

LAPPIN
ROSEN
GOLDBERG
SLAVET
LEVENSON
&
WEKSTEIN

COUNSELLORS AT LAW INCORPORATED

RECEIVED BY
OFFICE OF CITY CLERK

FEB 23 1 05 PM '79

CAMBRIDGE, MASS.

February 21, 1979

Re: Automatic Amusement Legislation
for the City of Cambridge

Dear Councillor:

Since October of 1978 this office has been speaking and commenting regarding proposed legislation for automatic amusement devices in the City of Cambridge. We have identified ourselves as representing the Automatic Amusement Industry. In that same capacity, we have been asked by the City Council to comment on the latest proposed ordinance which shall be discussed at the City Council meeting on Monday, February 26, 1979.

My comments regarding the proposed legislation will be very specific and will refer to the following items which I include as Exhibits hereto:

Exhibit 1 -- The Proposed Ordinance which is to be discussed on February 26, 1979;

Exhibit 2 -- The Proposed Ordinance submitted by the Coin Machine Industries Association of New England on November 10, 1978.

I also will refer to the following items which have previously been forwarded to you:

1. The transcript of the hearing of October 16, 1978;
2. The January 9, 1979 article which appeared in the Boston Globe regarding automatic amusement devices in the City of Cambridge.

My comments in this letter will be very specific and will refer to each item of the Proposed Ordinance that I believe important enough to require comments. There are, however, items upon which I will not comment because the matter is not significant enough to require a specific comment. The purpose of this letter is to give to you, prior to the hearing date, a written record of those matters which the Automatic Amusement Industry considers significant enough

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to require comment and hopefully appropriate action. There are also many general comments regarding this whole area which I will reserve for the night of the hearing at which time I hope the City Council will give me an opportunity to speak on behalf of the Automatic Amusement Industry.

Comments

1. The standards for issuing a license under the Proposed Ordinance for the City of Cambridge are contained in paragraphs (f)(1) and (2). The standards require the applicant to be of good moral character and that the granting of the license not create a nuisance or otherwise endanger public health, safety, morals, order or general welfare by unreasonably increasing pedestrian traffic, increasing the incidence of illegal or disruptive conduct, unreasonably increasing the level of noise, or otherwise significantly harming the legitimate protectable interests of the affected citizens of the City. I submit to you that "good moral character" is undefined, as is the phrase "legitimate protectable interests of the affected citizens of the city." These standards are so broad, and capable of such abuse, that the courts would strike this legislation down as being unconstitutional on its face.

I further suggest, that if you review paragraph (c) (1) through (4) of Exhibit 2, the Proposed Legislation submitted by the Industry, you will find specific standards setting forth precise definitions, and concluding that any findings to be used for the basis of denying a license are to be found by a preponderance of "specific facts placed in evidence." This language was chosen very carefully in our Proposed Ordinance because the standards have already been upheld by the Courts.

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No license would be granted if the License Commission found:

- (a) that the applicant had been convicted of a felony;
 - (b) that the granting of a license would unreasonably increase vehicular traffic conditions;
 - (c) the granting of a license would unreasonably increase the incidence of illegal conduct;
 - (d) the granting of a license would unreasonably increase the level of exterior noise in the immediate vicinity of the location;
 - (e) that the applicant had filed false or misleading statements with the License Commission;
 - (f) that the applicant had not reached the age of 18.
2. Paragraph (h)(2) of the Proposed Cambridge Ordinance does not allow a license to be transferred from one device to another similar device except by a new application to the License Commission. Massachusetts General Laws have already provided that a license may be transferred from one device to a similar device without the requirements of a new application. Therefore, this area of law has already been pre-empted by State Legislation and any provision contrary to State Law cannot possibly stand a Court challenge.

The replacing of equipment and transferring of a license from one device to another similar device should be a matter of reporting the change to the License Commission, said change being approved on an expedited basis, with the payment of a \$2.00 charge, as set forth in the State Legislation.

