



# CAMBRIDGE LICENSE COMMISSION

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POLICE COMMISSIONER | BOARD MEMBER

GERARD E. MAHONEY  
FIRE CHIEF | BOARD MEMBER

ELIZABETH Y. LINT  
EXECUTIVE DIRECTOR

## MEMORANDUM

**TO:** Louis E. DePasquale, City Manager; Nancy E. Glowa, City Solicitor; Arthur Goldberg, Deputy City Solicitor; Samuel Aylesworth, First Assistant City Solicitor; and Keplin Allwaters, Assistant City Solicitor

**FROM:** Nicole Murati Ferrer, Esq., Chair of Board of License Commissioners

**CC:** Branville G. Bard, Jr., Police/License Commissioner; Gerard E. Mahoney, Fire Chief/License Commissioner; and Ranjit Singanayagam, ISD Commissioner

**DATE:** March 9, 2021

**RE:** Home Rule Petition to Eliminate Certain Licensing Requirements of G. L. c. 140, § 183A

Pursuant to the comments raised during the City Council meeting of February 22, 2021, regarding the Board of License Commissioners' (the "Board") communication regarding the above-referenced, the Board further discussed the matter during its meetings of March 1 and 9, 2021.

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

The main issue of safety, including not blocking the ingress/egresses, pathways or minimal ADA space requirements, large crowds, remain at the forefront and must be reviewed to ensure the safety of employees, patrons, public, and first responders. Noise, especially in dense Cambridge where mixed-use and mixed-zoning are common, is of particular concern for the reasons previously stated including the fact that City residents already complain about church services at 3:00 p.m., background music on gasoline pumps, background music at grocery stores and restaurants, and already licensed acoustical music without amplification. Allowing a public and licensing process for businesses required to be licensed under c. 138 and 140 by which affected abutters may provide input is crucial in establishing and ensuring, public need, common good, and harmonious relationships between businesses and residents.

During its meeting the Board discussed how it was implied during the City Council meeting that this amenity is not accessible to any type of business. That is not an accurate statement as to licensing. It is, currently, an accurate statement as to zoning. Due to zoning, the amenity is not available to many businesses, including even the "typical" business that would request such an amenity, i.e. a restaurant. Acoustical music with no amplification has always been accessible and something the Board has allowed when appropriate, even in places like a retail store. The process to obtain a license, at least for the last 4+ years, has been incredibly accessible in that the application is online, it is streamlined so that the applicant does not have to go to multiple departments, and follows an open and transparent process.<sup>1</sup>

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<sup>1</sup> Aside from going to the License Department, for one day licenses it goes to the police (and depending on the event may be forwarded to Fire for safety review) and for annual licenses there is an initial zoning review (and after Board approval, to Inspectional and Fire).

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At least during this time, there have been no accessibility issues identified or an identification of the process being difficult or cumbersome as to licensing. If the zoning laws are changed to allow this amenity without any zoning impediments as City Solicitor Glowa stated might be the case with the current pending zoning ordinance changes, then the only roadblock requiring additional permitting and processing for this amenity (i.e. obtaining a special permit/variance) would be eliminated.

The Board recognized that the City Council's intent is to have businesses that would not necessarily apply for this type of license, i.e. bookstores, markets, etc., operate this amenity as a matter of right.<sup>2</sup> The Board acknowledged these types of businesses are of a different character and do not operate like those licensed under c. 138 and 140. Specifically, these types of businesses do not have areas where patrons usually congregate for the sole purpose of entertainment, or consuming food or drinks (meaning, they usually do not have a separate space for people to sit or stand and "watch the show"), rather they have the patrons roaming around the business while they are shopping. Considering that these businesses are meant to have patrons come in and out, and not remain on site for prolonged times while they eat, drink or dance, the amenity would be to attract customers and entertain them while shopping. It would be like when there is a street performer on the sidewalk and people walk by and sometimes stand to look but eventually leave.

Although the Board, Inspectional Services ("Inspectional") and Fire Departments can see the value in having this amenity available as a matter of right, the considerations around safety and noise remain. In terms of safety, specifically because this type of business is not licensed and floor plans are not necessarily reviewed for this type of activity when submitted to the Inspectional and Fire Departments, it is of concern that the amenity would be added without a fire safety, fire prevention and a building review. This is because even if the business does not change its type, i.e. the clothing store does not become an entertainment venue, the space will nonetheless need to be reconfigured or evaluated to ensure there is space to add the live performers and any person that decides to come in, linger, and observe.

