

Stephen H. Baird
P.O. Box 570
Cambridge, MA 02238
617/864-2970
February 11, 1985

RECEIVED BY
OFFICE OF CITY CLERK
FEB 13 2 22 PM '85
CAMBRIDGE, MASS.

Councillor David Sullivan
City Council Offices
City Hall
Cambridge, MA 02139

Dear Councillor David Sullivan:

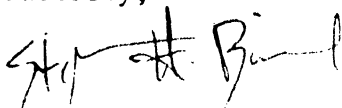
I have enclosed a proposed draft of a new revised Regulation of Street Performances. I hope this can be enacted before the sunny and warmer weather appears this spring.

The following are reasons I feel this new revised regulation should be enacted:

1. Street performers have become an important asset to the City of Cambridge since the original regulations were enacted.
2. The Eastern Federal District Court in *Goldstein v. Nantucket*, 477 F. Supp., 606, (1979), has ruled that street performances are a protected First Amendment right.
3. The Fourth Circuit US Court of Appeals has ruled limitation of street performances to designated areas as an unconstitutionally overbroad criteria (*Davenport v. Alexandria*, 710 F.2d, 148, (1983); CA #81-709-A; #83222).
4. The new revised regulation is more in line with regulations passed in Chicago, and those presently under consideration in Hartford, Connecticut.
5. The many new construction projects in Cambridge have greatly increased the number of appropriate areas for street performers.
6. The Cambridge Arts Council has worked extensively with street performers, including a street performers' festival as part of the River Festival.
7. Street performers in Cambridge have been featured numerous times on WBZ, WGBH, WCVB, The Boston Herald, The Boston Globe, TAB newspapers, The Cambridge Chronicle, and many other media outlets, increasing visibility and attracting tourists for the City of Cambridge.

In conclusion, I feel the new revised Street Performers Regulation will enhance both the City of Cambridge and the street performers' best interests in making the city's streets some of the most creative, safe, colorful, and exciting streets in the country. I hope the new regulations will be swiftly enacted.

Sincerely,



Stephen H. Baird

DRAFT

Regulation of Street Performances

Sec. 1 Definitions

The following terms are defined for the purpose of this regulation as follows:

(a) "Perform" includes, but is not limited to, the following activities: acting, singing, playing musical instruments, pantomime, juggling, magic, dancing and reciting.

(b) "Performer" means an individual who owns a permit issued pursuant to the provisions of this Regulation.

(c) "Public Areas" includes sidewalks, parks, playgrounds, and all other public ways located in the City of Cambridge.

Sec. 2 Prohibition

(a) No person may perform in a public area without having obtained a permit issued under Section 3 of this Regulation.

(b) Any person who performs in a public area without a permit issued under Section 3 of this Regulation shall be fined not more than \$25. The proceeds of any such fine shall be directed to the Cambridge Arts Council and used in its administration of this Regulation. Any person paying such a fine in excess of \$5 may obtain a permit under Section 3 of this Regulation without paying a fee therefor if application for such permit is made within 30 days of such payment.

Sec. 3 Permit

(a) A permit shall be issued by the Cambridge Arts Council to each applicant therefor in exchange for a completed application and a fee of \$5, subject to the provisions of Section 8 of this Regulation.

(b) A completed application for a permit shall contain the applicant's name, address, and telephone number and shall be signed by the applicant.

(c) A permit shall be valid from the date on which it is issued through December 31 of the year in which it is issued; provided, however, that a permit issued in 1984 shall be valid through December 31, 1985.

(d) A permit shall contain the name and permit number of the applicant plus the year in which the permit is valid and any special allowance made by the Cambridge Arts Council pertaining to the permit.

(e) A permit shall be non-transferable.

(f) Upon issuing a permit, the Cambridge Arts Council shall also issue the performer a printed copy of this Regulation.

Sec. 4 Display of Permit

A performer shall carry a permit on his or her person while performing and shall show it to any police officer of the City of Cambridge upon request.

Sec. 5 Permitted Performances

(a) Performances may take place in the following

locations:

in public areas, except those excluded by the City Council or the Chief of Police pursuant to Section 7 of this Regulation;

on private property, if the performer has obtained the written permission of the owner of such property or other person with authority to grant such permission with respect to such property; and

in a public area where an authorized fair or public festival is being conducted, if the performer has obtained the written permission of the sponsor of such fair or festival.

(b) Performances may take place between 10:00 a.m. and 11:00 p.m. unless otherwise allowed by the Cambridge Arts Council.

(c) A performer may not use electric or electronic amplification except as otherwise allowed by the Cambridge Arts Council.

(d) A performer may not block the passage of the public through a public area except as permitted by the sponsor of an event under paragraph (a) of this Section or otherwise allowed by the Director of Traffic and Parking. If a sufficient crowd gathers to see or hear a performer such that the passage of the public through a public area is blocked, a police officer may

disperse the portion of the crowd that is blocking the passage of the public, but said police officer shall not cause the performer to leave the location.

(e) No performer or group of performers shall perform at a distance of less than 50 feet from another performer or group of performers that already is performing.

Sec. 6 Legal Conduct

(a) A performer may accept contributions of money or property at a performance, provided that no sign requesting contributions shall exceed 12" by 18" in size. Contributions may be received in any receptacle.

(b) A performer who performs and accepts contributions under the provisions of this Regulation shall not be committing disorderly conduct by virtue of those acts.

(c) A performer who performs under the provisions of this Regulation shall be presumed not to constitute a disturbance of the peace or quiet.

Sec. 7 Exclusion of Public Areas

(a) Upon the written recommendation of the Chief of Police or the Director of Traffic and Parking, the City Council or any committee thereof to which responsibility is delegated may conduct a public hearing to determine whether a designated public area shall be excluded from further performances.

(b) No public area shall be excluded from performances except;

by majority decision of City Council or its designated committee pursuant to paragraph (a) hereof; or

by decision of the Chief of Police in the case of an emergency; provided that no public area may be excluded from performances by the Chief of Police under this subparagraph for more than 7 days.

(c) No exclusion of public areas, except as decided by the Chief of Police in an emergency, shall be effective until seven days after written notice of said exclusion has been mailed by the Cambridge Arts Council to each performer.

(d) Upon issuing a permit, the Cambridge Arts Council shall also issue to the performer a current and complete list of all public areas in the City of Cambridge that have been excluded from performances.

Sec. 8 Revocation of Permit

(a) The Cambridge Arts Council may suspend a permit for not more than 30 days if any information contained in the application therefor is found to be false.

(b) The Cambridge Arts Council may suspend a permit for not more than 60 days or revoke a permit if a performer violates any of the provisions of this Regulation.

(c) After revocation of a permit, the former performer may not obtain a new permit until such date as the Cambridge Arts Council may determine, provided that such date shall not be more than one year after the date of revocation.

(d) No permit may be suspended or revoked unless the Cambridge Arts Council holds a public hearing concerning that suspension or revocation, written notice of which has been given to the performer not less than 7 days prior to said public hearing. Such notice shall set forth the facts constituting the basis for the proposed suspension or revocation.



The
Cambridge
Arts
Council

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9033

July 1, 1984

Mr. Stephen Baird
Folk Arts Network
P.O. Box 867
Cambridge, MA 02138

Dear Steve,

I am very pleased to have the opportunity to support your newly drafted ordinance for the regulation of street performers.

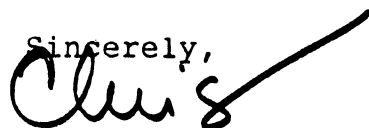
The Cambridge Arts Council welcomes the possibility of becoming the department responsible for licensing street performers. We have worked with a wide variety of street performers since the beginning of the Council in 1974 -- in the River Festival, other public celebrations and, most recently in the very successful Street Performers' Festival on Cambridge Commons. We know the artists and have built up a good rapport with them over the years. We are currently engaged in negotiations to bring street performers to Central Square (at the pressing request of the local merchants) and to improve performing conditions in Harvard Square, at the request of the performers.

Your proposed ordinance does, indeed, sensibly regulate -- as opposed to discourage -- street performing.

The street performers are a valuable asset to this city -- as witnessed by the enthusiasm in Central Square for such performers -- and a well drafted ordinance is very welcome in order to regulate in the public and performers' interest.

After ten years' experience in working with the street performers, with the public, with the city departments responsible for public safety and convenience, and with the businesses of Cambridge the Cambridge Arts Council is in an ideal position to become the licensing department. We hope that such authority will be established by the passage of this ordinance.

Sincerely,



Christine K. Connaire
Executive Director

CKC:es

ter Preston Lee, Chairman/ Judith Contrucci, Mark Favermann, Mark Murphy, Vice Chairmen/ Herbert Agoos/ Roswell Angier/
Martha Cain/ Eliza Collins/ John Constable M.D./ Jack Dyer/ Ronald Lee Fleming/ Willie Hills/ Faith Moore/
Michael Padnos, Esq./ Eduard Franz Sekier/ David J. Steinberg/ David Vickery/ Chris Connaire, Executive Director



CORCORAN'S

615 MASSACHUSETTS AVENUE, CAMBRIDGE, MA 02139 • (617) 864-3000

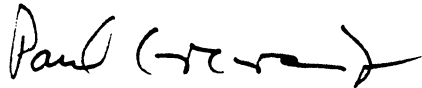
July 13, 1984

Stephen Baird
Folk Arts Network
P.O. Box 867
Cambridge, MA 02238

Dear Mr. Baird:

I have recently received a copy of the proposed regulation governing street performers in the City of Cambridge. I have read it and, as a Cambridge businessman, I fully support this proposal. I wish you and the Cambridge Arts Council success in having this proposal enacted into law.

