



City of Cambridge

Agenda # 17

IN CITY COUNCIL

June 15, 1992

WHEREAS: A petition was received by the City Council on April 13, 1992 by Joseph R. Indelicato, Jr., President of the Custom House News, Inc. doing business at 1 - 1A Central Square at the corner of Massachusetts Avenue and Western Avenue; and

WHEREAS: The petitioner requested to sell the following items:

newspapers, racing forms, magazines, soda in cans, Mass. State Lottery tickets, Ticketron event tickets, tobacco items and small amounts of sundry items for the convenience of commuters; and

WHEREAS: On April 27, 1992 this petition was referred by the City Council to the City Manager for a report and an advisory opinion was requested regarding such petition; and

WHEREAS: The City Manager reported back to the City Council on June 15, 1992 stating that although the petition could be granted by the City Council and a permit issued by the Superintendent of Street, the City Council also had grounds for denial of the petition. In addition the City Council could determine that the matter would be more appropriately addressed as one seeking a leasehold interest in public land at the premises numbered 1 - 1A Central Square; now therefore be it

ORDERED: That this City Council go on record denying the petition of Joseph R. Indelicato, Jr., President of Custom House News, Inc., for the reasons set forth in the communication received from the City Manager.

In City Council June 15, 1992.

Adopted by a yeas and nays vote:

Yeas 9; Nays 0; Absent 0.

Attest:- D. Margaret Drury, Temporary City Clerk.

A true copy;

ATTEST:-

D. Margaret Drury

D. Margaret Drury
Temporary City Clerk



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Temporary City Clerk

City of Cambridge

MASSACHUSETTS

In City Council

June 15

1992

17 Nonconsent Agenda

Central Square Revisited

To grant permit

	YEA	NAY	ABSENT	PRESENT	
Mr. Ed Cyr		✓			
Mr. Francis H. Duehay		✓			
Mr. Jonathan S. Myers		✓			
Mrs. Sheila T. Russell		✓			
Mr. Walter J. Sullivan		✓			
Mr. Timothy J. Toomey, Jr.		✓			
Mr. William H. Walsh		✓			
Ms. Alice K. Wolf		✓			
Mayor Kenneth E. Reeves		✓			

Failed

0

7

0

0

AW

M/suspension

VV/9

Cyr

revised

VV/9-0 NO



CITY OF CAMBRIDGE

Office of the City Solicitor

City Hall

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Cambridge, Massachusetts 02139

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Russell B. Higley
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Legal Counsel

Diane Wynshaw-Boris
Legal Counsel

Laura H. Yager
Legal Counsel

Linda A. Stamper
Legal Counsel

Arthur J. Goldberg
Legal Counsel

June 9, 1992

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Central Square Newsstand

Dear Mr. Healy:

The City Council has raised several questions regarding the petition of Mr. Joseph Indelicato for a permit to operate the newsstand in Central Square. The newsstand came into existence years ago pursuant to a permit granted by the City Council to allow a temporary structure to be placed on the sidewalk to shelter the permit holder for the purpose of selling newspapers. The original permit was issued pursuant to Section 12.08.020(B) of the Municipal Code (copy attached), and the use of the site was expressly limited to the sale of newspapers and racing forms. The ordinance authorizing the permit requires that a five dollar (\$5.00) annual fee be paid and that a bond be posted.

A complaint by a neighbor recently revealed that the annual permit fee had not been paid, that sales of unauthorized merchandise were being made at the site, and that the required bond had not been posted. Failure to pay the fee, failure to post the bond, and the sale of unauthorized merchandise, are all grounds for the revocation of the permit. Mr. Indelicato, upon being advised of the revocation of the permit, applied for a new permit. Mr. Indelicato's request expressly asks for authorization to sell newspapers, magazines, tobacco products, lottery tickets, and to serve as a Ticketron outlet for ticket sales.

City councilors have asked whether the authorization of such activities at the site would require compliance with the City-Owned Land and Buildings ordinance, Chapter 2.110 (copy attached), and with the state procurement law, Ch. 30B.

