



# CAMBRIDGE CITY COUNCIL

Jan Devereux  
City Councillor

May 18, 2016

Dear Fellow City Councillors,

I would like to explain why I filed for reconsideration of the order we adopted on May 9th pertaining to proposed changes to the city's liquor licensing regulations.

The order, which we amended on the floor, reads:

WHEREAS: The Licenses Commission is proposing changes to the current liquor license regulations; and

WHEREAS: The City Council has a policy regarding building community effort (sic) and street activation; now therefore be it

ORDERED: That the Public Safety Committee schedule a public hearing with the License Commission to discuss the proposed changes to the current liquor license regulations and the City Council policy goals on liquor licenses, economic development, the impact on neighborhoods and local businesses; and be it further

ORDERED: That the City Manager be and hereby is requested to instruct the License Commission to refrain from any liquor license regulation changes until the hearing is held by the Public Safety Committee.

ORDERED: That this is referred to the Public Safety Committee.

Two concerns prompted me to file for reconsideration.

The first lies with the legal implications of the second "ORDERED." The License Commission has publicly acknowledged that some of our current regulations contradict state law, and has proposed changes to bring our regulations into compliance. In instructing the License Commission not to make any changes prior to a council committee hearing, are we perpetuating, even condoning, the Commission's non-compliant practices? I think that it is the Commission's duty and obligation to bring our liquor licensing regulations back into compliance with state law as soon as possible, and that further delay only compounds a longstanding problem.

Thus, I would like us to consider amending the adopted order to strike the second "ORDERED" and to replace it with this:

ORDERED: That the License Commission immediately cease enforcing any liquor licensing regulations that do not comply with state law, and that it continue to meet and to hear public comment on any other proposed changes, as planned.

Among the current regulations that do not comply with state law and which the License Commission seeks to change are the enforcement of “cap” areas and the issuance of “no-value, non-transferrable” licenses. Since 1982 Cambridge has not been subject to a liquor license quota and the creation of cap areas, in 1986, and a two-tier value system, in 2006, have served to create a licensing process that may, in fact, undermine the Council’s economic development and street activation goals — and one whose fee structure and lack of transparency has not always served the public good. For example, the fees for “no-value, non-transferable” licenses are significantly higher than the fees for licenses that may be sold and transferred with a restaurant business, and the Commission acknowledges that its enforcement of the caps has been inconsistent. These non-compliant practices have produced a licensing system that is financially disadvantageous for about half of the 256 current liquor license holders and difficult to navigate for the uninitiated.

Further, I would like us to consider amending the order to add this:

ORDERED: That the City Manager be and hereby is requested to conduct a full review of the License Commission’s legal authority to approve changes to liquor licensing regulations.

Specifically, I would like us all to understand whether the City Council, as the city’s sole legislative body under our Plan E Charter, ever voted to cede its power to the License Commission to *approve* changes to the city’s liquor licensing regulations, or if it is even within our power to delegate this authority. It is within the Commission’s power to *recommend* changes to the Council, but it appears to have been the practice, up to now, for the Licenses Commission to assert a legislative authority that goes beyond regulatory enforcement. In light of the Commission’s acknowledged history of non-compliant practices, I feel that knowing with legal certainty which body has final *approval* over substantive changes to the city’s liquor licensing regulations is essential to informing our discussion at the coming Public Safety Committee hearing and beyond.

I encourage you all to carefully read the License Commission’s detailed summary and rationale for its proposed changes. It is posted on the Commission’s webpage, and I attach a copy here for your convenience. I make these suggestion in the interest of promoting greater transparency and accountability as our discussion continues on how best to achieve the Council’s policy goals and serve the public good with regard to liquor licensing.

Sincerely,



Jan Devereux  
City Councillor

Nicole Murati Ferrer  
Chairperson

Chief Gerald R. Reardon  
Fire Department  
Commission Member

Commissioner Robert C. Haas  
Police Department  
Commission Member

## CAMBRIDGE LICENSE COMMISSION

831 Massachusetts Avenue, First Floor, Cambridge, Massachusetts 02139



City of Cambridge

Elizabeth Y. Lint  
Executive Director

### COMMISSION'S EXPLANATION AS TO PROPOSED CHANGES IN RULES

*The following is a summary of the Commission's general responses, thoughts and further edits/additions as to the proposed changes in rules. To facilitate, we are incorporating this into the previously published "Expanded List of Changes." Please note that based on the Commission's discussion of May 2, 2016, some further edits were proposed and those have been detailed herein.*

*Public comments for the Commission's consideration can be mailed to 831 Massachusetts Avenue, Cambridge, MA 02139, emailed to [License@cambridgema.gov](mailto:License@cambridgema.gov), or faxed to (617) 349-6148. The Commission will accept written comments until May 31, 2016. Public comments will be accepted for a limited time during the Commission's meetings of May 10, 2016, and May 24, 2016.*

*The Commission will not take a vote on adopting any changes prior to May 31, 2016.*

#### The proposed changes:

1) Add Common Victualler and Innholders/Lodging Houses licensees as part of the types that are governed by the rules.

*Commission: The rules apply to these types of licensee which currently have no rule book to assist them in knowing what is expected of them.*

2) Edit the following rules but do not change the substance: 2, 3, 4, 5, 6, 7, 8, 12, 14, 15, 16, 18, 32, 33, 35, 36, 39, 43, 45, 46, 47, Rule 3 of Noise Section, Rule 2 of Entertainment Section, and Addendum C.