Sincerely,



Paul R. Corcoran, Jr.
President

dations had possession of the raw data requested, and the 13 recipients of research grants that did were not themselves an "agency," no "agency record" existed for purposes of FOIA. *Id.* 190 U.S.App.D.C. at 238-239, 587 F.2d at 1135-36.

The decision in *Forsham* does not disturb this Court's prior holding. The Circuit Court's primary line of reasoning, concerning the degree of federal involvement necessary to transform data into "agency records," need not be reached if the possessor and producer of the data is itself an agency. NCMF undisputedly possesses and controls the production of all relevant documents here; moreover, it satisfies the test for agency status previously promulgated by this Circuit and endorsed in *Forsham*. To qualify as an agency under FOIA, 5 U.S.C. § 552(e), an organization must exercise substantial independent authority in performing its particular functions, *Washington Research Project, Inc. v. Department of HEW*, 164 U.S.App.D.C. 169, 179, 504 F.2d 238, 248 (D.C. Cir. 1974), *cert. denied*, 421 U.S. 963, 95 S.Ct. 1951, 44 L.Ed.2d 450 (1975); *Soucic v. David*, 145 U.S.App.D.C. 144, 152, 448 F.2d 1067, 1075 (D.C. Cir. 1971), and it must be sufficiently controlled by government to justify attributing governmental character to its operations. *Rocap v. Indiek*, 176 U.S.App.D.C. 172, 175, 539 F.2d 174, 177 (D.C. Cir. 1976). See H.R.Rep.No.876, 93d Cong., 2d Sess. 8 (1974), *reprinted in* [1974] U.S. Code Cong. & Admin.News, pp. 6267, 6274; S.Rep.No.1200, 93d Cong., 2d Sess. 9 (1974) (Conf.Report), *reprinted in* [1974] U.S. Code Cong. & Admin.News, pp. 6285, 6293.

The holding in *Forsham* that private medical centers receiving pure research grants lack the independent decisional authority to qualify as an agency is clearly distinguishable from the facts of this case. As noted above, NCMF has statutory authority to make final, binding decisions, and it exercises such authority on a regular basis just as Congress intended. The conclusion that the 13 medical centers in *Forsham* are not sufficiently subject to day-to-day federal control must also be distinguished here. The PSRO statute established pervasive procedural requirements

for virtually every phase of PSRO activities, and organizational requirements governing selection of the PSRO entity and its members. These statutory obligations are supplemented extensively by HEW regulations and by the PSRO Transmittals and Program Manual which are binding on each PSRO. See NCMF Contract, Art. XIV, (July 1, 1977), attached to defendants' Affidavit of Michael Goran. In short, PSROs such as NCMF perform a characteristically governmental function and are subject to detailed government control in their program planning and implementation.

Defendants have failed to establish the applicability of any exemptions claimed. Accordingly, plaintiff's motion for summary judgment is hereby granted and defendants' motion for reconsideration or summary judgment is hereby denied. The Court in entering its earlier decision that NCMF is an "agency," felt that an immediate appeal would not materially advance the ultimate termination of the litigation. It denied NCMF's request for an interlocutory appeal, but assured defendants that a stay would be entered upon resolution of the entire controversy. All further proceedings in this action are now stayed for 30 days, to allow defendants to seek a stay pending appeal in the United States Court of Appeals for the District of Columbia Circuit.

SO ORDERED.



Robert GOLDSTEIN

v.

TOWN OF NANTUCKET et al.

Civ. A. No. 79-1455-Z.

United States District Court,
D. Massachusetts.

Sept. 25, 1979.

Professional musician brought action for declaratory and injunctive relief, alleg-

ing t
sient
secur
trict
vend
const

1. Co

bids
and
spec
form
cal,

1.

2. Co

Nan
clear
Amc
Amc

3. C

Amc
tecti
lic e
ble
plac
U.S

4. C

for
plai
bro.
sibi
pro
did
plic
pla
ba
An
An

5.

cor
pe
tic
nc

ing that enforcement by town of its transient vendor bylaw deprived him of rights secured by the First Amendment. The District Court, Zobel, J., held that transient vendor bylaw, as applied to troubadour, was constitutionally deficient.

Judgment to be entered.

1. Constitutional Law ⇔ 90(1)

By its terms, the First Amendment forbids infringement of right of free speech and this constitutional protection of free speech, moreover, applies broadly to various forms of expression, literary, artistic, political, and scientific. U.S.C.A.Const. Amend. 1.

2. Constitutional Law ⇔ 90.1(6)

Troubadour's public performance of Nantucket's traditional folk music was clearly within scope of protected First Amendment expression. U.S.C.A.Const. Amend. 1.

3. Constitutional Law ⇔ 90(3)

Constitutional guarantee of the First Amendment does not confer absolute protection from government regulation of public expression; states may impose reasonable and impartial regulations upon the time, place and manner of public expression. U.S.C.A.Const. Amend. 1.

4. Constitutional Law ⇔ 90.1(4)

Nantucket's bylaws setting standards for licensing of entertainers, including plaintiff troubadour, and which included broad licensing criteria of financial responsibility of applicant, effect on neighboring properties, and opinion of town merchants, did not pass constitutional muster as applied to plaintiff troubadour, whose contemplated activity of performing in tradition of balladeers, on the street, enjoyed First Amendment protection. U.S.C.A.Const. Amend. 1.

5. Constitutional Law ⇔ 90.1(4)

Fact that plaintiff troubadour accepted contributions of passersby during his public performances would not dilute his protection under the First Amendment and would not broaden town's narrow mandate to ex-

ercise impartial regulation upon use of sidewalks for public expression. U.S.C.A.Const. Amend. 1.

John Reinstein, Mass. Civil Liberties Union Foundation, Boston, Mass., for Robert Goldstein.

Charles A. Goglia, Jr., King, Goglia, Kellogg & Gardner, Wellesley, Mass., for the Town of Nantucket.

MEMORANDUM OF DECISION

ZOBEL, District Judge.

Plaintiff is a professional musician who is known as the "Troubadour of Nantucket". He brought this action for declaratory and injunctive relief, alleging that enforcement by the Town of Nantucket of its Transient Vendor Bylaw deprives him of rights secured by the First Amendment. The bylaw, as applied to plaintiff, is constitutionally deficient.

The relevant facts are not in dispute. Plaintiff has for many years studied and performed the traditional music of Nantucket and is an acknowledged authority on the music and folklore of the island. He plays a number of instruments from the hammer dulcimer to the fife and banjo and he sings. He has performed the music of Nantucket at numerous festivals and in concert but prefers to perform in the tradition of balladeers, on the street. When he performs in Nantucket, he customarily plays the hammer dulcimer and sings, and positions his open dulcimer case so that passersby may contribute donations, and some do. On a number of occasions during the past four years plaintiff attempted to play his music in the streets of Nantucket but was prevented by town officials from doing so. In 1975, he applied to the town for permission to perform, and his petition was denied. In 1978 he again applied and was granted a "conditional permit" for a period of two weeks. The permit specified locations and times at which plaintiff could perform. At the end of the two-week period the Police Chief reported to the Board of

Selectmen that there had been "no problems". The Board then advised plaintiff that the new Transient Vendor Bylaw did apply to him and that he would have to obtain a permit before he would "be allowed to proceed further with the playing of [his] music." The bylaw defines "Transient Vendors" to include "any person who engages in a transient or temporary business selling offering for sale or accepting contributions for the offering or providing entertainment." It sets forth the standards for deciding whether a permit may issue. Plaintiff attacks these standards and argues that in light of the First Amendment they include impermissible criteria for regulation of free expression.

[1, 2] By its terms, the First Amendment forbids infringement of the right of free "speech." The Constitutional protection of free speech,¹ moreover, applies broadly to various forms of expression, literary, artistic, political, and scientific. *Miller v. California*, 413 U.S. 15, 22-3, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973), rehearing denied 414 U.S. 881, 94 S.Ct. 26, 38 L.Ed.2d 128 (1973). See also, *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557-8, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975) (the musical "Hair"), *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503, 72 S.Ct. 777, 96 L.Ed. 1098 (1952) (the motion picture "The Miracle"). The substance and not merely a method of expression is protected by the First Amendment:

[While] Each medium of expression, of course, must be assessed for First Amendment purposes by standards suited to it, "the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule." *Southeastern Promotions, Ltd. v. Conrad*, supra, 420 U.S. at 557-8, 95 S.Ct. at 1246,

1. First Amendment protection applies to state action as well as Congressional action. See *Schneider v. State of New Jersey*, 308 U.S. 147,

quoting *Joseph Burstyn, Inc. v. Wilson*, supra, 343 U.S. at 503, 72 S.Ct. 777.

Accordingly, plaintiff's public performance of Nantucket's traditional folk music is clearly within the scope of protected First Amendment expression.