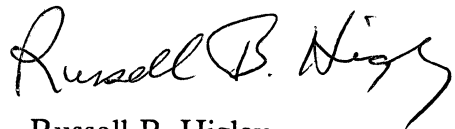
Chapter 12.08 provides essentially for a "license" to install a "...counter, platform, or

other apparatus or structure for the purpose of selling merchandise...placed on any public highway...." A license is not an interest in real property, and for that reason these permits may be granted without any requirement to follow the procedures of the City-Owned Land and Building Ordinance. Likewise, the real property provisions of Ch. 30B do not apply. And, since the issuance of such a permit does not achieve the procurement of goods or services for the City, the contract provisions of Ch. 30B also do not apply.

It is important to recognize that this conclusion is based upon the recognition that the permit provided for in Chapter 12.08 of the Municipal Code creates a "license" to perform certain activities on public highways. As a matter of law, a license is viewed as a privilege, not as a right. Accordingly, the City Council has broad latitude in determining the appropriateness of an application for such a permit, and any reasonable conditions may be attached to the issuance of such a permit.

It is possible for the Council to determine that the broad range of activities proposed by Mr. Indelicato would be more appropriately addressed in the context of a lease. A lease is an interest in real property and a decision to lease public property would require compliance with the City-Owned Land and Buildings Ordinance. Depending upon the appraised value of the contemplated lease, Ch. 30B would also apply.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell B. Higley", with a stylized flourish at the end.

Russell B. Higley

Chapter 12.08

ADVERTISING SIGNS AND DISPLAYS

Sections:

- 12.08.010 Encroachments onto streets—
Permit required—Fee—
Exceptions.**
- 12.08.020 Display of merchandise—
Permit—Fee.**
- 12.08.030 Connection with buildings—
Building ordinance
conformance.**
- 12.08.040 Gasoline swing arms—Permit
required—Fee.**
- 12.08.050 Advertising banners
prohibited—Exceptions.**
- 12.08.060 Permit issuance subject to
bond requirements.**
- 12.08.070 Violation—Penalty.**

- 12.08.010 Encroachments onto streets—
Permit required—Fee—
Exceptions.**

No sign, advertising device, clock, marquee, barber pole, stationary or movable, permanent awning or other like structures, projecting into or placed on or over the public highway a distance of more than six inches, except poles, wires, conduits and appurtenances of telegraph and telephone, water, gas, electric light, heat and power companies and public transportation authorities shall be placed or maintained in any public way until a permit therefor has been granted by the City Council. The permit shall be issued by the Superintendent of Streets and the fee shall be one dollar. (Prior code § 3-1)

- 12.08.020 Display of merchandise—
Permit—Fee.**

A. No merchandise shall be displayed within the limits of any public highway in the City without a permit granted by the City Council and issued by the Superintendent of Streets. The fee for the permit shall be five dollars annually.

B. No counter, platform or other apparatus or structure for the purpose of selling merchandise shall be placed on any public highway in the City without a permit granted by the City Council, and issued by the Superintendent of Streets. The fee for the permit shall be five dollars and for any permits granted for periods of more than one year the fee shall be five dollars annually.

C. No permit shall be granted for encroachment of such merchandise, counter, platform or other apparatus or structure to exceed more than twenty-five percent of the width of the sidewalk from the property line of the premises in front of which such merchandise, counter, platform or other apparatus or structure shall be displayed or installed. (Prior code § 3-2)

- 12.08.030 Connection with buildings—
Building ordinance conformance.**

All signs, advertising devices, clocks, marquees, barber poles, permanent awnings and other like structures shall be constructed, and, when attached to the building, shall be connected therewith in accordance with the requirements of the building ordinances of the City. (Prior code § 3-3)

- 12.08.040 Gasoline swing arms—Permit
required—Fee.**

No person shall install a gasoline swing arm to extend over the sidewalk without a permit from the Superintendent of Streets when authorized by the City Council. Permits may be granted for not more than one year from May 1st and shall be renewed on expiration or within thirty days thereafter. A fee of five dollars shall be paid for such permit and each renewal thereof. (Prior code § 3-4)

- 12.08.050 Advertising banners prohibited—
Exceptions.**

No advertising sign or banner shall be extended across any highway in the City except those of religious, fraternal or charitable organizations. (Prior code § 3-5)

Chapter 2.110

CITY-OWNED LAND AND BUILDINGS

Sections:

2.110.010 Disposition of city property.

2.110.010 Disposition of city property.

This chapter shall apply to the sale, transfer, lease or rental, or exchange of any city-owned property or property rights or interest such as a public easement on private property, collectively called "Disposition of City Property." This chapter shall not apply to the transfer of real estate, or any interest therein, to the Affordable Housing Trust for the purposes of construction of low- and moderate-income housing pursuant to M.G.L. c. 40, s. 15A.