*Commission: Semantic type changes to make rules clearer.*

3) Do not change the following rules: 10, 11, 22, 23, 24, 30, 41, 44, and 45.

*Commission: Make sense as written, no need to change.*

#### Proposed Substantive Changes:

1) **Current Rule # 1:** The owner and/or Manager of Record shall be totally responsible for any violations or infractions of the law, these rules and regulations, and disorders or disturbances of any kind which take place on the licensed premises whether or not they are present, including the actions of employees and/or entertainers.

**Commission:** *Edit to have licensee and manager responsibility separated. Re-write as to licensee to mirror language of 204 C.M.R. 2.05(2); write Commission's expectation as to manager responsibility.*

**Proposed Rule #1:** No licensee shall permit any disorder, disturbance or illegality of any kind to take place in or on the licensed premises. The licensee shall be responsible therefor whether present or not.

**Proposed second part of Rule #1 (expansion):** The License Commission expects the Manager of Record to be the person in control of the premises on any given day or time and who is there to ensure compliance with all applicable laws and Rules and Regulations. Approved Managers of Record will be held accountable by the License Commission whether or not present at the premises at the time of a disorder, disturbance or illegality of any kind.

**2) Current Rule # 9:** If the licensed premises are to be closed for any reason or become inactive, the owner must notify the License Commission in advance, and state in said notice the reason and length of such closing. A hearing must be held for permission to be closed. No alcoholic beverage establishment licensee may close for any reason other than the following:

- After a request to the License Commission for closing in order to do renovations/or other special circumstances
- On holidays in accordance with the calendar issued by the Alcoholic Beverage Control Commission
- Due to an act of nature

**Commission:** *Separate rule and include language of G. L. c. 138, §§ 64, 67, 77. Expand the rule to include that closures are allowed for declared state of emergency.*

**Proposed Rule #9:** If the licensed premises are to be closed for any reason or become inactive, the licensee or its representative must request permission from the License Commission in advance, and state in said request the reason and length of such closing. A hearing may be held for permission to be closed. At any time, the License Commission retains the right to call the licensee in for a hearing to discuss the closure or non-use of the license, and in such cases, the licenses may be subject to cancellation for non-use.

**Proposed second part of Rule #9 (expansion):** No licensee may close for any reason other than the following:

- (a) After a request to the License Commission for closing in order to do renovations/or other special circumstances.
- (b) After obtaining approval from the License Commission to conduct an event that is closed to the public.
- (c) On holidays in accordance with the calendar issued by the Alcoholic Beverage Control Commission or any holiday observed by the State, Municipal or Federal Government, or any observed religious holiday.
- (d) Due to an act of nature or declared state of emergency.

**3) Current Rule # 19:** All licensed liquor establishments must maintain an updated employee roster that shall be available upon request to authorized agents of the License Commission.

**Commission:** Expand rule such that the rosters/lists specify which employees were on duty on a given date/time and who, when applicable, was the crowd manager. Also, require the lists/rosters be kept for a minimum of 60 days. This will assist with investigations.

**Proposed Rule # 19:** All licensees must maintain an updated employee roster or list that shall be available upon request to the License Commission and its agents, and Cambridge police, fire, and inspectional service departments' agents. The roster/list must identify all employees, specify which employee is on duty on a particular date and time, and, when applicable, who was the crowd manager. The roster/list for any given day must be kept a minimum of sixty (60) days.

4) **Current Rule #20:** No licensee may require any person to pay a minimum charge or cover charge unless a sign is conspicuously posted at every entrance stating that a minimum charge or cover charge shall be charged and also stating the amount of charge. Cover charge means all admission fees or admission charges. This does not prohibit advance ticket sales.

**Commission:** Edits rule to track language of G. L. c. 140, § 183D.

**Proposed Rule #20:** No licensee may require any person to pay a minimum or cover charge unless a sign is conspicuously posted at every entrance stating in letters no less than one inch in height: that a minimum or cover charge will be imposed; the amount of charge; that there is no minimum charge for alcoholic beverages; and the admission charge shall not be credited towards the purchase price of any alcoholic beverage. Cover charge means all admission fees or admission charges. This does not prohibit advance ticket sales. No licensee may impose a cover or minimum charge on any person less than thirteen (13) years old.

5) **Current Rule #21:** No minimum charge for the purchase of alcoholic beverages is allowable. A licensee may not set a minimum amount of alcohol to be purchased or consumed by a patron. All licensees shall maintain a schedule of the prices charged for all drinks to be served.

No licensee or employee shall:

Offer or deliver any free drinks to any person or group of persons;

Deliver more than two drinks to one person at one time;

Sell, offer to sell or deliver to any person or groups of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week;

Offer to sell or deliver malt beverages or mixed drinks by the pitcher except to two or more persons;

Increase the volume of alcoholic beverages contained in a drink without increasing

proportionally the price regularly charged for such drink during the same calendar week;

Allow any game or contest that involves drinking or the awarding of drinks as prizes.

**Commission:** Edit and separate the rule; re-write so that the language used mirrors the ABCC's prohibited practices, 204 C.M.R. 4.00. Also incorporate current Rule #11 because it relates to the same prohibited practices and would be duplicative to have it as another rule.

**Proposed Rule #21:** It is prohibited to have a minimum charge for the purchase of alcoholic beverages. A licensee cannot set a minimum amount of alcohol to be purchased or consumed by a patron. All licensees shall maintain a schedule of the prices charged for all drinks to be served and consumed on the premises.