[3] The Constitutional guarantee, however, does not confer absolute protection from government regulation of public expression. States may impose reasonable and impartial regulations upon the time, place and manner of public expression. *Schneider v. State of New Jersey*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155 (1939). But "streets, sidewalks, parks, and other similar public places are historically associated with the exercise of First Amendment rights." *Amal. Food Emp. U. Loc. 590 v. Logan Val. Plaza*, 391 U.S. 308, 315, 88 S.Ct. 1601, 1607, 20 L.Ed.2d 603 (1968), and "[the Supreme Court] ha[s] consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper regulation of public places." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 153, 89 S.Ct. 935, 940, 22 L.Ed.2d 162 (1969) (citations omitted). In *Shuttlesworth v. City of Birmingham*, the court recalled thirty years of prior First Amendment decisions and concluded "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Id.*, 394 U.S. at 150-1, 89 S.Ct. at 938. (citations omitted)

[4] Nantucket's bylaw subjects entertainers, including plaintiff, to the same licensing requirements as apply to transient merchants and vendors. A permit may not issue without a finding by the Board of Selectmen that issuance "would be beneficial to the best interests of the Town of Nantucket and its inhabitants." In making its determination, the Board of Selectmen are, by the terms of the bylaw, required to

150, 60 S.Ct. 146, 84 L.Ed. 155 (1939). See especially *id.*, at 150, n. 8, 60 S.Ct. 146.

GOLDSTEIN v. TOWN OF NANTUCKET

609

Cite as 477 F.Supp. 606 (1979)

consider the "financial responsibility" of the entertainer, the "effect of the [entertainment] on the neighborhood properties", and the interests of public order and safety. As a matter of practice, they also take into consideration the wishes of the merchants in the shopping area. Because three of the licensing criteria—financial responsibility of the applicant, effect on neighboring properties, and the opinion of town merchants—are neither narrow, objective nor definite standards, and because those criteria exceed in their scope constitutionally permissible grounds for regulating free expression, the bylaw does not pass constitutional muster. As applied to plaintiff, whose contemplated activity enjoys First Amendment protection, it is unconstitutional.

Defendant contends, however, that plaintiff's activity is commercial speech and thus does not enjoy First Amendment protection. It further argues that even if the performance is protected activity, the enforcement of the bylaw conforms with the guaranteed right of free expression and permits only impartial restriction of the time, place and manner of plaintiff's activity. Neither of these contentions is availing.

[5] The United States Supreme Court recently observed that "the notion of unprotected 'commercial speech' [has] all but passed from the scene." *Va. St. Bd. of Pharm. v. Va. Cit. Cons. Council*, 425 U.S. 748, 759, 96 S.Ct. 1817, 1824, 48 L.Ed.2d 346 (1976), citing *Bigelow v. Virginia*, 421 U.S. 809, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975). Indeed, "[s]peech is protected even though it is carried in a form that is 'sold' for profit (citations omitted), and even though it may involve a solicitation to purchase or otherwise pay or contribute money." (citations omitted) *Va. St. Bd. of Pharm. v. Va. Cit. Cons. Council*, *supra*, 425 U.S. at 761, 96 S.Ct. at 1825. See also *Bates v. State Bar of Arizona*, 433 U.S. 350, 363, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977). The fact that plaintiff accepts contributions of passersby during his public performances, thus, does not dilute plaintiff's protection of the First Amendment. It plainly does not

broaden defendant's limited mandate to exercise impartial regulations upon the use of the sidewalks for public expression.

Defendant's second argument is contradicted by the very terms of the bylaw which chart a course of Town inquiry that ranges far beyond the narrow parameters set by the First Amendment. Neither the language of the bylaw nor defendant's testimony suggests that any authoritative construction so narrows the bylaw as to comply with the command of the First Amendment. *Cf. Cox v. State of New Hampshire*, 312 U.S. 569, 576, 61 S.Ct. 762, 85 L.Ed. 1049 (1941). See also *Shuttlesworth v. City of Birmingham*, *supra*, 394 U.S. 147, 153, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969).

The bylaw directs the selectmen to consider, among other factors, the "financial responsibility" of the applicant and the effect of the proposed expression "on the neighborhood properties." The existence of such broad evaluative criteria in addition to specific criteria for the protection of public safety belies defendant's claim that determination of what is "beneficial to the best interests of the Town . . ." contemplates only the interest of public safety. Indeed, the Chairman of the Board of Selectmen testified that one primary consideration in weighing applications is the opinion of neighboring merchants, and on the face of plaintiff's 1978 application to the town there appears a handwritten notation that one of the selectmen is "investigating with merchants."

The requirement of merchants' approval is irreconcilable with freedom of expression. It is unqualified censorship and it is just what the First Amendment forbids. The prayers for declaratory and injunctive relief are granted. Pursuant to authority granted by 28 U.S.C. § 2201, the Court determines and declares that the Transient Vendor Bylaw (Effective August 24, 1978) of the Town of Nantucket, Massachusetts is unconstitutional as applied to plaintiff.

Plaintiff shall prepare and submit to defendant for approval as to form a judgment in accordance with this opinion.

Comm. from Councillor David Sullivan, transmitting a proposed draft of an amendment to the General Ordinances entitled "Regulation of Street Performances" as submitted by Stephen H. Baird, a copy of the decision in the case of Robert Goldstein vs. Town of Nantucket & endorsements of the proposed amendment by Christine K. Connaire of the Arts Council & Paul R. Corcoran, Jr.

3/4/1985
Returned to the
Special Committee
By Order of Councilor
Draboy

In City Council,

February 25, 1985 2/25/85

Returned to
the
Committee on
Ordinances.

(see Order #6 of the date)

May 5, 1985

RECEIVED BY
OFFICE OF CITY CLERK

TO: Ms. Alice Wolff and the Cambridge City Council
Re: Street Performance Ordinances
MAY 9 10 40 AM '85
CAMBRIDGE, MASS.

Dear Councilors,

I am writing to express my strong opinion that it would be advantageous to all concerned--the performers, the police, the City of Cambridge, and the public--for you to pass the new street performing ordinance (supported by Steven Baird, et al). The old ordinance is quite unsatisfactory in a number of ways: the "designated areas" are far too few and quite unsatisfactory for performing (have you tried to be heard in the Central Square traffic island lately?) and several areas of the law are rather vague, leaving a large "grey area" in interpretation and enforcement. As a street performer (I play hammered dulcimer) I have seen a number of situations in which individual policemen have set out to make performers conform to their personal ideas of what the law should be, inventing clauses and designated areas as it suits them. The resulting confusion is not fair to anyone.

The new ordinance would vastly improve this situation and I urge you to vote in favor of it. Thank you.

Yours sincerely,

Beverly Woods

Beverly Woods

P.O. Box 62

Franconia, N.H.

03580

2.

Comm. from Beverly Woods of Franconia, N.H.
in support of passage fo the proposed street
performing ordinance submitted by Stephen H.
Baird, et al.

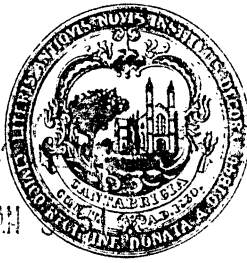
In City Council,

May 13, 1985

*5/13/85 Referred to the
petition*

RECEIVED
OFFICE OF CITY

1986 JUL 11 AM



CAMBRIDGE, MA
Walter J. Sullivan
Mayor
City of Cambridge
Cambridge, Massachusetts 02139
617-498-9090

July 9, 1986

Mr. Stephen Baird
P.O. Box 570
Cambridge, MA. 02238

Dear Mr. Baird:

This will acknowledge receipt of your letter of July 4, 1986 directed to me and to the members of the City Council. I am forwarding same to the Acting City Clerk, Joseph Connarton, with the request that he incorporate your communication in the materials which will be provided to the Council members at their next regularly scheduled session.

Sincerely,

A handwritten signature in cursive script that reads "Walter J. Sullivan".

Walter J. Sullivan,
Mayor

cc: (with enclosure)
Mr. Joseph Connarton
Acting City Clerk
City of Cambridge

WJS/dn

Stephen Baird, Streetsinger

Stephen Baird, Streetsinger, P.O. Box 1570, Cambridge, MA 02238 617/864-2970

July 4, 1986

Honorable Walter Sullivan
Mayor, City of Cambridge
and City Councillors
City Hall
795 Massachusetts Ave.
Cambridge, MA 02139

RECEIVED

JUL 8 1986

Dear Mayor Sullivan and City Councillors:

I strongly object to the Proposed Ordinance Concerning the Public Way as a Forum for Expression and Business that has been presented to the council for consideration. In my opinion the proposed ordinance is grossly unconstitutional and a hostile response to my request to curb police abuse of my and other street performers' constitutional rights during the past fifteen years. My patience has run out and I am contacting my lawyers to pursue a suit and seek financial penalties against the city.