The purpose of this chapter is to protect the citizens of Cambridge and to achieve land uses that best serve the City's public purpose.

In addition, when the public purpose is found to be best served by a disposition of City property for a private purpose, the City's objective will be to receive the fair market value for such property, to protect real estate values, and to dispose of each property without favoritism.

No disposition of City property shall be completed unless the above criteria have been satisfied, all requirements of applicable State law have been met, and the following process has taken place:

A. The City Manager shall be responsible for engaging in a process that will result in a fair analysis of how the greatest public benefit can be obtained from the City property in question.

B. The City Manager shall prepare a report. The report shall be based on careful consideration of the issues enumerated below. In the course of preparing the report, at least one community meeting shall be held to discuss the issues and community concerns and they shall be addressed in the report. Advance notice of such meetings shall be given to potentially affected persons de-

scribing the proposals under consideration. The report shall include the following information:

1. A description and analysis of the alternative uses for the City property, including an analysis of public benefits and drawbacks and the financial impact of each alternative;

2. The use of the City property at the time of the recommended disposition and any actual or projected annual revenues or costs associated with such property;

3. The existing zoning status of the property and other City, State, and federal laws, codes, ordinances and regulations that apply to it at the time of the recommended disposition and that would apply to the various alternative uses analyzed;

4. Any attempts to rezone the property or to change existing laws, codes, ordinances or regulations or uses with regard to the property that have taken place within the previous five years;

5. The development potential of the property;

6. A full description of development plans proposed for the site, including traffic and parking studies and other appropriate analyses of the impact on the neighboring area and the City as a whole;

7. A review of the financial arrangements being recommended, including two independently prepared impartial appraisals of such property's worth that contain an independent, good faith estimate of such property's worth to the prospective buyer, transferee, or lessee.

C. The City Manager shall submit the report to the Planning Board and to the City Council and City Clerk for public dissemination. The Planning Board shall hold a public hearing not sooner than two weeks after receipt of the report, and after study, shall submit its recommendation to the City Manager for submission to the City Council.

D. The City Council shall hold a public hearing within six weeks of receipt of the City Manager's recommendation and the Planning Board report.

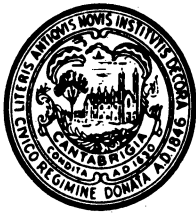
E. At least fourteen days prior to the public hearings by the Planning Board and the City

Council, the City Clerk shall post notice of the hearings at various conspicuous locations upon the City property, giving the purpose of the hearing in detail, and shall send this written notice to the owners of property and renters, listed on the annual street list or on the assessor's records, within three hundred feet of the City property.

The City Clerk shall notify civic groups and neighborhood associations who may be affected by or interested in such disposition of City property and shall publish notice of said hearings in newspapers of general circulation within Cambridge at least fourteen days prior to the date of each said hearing.

F. The disposition of City property shall require a $\frac{2}{3}$ vote of the City Council.

G. For the disposition of city property that is of such little significance that the above described process would be unduly burdensome, the City Manager may request of the City Council a diminution of this process. Approval of such a request shall require a $\frac{2}{3}$ vote of the City Council. (Ord. 1105, 1990)



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

June 15, 1992

To The Honorable, The City Council:

Please find attached a response to the City Council's request for information relative to the Central Square Newsstand received from Russell B. Higley, City Solicitor, for your consideration.

Very truly yours,

Robert W. Healy
City Manager

RWH/mev
attachment

Agenda # 17

#-84

Response to the City Council's
request for information relative
to the Central Square Newsstand.

In City Council,

June 15, 1992

Permit Denied

0-9-0.

See also Highway #

39