As such, the Board proposed to create a separate application for any business not licensed under c. 138 and 140 where they can apply to add this amenity. The application would be received by the License Commission, Inspectional and Fire Departments simultaneously. It would be reviewed by the designees and once Fire and Inspectional approve it, the license would be issued administratively by the License Commission. The license would have the recommended limitations on the hours of operation, number of musicians and sole amplification of one microphone. Having a license is important as it will give the City a mechanism to control any issues that arise due to the added amenity. It will provide security for the residents in the area if negatively impacted by the added amenity.

In terms of noise, the issue remains regardless of the type of business for the reasons stated. The Board's recommendation on the issue is to have the Noise Ordinance amended so that there is a

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<sup>2</sup> The Board has received requests from these types of businesses in the past usually in the form of one-day license applications.

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more streamlined mechanism to take action for violations due to the noise generated for acoustical performances, i.e. ticketing, by responding Police Officers, License, Fire, Inspectional Inspectors/Investigators or the designees of the License, Police, Fire and Inspectional Departments. Keeping the matter actionable under the Noise Ordinance ensures a balance between the rights of the businesses and that of residents.

In terms of hotels, restaurants, bars, alcohol establishments and entertainment venues, the Board remains on the same page in terms of keeping the current public process, license and enforcement. The one change the Board implemented was to eliminate the need to advertise the application on the newspaper prior to the hearing. Instead, the applicant will be required to notify abutters at least 7 days prior to the hearing before the Board and submit an affidavit of notice to abutters with the application. This will ensure abutters are still provided an opportunity to express their concerns or support without delaying the application process due to the newspaper's deadline on advertisements (it will also decrease the cost of the application by \$75.00).

The Board also discussed changing the fees associated with the license. As to one-day licenses, in August 2018 the Board sent a response to the City Council regarding its nominal \$50.00 flat rate one-day fee for any type of entertainment. The Board notes this fee is quite nominal based on the costs of review and enforcement, however, in light of the interest of having this amenity more widely used, the Board voted to change the one-day entertainment license fee for acoustical music with no amplification except for one microphone to \$25.00/3months, regardless of how many times it is used. In that same vein, the annual license for this particular amenity in retail businesses not licensed under c. 138 & 140 would be \$100.00.

The Board also voted to reduce the annual license fee for this amenity within c. 138 and 140 establishments to \$100.00 as of January 1, 2022 (including the 2022 renewals). The Board committed into looking whether the annual and renewal fees could be changed forthwith considering the renewal of those types of licenses have already been paid for 2021. A request for a legal opinion on the matter has been submitted.

In sum, the Board decided: (1) The concerns raised on February 10, 2021 and memorialized in the February 12, 2021 memorandum remain and are unchanged as to businesses required to be licensed under c. 138 & 140. (2) The Board eliminated the requirement for advertising on the newspaper applications for annual entertainment licenses, including live entertainment. (This will eliminate the cost of advertising and delay caused by having these advertised but still allow for the public process). Notification will now be to abutters 7 days prior to the hearing (to allow abutters to attend or submit comments to the Board prior to the hearing) and an affidavit of notice to abutters will be submitted for with the application. This is for annual applications only. (3) An application for live acoustical music with no amplification, except one microphone, will be created for businesses not generally licensed under c. 138 or 140. That application will be reviewed simultaneously by License, Fire and Inspectional and upon approval by Inspectional and Fire, the license will be administratively issued

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by License (after payment of a nominal fee, \$25.00/3 months, \$100.00/annually).<sup>3</sup> (4) The Board respectfully asks the City Manager to relay to the City Council the Board's recommendation that the Noise Ordinance be amended so that there is a more streamlined mechanism to take action for violations due to the noise generated for acoustical performances, i.e. ticketing, by responding Police Officers, License, Fire, Inspectional Inspectors/Investigators or the designees of the License, Police, Fire and Inspectional Departments (rather than having the matters be presented to the Board before a hearing). (5) As of 2022, the annual license/renewal fee for acoustical music with no amplification, except one microphone, for all license types will be \$100.00. (6) The Board, through the Chair, will work with the City Solicitor to determine whether there is any mechanism by which the change in #5 can be implemented effective immediately considering c. 138 and 140 licensees have already submitted their renewals and licensing fees.

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<sup>3</sup> This process of review assumes there are no zoning impediments, and hence, no zoning review is necessary. If zoning review is necessary, zoning would be added to the review process.