This direct assault on the Constitution on the eve of its 200th anniversary is appalling. I just can not believe Sam Adams and the Sons of Liberty would have discarded their signs and effigies ("inanimate objects") on their march to the Liberty Tree because, as this ordinance proposes:

1. Owner(s) and ground floor tenants might object (p. 7)
2. It might decrease the value of real estate (p. 10)
3. It could harm tourist appeal (p. 10)
4. It was inharmonious or incongruent with the distinctive character of the area. (p. 10)
5. Its features may not have nurtured cultural stability (p. 10)

The Eastern Federal District Court in a decision I enclosed with my letter back on February 11, 1985, said:

"Nantucket's bylaws setting standards for licensing entertainers, including plaintiff troubadour, and which included broad licensing criteria of financial responsibility of applicant, **effect on neighboring properties, and opinion of town merchants, did not pass constitutional muster as applied to plaintiff troubadour**, whose contemplated activity of performing in tradition of balladeers, on the street, enjoyed First Amendment protection. *Goldstein v. Nantucket*, 477 F. Supp., 606 (1979) (Emphasis added).

There is a requirement that all people wanting to exercise their First Amendment rights must have a probation record secured from the State Board of Probation on file (p. 5 & 7). This ordinance would require every minister coordinating a peace rally , every politician distributing campaign literature, and every civic organization in the city to pass "character" analysis by city licensing officials. The U.S. Supreme Court has repeatedly rejected this type of prior restraint since 1939:

"Conceding that fraudulent appeals may be made in the name of charity and religion we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval.... Frauds may be denounced as offences and punished by law."
Schneider v. State, 308 US 147, 164 (1939).

"A free society prefers to punish the few who abuse rights of speech **after** they break the law than to throttle them and all others beforehand." Southeastern Promotions, Ltd. v Conrad, 430 US 546, 559 (1974) (emphasis added).

The Supreme Court has repeatedly said that each medium of expression must be assessed by different standards. To regulate all forms of expression under one overall ordinance is impossible. To regulate expression with business endeavors under one overall ordinance is absurd. The police, the ones who have to enforce this law, will never be able to figure out what part of the ordinance regulates what activity.

I cannot believe I have waited a year and a half, while being subjected to blatant forms of police harassment, for an ordinance to be submitted that is even more unconstitutionally restrictive and dangerous than the one already on the books. I will contact newspapers, civic organizations, political groups, and church groups to alert them to the dangers of this proposed ordinance. I am also compelled to seek redress in court.

Sincerely,

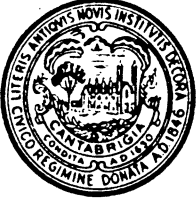
A handwritten signature in black ink, appearing to read 'Stephen Baird', written in a cursive style.

Stephen Baird

Stephen Baird
P.O. Box 570
Cambridge, MA 02238

The Honorable Walter Sullivan
Mayor of Cambridge
and Cambridge City Councilors
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139





CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
TEL. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
DEPUTY CITY MANAGER

June 30, 1986

To the Honorable, the City Council:

Attached please find a copy of a proposed ordinance concerning use of the public way as a forum for expression and business. As you are aware, our current methods of regulating business activities and First Amendment activities such as street performances in public places need improvement. On several occasions, the City Council has requested that I review the various regulations and procedures the City employs to license activities on sidewalks and public ways. As outlined in the accompanying memorandum from James McDavitt, License Commission Chair, the proposed ordinance represents a comprehensive attempt to consolidate these procedures under one agency, the License Commission. I support this effort to respect these activities in public places while still maintaining and preserving public order.

It is my recommendation that this ordinance be referred to the Committee on Ordinances for a public hearing. Due to the broad impact of this regulation, the attached list of department heads, business groups, neighborhood associations, and other local organizations should be invited to attend.

Very truly yours,

Robert W. Healy
City Manager

No operation

2



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 498-9021

LICENSE COMMISSION

JAMES THADDEUS McDAVITT
Chairman

ANTHONY G. PAOLILLO
Chief-of-Police Department

THOMAS V. SCOTT
Chief-of-Fire Department

MEMORANDUM

TO: Robert W. Healy
City Manager

FROM: James T. McDavitt *JTM*
License Commission Chair

DATE: June 26, 1986

SUBJECT: Proposed Ordinance Concerning the Public Way as a Forum for
Expression and Business

Pursuant to your directive, I hereby transmit to you a proposed ordinance as described above which I have drafted after consultation with all affected City departments. This proposed ordinance would consolidate almost all licensing of activities in the public way under the jurisdiction of the License Commission.

Currently, the following seven agencies regulate the following activities in the public way and in public parks:

1. License Commission, relative to peddlers outside Harvard Square and to taxicabs;
2. Police Chief, relative to peddlers in Harvard Square;
3. Traffic and Parking Director, relative to street musicians at traffic islands;
4. Public Works Commissioner, relative to distribution of literature and placement of signs;
5. Veterans Agent, relative to seeking contributions;
6. City Manager, relative to tourist buses and the use of amplified sound devices;
7. City Council, relative to the display of merchandise.

Moreover, there is currently no licensing mechanism for transient vendors selling merchandise on private property, for so-called package cabs, and for newspaper boxes.

The problems which have developed from the current decentralization of regulatory licensing authority over activities in the public way are threefold. First, such decentralization has caused confusion in the minds of the public and of license applicants as to what agency licenses what activity. Second, this decentralization has also caused different agencies to treat license applicants in different procedural and substantive ways, thus departing from the goal of a comprehensive, consistent city policy on regulating activities in the public way. And finally, the decentralization has served as an obstacle to the efficient regulation of controversial constitutionally-protected activities which frequently are the subject of court cases.

The proposed ordinance centralizes this kind of regulation under the License Commission such that the City will enjoy a clear, consistent, time-sensitive, and comprehensive policy on the use of the public way by businesses and by those exercising constitutional rights to free speech. The proposed ordinance also contains the narrow licensing standards and the definite licensing procedures needed to withstand any court challenge brought on constitutional grounds. Indeed, as you advised me, it is the frequent possibility of court action on constitutional grounds which favors this consolidation under the License Commission, given my background as a constitutional lawyer.

The proposed ordinance is self-explanatory and well-organized, with a Table of Contents that also acts as an outline. Therefore, there is no need to discuss the specifics of the proposed ordinance in this cover letter in any greater detail.

Please advise if there are any questions or comments.

All Assistant City Managers

City Solicitor

City Clerk

Police Chief

Fire Chief

License Commission Chair

City Electrician

Traffic and Parking Director

Inspectional Services Commissioner

Chairman, Board of Assessors

Public Works Commissioner

Arts Council Director

Veterans' Agent

Neighborhood Associations (1/86)

Area 1

East Cambridge Planning Team
c/o Nick Geraigery
269 Hurley Street
Cambridge, MA 02141

East Cambridge Planning Team
c/o Paul Dodds, Secretary
83 Third Street
Cambridge, MA 02141

East Cambridge Stabilization Committee
c/o Pat Shapiro, Secretary
One Fifth Street
Cambridge, MA 02141

Area 3

James Bentubo
c/o Just A Start
Wellington-Harrington Citizens Committee
320 Cambridge Street
Cambridge, MA 02141

Area 4

Area Four Planning Team
c/o Janet Rose
16 Pine Street
Cambridge, MA 02139

Area Four Coalition
c/o Jackie Carroll
263 Broadway, #2
Cambridge, MA 02139

Margaret Fuller House
c/o Gloria Smith
71 Cherry Street
Cambridge, MA 02139

Cambridgeport Planning Team
c/o Constance Yee
808 Memorial Drive B-503
Cambridge, MA 02139

New Alternative Neighborhood Council
Peggy Lester, Chairperson
200 Erie Street
Cambridge, MA 02139

Mid-Cambridge Neighborhood Association
c/o John Pitkin, President
P.O. Box 904
Cambridge, MA 02138

Harvard Square Defense Fund
c/o Mrs. K. Dunn Gifford, Executive Director
85 Sparks Street
Cambridge, MA 02138

Harvard Square Defense Fund
c/o J.d. Pollack, President
24 Farwell Place
Cambridge, MA 02138

Harvard Square Business Association
Sally Alcorn, Executive Director
18 Brattle Street, Room 256
Cambridge, Ma 02138

Harvard Square Business Association
c/o Sheldon Cohen, President
Four Brattle Street
Cambridge, MA 02138

Business Association of North Cambridge
c/o Karen Swaim, President
Frameworks
1967 Massachusetts Avenue
Cambridge, MA 02140

Central Square Association
c/o Carl Barron, President
Putnam Furniture
614 Massachusetts Avenue
Cambridge, MA 02139

Cambridge Chamber of Commerce
c/o Barbara Sullivan, Executive Director
859 Massachusetts Avenue
Cambridge, MA 02139

Neighborhood Nine Association
c/o A. T. Sawyer
14 Avon Place
Cambridge, MA 02138

Neighborhood Ten Association
c/o John Brode
23 Berkeley Street
Cambridge, MA 02138

North Cambridge Stabilization Committee
c/o Jed Lowry
22 Madison Avenue
Cambridge, MA 02140

Riverside Planning Team
c/o Diane Sealy
One Putnam Gardens
Cambridge, MA 02139

Agassiz Neighborhood Council
c/o Terry Delancey
23 Sacramento St
Cambridge, MA 02138

East Cambridge Business Association
c/o Frank Budryck, President
660 Cambridge Street
Cambridge, MA 02141

Kendall Square Business Association
c/o Norman McIver, Vice President
Cambridge Trust Company
326 Main Street
Cambridge, MA 02142