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3. In paragraph (j) of the Proposed Cambridge Legislation, Cambridge has retained the invalid provision for seizure and destruction of automatic amusement devices. This provision is contrary to State Law (Massachusetts General Laws, Chapter 276, Sections 1-7) and no valid reason can be put forth for the "destruction" of the machines. Under State Law, a pinball machine used for gambling could either be sold or returned to the party legally entitled to possession.
4. In paragraph (k) of the Proposed Cambridge Legislation there are contained the most offensive provision. Paragraph (k)(1) does not allow any person under 18 years of age to play or operate an automatic amusement device located in establishments also holding licenses under Massachusetts General Laws, Chapter 138. Establishments such as the Holiday Inn or other hotel or motel operations, which happen to have licenses to serve alcoholic beverages, would be prohibited from having recreation rooms for families who are spending time at such establishments. If you compare this provision to that provided by the Automatic Amusement Industry in paragraph (a)(1), I think you will see that the problem is more realistically resolved by prohibiting the solicitation of business from persons under the age of 18 in an area that is licensed under the provisions of General Laws, Chapter 138, Sections 12-14.
5. Paragraphs (k)(2)(3) and (4) of the Proposed Ordinance for the City of Cambridge set forth the minimum gross floor area to be used for each machine. The requirement of 500 square feet of gross floor area for each machine is a disguised attempt to eliminate pinball arcades. It is the fulfillment of the promise of City Manager James L. Sullivan when he was quoted in the January 9, 1979 Boston Globe Article as stating: "Pinball arcades are not an asset to any city and the new Ordinance will prohibit such places." Since a pinball machine occupies approximately 15 square feet, the requirement of 500 square feet per machine has no basis in reality. Furthermore, there has been no evidence

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presented at any of the hearings held on this subject matter that would show any need for the requirement of 500 square feet per machine. In fact, all of the square footage requirements set forth in paragraphs (k)(1)(2)(3) and (4) have no basis in the safety, health or welfare of the community. Their only purpose is to eliminate pinball arcades from the City of Cambridge. If that is the intent of the City of Cambridge then why not say "no pinball arcades in the City of Cambridge." To legislate that you will allow arcades but only if impossible standards are met, is the worst type of deception for government to participate in. It violates all sense of fairness, due process, or honesty. It is an obvious violation of the United States Constitution and the Bill of Rights for the Commonwealth of Massachusetts. Furthermore, the passing of provisions such as those contained in paragraphs (k)(1)(2)(3) and (4) of the Proposed Cambridge Ordinance, makes a mockery of the entire democratic process. It ignores all of the public hearings held up to now at which the public at large testified. It ignores all of the input and statements made by various City Councillors together with those put forward by the Automatic Amusement Industry. In short, it takes into account only one point of view, namely, the point of view of the City Manager, James Sullivan as set forth in the Boston Globe article of January 9, 1979.

6. Paragraph (p) of the Proposed Ordinance states that it will be in full force and effect 30 days from the date of passage. Considering the fact that a hearing does not have to be held for 30 days from receipt of an application, and the License Commission is not required to give an answer on an application for 30 days after a hearing, this particular provision will put all business premises which currently maintain and operate automatic amusement devices in technical default immediately.

Considering the fact that the License Commission for the City of Cambridge meets only one day per week, and considering the fact that there are very many

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businesses currently operating automatic amusement devices in the City of Cambridge within the law as it stands today, it would be more realistic to grant a 6 month period for those parties who are currently operating automatic amusement devices to apply for a license, receive a hearing, and be granted an answer by the License Commission before they could be considered in default.

