LUCY VALENA: We had an art opening  
13          and I had a confusion with the License  
14          Commission as to what sort of paperwork I was  
15          supposed to file with them when I was serving  
16          beer and wine. There was a confusion that I  
17          had that if we were simply giving the alcohol  
18          away and didn't have to -- and weren't  
19          selling it, that we didn't have to have a  
20          license. Basically what I ended up finding  
21          after the fact was I was supposed to have for

1       that night was a letter saying I didn't have  
2       to have a license signed by Elizabeth Lint.  
3       That was what I had a couple of -- for a  
4       couple of openings after this. But then it  
5       was discovered that -- or what she said to me  
6       is that no, now we need to have this license  
7       for every time we're serving alcohol. And  
8       there was also a noise complaint.

9               MICHAEL GARDNER: Was this a 24-hour  
10       license or event license? I'm not sure I  
11       understand.

12              ELIZABETH LINT: Let's back up.  
13              So, she has been doing some one day  
14       events serving beer and wine. The  
15       Commission's policy was always that if you're  
16       not selling it, that you didn't need a  
17       license. I very recently had conversation  
18       with Bill Kelly, the general counsel at the  
19       ABCC. His point of view is that whether  
20       you're selling it or giving it away, if it's  
21       advertised on social media, if it's open to

1       the public, if there's any invitations going  
2       out, that regardless, sale or free, you have  
3       to have a license.

4               MICHAEL GARDNER: Okay.

5               ELIZABETH LINT: So now we issue  
6       licenses.

7               LUCY VALENA: And I've been getting  
8       them ever since.

9               MICHAEL GARDNER: And in October of  
10       2011 you didn't have -- you hadn't contacted  
11       the License Commission to advise them of --  
12       that you were having the event? I'm just  
13       trying to understand.

14              LUCY VALENA: Yeah. I, I was  
15       confused and I didn't do the right thing.  
16       And I respect that I did that. I thought  
17       that because they kept saying you don't have  
18       to have a license, that I didn't have to  
19       contact them. And I should have contacted  
20       them, but I didn't -- that night was -- I  
21       mean, it was a beautiful opening. I mean it

1           was this amazing installation artist. It was  
2           her first solo show, and there was some live  
3           music that we had.

4                     ROBERT HAAS: That you weren't  
5           licensed for?

6                     LUCY VALENA: We have a live  
7           entertainment license.

8                     ROBERT HAAS: Not then, though.

9                     LUCY VALENA: Yes, we did.

10                    ROBERT HAAS: Why did they complain  
11          about the noise then?

12                    LUCY VALENA: Because we have a pair  
13          of grumpy neighbors and it was Avant-Garde  
14          saxophone music which they did not like. In  
15          any case, that's what happened.

16                    MICHAEL GARDNER: So I see that  
17          you're doing business as Voltage Coffee and  
18          Art. So are art installations or art events  
19          an inherent component of the business?

20                    LUCY VALENA: We're a gallery.  
21          We're a full service gallery. And that's a

1       really important part of my business, is  
2       making good art available to the public seven  
3       days a week. You can't go to a gallery every  
4       day, but you can go to a cafe, and we've  
5       found a lot of really wonderful success with  
6       that aspect of the business. We've sold a  
7       good amount of art. A lot of times people  
8       who never bought art before because I think  
9       that it feels a little more possible in my  
10      place. The way that the space is laid out,  
11      the art it feels like a serious art space,  
12      not like a cafe that just has some stuff  
13      thrown up on the walls. But it does feel  
14      approachable.

15               MICHAEL GARDNER: And could you  
16      describe your menu a little to us?

17               LUCY VALENA: It's a fairly simple  
18      menu at this point. The emphasis is on the  
19      coffee for sure. We make all of our own  
20      craft syrups in-house. We have a full menu  
21      of different flavored lattes. Basically

1        we're trying to kind of invite the public in  
2        to specialty coffee which is something that  
3        could be very intimidating to people. So  
4        instead of saying no, you can't have that 16  
5        ounce skim sugar free vanilla latte, we say,  
6        okay, you can have vanilla latte but it's  
7        going to be the best one you ever had. And  
8        along with that we serve amazing espresso.  
9        We serve a variety of single origin coffees  
10       that we do manually one cup at a time. It's  
11       a really -- the emphasis is on the coffee.  
12       We do serve some breakfast foods. We serve  
13       paninis at lunch.