**Proposed second part of Rule #21 (expansion):** Licensees and their employees or agents, are prohibited from engaging in, permitting, promoting or advertising any of the following:

- (a) Offering or delivering any free alcoholic drinks to any person or group of persons;
- (b) Selling or delivering more than two (2) drinks to one person at any one time;
- (c) Allowing a patron to possess or have in front of him/her more than two (2) drinks at any time;
- (d) Selling, offering to sell or delivering to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public;
- (e) Selling, offering to sell, or delivering to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;
- (f) Selling, offering to sell or delivering to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;
- (g) Selling, offering to sell, or delivering malt beverages or mixed drinks by the pitcher, except to two (2) or more persons at any one time;
- (h) Increasing the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week;
- (i) Encouraging or permitting, on the licensed premises, any game or contest, which involves drinking or the awarding of drinks as prizes.

6) **Current Rule #25:** Licensees and their employees shall not make a sale or delivery of an alcoholic beverage to an intoxicated person.

*Commission: Change to mirror relevant portions of G. L. c. 138, §§ 64A, 69.*

**Proposed Rule #25:** Licensees and their employees shall not make a sale or delivery of an alcoholic beverage to someone who appears to be impaired, intoxicated or under the influence of any substance. No licensee, or its employees or agents, shall allow any sale or delivery of alcoholic beverages by any patron or other person in the premises to a person who is or appears to be impaired, intoxicated, or under the influence of any substance.

7) **Current Rule #26:** Licensees shall take such steps as are necessary to ensure that patrons or employees do not leave the premises with alcoholic beverages.

*Commission: Add new privilege due to change in law G. L. c. 138, § 12 (re-corking of wine).*

**Proposed Rule #26:** Licensees that have a pouring license shall take such steps as are necessary to ensure that patrons or employees do not leave the premises with alcoholic beverages except as allowed to by G. L. c. 138, § 12 (re-corking of wine).

8) **Current Rule #27:** Licenses shall instruct their employees and security personnel that they are not to make bodily contact with a patron unless to protect other patrons or themselves from being subjected to body blows or other harm from an unruly patron. In all other circumstances employees and security personnel are to call the police to have patrons removed from the premises when such patrons are being disruptive.

**Commission:** Add language to state that if an employee is to use force to remove a patron, the force used must be reasonable.

**Proposed Rule #27:** Licensees shall instruct their employees and security personnel that they are not to make bodily contact with a patron unless to protect other patrons or themselves from being subjected to body blows or other harm from an unruly patron. If the employee determines that he/she must make bodily contact, the employee shall use the least amount of force which would constitute reasonable force under the circumstances. In all other circumstances employees and security personnel are to call the police to have patrons removed from the premises when such patrons are being disruptive.

9) **Current Rule #29:** All licenses and building certificates shall be posted in an accessible place on the premises, easily seen by the patrons where they can be read without difficulty and without the assistance of employees. No document shall be posted in a way that will cover any part of the license issued by the Commission.

**Commission:** Created a new section to ensure that it is clear the Commission expects all certificates to operate the business to be posted conspicuously. This ensures transparency within the business but also the public.

**Proposed Rule #29:**

Licenses issued by the License Commission must be conspicuously posted on the premises in an area that is easily accessible to the public without the assistance of employees.

All permits, licenses and certificates issued by other City of Cambridge entities which affect the licensed premises must also be posted conspicuously but not in a manner as to cover any of the licenses issued by the License Commission.

Any additional certificates or postings provided to the licensee by the License Commission must also be posted conspicuously on the premises and in the manner specified by the License Commission.

10) **Current Rule #30:** All exit doors shall be clearly marked "Fire Exit- Do Not Block" in red letters on a white background.

**Commission:** The expansion of the rule is in line with the fire code to ensure egresses are not blocked. Also, insert language that the size of the sign should be the standard size determined by the Fire Department.

**Proposed Rule #30:** All exit doors shall be clearly marked "Fire Exit- Do Not Block" in red letters on a white background in the standard size determined by the Fire Cambridge Department. At no time may exit doors or any other form of egress be blocked or locked during operating hours.

11) **Current Rule #31:** No licensee shall make any distinction, discrimination, or restriction on account of race, color, religious creed, national origin, sex or ancestry relative to the admission or treatment of any person. (Massachusetts Commission Against Discrimination, Chapter 273, Sec. 92, 98, 98A.)

**Commission:** Change to ensure the rule mirrors the language in G. L. c. 272, §§92, 92A, 98, 98A. Also, expand to add the language pursuant to Cambridge Municipal Code 2.76.

**Proposed Rule #31:** No licensee shall make any distinction, discrimination, or restriction on account of race, color, religious creed, national origin, sex, ancestry, sexual orientation, deafness, hearing impairment, blindness, physical disability, mental disability or any other protected category as listed in G. L. c. 272, §§ 92, 92A, 98, and 98A.

Licensees must also ensure compliance with Cambridge Municipal Code Chapter 2.76, which establishes that it is unlawful to discriminate on the basis of race, color, sex, age, religious creed, disability, national origin or ancestry, sexual orientation, gender, marital status, family status, military status or source of income.

12) **Current Rule #32:** The alcoholic beverages license is subject to suspension, revocation, forfeiture or further conditions for breach of its conditions or regulations or any law of the Commonwealth of which the licensee has notice.