Cambridge Christian Center
99 Prospect St.
Cambridge, MA 02139

Grace Methodist
56 Magazine St.
Cambridge, MA 02139

St. Mary's Orthodox Ch.
8 Inman St.
Cambridge, MA 02139

Cambridgeport Baptist Ch.
459 Putnam Ave.
Cambridge, MA 02139

Mass. Ave. Baptist Church
148 Hampshire St.
Cambridge, MA 02139

St. Paul's A.M.E. Church
37 Bishop Allen Drive
Cambridge, MA 02139

Christian Mission Holiness
789 Main St.
Cambridge, MA 02139

Metropolitan Baptist Ch.
16 Beech St.
Cambridge, MA 02140

St. Peter's Episcopal Ch.
15 Sellars St.
Cambridge, MA 02139

Christian Mission
Pentecostal
77 Columbia St.
Cambridge, MA 02139

Our Lady of Pity
35 Middlesex St.
Cambridge, MA 02140

Sts. Constantine & Helen
Greek Orthodox Church
14 Magazine St.
Cambridge, MA 02139

Church of Jesus Christ
132 Pleasant St.
Cambridge, MA 02139

Pilgrim Congregational Ch.
35 Magazine St.
Cambridge, MA 02139

Salvation Army Citadel
402 Mass. Ave.
Cambridge, MA 02139

Church of the Nazarene
234 Franklin St.
Cambridge, MA 02139

Prospect Congregational Ch.
99 Prospect St.
Cambridge, MA 02139

Union Baptist Church
874 Main St.
Cambridge, MA 02139

Faith Lutheran Church
311 Broadway
Cambridge, MA 02139

Rush A.M.E. Zion Church
82 School St.
Cambridge, MA 02139

Western Ave. Baptist Ch.
297 Western Ave.
Cambridge, MA 02139

First Baptist Church
5 Magazine St.
Cambridge, MA 02139

St. Augustine African Ch.
137 Austin St.
Cambridge, MA 02139

First Holiness Pentecostal
11 Columbia St.
Cambridge, MA 02139

St. Bartholomew's Church
239 Harvard St.
Cambridge, MA 02139

First Reformed Presbyterian
106 Antrim St.
Cambridge, MA 02139

St. Joseph's Church
120 Norfolk St.
Cambridge, MA 02139

First United Presbyterian
1418 Cambridge St.
Cambridge, MA 02139

St. Mary's of the
Annunciation
134 Norfolk St.
Cambridge, MA 02139

Benovan's witnesses
Beech St.
Cambridge, MA 02140

Church of Scotland
167 Hampshire St.
Cambridge, MA 02139

Portuguese Baptist Church
114 Inman St.
Cambridge, MA 02139

Antioch Temple Church
96 River St.
Cambridge, MA 02139

Holy Cross National Church
101 Third St.
Cambridge, MA 02141

Old Cambridge Baptist Ch.
1151 Mass. Ave.
Cambridge, MA 02138

Church of Scientology
3 Essex St.
Cambridge, MA 02139

St. James's Episcopal Ch.
1991 Mass Ave.
Cambridge, MA 02140

University Lutheran
66 Winthrop St.
Cambridge, MA 02138

Korean Church in Cambridge
11 Garden St.
Cambridge, MA 02138

Cambridgeport Central
Baptist Church
459 Putnam Ave.
Cambridge, MA 02139

St. Paul's R.C. Church
Bow & Arrow Sts.
Cambridge, MA 02138

Society of Friends
5 Longfellow Park
Cambridge, MA 02138

Christ Church
Zero Garden St.
Cambridge, MA 02138

Immaculate Conception Ch.
45 Alewife Brook Pkwy.
Cambridge, MA 02140

St. Anthony's Church
702 Cambridge St.
Cambridge, MA 02141

Church of the New
Jerusalem
50 Quincy St.
Cambridge, MA 02138

St. John the Evangelist
2254 Mass. Ave.
Cambridge, MA 02140

St. Hedwig's Church
100 Otis St.
Cambridge, MA 02141

First Church of Christ,
Scientist
13 Waterhouse St.
Cambridge, MA 02138

Church of Jesus Christ of
Latter Day Saints
4 Longfellow Park
Cambridge, MA 02138

St. Patrick's Church
40 York St.
Cambridge, MA 02141

First Church Cong.
11 Garden St.
Cambridge, MA 02138

Holy Trinity Armenian Ch.
145 Brattle St.
Cambridge, MA 02138

St. Francis of Assisi
42 Sciarappa St.
Cambridge, MA 02141

First Parish, Unitarian
3 Church St.
Cambridge, MA 02138

Antioch Temple
40 Williams St.
Cambridge, MA 02139

Immaculate Conception
Lithuanian Church
432 Windsor St.
Cambridge, MA 02141

Harvard-Epworth Church
1555 Mass. Ave.
Cambridge, MA 02138

Apostolic Pentecostal Ch.
47 Howard St.
Cambridge, MA 02139

Sacred Heart of Jesus Ch.
49 Sixth St.
Cambridge, MA 02141

N. Congregational Church
1803 Mass. Ave.
Cambridge, MA 02140

Blessed Sacrament Church
189 Pearl St.
Cambridge, MA 02139

HOTELS:

Best Western Homestead
220 Alewife Brook Parkway
Cambridge, MA 02138

Charles Hotel
15 Eliot Street
Cambridge, MA 02138

Harvard Motor House
110 Mount Auburn Street
Cambridge, MA 02138

Sheraton Commander
16 Garden Street
Cambridge, MA 02138

Howard Johnson's Motel
777 Memorial Drive
Cambridge, MA 02139

Hyatt Hotel
575 Memorial Drive
Cambridge, MA 02139

STREET PERFORMANCE PERMITS

| <u>NAME:</u> | <u>ADDRESS:</u> | <u>TEL.</u> |
|----------------------------------|--------------------------------------|-------------|
| Dick Howick | 789 Belmont St., Bel., MA02178 | 489-1422 |
| Adam Grossman | 172 Norfolk St., Camb., MA02139 | 876-8357 |
| Russ Gershon | 117 Columbia St., Camb., MA02139 | 876-4012 |
| John Grossman | 34 Cotton St., Newton, MA02154 | 527-2444 |
| Charles C. Smith | 89 Washington St., Woburn, MA01801 | 932-9132 |
| Joel M. Sipress | 407 Memorial Dr., Camb., MA02139 | 225-9546 |
| Leonard Boni | 205 Green St., Camb., MA02139 | 354-6141 |
| Carole Kelner | 62A Forest St., Wat., MA 02172 | 924-6350 |
| Leora Salo | 61 Adams St., Som., MA02145 | 628-0959 |
| Mark Cushing | 72 Pearl Ave., Revere, MA02151 | 289-5457 |
| Albert F. (Erick) Schenkel | 159 Charlton St., Arl., MA02174 | 646-9027 |
| Peter Kane DuFault | c/o Mrs. C.D. Wilson | 237-0269 |
| Karen Bush | 26 Suffolk St., Camb., MA02139 | 354-0807 |
| Mark Kelley & Dave Herlihy | 35 Allston St., Allston, MA02134 | 782-2616 |
| Michael Sullivan/Neti Vaandrager | 3608 Jubilee Ter., Dallas, Texas | 492-3683 |
| Mackson P. McDowall/Wendy Kalp | 32 Fox Hill Rd., Framingham, MA01701 | 237-6667 |
| Kathryn L. Tighe/Alice Feiring | 19A Maple Ave., Camb., MA 02139 | 661-9589 |
| Ron Soltz | 3 Ames St., Camb., MA02139 | 225-6424 |
| Helio Pere | 15 Roseland Ave., Warwick, R.I.02888 | ---- |
| Steven Kriger | 1408 Stearns Hill Rd., Wal., MA02154 | 893-4097 |
| Robert Lynch/Jerry Weymiller | 1133 Comm. Ave., Allston, MA02134 | 782-2644 |
| Philip H. Corcoran | 17 Paul Revere Rd., Arl., MA02174 | 643-5717 |
| Illana K. Levenson | P.O. Box 936, Amherst, MA 01004 | 784-7474 |
| Russ Cobe | 54E Trowbridge St., Camb., MA02139 | 354-7379 |
| Owen Murray | 1179 Boylston St., Voston, MA 02215 | 536-7667 |
| Robert O'Brien | 13 Medford St., Chelsea, MA02150 | 889-4824 |
| Rosalie Hoffman/Chas. Goumas | 27 Marshall St., Som., MA02145 | 776-6249 |
| Benjamin Neubauer | 7 Kensington Rd., Arl., MA02174 | 646-9046 |
| Robert Chabot | 185 Lowell St., Som., MA02144 | 628-5347 |
| David Goldfinger | 145 South St., J.P., MA 02130 | 524-8219 |
| Virginia Briggs | 17A Arlington St., Camb., MA02140 | 868-7674 |
| Jeffrey C. Howry | 26 Wachusetts Dr., Lex., MA02173 | 861-8524 |
| Marcie Deihl | 20 Clary St., Camb., MA 02139 | --- |
| Jim Kweskin | 2 Fort Ave. Terr., Rox., MA02119 | 445-6049 |
| Miguel M. Jimenez/Peggy Waldron | 37A Harard St., Brookline, MA04126 | 492-2281 |
| Y. Bo Chu | 11 Sumner Rd., Camb., MA02138 | 491-4944 |