14                With this these changes I would like to  
15       move to having small plates in the afternoon  
16       and evening and desserts as well.

17                MICHAEL GARDNER: So you're -- do  
18       you prepare any food on-site?

19                LUCY VALENA: We do.

20                MICHAEL GARDNER: What do you  
21       prepare?

1                   LUCY VALENA: Paninis for lunch and  
2                   we do a granola parfait, breakfast sandwiches  
3                   in the morning. I mean it's very simple  
4                   food.

5                   MICHAEL GARDNER: What about in the  
6                   evening?

7                   LUCY VALENA: We have some pastries.  
8                   We serve sandwiches until they run out. We  
9                   prepare a certain amount everyday.

10                  MICHAEL GARDNER: So at least it  
11                  sounds to me like now you're mostly a coffee  
12                  specialty shop with a very limited food  
13                  emphasis, and now you want to become not  
14                  really a restaurant but a place that sells  
15                  coffee and beer and wine?

16                  LUCY VALENA: Well more of a  
17                  European style place. Cafes on the West  
18                  Coast is very common for beer and wine  
19                  license to be had. And what we would do is  
20                  we have a couple of different craft breweries  
21                  that we've talked to. We would have a very

1       limited menu, like, you know, two or three  
2       different beers, maybe four or five different  
3       types of wine. It would be very limited and  
4       wonderful. And we would expand the menu a  
5       little bit so that we would have more food  
6       offering in the evening, but we just want to  
7       keep them talking.

8               MICHAEL GARDNER: And what's your  
9       experience in managing or being involved with  
10      a facility that sells alcohol?

11             LUCY VALENA: I've had very small  
12      amount of bartending experience years ago.  
13      I'm registered for a bartender training  
14      class. I have taken one in the past as well,  
15      but to get the TIPS Certification. And  
16      that's the extent.

17             MICHAEL GARDNER: Do we have any  
18      letters of support or --

19             ELIZABETH LINT: I have nothing  
20      against. I have a letter of support from  
21      Councillor Toomey who feels it's a reasonable

1 request that would allow Lucy to serve  
2 patrons who may desire wine or beer with  
3 their food or dessert. As Kendall Square  
4 continues to grow new and existing  
5 businesses, must adapt to the growing  
6 competition in the area. He thinks it's a  
7 reasonable request that will help Voltage  
8 remain a vibrant Kendall Square location.

9 ROBERT HAAS: So I'm just trying to  
10 figure out, you'd sell beer and wine for  
11 breakfast?

12 LUCY VALENA: No.

13 ROBERT HAAS: You said after seven  
14 o'clock or eight o'clock.

15 LUCY VALENA: I said that in my  
16 application?

17 ROBERT HAAS: Starting after eight  
18 o'clock.

19 LUCY VALENA: Beer for breakfast.

20 ROBERT HAAS: That's what I'm  
21 reading. What you're asking for is alcohol

1 service.

2 LUCY VALENA: Okay. I clearly, I  
3 clearly -- that's not what's going to happen.

4 ROBERT HAAS: So when do you plan on  
5 starting to serve beer or wine?

6 LUCY VALENA: Noon.

7 ROBERT HAAS: Noontime?

8 LUCY VALENA: Yeah, that's a  
9 reasonable time.

10 MICHAEL GARDNER: I'm a little  
11 concerned about your level of experience and  
12 sort of lack of understanding of at least  
13 what our needs are or -- and the, I guess the  
14 general confusion here this evening. We  
15 haven't talked about the 20 patio seats. Do  
16 you have 10 patio seats, do I understand that  
17 right?