*Commission: Changed language of forfeiture to mirror that in the statute, G. L. c. 138, § 16B.*

**Proposed Rule #32:** Licenses issued by the Commission are subject to suspension, revocation, modification or cancellation, or further conditions for breach of its conditions or regulations or any law of the Commonwealth of which the licensee has or should have notice.

Any holder of a liquor license who fails to pay the license fee within fourteen (14) days after written notice that a license has been authorized to be issued to the licensee, shall forfeit any right to that license as determined by the License Commission at a hearing scheduled for that purpose.

13) **Current Rule # 34:** The licensed premises shall be subject to inspection by the police, the Alcoholic Beverages Control Commission, the License Commission, and duly authorized agents of the License Commission.

*Commission: Changed to add language of investigators' right to enter and of licensee's duty to cooperate as stated in G. L. c. 138, §§ 63-63A.*

**Proposed Rule #34:** Any licensed premises shall be subject to inspection by the police, the License Commission, and duly authorized agents of the License Commission. Premises licensed under Chapter 138, shall also be subject to inspection by the Alcoholic Beverages Control Commission and its agents. At no time may the licensee, its employees or agents use any device to signal other employees or agents that agents of the Licensing Commission are present.

14) **Current Rule #37:** No gambling machines are allowed on the premises and no gambling or games of chance are permitted. Any use of coin operated amusement devices for gambling or gambling or games of chance purposes shall result in suspension and/or revocation of both the alcoholic beverages license as well as the amusement devices license. No one under the age of 20 shall be permitted to use any coin operated amusement device in any part of the premises in which alcoholic beverages are sold. No Las Vegas Nights are allowed. (See Gaming Policy, Page 27 and the Attorney General's Regulation 940 CMR 13).

*Commission: Change so that it does not contradict the recent changes in law with regard to gambling in Massachusetts.*



**Proposed Rule #37:** No gambling machines are allowed on the premises and no gambling or games of chance are permitted except those games of chance authorized by the Legislature or License Commission. Any use of coin operated amusement devices for gambling or gambling or games of chance purposes may result in suspension and/or revocation of all licenses issued by the License Commission to be operated at the premises.

15) **Current Rule #38:** No licensee or employee shall sell or use drugs or narcotics.

*Commission: Make clearer and also phrase so as to not exclude legal uses which are now allowed, i.e. medicinal.*

**Proposed Rule #38:** No licensee, its employees or agents shall sell drugs or narcotics unless lawfully authorized to do so. No employees or agents of the licensee shall use or allow the use of drugs, narcotics, or other controlled substances except as authorized by the laws of the Commonwealth of Massachusetts.

16) **Current Rule #42:** Patrons are not permitted to bring alcoholic beverages on the premises for their own consumption. Non-alcoholic Common Victualler licensees are not permitted to keep alcoholic beverages on the premises except for a reasonably small quantity that is used in the preparation of certain specialty foods. The board will, in its discretion, determine what is reasonable for this purpose and whether or not it is customary in the preparation of such specialty foods. Passed November 30, 1976.

*Commission: Edit and separate rule to ensure it takes into account new types of licensees.*

**Proposed Rule #42:**

Patrons of establishments licensed under Chapter 138 and 140 are not permitted to bring alcoholic beverages on the premises for their own consumption. This Rule shall not be construed so as to prohibit a guest of an innholder to bring alcoholic beverages to the room in which they are registered for their own private consumption so long as the innholder does not have an internal policy prohibiting it.

Non-alcoholic Common Victualler licensees are not permitted to keep alcoholic beverages on the premises except for a reasonably small quantity that is used in the preparation of certain specialty foods. The Licensing Commission will, in its discretion, determine what is reasonable for this purpose and whether or not it is customary in the preparation of such specialty foods.

17) **Current Rule # 48:** Relative to Package Goods Stores. The board of license commissioners may decrease the hours of sales of alcoholic beverages of a packaged goods licensee if they find a public need for such a decrease. The board may do this after holding a public hearing for which the licensee was given two weeks advanced notice and provided further that no licensee authorized to make sales of alcoholic beverages not to be drunk on the premises shall be prohibited from making such sales after 10 o'clock ante meridian and before 11 o'clock post meridian. A licensee whose hours are decreased pursuant to the provision of this act may not be barred from opening the premises between the hours of 8 o'clock ante meridian and 10 o'clock post meridian provided that no sales of alcoholic beverages shall be made during the hours when such sales are prohibited by the board. Subject to the provisions of this act, said board shall have discretion to affect the hours of (i) and individual licensee authorized to sell alcoholic beverages not to be drunk on the premises; or (ii) all licensees authorized to sell alcoholic beverages not to be drunk on the premises. A licensee aggrieved by any such decrease in hours may

bring a civil action in the nature of certiorari against said board pursuant to section 4 of chapter 249 of the General Laws. Chapter 31 of the Acts of 1998. Signed February 20, 1998 by Acting Governor Cellucci.

*Commission: Changed to be less convoluted and to ensure the language clearly states what the License Commission is allowed to do under the Special Acts of 1998, Chapter 31.*

**Proposed Rule #48:** With regard to any Chapter 138, § 15 licensee, the License Commission may, after due notice and public hearing, decrease the hours during which sale of alcoholic beverages may be sold. However, at no time can sales be prohibited from 10:00 a.m. to 11:00 p.m. In addition, the business may not be prohibited from opening at 8:00 a.m. but may be prohibited from selling alcoholic beverages from 8:00 a.m. to 10:00 a.m.