1986

STREET PERFORMANCE PERMITS

| <u>NAME:</u> | <u>ADDRESS:</u> | <u>TEL.</u> |
|------------------------------|------------------------------------|----------------|
| Marion Bevans | 62 Middlesex St., Camb., MA02140 | 491-0934 |
| Daniel Fassett | RD #2, Groton, MA01450 | 448-5305 |
| Dorothy Boudreau | 15 Willow Ave., Som., MA02144 | 628-8861 |
| Johannes Ammon/John J. Jones | 32 Merriam St., J.O. MA02130 | 427-2594 |
| Katherine Rhoda | P.O. Box 56, Hiram, ME04041 | (207) 625-8701 |
| Paul Winkelman | 7 Key St., Millis, MA02054 | 376-5873 |
| Eric Brysk | 226 Chestnut St., Camb., MA02139 | 661-0999 |
| Phillip Thibodeau | 700 Huron Ave., Camb., MA02138 | 547-7293 |
| Kevin McNamara | 417 Somerville Ave., Som., MA02143 | 628-8025 |
| Rob Dubow | 322 Brookline St., Camb., MA02139 | 576-6452 |
| Tom Clancy/Celia Slattery | 17 Osborne St., Brookline, MA02146 | 253-2613 |
| Mel Dorfman | 35 Trowbridge St., Camb., MA02138 | 354-0406 |
| Ted German/Tony Polumba | 30A Hancock St., Som., MA02143 | 628-9175 |
| Tom Sullivan/Marilyn Sandau | 25 Hammond St., Camb., MA02138 | 492-3384 |
| Donald Lyman, Jr. | 3 Hilltop Rd., Wilmington, MA01887 | 658-4886 |
| John Perroli | 507 Main St., Waltham, MA02154 | 647-5453 |
| Vera Meyer | 30 Sciarappa St., Camb., MA02141 | 492-8540 |
| Nvaka Ni'Chanainn | 645 Beacon St., Boston, MA 02215 | 522-0718 |
| Berrien Thorn | 56 Wendell St., Camb., MA02138 | --- |
| Laurie M Ketzenberg | 120 Brainerd Rd., Brighton, MA | 738-5706 |
| M. Donald Burnette | 5 Jay St., Camb., MA 02139 | 846-0506 |
| Lawrence Butler | 165A Putnam Ave., Camb., MA | 864-8786 |
| Gary Wortzel | 428 Cambridge St., Camb., MA02141 | 576-4715 |
| Dick Howick | 789 Belmont St., Belmont, MA02178 | 489-1422 |



City of Cambridge

6.

IN CITY COUNCIL
February 25, 1985

VICE-MAYOR DUEHAY

ORDERED: That the City Manager be and hereby is requested to establish a committee to review and update city regulations of street musicians; and be it further

ORDERED: That the street musicians and owners of affected property as well as business associations be fully consulted for their input and advice.

In City Council February 25, 1985.
Adotped by the affirmative vote of 9 members.
Attest:- Paul E. Healy, City Clerk.

A true copy;

ATTEST:

A handwritten signature in cursive script, reading "Paul E. Healy", written over a horizontal line.

Paul E. Healy, City Clerk.

Stephen H. Baird
P.O. Box 570
Cambridge, MA 02238
617/864-2970
February 11, 1985

RECEIVED BY
OFFICE OF CITY CLERK
FEB 13 2 22 PM '85
CAMBRIDGE, MASS.

Councillor David Sullivan
City Council Offices
City Hall
Cambridge, MA 02139

Dear Councillor David Sullivan:

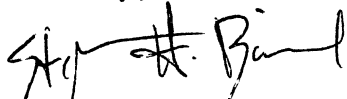
I have enclosed a proposed draft of a new revised Regulation of Street Performances. I hope this can be enacted before the sunny and warmer weather appears this spring.

The following are reasons I feel this new revised regulation should be enacted:

1. Street performers have become an important asset to the City of Cambridge since the original regulations were enacted.
2. The Eastern Federal District Court in *Goldstein v. Nantucket*, 477 F. Supp., 606, (1979), has ruled that street performances are a protected First Amendment right.
3. The Fourth Circuit US Court of Appeals has ruled limitation of street performances to designated areas as an unconstitutionally overbroad criteria (*Davenport v. Alexandria*, 710 F.2d, 148, (1983); CA #81-709-A; #83222).
4. The new revised regulation is more in line with regulations passed in Chicago, and those presently under consideration in Hartford, Connecticut.
5. The many new construction projects in Cambridge have greatly increased the number of appropriate areas for street performers.
6. The Cambridge Arts Council has worked extensively with street performers, including a street performers' festival as part of the River Festival.
7. Street performers in Cambridge have been featured numerous times on WBZ, WGBH, WCVB, The Boston Herald, The Boston Globe, TAB newspapers, The Cambridge Chronicle, and many other media outlets, increasing visibility and attracting tourists for the City of Cambridge.

In conclusion, I feel the new revised Street Performers Regulation will enhance both the City of Cambridge and the street performers' best interests in making the city's streets some of the most creative, safe, colorful, and exciting streets in the country. I hope the new regulations will be swiftly enacted.

Sincerely,



Stephen H. Baird

DRAFT

Regulation of Street Performances

Sec. 1 Definitions

The following terms are defined for the purpose of this regulation as follows:

(a) "Perform" includes, but is not limited to, the following activities: acting, singing, playing musical instruments, pantomime, juggling, magic, dancing and reciting.

(b) "Performer" means an individual who owns a permit issued pursuant to the provisions of this Regulation.

(c) "Public Areas" includes sidewalks, parks, playgrounds, and all other public ways located in the City of Cambridge.

Sec. 2 Prohibition

(a) No person may perform in a public area without having obtained a permit issued under Section 3 of this Regulation.

(b) Any person who performs in a public area without a permit issued under Section 3 of this Regulation shall be fined not more than \$25. The proceeds of any such fine shall be directed to the Cambridge Arts Council and used in its administration of this Regulation. Any person paying such a fine in excess of \$5 may obtain a permit under Section 3 of this Regulation without paying a fee therefor if application for such permit is made within 30 days of such payment.

Sec. 3 Permit

(a) A permit shall be issued by the Cambridge Arts council to each applicant therefor in exchange for a completed application and a fee of \$5, subject to the provisions of Section 8 of this Regulation.

(b) A completed application for a permit shall contain the applicant's name, address, and telephone number and shall be signed by the applicant.

(c) A permit shall be valid from the date on which it is issued through December 31 of the year in which it is issued; provided, however, that a permit issued in 1984 shall be valid through December 31, 1985.

(d) A permit shall contain the name and permit number of the applicant plus the year in which the permit is valid and any special allowance made by the Cambridge Arts Council pertaining to the permit.

(e) A permit shall be non-transferable.

(f) Upon issuing a permit, the Cambridge Arts Council shall also issue the performer a printed copy of this Regulation.

Sec. 4 Display of Permit

A performer shall carry a permit on his or her person while performing and shall show it to any police officer of the City of Cambridge upon request.

Sec. 5 Permitted Performances

(a) Performances may take place in the following

locations:

in public areas, except those excluded by the City Council or the Chief of Police pursuant to Section 7 of this Regulation;

on private property, if the performer has obtained the written permission of the owner of such property or other person with authority to grant such permission with respect to such property; and

in a public area where an authorized fair or public festival is being conducted, if the performer has obtained the written permission of the sponsor of such fair or festival.

(b) Performances may take place between 10:00 a.m. and 11:00 p.m. unless otherwise allowed by the Cambridge Arts Council.

(c) A performer may not use electric or electronic amplification except as otherwise allowed by the Cambridge Arts Council.

(d) A performer may not block the passage of the public through a public area except as permitted by the sponsor of an event under paragraph (a) of this Section or otherwise allowed by the Director of Traffic and Parking. If a sufficient crowd gathers to see or hear a performer such that the passage of the public through a public area is blocked, a police officer may

disperse the portion of the crowd that is blocking the passage of the public, but said police officer shall not cause the performer to leave the location.

(e) No performer or group of performers shall perform at a distance of less than 50 feet from another performer or group of performers that already is performing.

Sec. 6 Legal Conduct

(a) A performer may accept contributions of money or property at a performance, provided that no sign requesting contributions shall exceed 12" by 18" in size. Contributions may be received in any receptacle.

(b) A performer who performs and accepts contributions under the provisions of this Regulation shall not be committing disorderly conduct by virtue of those acts.

(c) A performer who performs under the provisions of this Regulation shall be presumed not to constitute a disturbance of the peace or quiet.

Sec. 7 Exclusion of Public Areas

(a) Upon the written recommendation of the Chief of Police or the Director of Traffic and Parking, the City Council or any committee thereof to which responsibility is delegated may conduct a public hearing to determine whether a designated public area shall be excluded from further performances.

(b) No public area shall be excluded from performances except;

by majority decision of City Council or its designated committee pursuant to paragraph (a) hereof; or

by decision of the Chief of Police in the case of an emergency; provided that no public area may be excluded from performances by the Chief of Police under this subparagraph for more than 7 days.

(c) No exclusion of public areas, except as decided by the Chief of Police in an emergency, shall be effective until seven days after written notice of said exclusion has been mailed by the Cambridge Arts Council to each performer.

(d) Upon issuing a permit, the Cambridge Arts Council shall also issue to the performer a current and complete list of all public areas in the City of Cambridge that have been excluded from performances.