18 LUCY VALENA: Yes, I have 10 patio  
19 seats.

20 MICHAEL GARDNER: Are they on city  
21 property or private property?

1 LINDA CUSTER: Private property.

2 MICHAEL GARDNER: Who, if anybody,  
3 has indicated that there's room for 20?

4 LUCY VALENA: There aren't that many  
5 tables outside. Anybody can come and look.  
6 It's pretty.

7 LINDA CUSTER: You had a plan with  
8 20 tables? Do you have a plan with 20  
9 tables?

10 LUCY VALENA: The plan?

11 LINDA CUSTER: Yeah.

12 LUCY VALENA: Says 20 tables. 20  
13 seats.

14 LINDA CUSTER: 20 seats.

15 MICHAEL GARDNER: I assume not 20  
16 tables, it's 20 seats.

17 LUCY VALENA: Yeah.

18 MICHAEL GARDNER: Do I understand  
19 the application that you do not intend to  
20 serve alcohol on the patio?

21 LUCY VALENA: Absolutely not. No,

1 we won't do that.

2 LINDA CUSTER: Right, correct.

3 MICHAEL GARDNER: Any other  
4 questions for the applicant?

5 GERALD REARDON: How long have you  
6 been at this location?

7 LUCY VALENA: Two years.

8 GERALD REARDON: Two years? Things  
9 are going pretty well in terms of volume?

10 LUCY VALENA: Yeah. I mean, I just  
11 love the ideas and the conversations that I  
12 hear all day when I'm there. I hate kicking  
13 them out at night. You know, they are like  
14 having these wonderful dialogues and what I  
15 would love to do is just give them a point  
16 and let them continue, you know?

17 MICHAEL GARDNER: Do you kick them  
18 out and seven p.m. now?

19 LUCY VALENA: Uh-huh, absolutely.

20 ROBERT HAAS: How does it sit with  
21 your neighbors that have already had concerns

1           about your operation?

2                   LUCY VALENA: Well, I think the main  
3 concern was the live music, and I haven't had  
4 any at all for a while because I was so tired  
5 of talking to them frankly. I would like to  
6 keep my live music license, but I don't plan  
7 on using it for a while.

8                   ROBERT HAAS: But if you moved it  
9 inside as opposed to having it outside?

10                  LUCY VALENA: What did you say?

11                  ROBERT HAAS: If you moved it inside  
12 as opposed to having it outside?

13                  LUCY VALENA: It is inside.

14                  ROBERT HAAS: Moving it out on the  
15 street or people on the --

16                  LUCY VALENA: That was the one crazy  
17 time.

18                  ROBERT HAAS: Oh, so you haven't had  
19 it on the outside?

20                  LUCY VALENA: No, no, no. That's  
21 not a thing.

1                   Yeah, that happened, I was talking to  
2                   the officers, and the next thing I knew the  
3                   saxophonist had moved across the street.  
4                   Sounds surreal, doesn't it? It was pretty  
5                   surreal.

6                   ROBERT HAAS: Okay.

7                   MICHAEL GARDNER: Are there any  
8                   members of the public who would like to be  
9                   heard on this matter? Please come forward,  
10                  state and spell your name for the record.

11                  JAIMIE VAN SCHYNDEL: Jaime Van  
12                  Schyder. J-a-i-m-e v-a-n S-c-h-y-n-d-e-l.  
13                  I'm the owner of Barismo and Dwelltime. So  
14                  I'm next. I've known Lucy for the last two  
15                  years. I actually have worked with her in  
16                  the community, and there's a lot of space, so  
17                  as far as Voltage expanding the seating, you  
18                  have to understand it's an art gallery that  
19                  has a tables that are spaced out quite a bit.  
20                  There's a large patio area out front. So,  
21                  you know, I'm fully in support of that and I

1 think that kind of makes a ton of sense for  
2 the space. As far as the -- I voice my  
3 support for the beer and wine. I know the  
4 staff there. They're competent. They're  
5 capable. If you set down the terms that they  
6 have to live up to, I've trained a lot of  
7 those people. I worked with them on the  
8 coffee end of things. I think it's a  
9 reasonable risk. I don't, I would put my,  
10 you know, my personal, whatever weight that  
11 has. I know I've been in here a few times.  
12 But, you know, I would say that that's not an  
13 unreasonable risk. It is a model that you  
14 see more and more in places like Brooklyn  
15 where kind of these coffee shops are a little  
16 confusing in what we do, and it's hard to lay  
17 out into a neat package that fits into  
18 categories in such a coffee bar that's an art  
19 gallery. Yeah, so that's -- I am completely  
20 in support of that.