**18) Current Addendum E, #2 (trivia quiz game):** The Chairman of the Commission is authorized to issue one license for one coin-operated trivia quiz game to premises where alcoholic beverages are served for on-premises consumption, without an advertised public hearing. Such locations must not be the subject of recent complaints. Notice of such licenses so issued shall be put on the agenda for the next following Commission hearing for ratification.

*Commission: Entire Commission should vote on the application. Also changed it so that there is compliance with the open meeting law (G. L. c. 30A, §§ 18-25) – have the matter published in a Commission agenda and have the Commission vote on the application at an open meeting.*

**Proposed Addendum E, #2 (trivia quiz game):** The Commission may decide to issue one license for one coin-operated trivia quiz game to premises where alcoholic beverages are served for on-premises consumption at a public hearing where notice was given forty-eight (48) hours prior to the hearing in accordance with the Open Meeting Law. The application will be ruled upon based on the provisions of the law, and the Commission may take into account the licensee's disciplinary record in the granting or denying of the application.

**Proposed Deletions:**

**1) Current Rule #12 (last sentence):** Licensees are required to submit a security procedure to the License Commission and Police Department to ensure minors are not being served alcoholic beverages if the Licensee has any "all ages shows," "18 plus shows," or "19 plus shows."

*Commission: This rule was meant for Special Events (one-day licenses). As such, it is being removed from the rule book for annual licensees. The Commission will make sure that the instructions for one-day licenses for these types of events clearly state the need for a security plan for such events.*

**2) Current Rule # 13:** Any grocery and/or convenience store which is the holder of a package goods store license and which is open on a Sunday and is not approved for Sunday sales must, by means of a drop curtain, a wire mesh divider, or a gate at least five (5) feet in height, close off from the rest of the premises that section in which the alcoholic premises are displayed. No patrons shall be permitted to enter that area of the premises containing such beverages. The covering of displays of such beverages by means of cloths are no longer sufficient.

**Commission:** *This is a contradiction of G. L. c. 138, § 15 which allows sales on Sundays without the approval of the local board or the ABCC.*

**3) Current Rule # 40:** Any licensee who desires to store extra chairs on the licensed premises shall secure the permission of the License Commission before storing any extra chairs. Extra Chairs" means that number of chairs above the maximum number of occupants lawfully allowed to be seated on the premises. Passed December 31, 1990.

**Commission:** *Pursuant to the Special Acts of 1991, Chapter 551, the License Commission's capacity controls licensed premises. This rule lends itself to confusion and also to creating situations where premises will end up being over capacity.*

**4) Noise Section Rule 1:** Noise from persons leaving licensed premises, and music from inside a licensed premises, shall not be audible on residential premises after 6:00 p.m. Such noise or music shall be considered audible if more than ten percent of the time the sound level meter reading of the noise or music registers at least 5 dB(A) above the background noise level of the area. Such noise or music shall be considered "clearly audible" if more than ten percent of the time the sound level meter reading of the patron noise or music registers at least 10 dB(A) above the background noise level of the area. Background noise level is here defined as the noise level for an area that is exceeded 90% of the time, as measured without the presence of the noise or music. The number of readings used for measurements must be at least 100. All measurements shall be taken on a "fast" time weighting. Passed December 18, 1990.

**Commission:** *This was extracted from the Noise Control Ordinance but a good portion of it refers to measured noise with regard to construction. In addition, the portion that is applicable is already part of the rules in the entertainment section.*

**5) Entertainment Section Rules 1, 3, 4 & 5.**

**Rule #1:** Hotels, Restaurants and Clubs may have entertainment in categories as listed on their application upon application hearing before and approval by the License Commission.

**Commission:** *Unnecessary and also covered by proposed new rules which were extracted from G. L. c. 140.*

**Rule #3:** Dancing is permitted in restaurants. A hearing must be held and a separate license must be obtained for dancing.

**Commission:** *Unnecessary and also covered by proposed new rules which were extracted from G. L. c. 140.*

**Rule #4:** Hotels, Restaurants and Clubs may have music machines and amusement machines; however, a hearing must be held and a separate license must be obtained for each.

**Commission:** *Unnecessary and also covered by proposed new rules which were extracted from G. L. c. 140.*

**Rule #5:** All other types of entertainment require a Special License issued by the License Commission.

**Commission:** Unclear meaning.

6) Addendum A – non-transferrable/no-value licenses (too long to copy, please see link on our website).

**Commission:** Pursuant to G. L. c. 138, § 23 “Any license issued under this chapter may, upon application pursuant to section fifteen A, be transferred from one location to another or the description of the licensed premises may be changed with the approval of the licensing authorities.” In addition, “Any license granted under the provisions of this chapter may be pledged by the licensee for a loan, provided approval of such loan and pledge is given by the local licensing authority and the commission. Such pledge shall not be construed so as to affect the right of such local licensing authority or the commission to suspend, revoke, or otherwise regulate such license, as provided in this chapter.”

Moreover, the case law has established that licenses are transferrable, have value, and can be attached by creditors. See Arrowhead Estates, Inc. v. Boston Licensing Board, 15 Mass. App. Ct. 629 (1983) (and cases cited therein); Springsteen v. The Meadows, Inc., 534 F. Supp. 504 (D. Mass. 1982). Finally, as recent history has shown, liquor licenses are often and recently being levied and auctioned off by the IRS and DOR for delinquent tax bills.