7. I would be remiss if I did not report to you various omissions in the Proposed Cambridge Ordinance. These omissions become more startling if one reviews the transcript of the public hearing, since many of these omissions were of great concern to various City Councillors at the time of the hearings. These omissions include the following:
 - (a) Supervision--There is no provision in the Cambridge Ordinance for any attendant to be present on the licensed premises. In paragraph (k)(3) of the Legislation proposed by the Automatic Amusement Industry, at least one attendant was required to be present on a licensed premises.
 - (b) School-Age Children--The Proposed Cambridge Ordinance has no provision whatsoever regarding school-age children. The proposed industry legislation prohibits school-age children from playing machines during school hours.

I have tried to point out the glaring problems in the Proposed Cambridge Legislation although there are many other comments that could have been made, I suggest that those outlined in this letter are the most important, and the ones that would be most vigorously challenged in any court proceeding should they be enacted by the City Council.

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Furthermore, a comparison of Exhibits 1 and 2 included herewith will adequately reflect the need for serious consideration in the drafting of any final Ordinance.

In conclusion, both sides of this issue have spent considerable time in the hope that through the democratic process, an ordinance will be passed that truly regulates an industry in need of regulation, without disenfranchising legitimate business persons who could qualify under any reasonable standard. After all this time and effort, it would surely be a shame if the City of Cambridge were to pass an Ordinance that required an immediate challenge in the Courts in order to determine its validity.

I reiterate my original offer to spend whatever time is necessary with the City Council, the City of Cambridge Law Department, and any other parties designated by the City of Cambridge to draft appropriate legislation that could be acceptable by all.

Very truly yours,

LAPPIN, ROSEN, GOLDBERG,
SLAVET, LEVENSON & WEKSTEIN

By:


Barry E. Rosenthal

BER/deb

RECEIVED BY
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FEB 23 11 05 AM '78

CAMBRIDGE, MASS.

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City of Cambridge

AMENDED ORDER

IN CITY COUNCIL⁴
March 13, 1978

COUNCILLOR PREUSSER

ORDERED: That the City Manager be requested to instruct the City Solicitor to draw up a draft ordinance for Council's consideration which would regulate the use and licensing of pinball machines and automatic coin amusement devices within the City of Cambridge, and be it further

ORDERED: That this draft ordinance be presented to the City Council for its consideration within three weeks.

In City Council March 20, 1978
Adopted as amended by the affirmative vote of
8 members.

Attest: Paul E. Healy, City Clerk

A true copy,

ATTEST:



City of Cambridge

AMENDED ORDER

IN CITY COUNCIL⁴
March 13, 1978

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Attest: Paul E. Healy, City Clerk

A true copy,

ATTEST:

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OFFICE OF CITY CLERK

MOTION FOR RECONSIDERATION SUBMITTED BY COUNCILLOR MAYOR DANEHY

CAMBRIDGE, MASS.

MARCH 15, 1978

Date

Mayor Danehy has notified the City Clerk of his intention to move reconsideration of the vote of the City Council on March 13, 1978 adopting the following order introduced by Councillor Preusser:

ORDERED: That the City Manager be requested to instruct the City Solicitor to draw up a draft ordinance for Council's consideration which would regulate the use and licensing of pinball machines within the City of Cambridge, and be it further

ORDERED: That this draft ordinance be presented to the City Council for its consideration within three weeks.

Thomas R. Danahy (DR)
Signature



City of Cambridge

4.
IN CITY COUNCIL
March 13, 1978

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ORDERED: That this draft ordinance be presented to the City Council for its consideration within three weeks.

In City Council March 13, 1978
Adopted by the affirmative vote of 9 members.
Attest: Paul E. Healy, City Clerk

A true copy,

ATTEST:

A handwritten signature in cursive script that reads "Paul E. Healy".

Order #4

0.12

C. Preusser re: licensing of pinball
machines.

In City Council,
March 13, 1978

MD

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RECONSIDERATION FILED BY MAYOR DANEHY
3/15/78

*2/20/78 Order as to
Preusser awarded by
Mayor Danahy and
Advised as awarded*