21 MICHAEL GARDNER: Thank you very

1 much.

2 When did you expect to complete your  
3 bartender course?

4 LUCY VALENA: December 1st.

5 MICHAEL GARDNER: When would you be  
6 ready to change the business model and sell  
7 the beer and wine and also change the  
8 seating?

9 LUCY VALENA: I think New Year's  
10 would be reasonable.

11 MICHAEL GARDNER: Thank you.

12 Pleasure of the Commission?

13 GERALD REARDON: I make a motion to  
14 approve the Voltmeter, LLC, d/b/a Voltage  
15 Coffee and Art, 295 Third Street for seats to  
16 125.

17 ELIZABETH LINT: It should be 105.

18 GERALD REARDON: Excuse me 75 seats  
19 inside, 30 standing, 20 patio seats without  
20 alcohol service.

21 Do we need to specify the hours of the

1 alcohol?

2 ELIZABETH LINT: You can.

3 GERALD REARDON: Obviously I would  
4 say, I would suggest it doesn't start before  
5 eleven a.m.

6 LINDA CUSTER: You want to say  
7 eleven?

8 LUCY VALENA: Eleven sounds great.

9 MICHAEL GARDNER: I guess I would  
10 ask you if you would be willing to include a  
11 provision of -- I would think is it a  
12 three-month review after opening because of  
13 the -- what I think is the extreme  
14 inexperience of the owner in this business,  
15 and I encourage that you get some inspections  
16 in before the three months is done. So that  
17 would be my suggestion.

18 GERALD REARDON: That's fine.

19 ELIZABETH LINT: And 21-Proof  
20 training.

21 GERALD REARDON: 21-Proof training.

1                   MICHAEL GARDNER: And I would  
2 suggest not to begin before January 1st just  
3 in terms of what she said.

4                   ELIZABETH LINT: We would likely not  
5 have it back from the ABCC by then.

6                   MICHAEL GARDNER: So I'll second  
7 that motion with those changes.

8                   All those in favor signify by saying  
9 "Aye."

10                  ROBERT HAAS: Aye.

11                  GERALD REARDON: Aye.

12                  MICHAEL GARDNER: Aye.

13                  None opposed.

14                  Good luck with the new venture. Sounds  
15 like you're doing a very nice job with the  
16 model that you've got. But we are not in the  
17 business of opening bars. We like to open  
18 restaurants that serve alcohol. And I'm a  
19 little concerned as the wear on that  
20 continuum that you are, and we will  
21 definitely be interested in looking at what

1           you're in fact food offerings are.

2                   LUCY VALENA:   Okay.

3                   MICHAEL GARDNER:   Good luck.

4                   LUCY VALENA:   Thank you so much.

5                   LINDA CUSTER:   I would just like to  
6           say that Equity Residential will be also, you  
7           know, as her landlord a reputable large  
8           company, will be watching Lucy and helping  
9           her and making sure that, you know, she's  
10          following whatever rules are set out. And we  
11          also have rules that she needs to follow,  
12          too, as part of her lease. And, you know, we  
13          take great interest in our tenants and our  
14          stores and in our community and we'll be  
15          there to help as well.

16                   MICHAEL GARDNER:   Thank you. I'm  
17          sorry I didn't give you the opportunity to  
18          speak before.

19                   LINDA CUSTER:   That's okay. It's  
20          easier now.

21                   Thank you.

1                   MICHAEL GARDNER: All right. Well,  
2                   good luck.

3                   LUCY VALENA: Thank you.

4                   ELIZABETH LINT: Application,  
5                   Barismo, Incorporated, doing business as  
6                   Dwelltime, Jaime Van Schyndel, Manager,  
7                   holder of a common victualer license at 364  
8                   Broadway has applied for an increase of  
9                   seating from 20 to 40.

10                  MICHAEL GARDNER: So I think you  
11                  have already stated and spelled your name for  
12                  the record, so I assume the stenographer is  
13                  okay with that. So tell us about the  
14                  business that you've got now and what leads  
15                  you to want to increase it by a hundred  
16                  percent.