Therefore, this Addendum contradicts the law. As such, by striking it and not continuing the practice of issuing licenses with these restrictions ensures the Commission is not creating licenses contrary to state law.

**Note:** Current licenses issued under this Addendum will not be taken away or invalidated by the deletion of this Addendum. Licenses previously issued under this Addendum and currently still in use will continue to exist so long as the licensee complies with all of the provisions of Chapter 138, any other applicable law or ordinance, Rules and Regulations of this Commission, and the license is not revoked or cancelled for any other reason. Once the business ceases to exist, the license will cease to exist.

**Note:** The deletion of this Addendum does not mean the Commission will not grant any further new licenses (see #8 below). Every application submitted to the Commission will be reviewed on a case-by-case basis, evaluated and decided upon the provisions of the law.

7) Addendum B – before granting a new license Chair must contact business associations of area and get their input; non-transferable/no-value licenses (too long to copy, please see link on our website).

**Commission:** Pursuant to G. L. c. 138, § 23 “Any license issued under this chapter may, upon application pursuant to section fifteen A, be transferred from one location to another or the description of the licensed premises may be changed with the approval of the licensing authorities.” In addition, “Any license granted under the provisions of this chapter may be pledged by the licensee for a loan, provided approval of such loan and pledge is given by the local licensing authority and the commission. Such pledge shall not be construed so as to affect the right of such local licensing authority or the commission to suspend, revoke, or otherwise regulate such license, as provided in this chapter.”

In addition, it is inappropriate for the Chair to be discussing pending applications with neighborhood associations. Neighborhood associations have an opportunity to be heard at the open meetings where the application is being presented before the Commission. See also Ballarin, Inc. v. City of Boston, 49 Mass. App. Ct. 506, 512-513 (2000) (“The opposition of the neighborhood, albeit an

*important factor for a licensing board to consider, does not convert the exercise of a licensing board's adjudicatory function into a plebiscite.").*

*Therefore, this Addendum contradicts the law. As such, by striking it and not continuing the practice of issuing licenses with these restrictions ensures the Commission is not creating licenses contrary to state law.*

**Note: Current licenses issued under this addendum will not be taken away or invalidated by the deletion of this Addendum. Licenses previously issued under this Addendum and currently still in use will continue to exist so long as the licensee complies with all of the provisions of Chapter 138, any other applicable law or ordinance, Rules and Regulations of this Commission, and the license is not revoked or cancelled for any other reason. Once the business ceases to exist, the license will cease to exist.**

**Note: The deletion of this Addendum does not mean the Commission will not grant any further new licenses (see #8 below). Every application submitted to the Commission will be reviewed on a case-by-case basis, evaluated and decided upon the provisions of the law.**

**8) Addendum D – cap areas (too long to copy, please see link on our website).**

**Commission: These are permissible pursuant to G. L. c. 138, § 12: "The licensing authorities may refuse to grant licenses under this section in certain geographical areas of their respective cities or towns, where the character of the neighborhood may warrant such refusal."**

*However, the caps have not been observed. The Commission has granted licenses beyond the cap (which is allowed under the terms of this Addendum). However, it is clear the "breaking the cap" was meant to be the exception not the rule but that has not been the practice. As such, there is no reason to continue having these "artificial caps."*

*Moreover, the purpose of the caps (to not saturate an area) is already built in the law. See G. L. c. 138, § 23: "The provisions for the issue of licenses and permits hereunder imply no intention to create rights generally for persons to engage or continue in the transaction of the business authorized by the licenses or permits respectively, but are enacted with a view only to serve the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain, in the manner and for the kind of use indicated, the different sorts of beverages for the sale of which provision is made." Also Ballarin, 49 Mass. App. Ct. at 511 ("Need, in the literal sense of requirement, is not what the statute is about. Rather, the test includes an assessment of public want and the appropriateness of a liquor license at a particular location. For example, one might hesitate to authorize a license for a bar across the street from a public school. Consideration of the number of existing dispensaries in a locality is a proper concern, as are the views of the inhabitants of the locality in which a license is sought. In making its discretionary determination, a licensing authority may take into account a wide range of factors - such as traffic, noise, size, the sort of operation that carries the license, and the reputation of the applicant. In the case of liquor licenses, town and city boards may exercise judgment about public convenience and public good that is very broad, but it is not untrammelled.") (internal citations omitted).*

**Note: Although Cambridge is not subject to a quota and in theory it has an unlimited number of licenses to issue, the deletion of this Addendum and removal of caps does not mean that the Commission will start granting licenses like a "free for all." The Commission will review each application on a case-by-**



*case basis and will only grant new licenses when in accordance to the law and when it is shown that the license will serve the public need and in such a manner to protect the common good.*

**9) Policy –**

**Commission:** *As a general matter, the policy section is being removed not necessarily for the sake of getting rid of whatever is therein but rather because policies should not be part of the rules and regulations book. Policies should be issued as advisories and posted on the Commission's website.*

**a) Pocket Licenses (parts one and two) (too long to copy, please see link to current rules on website).**

**Commission:** *The case law with regard to what is a reasonable amount of time to have a pocket license has changed significantly (6 months versus 48 months). In addition, this policy truncates the purpose of licenses – to be in use to serve the public need and protect the common good. At the same time, protections for licensees exist in terms of the case law so there is no need for this policy. Also, as to part two, it contradicts current case law. Finally, these matters should be (and currently are) looked at and assessed on a case-by-case basis, and that is how the process will continue. Therefore, it will be deleted/repealed and will not be replaced with any policy. These matters will be evaluated as the law intends them to be and how the Commission has been doing so – on a case-by-case basis.*

**b) Results of Special Meeting (too long to copy see link to current rules on website).**

**Commission:** *These votes should not be part of the rules and may not reflect the most current votes of the Commission. In addition, hours on a license are decided on a case-by-case basis and with regard to public need and to serve the common good. The hours for one licensee do not automatically transfer to the next. Therefore, it will be deleted/repealed.*

**c) Policy on Sale of Licenses:** If a liquor license is revoked by this Commission for vice-related issues, i.e., drug sales, possession, etc., this Commission will not approve a sale of that license instead of the license being revoked or suspended.