Sec. 8 Revocation of Permit

(a) The Cambridge Arts Council may suspend a permit for not more than 30 days if any information contained in the application therefor is found to be false.

(b) The Cambridge Arts Council may suspend a permit for not more than 60 days or revoke a permit if a performer violates any of the provisions of this Regulation.

(c) After revocation of a permit, the former performer may not obtain a new permit until such date as the Cambridge Arts Council may determine, provided that such date shall not be more than one year after the date of revocation.

(d) No permit may be suspended or revoked unless the Cambridge Arts Council holds a public hearing concerning that suspension or revocation, written notice of which has been given to the performer not less than 7 days prior to said public hearing. Such notice shall set forth the facts constituting the basis for the proposed suspension or revocation.

RECEIVED BY
OFFICE OF CITY CLERK
FEB 19 2 23 PM '05
CAMBRIDGE, MASS.

The
Cambridge
Arts
Council

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9033

July 1, 1984

Mr. Stephen Baird
Folk Arts Network
P.O. Box 867
Cambridge, MA 02138

Dear Steve,

I am very pleased to have the opportunity to support your newly drafted ordinance for the regulation of street performers.

The Cambridge Arts Council welcomes the possibility of becoming the department responsible for licensing street performers. We have worked with a wide variety of street performers since the beginning of the Council in 1974 -- in the River Festival, other public celebrations and, most recently in the very successful Street Performers' Festival on Cambridge Commons. We know the artists and have built up a good rapport with them over the years. We are currently engaged in negotiations to bring street performers to Central Square (at the pressing request of the local merchants) and to improve performing conditions in Harvard Square, at the request of the performers.

Your proposed ordinance does, indeed, sensibly regulate -- as opposed to discourage -- street performing.

The street performers are a valuable asset to this city -- as witnessed by the enthusiasm in Central Square for such performers -- and a well drafted ordinance is very welcome in order to regulate in the public and performers' interest.

After ten years' experience in working with the street performers, with the public, with the city departments responsible for public safety and convenience, and with the businesses of Cambridge the Cambridge Arts Council is in an ideal position to become the licensing department. We hope that such authority will be established by the passage of this ordinance.

Sincerely,



Christine K. Connaire
Executive Director

CKC:es



CORCORAN'S

615 MASSACHUSETTS AVENUE, CAMBRIDGE, MA. 02139 • (617) 864-3000

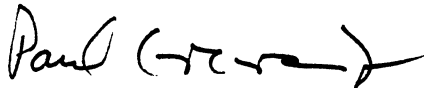
July 13, 1984

Stephen Baird
Folk Arts Network
P.O. Box 867
Cambridge, MA 02238

Dear Mr. Baird:

I have recently received a copy of the proposed regulation governing street performers in the City of Cambridge. I have read it and, as a Cambridge businessman, I fully support this proposal. I wish you and the Cambridge Arts Council success in having this proposal enacted into law.

Sincerely,



Paul R. Corcoran, Jr.
President

dations had possession of the raw data requested, and the 13 recipients of research grants that did were not themselves an "agency," no "agency record" existed for purposes of FOIA. *Id.* 190 U.S.App.D.C. at 238-239, 587 F.2d at 1135-36.

The decision in *Forsham* does not disturb this Court's prior holding. The Circuit Court's primary line of reasoning, concerning the degree of federal involvement necessary to transform data into "agency records," need not be reached if the possessor and producer of the data is itself an agency. NCMF undisputedly possesses and controls the production of all relevant documents here; moreover, it satisfies the test for agency status previously promulgated by this Circuit and endorsed in *Forsham*. To qualify as an agency under FOIA, 5 U.S.C. § 552(e), an organization must exercise substantial independent authority in performing its particular functions, *Washington Research Project, Inc. v. Department of HEW*, 164 U.S.App.D.C. 169, 179, 504 F.2d 238, 248 (D.C. Cir. 1974), *cert. denied*, 421 U.S. 963, 95 S.Ct. 1951, 44 L.Ed.2d 450 (1975); *Soucic v. David*, 145 U.S.App.D.C. 144, 152, 448 F.2d 1067, 1075 (D.C. Cir. 1971), and it must be sufficiently controlled by government to justify attributing governmental character to its operations. *Rocap v. Indiek*, 176 U.S. App.D.C. 172, 175, 539 F.2d 174, 177 (D.C. Cir. 1976). See H.R.Rep.No.876, 93d Cong., 2d Sess. 8 (1974), reprinted in [1974] U.S. Code Cong. & Admin.News, pp. 6267, 6274; S.Rep.No.1200, 93d Cong., 2d Sess. 9 (1974) (Conf.Report), reprinted in [1974] U.S. Code Cong. & Admin.News, pp. 6285, 6293.

The holding in *Forsham* that private medical centers receiving pure research grants lack the independent decisional authority to qualify as an agency is clearly distinguishable from the facts of this case. As noted above, NCMF has statutory authority to make final, binding decisions, and it exercises such authority on a regular basis just as Congress intended. The conclusion that the 13 medical centers in *Forsham* are not sufficiently subject to day-to-day federal control must also be distinguished here. The PSRO statute established pervasive procedural requirements

for virtually every phase of PSRO activities, and organizational requirements governing selection of the PSRO entity and its members. These statutory obligations are supplemented extensively by HEW regulations and by the PSRO Transmittals and Program Manual which are binding on each PSRO. See NCMF Contract, Art. XIV, (July 1, 1977), attached to defendants' Affidavit of Michael Goran. In short, PSROs such as NCMF perform a characteristically governmental function and are subject to detailed government control in their program planning and implementation.

Defendants have failed to establish the applicability of any exemptions claimed. Accordingly, plaintiff's motion for summary judgment is hereby granted and defendants' motion for reconsideration or summary judgment is hereby denied. The Court in entering its earlier decision that NCMF is an "agency," felt that an immediate appeal would not materially advance the ultimate termination of the litigation. It denied NCMF's request for an interlocutory appeal, but assured defendants that a stay would be entered upon resolution of the entire controversy. All further proceedings in this action are now stayed for 30 days, to allow defendants to seek a stay pending appeal in the United States Court of Appeals for the District of Columbia Circuit.

SO ORDERED.



Robert GOLDSTEIN

v.

TOWN OF NANTUCKET et al.

Civ. A. No. 79-1455-Z.

United States District Court,
D. Massachusetts.

Sept. 25, 1979.

Professional musician brought action for declaratory and injunctive relief, alleg-

ing th
sient
secure
strict
vendo
consti

J.

1. Co

1
bids

and

spec

form

cal,

1.

2. Co

Nant

clear

Ame

Ame

3. C

Ame

tecti

lic e

ble

plac

U.S.

4. C

for

plai

bro

sibi

pro

did

plie

pla

bal

An

An

5.

cor

pe

tic

no

ing that enforcement by town of its transient vendor bylaw deprived him of rights secured by the First Amendment. The District Court, Zobel, J., held that transient vendor bylaw, as applied to troubadour, was constitutionally deficient.

Judgment to be entered.

1. Constitutional Law ⇐90(1)

By its terms, the First Amendment forbids infringement of right of free speech and this constitutional protection of free speech, moreover, applies broadly to various forms of expression, literary, artistic, political, and scientific. U.S.C.A.Const. Amend. 1.

2. Constitutional Law ⇐90.1(6)

Troubadour's public performance of Nantucket's traditional folk music was clearly within scope of protected First Amendment expression. U.S.C.A.Const. Amend. 1.

3. Constitutional Law ⇐90(3)

Constitutional guarantee of the First Amendment does not confer absolute protection from government regulation of public expression; states may impose reasonable and impartial regulations upon the time, place and manner of public expression. U.S.C.A.Const. Amend. 1.

4. Constitutional Law ⇐90.1(4)

Nantucket's bylaws setting standards for licensing of entertainers, including plaintiff troubadour, and which included broad licensing criteria of financial responsibility of applicant, effect on neighboring properties, and opinion of town merchants, did not pass constitutional muster as applied to plaintiff troubadour, whose contemplated activity of performing in tradition of balladeers, on the street, enjoyed First Amendment protection. U.S.C.A.Const. Amend. 1.

5. Constitutional Law ⇐90.1(4)

Fact that plaintiff troubadour accepted contributions of passersby during his public performances would not dilute his protection under the First Amendment and would not broaden town's narrow mandate to ex-

ercise impartial regulation upon use of sidewalks for public expression. U.S.C.A.Const. Amend. 1.

John Reinstein, Mass. Civil Liberties Union Foundation, Boston, Mass., for Robert Goldstein.

Charles A. Goglia, Jr., King, Goglia, Kellogg & Gardner, Wellesley, Mass., for the Town of Nantucket.

MEMORANDUM OF DECISION

ZOBEL, District Judge.

Plaintiff is a professional musician who is known as the "Troubadour of Nantucket". He brought this action for declaratory and injunctive relief, alleging that enforcement by the Town of Nantucket of its Transient Vendor Bylaw deprives him of rights secured by the First Amendment. The bylaw, as applied to plaintiff, is constitutionally deficient.