17                  JAIME VAN SCHYNDEL: Well, we're a  
18                  lot busier than we thought we were going to  
19                  be. And the biggest complaint is the lack of  
20                  seats. I've had some customers compare it to  
21                  a torture test of how much open space there

1 is in the place. But, yeah, we're just a lot  
2 busier. We have a full-time dishwasher now,  
3 and a lot of plate service. We're kind of a  
4 weird business. It's a little bit hard to  
5 explain just how much sit down --

6 MICHAEL GARDNER: Well, tell us the  
7 kinds of food you sell and your hours of  
8 operation.

9 JAIME VAN SCHYNDEL: Sure.

10 MICHAEL GARDNER: Just a little bit  
11 more background.

12 JAIME VAN SCHYNDEL: Yeah, seven to  
13 seven weekdays. Shorter hours on the  
14 weekends. It's nine to -- sorry, eight to  
15 six, nine to six on Saturday/Sunday. We got  
16 a lunch program, we do a couple of soups, a  
17 you know, six/seven sandwiches, a couple  
18 salads. It changes. It's kind of seasonal.  
19 You know, it's -- lunch is pretty good. We  
20 do have a lot of problems with seating at  
21 lunch. We turn off the WI-FI. We get a

1        little bit of a backlash for that, but in  
2        generally speaking lunch numbers are still,  
3        you know, growing. We're still, normally  
4        seven, eight months in with that. Coffee's  
5        the main part of the program. We do  
6        pour-overs that range, or drip coffee we call  
7        it, you know. It ranges from \$3 a cup to  
8        about \$4 a cup for single stay coffees. We  
9        have multiple espressos on tap that go  
10       anywhere from 2.50 from a regular espresso to  
11       3.50 for something with more of a story. So  
12       we take a lot more time to make a better  
13       product and, you know, try to present it with  
14       as much storing and as much craft as we can.  
15       So we are a coffee bar that serves a lot of  
16       lunch and everything tails off around  
17       five-ish and we get out of there by seven.

18                MICHAEL GARDNER: And how are you  
19       going to fit these seats in?

20                JAIME VAN SCHYNDEL: We have plenty  
21       of square footage. You know, right now it

1 looks very vacant with the layout the way it  
2 is. It can be kind of intimidating because  
3 there's so much bar space. We're just going  
4 to add a couple more tables and possibly, you  
5 know, tossing around the idea -- we have a  
6 standing bar around the counter area. And  
7 we're thinking about putting a couple of  
8 seats on that because on the weekends it's  
9 used but during the weekdays people don't  
10 really use it. So having something where  
11 people can kind of sit at the counter and be  
12 closer to the line and action of people  
13 making drinks.

14 MICHAEL GARDNER: Drinks you mean  
15 coffee?

16 JAIME VAN SCHNYDER: Coffee. Not  
17 just for alcohol.

18 MICHAEL GARDNER: Do we need a more  
19 definite seating plan?

20 ELIZABETH LINT: I have Zoning  
21 signoff on it.

1 And do you have a floor plan?

2 JAIME VAN SCHYNDEL: I don't. I can  
3 draft something up.

4 ELIZABETH LINT: Yes, we would need  
5 a floor plan.

6 JAIME VAN SCHYNDEL: Sure. Yeah,  
7 the -- I didn't bring all the stuff that we  
8 had brought to Zoning. I know there's no  
9 opposition as far as, as far as I'm aware.  
10 And Ranjit was in support.

11 MICHAEL GARDNER: And do you have a  
12 service contract?

13 ELIZABETH LINT: Yes, I do.

14 MICHAEL GARDNER: Can we act without  
15 a seating plan?

16 ELIZABETH LINT: Yes.

17 JAIME VAN SCHYNDEL: I can bring  
18 something, you know, and submit that.

19 GERALD REARDON: And what is your  
20 certificate of occupancy list now?

21 JAIME VAN SCHYNDEL: At this hour, I

1 don't have it in front of me.