The reasoning behind this policy is that licensees who have committed or were somehow involved in a vice offense, should not profit from the sale of the license where vice activity occurred.

**Commission:** *The intent and reasoning on this policy makes sense in theory. However, in practicality it may not work. In addition, when the Commission revokes a license there has to be a hearing. The Commission cannot decide without a hearing and cannot adopt a blanket rule on how it will vote on matters that depend on the evidence and facts before the Commission. These are matters that have to be decided on a case-by-case basis, and therefore, it will be deleted/repealed. Moreover, G. L. c. 138, § 12 already specifies that such licenses may not issue to someone who has been convicted of a state or federal narcotics drug law; and G. L. c. 138, § 15 states that such licenses may not issue to someone who has been convicted of a felony. The Commission, however, will ensure that it adds a rule that states that violations of any laws may result in the revocation of the license.*

**d) Criminal Record Checks:** The License Commission voted 3-0 to institute a \$10.00 fee for each criminal record check required by law for all alcohol, vendor and peddler licensees. All record checks will be submitted through our office. This License Commission is a certified agency to receive criminal records. Passed January 9, 1996.

**Commission:** *The Commission is deleting this from the Rules book not to get rid of the policy but rather because it does not belong in the rules book. In addition, it is not a policy it is a fee for the processing of an application which the Commission has a right to set and from time to time change. This fee will be published with all other fees on our website.*

e) **Time Limit on Approval:** 1. It is hereby passed that all approvals of applications by the License Commission are valid for (6) six months from the date of approval. If such time expires before the license is issued, the applicant must reapply and be reheard before the License Commission.

2. All applicants who are denied a license must wait one year before reapplying unless there is a change of circumstances, i.e., change of location, name of applicant, or new evidence not previously submitted.

**Commission:** *This is better expressed in the statute at G. L. c. 138, § 16B. This will be added as a rule and with the language used in the statute.*

**Proposed Rule:** *No application by the same applicant for the same type of license to be exercised on the same premises may be filed within one year of the date of his/hers/its last prior application. The Commission cannot and will not receive more than two applications for a license under section twelve or fifteen to be exercised on the same premises during the same license year.*

f) **Entertainment Gaming Policy:** No gaming activity or appearance of casino type games are to be held in any licensed premises without applying for an exemption to the Attorney General's prohibition against casino nights, appearing at a hearing before the License Commission, and obtaining sign off from the Cambridge Police Commissioner.

**Commission:** *Contradicts current state of the law. It will be deleted/repealed.*

g) **Banked seat policy** (too long to copy, see link to current rules).

**Commission:** *Same issue as with Rule # 40 – pursuant to the Special Acts of 1991, Chapter 551, the License Commission's capacity controls licensed premises. This lends itself to confusion and also to creating situations where premises will end up being over capacity. It will be deleted/repealed.*

h) **Keg Policy:** Any retail licensee making the sale of a keg must notify the Cambridge Police Department within a reasonable time of the date of sale, via email, fax or telephone. Notification shall include the name, address and date of birth of the purchaser and all information required on the attached form.

For purposes of this Rule, a keg is defined as any container requiring a tap.

**Commission:** *This is contrary to 204 C.M.R. 9.00, and not allowed by 204 C.M.R. 9.09. It will be deleted/repealed.*

i) **Patio Policy [and Amendment]** (too long to copy, see link to current rules on website).

**Commission:** *For no other type of service do we spell out the process in the rules book. Explanation on how to apply for a particular service is best posted on our website, instruction sheet on an application and/or an advisory published by the Commission. In addition, the process laid out herein*

*describes internal procedures and fees for other Departments to which the Commission may not be privy to and may not be describing appropriately.*

*Note: The deletion of this section does not mean that the Commission will not approve patios or that it is eliminating patios. The service of food and alcohol on patios will continue to be decided on a case-by-case basis and in accordance to the provisions of G. L. c. 138 and 140.*

*Note: The Commission will work with the other relevant departments to create a step-by-step list on how to apply for a patio on public property.*

**j) Recommendation of cap and economic development task force** (too long, please see link to current rules).

*Commission: See comments on Addendums A, B & D, above. Also, fees may be changed from time to time and are best published in our website and/or on an advisory. Therefore, this will be deleted/repealed.*

**i) Training policies for owners and managers:** The License Commission heard a policy proposal by the Cambridge Prevention Coalition on February 12, 2008 and voted 3-0 on February 28, 2008 to formalize the Commission's policy of requiring 21 Proof training for all new owners and managers of alcohol establishments in the City of Cambridge. The policy for 21 Proof training includes a fee charged proportionately to active CLAB members and non-members.