The relevant facts are not in dispute. Plaintiff has for many years studied and performed the traditional music of Nantucket and is an acknowledged authority on the music and folklore of the island. He plays a number of instruments from the hammer dulcimer to the fife and banjo and he sings. He has performed the music of Nantucket at numerous festivals and in concert but prefers to perform in the tradition of balladeers, on the street. When he performs in Nantucket, he customarily plays the hammer dulcimer and sings, and positions his open dulcimer case so that passersby may contribute donations, and some do. On a number of occasions during the past four years plaintiff attempted to play his music in the streets of Nantucket but was prevented by town officials from doing so. In 1975, he applied to the town for permission to perform, and his petition was denied. In 1978 he again applied and was granted a "conditional permit" for a period of two weeks. The permit specified locations and times at which plaintiff could perform. At the end of the two-week period the Police Chief reported to the Board of

SRO activi-
ments gov-
nity and its
gations are
EW regula-
mittals and
ing on each
Art. XIV,
dants' Affi-
ort, PSROs
acteristically
e subject to
n their pro-
tion.

establish the
ns claimed.
or summary
and defend-
or summa-
The Court
that NCMF
mediate ap-
nce the ulti-
ion. It de-
terlocutory
that a stay
ion of the
proceedings
30 days, to
ay pending
urt of Ap-
bia Circuit.

et al.

urt,

ght action
ief, alleg-

Selectmen that there had been "no problems". The Board then advised plaintiff that the new Transient Vendor Bylaw did apply to him and that he would have to obtain a permit before he would "be allowed to proceed further with the playing of . . . [his] . . . music." The bylaw defines "Transient Vendors" to include "any person who engages in a transient or temporary business . . . selling . . . offering for sale or accepting contributions for the offering . . . or providing . . . entertainment." It sets forth the standards for deciding whether a permit may issue. Plaintiff attacks these standards and argues that in light of the First Amendment they include impermissible criteria for regulation of free expression.

[1,2] By its terms, the First Amendment forbids infringement of the right of free "speech." The Constitutional protection of free speech,¹ moreover, applies broadly to various forms of expression, literary, artistic, political, and scientific. *Miller v. California*, 413 U.S. 15, 22-3, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973), rehearing denied 414 U.S. 881, 94 S.Ct. 26, 38 L.Ed.2d 128 (1973). See also, *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 557-8, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975) (the musical "Hair"), *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 503, 72 S.Ct. 777, 96 L.Ed. 1098 (1952) (the motion picture "The Miracle"). The substance and not merely a method of expression is protected by the First Amendment:

[While] Each medium of expression, of course, must be assessed for First Amendment purposes by standards suited to it, . . . the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary. Those principles, as they have frequently been enunciated by this Court, make freedom of expression the rule.' *Southeastern Promotions, Ltd. v. Conrad*, *supra*, 420 U.S. at 557-8, 95 S.Ct. at 1246,

1. First Amendment protection applies to state action as well as Congressional action. See *Schneider v. State of New Jersey*, 308 U.S. 147,

quoting *Joseph Burstyn, Inc. v. Wilson*, *supra*, 343 U.S. at 503, 72 S.Ct. 777.

Accordingly, plaintiff's public performance of Nantucket's traditional folk music is clearly within the scope of protected First Amendment expression.

[3] The Constitutional guarantee, however, does not confer absolute protection from government regulation of public expression. States may impose reasonable and impartial regulations upon the time, place and manner of public expression. *Schneider v. State of New Jersey*, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155 (1939). But "streets, sidewalks, parks, and other similar public places are . . . historically associated with the exercise of First Amendment rights . . ." *Amal. Food Emp. U. Loc. 590 v. Logan Val. Plaza*, 391 U.S. 308, 315, 88 S.Ct. 1601, 1607, 20 L.Ed.2d 603 (1968), and "[the Supreme Court] ha[s] consistently condemned licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria unrelated to proper regulation of public places." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 153, 89 S.Ct. 935, 940, 22 L.Ed.2d 162 (1969) (citations omitted). In *Shuttlesworth v. City of Birmingham*, the court recalled thirty years of prior First Amendment decisions and concluded "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Id.*, 394 U.S. at 150-1, 89 S.Ct. at 938. (citations omitted)

[4] Nantucket's bylaw subjects entertainers, including plaintiff, to the same licensing requirements as apply to transient merchants and vendors. A permit may not issue without a finding by the Board of Selectmen that issuance "would be beneficial to the best interests of the Town of Nantucket and its inhabitants." In making its determination, the Board of Selectmen are, by the terms of the bylaw, required to

150, 60 S.Ct. 146, 84 L.Ed. 155 (1939). See especially *id.*, at 150, n. 8, 60 S.Ct. 146.

Cite as 477 F.Supp. 606 (1979)

consider the "financial responsibility" of the entertainer, the "effect of the [entertainment] on the neighborhood properties", and the interests of public order and safety. As a matter of practice, they also take into consideration the wishes of the merchants in the shopping area. Because three of the licensing criteria—financial responsibility of the applicant, effect on neighboring properties, and the opinion of town merchants—are neither narrow, objective nor definite standards, and because those criteria exceed in their scope constitutionally permissible grounds for regulating free expression, the bylaw does not pass constitutional muster. As applied to plaintiff, whose contemplated activity enjoys First Amendment protection, it is unconstitutional.

Defendant contends, however, that plaintiff's activity is commercial speech and thus does not enjoy First Amendment protection. It further argues that even if the performance is protected activity, the enforcement of the bylaw conforms with the guaranteed right of free expression and permits only impartial restriction of the time, place and manner of plaintiff's activity. Neither of these contentions is availing.

[5] The United States Supreme Court recently observed that "the notion of unprotected 'commercial speech' [has] all but passed from the scene." *Va. St. Bd. of Pharm. v. Va. Cit. Cons. Council*, 425 U.S. 748, 759, 96 S.Ct. 1817, 1824, 48 L.Ed.2d 346 (1976), citing *Bigelow v. Virginia*, 421 U.S. 809, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975). Indeed, "[s]peech . . . is protected even though it is carried in a form that is 'sold' for profit (citations omitted), and even though it may involve a solicitation to purchase or otherwise pay or contribute money." (citations omitted) *Va. St. Bd. of Pharm. v. Va. Cit. Cons. Council*, *supra*, 425 U.S. at 761, 96 S.Ct. at 1825. See also *Bates v. State Bar of Arizona*, 433 U.S. 350, 363, 97 S.Ct. 2691, 53 L.Ed.2d 810 (1977). The fact that plaintiff accepts contributions of passersby during his public performances, thus, does not dilute plaintiff's protection of the First Amendment. It plainly does not

broaden defendant's limited mandate to exercise impartial regulations upon the use of the sidewalks for public expression.

Defendant's second argument is contradicted by the very terms of the bylaw which chart a course of Town inquiry that ranges far beyond the narrow parameters set by the First Amendment. Neither the language of the bylaw nor defendant's testimony suggests that any authoritative construction so narrows the bylaw as to comply with the command of the First Amendment. *Cf. Cox v. State of New Hampshire*, 312 U.S. 569, 576, 61 S.Ct. 762, 85 L.Ed. 1049 (1941). See also *Shuttlesworth v. City of Birmingham*, *supra*, 394 U.S. 147, 153, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969).

The bylaw directs the selectmen to consider, among other factors, the "financial responsibility" of the applicant and the effect of the proposed expression "on the neighborhood properties." The existence of such broad evaluative criteria in addition to specific criteria for the protection of public safety belies defendant's claim that determination of what is "beneficial to the best interests of the Town . . ." contemplates only the interest of public safety. Indeed, the Chairman of the Board of Selectmen testified that one primary consideration in weighing applications is the opinion of neighboring merchants, and on the face of plaintiff's 1978 application to the town there appears a handwritten notation that one of the selectmen is "investigating with merchants."

The requirement of merchants' approval is irreconcilable with freedom of expression. It is unqualified censorship and it is just what the First Amendment forbids. The prayers for declaratory and injunctive relief are granted. Pursuant to authority granted by 28 U.S.C. § 2201, the Court determines and declares that the Transient Vendor Bylaw (Effective August 24, 1978) of the Town of Nantucket, Massachusetts is unconstitutional as applied to plaintiff.

Plaintiff shall prepare and submit to defendant for approval as to form a judgment in accordance with this opinion.

Wilson,
777.
nance
sic is
First

how-
ection
lic ex-
onable
time,
ession.
8 U.S.
) But
similar
ally as-
Amend-
Emp.
1 U.S.
2d 603
[s] con-
systems
cial dis-
it upon
regula-
orth v.
153, 89
9) (cita-
City of
ty years
ons and
ercise of
rior re-
v, objec-
ide the
tional."
at 938.

s enter-
same li-
ransient
may not
Board of
e benefi-
Town of
n making
electmen
quired to
339). See
46.

0-56

Comm. from Councillor David Sullivan, transmitting a proposed draft of an amendment to the General Ordinances entitled "Regulation of Street Performances" as submitted by Stephen H. Baird, a copy of the decision in the case of Robert Goldstein vs. Town of Nantucket & endorsements of the proposed amendment by Christine K. Connaire of the Arts Council & Paul R. Corcoran, Jr.

*copy sent to Councillor David Sullivan,
Chairman, Ordinance Committee
3/1/85mb*

In City Council,

February 25, 1985

2/25/85

Referred to

the

COMMITTEE ON

Ordinances -

(see Order #6 of this date)