2 ELIZABETH LINT: Zoning signed off  
3 for 40.

4 GERALD REARDON: They did. Okay.

5 JAIME VAN SCHYNDEL: Yeah. They  
6 said it was one of the most complete  
7 applications and presentations than they ever  
8 received with many, many hundred signatures.  
9 And a lot of people showed. Up and one of my  
10 neighbors did not show up with pom-poms as he  
11 had at the licensing hearing.

12 MICHAEL GARDNER: So should we feel  
13 slighted that all these people didn't stick  
14 around and come to us?

15 JAIME VAN SCHYNDEL: No.

16 ELIZABETH LINT: Yeah.

17 JAIME VAN SCHYNDEL: Yeah. If this  
18 is a record, I've been here for two that have  
19 been quite, quite to the end, but no problem  
20 with it. So, yeah, that's just been the  
21 biggest complaint. We just get a lot of

1 negative reviews about what looks like where  
2 there should be seats and there's just  
3 literally potted plants covering the space.

4 MICHAEL GARDNER: Okay. Any other  
5 questions?

6 ROBERT HAAS: No questions.

7 MICHAEL GARDNER: Are there any  
8 members of the public who would like to be  
9 heard on this matter briefly?

10 LUCY VALENA: I don't really,  
11 Jaime's awesome and does -- he does wonderful  
12 things and he does a great job. Everybody  
13 loves Barismo and Dwelltime and loves what  
14 they're doing and furthering the awesomeness  
15 of Cambridge being awesome.

16 MICHAEL GARDNER: If he's coffee and  
17 you're coffee, aren't you competitors?

18 LUCY VALENA: No, I sell his coffee.

19 JAIME VAN SCHYNDEL: We have the  
20 roastery, and I worked at a lot different  
21 shops. It's kind of -- we're all a very

1           tight community.

2                   LUCY VALENA: We're all in it  
3 together. We're all against the big guys.

4                   MICHAEL GARDNER: Seeing no other  
5 members of the public who'd like to be heard,  
6 the pleasure of the Commission?

7                   GERALD REARDON: Make a motion to  
8 approve increase in seating from 20 to 40.

9                   MICHAEL GARDNER: I'll second the  
10 motion.

11                   Any discussion?

12                   (No Response.)

13                   MICHAEL GARDNER: Hearing none, all  
14 those in favor signify by saying "Aye."

15                   ROBERT HAAS: Aye.

16                   GERALD REARDON: Aye.

17                   MICHAEL GARDNER: Aye.

18                   None opposed. So I don't know if the  
19 wait was worth it, but you're ready with  
20 this. So good luck with the expanded  
21 operation.

1 JAIME VAN SCHYNDEL: Thank you.

2 ELIZABETH LINT: Ratifications.

3 Sale of 213, finance of 213, and  
4 refinance of 194, 188, 116, 144, 45, and 85.  
5 Paperwork's all in order.

6 ROBERT HAAS: Motion to accept.

7 MICHAEL GARDNER: There's a motion  
8 to accept the ratifications approved by the  
9 Executive Director. I'll second it.

10 Any discussion?

11 (No Response.)

12 MICHAEL GARDNER: Hearing none, all  
13 those in favor signify by saying "Aye."

14 ROBERT HAAS: Aye.

15 GERALD REARDON: Aye.

16 MICHAEL GARDNER: Aye.

17 None opposed.

18 So thank you, Ms. Lint for that.

19 Any other business before us?

20 GERALD REARDON: Motion to adjourn.

21 MICHAEL GARDNER: Motion to adjourn.

1 I'll second.

2 All those in favor signify by saying

3 "Aye."

4 ROBERT HAAS: Aye.

5 GERALD REARDON: Aye.

6 MICHAEL GARDNER: Aye.

7 And we're adjourned at approximately

8 11:28.

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BRISTOL, SS.

I, Catherine Lawson Zelinski, a  
Certified Shorthand Reporter, the undersigned  
Notary Public, certify that:

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in this matter by blood or marriage and that  
I am in no way interested in the outcome of  
this matter.

I further certify that the testimony  
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IN WITNESS WHEREOF, I have hereunto set  
my hand this 23rd day of November 2012.

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Catherine L. Zelinski  
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