*Commission: This should be a rule not a policy, and therefore, will be incorporated into the rules and edited as follows.*

*Proposed Rule: All owners, managers of record, and any employee who is in the direct handling, serving or selling of an alcoholic beverage must successfully complete the 21 Proof Training and/or any other training the Commission orders be completed.*

**Proposed New Rules:**

- 1) **Definition of terms extracted from G. L. c. 138 & 140** (please see link to proposed rules).
- 2) **Availability of rule book at premises and knowledge of rules:**

*All licensees shall ensure that a copy of these Rules and Regulations is kept on the premises at all times and is available for inspection upon request by a member of the public or an agent of the License Commission.*

*The Rules and Regulations do not need to be posted.*

*The licensee and manager of record are responsible for ensuring that all employees have read, are familiar with, and comply with the Rules and Regulations.*

**3) Transfer of privilege – extracted from ABCC advisory (Dec. 10, 2015):**

*A licensee's obligation to comply with the Rules and Regulations herein cannot be circumvented by using a third party or promoter. Licensees should understand that allowing a third party to sell tickets or use other methods of admission (where the price of admission includes any alcoholic beverages), results in the licensee transferring the privilege of its license, or transferring a direct or indirect beneficial interest in its license to a third party. Transferring the privilege of the license or any interest in it prior to obtaining approval is a violation of the law and the License Commission's Rules and Regulations.*

**4) Food requirements for common victuallers and innholders – extracted from G. L. c. 140, § 6:**

*Each holder of a common victualler and innholder license shall at all times be provided with suitable food for strangers and travelers. In addition, prior to being granted such types of licenses, the applicant must show that the premises have the necessary implements and facilities for cooking, preparing and serving food for strangers and travelers.*

*Every innholder must have upon the premises suitable beds and bedding for the lodging of its guests.*

**5) Register requirements for Innholders/motels/lodging houses – extracted from G. L. c. 140, §§ 27-29 and Special Act:**

*Every innholder, lodging house, or motel shall keep or cause to be kept in permanent form a register of the name and residential address of each guest within its premises, the room assigned to each guest and the time in which the room was assigned. Such registers must be kept at least one (1) year after the last entry made and must be available for inspection by the agents of the License Commission or the police,*

*All innholders, lodging houses and motels must post in a conspicuous place the requirements under the law, G. L. c. 140, §§ 27, 29, to keep and maintain guest registers in addition to the penalties for failure to do so.*

**6) Happy Hour Regulation exceptions – extracted from 204 CMR 4.04:**

*Nothing in Rule 24 [Happy Hour Regulation-prohibited practices] shall be construed to prohibit licensees from offering free food or entertainment at any time; or to prohibit licensees from including a drink as part of a meal package; or to prohibit the sale or delivery of wine by the bottle or carafe when sold with meals or to more than one person; or to prohibit those licensed under G. L. c. 138, § 15, from offering free wine tastings; or to prohibit those licensed under G. L. c. 138, § 12, from offering room services to registered guests.*

**7) Hindering investigations & Penalty for failure to respond to request from Commission – extracted from G. L. c. 138, § 63A:**

*Any licensee or its employees or agents who refuse to cooperate with the Licensing Commission or its agents, hinders an investigation, or fails to respond to a request for documents or information from the License Commission or its agents, may have its licenses suspended and/or revoked.*

**8) Crowd Manager – extracted from 527 CMR 1.00, c. 20, § 20.1.5.6:**

*Crowd managers are required in any facility with a legal occupant limit of 100 or more persons as indicated on the certificate of inspection or license issued by the Commission, and designated under the State Building Code by the building official as an Assembly Use, which is principally designed or used as a nightclub, dance hall, discotheque or bar, or features entertainment by a live band or recorded music generating above normal sounds levels and which has a specific area designated for dancing. Those with an occupant load of 100 or more, shall be provided with a minimum of one trained crowd manager, pursuant to 527 CMR 1.00, § 20.1.5.6.1. Where the occupant load exceeds 250, additional trained crowd managers or crowd manager supervisors shall be provided at a ratio of one crowd manager for every 250 occupants.*

**9) Entertainment – extracted from G. L. c. 140, §§ 181, 183A, 184:**

*Licensees may have entertainment after receiving approval from the License Commission.*

*Dancing is permitted at a licensed premises as authorized by Massachusetts law and any required license.*

*Licensees may have music machines and amusement machines after receiving approval from the Licensing Commission.*

**10) Noise Ordinance – extracted from Cambridge Municipal Code Chapter 8.16:**

*Licensees must not willfully, negligently, or through failure to provide necessary equipment or facilities or to take necessary precautions, permit the establishment or continuation of a condition of noise disturbance. Licensees and tis employees must ensure that they are operating the business at all times in compliance with Cambridge Municipal Code Chapter 8.16 (Noise Ordinance).*

**11) Requirement to comply with all laws and rules, and possible penalties for failure to comply – based on G. L. c. 138, §§ 23, 64, c. 140, §§ 9, 30, 183A:**

*All licensees are expected to comply with the Rules and Regulations herein and those that the Commission may from time to time publish through advisories.*

*All licensees are expected to comply with all of the laws of the Commonwealth of Massachusetts, the local ordinances of the City of Cambridge, and all rules and regulations of the other City of Cambridge Departments which regulate the licensee.*

*Any violation of any law, ordinance or rules and regulations may result in the suspension, cancellation, revocation or modification of a license.*