

# City of Cambridge

MASSACHUSETTS

In City Council

Sept. 8

1986

C. Duehay 1 Ch. H. #13 In Revision

|                          | YEA | NAY | ABSENT | PRESENT |
|--------------------------|-----|-----|--------|---------|
| Mr. Thomas W. Danczy     | ✓   | ✓   |        |         |
| Mr. Francis H. Duehay    | ✓   |     |        |         |
| Ms. Sandra Graham        |     | ✓   |        |         |
| Mrs. Sheila T. Russell   |     | ✓   |        |         |
| Mr. David E. Sullivan    | ✓   |     |        |         |
| Mr. Alfred Vellucci      |     | ✓   |        |         |
| Mr. William H. Walsh     |     | ✓   |        |         |
| Ms. Alice K. Wolf        | ✓   |     |        |         |
| Mayor Walter J. Sullivan |     | ✓   |        |         |

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# City of Cambridge

MASSACHUSETTS

In City Council

Sept. 8 1986

Ch. H. #13 / Table for 1 week

|                          | YEA                             | NAY | ABSENT | PRESENT |
|--------------------------|---------------------------------|-----|--------|---------|
| Mr. Thomas W. Denehy     | X <sup>①</sup> — <sup>②</sup> ✓ |     |        |         |
| Mr. Francis H. Duehay    | ✓                               |     |        |         |
| Ms. Sandra Graham        | ✓                               |     |        |         |
| Mrs. Sheila T. Russell   | X <sup>①</sup> — <sup>②</sup> ✓ |     |        |         |
| Mr. David E. Sullivan    | ✓                               |     |        |         |
| Mr. Alfred Vellucci      |                                 | ✓   |        |         |
| Mr. William H. Walsh     |                                 | ✓   |        |         |
| Ms. Alice K. Wolf        | ✓                               |     |        |         |
| Mayor Walter J. Sullivan |                                 | ✓   |        |         |

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To Table

Failed & Adjourn

CITY OF CAMBRIDGE

COUNCILLOR FRANCIS DUEHAY

#9

WHEREAS, pursuant to a petition filed by Frank N. Cardullo, d/b/a Wursthaus Restaurant, on May 14, 1984 the City Council adopted an Order requesting the City Manager to direct the Commissioner of Public Works to grant the petitioner a permit, under the provisions of Section 17-10 of the General Ordinances, to place ten summer lawn tables and chairs and umbrellas on the MBTA Plaza in Harvard Square outside the Wursthaus Restaurant and near the stairway and handicap elevator entrance to the newly completed MBTA station and information booth;

WHEREAS, by application to the Cambridge License Commission, the petitioner sought an extension of its liquor license to allow it to serve alcoholic beverages at the ten tables in a chained-off area of the MBTA Plaza across the sidewalk from the building in which the restaurant is located, which application was granted;

WHEREAS, upon appeal of the decision of the Cambridge License Commission, and after hearing, the Alcoholic Beverages Control Commission of the Commonwealth of Massachusetts, held that "the extension of service of alcoholic beverages to the public kiosk would not serve the public need nor protect the common good and that it would create a public safety problem" and accordingly found that "the Cambridge License Commission has acted in an arbitrary and capricious manner in granting the extension";

WHEREAS, Section 17-10 of the General Ordinances, under which the City Council voted to grant the petitioner's request, pertains to the issuance of licenses by the Superintendent of Streets to conduct work which requires excavation and temporary obstruction of city streets and sidewalks and the maintenance of fencing around the excavation area while work takes place, and said Section does not authorize issuance of a permit to permanently obstruct a public walkway by a commercial restaurant unrelated to any work necessitating the obstruction of the walkway;

WHEREAS, Section 3-2 of the City Ordinances authorizes the City Council and the Superintendent of Streets to issue a permit to a merchant allowing the display of merchandise in an area no more than twenty-five percent of the width of the sidewalk contiguous to the building in which the merchant is doing business, and, even if the serving of food is deemed to be displaying of merchandise, allowing the petitioner to chain-off an area of the public plaza for ten tables which is not contiguous to the building in which the Wursthause Restaurant is located is in violation of Section 3-2 of the City Ordinances;

WHEREAS, chaining-off an area of the MBTA plaza for private commercial purposes, without compensation, is an inappropriate use of public space and impedes the pedestrian flow through the Plaza and to the MBTA stairways and handicap elevator.

NOW THEREFORE, it is hereby:

ORDERED: That the Order of the City Council adopted on May 14, 1984 on petition of Frank M. Cardullo, d/b/a The Wursthause Restaurant, be rescinded, and that the City Manager hereby is requested to direct the Commissioner of Public Works to rescind the permit granted to Frank M. Cardullo, d/b/a Wursthause Restaurant allowing placement of 10 summer lawn tables and chairs with umbrellas on the MBTA Plaza outside the Wursthause Restaurant.



# City of Cambridge

(Calendar Item No. 13)

-9-

## IN CITY COUNCIL

~~August 4, 1986~~

September 8, 1986

COUNCILLOR DUEHAY

### WHEREAS:

Pursuant to a petition filed by Frank N. Cardullo, doing business as Wursthau Restaurant, on May 14, 1984 the City Council adopted an order requesting the City Manager to direct the Commissioner of Public Works to grant the petitioner a permit, under the provisions of Section 17-10 of the General Ordinances, to place ten summer lawn tables and chairs and umbrellas on the MBTA Plaza in Harvard Square outside the Wursthau Restaurant and near the stairway and handicap elevator entrance to the newly completed MBTA station and information booth; and

### WHEREAS:

By application to the Cambridge License Commission, the petitioner sought an extension of its liquor license to allow it to serve alcoholic beverages at the ten tables in a chained-off area of the MBTA Plaza across the sidewalk from the building in which the restaurant is located, which application was granted; and

### WHEREAS:

Upon appeal of the decision of the Cambridge License Commission, and after hearing, the Alcoholic Beverages Control Commission of the Commonwealth of Massachusetts, held that "the extension of service of alcoholic beverages to the public kiosk would not serve the public need nor protect the common good and that it would create a public safety problem" and accordingly found that "the Cambridge License Commission has acted in an arbitrary and capricious manner in granting the extension"; and

### WHEREAS:

Section 17-10 of the General Ordinances, under which the City Council voted to grant the petitioner's request, pertains to the issuance of licenses by the Superintendent of Streets to conduct work which requires excavation and temporary obstruction of city streets and sidewalks and the maintenance of fencing around the excavation area while work takes place, and said Section does not authorize issuance of a permit to permanently obstruct a public walkway by a commercial restaurant unrelated to any work necessitating the obstruction of the walkway; and

WHEREAS: Section 3-2 of the City Ordinances authorizes the City Council and the Superintendent of Streets to issue a permit to a merchant allowing the display of merchandise in an area no more than twenty-five percent of the width of the sidewalk contiguous to the building in which the merchant is doing business, and, even if the serving of food is deemed to be displaying of merchandise, allowing the petitioner to chain-off an area of the public plaza for ten tables which is not contiguous to the building in which the Wursthaus Restaurant is located is in violation of Section 3-2 of the City Ordinances; and

WHEREAS: Chaining-off an area of the MBTA Plaza for private commercial purposes, without compensation, is an inappropriate use of public space and impedes the pedestrian flow through the Plaza and to the MBTA stairways and handicap elevator; now therefore be it

ORDERED: That the order of the City Council adopted on May 14, 1984 on the petition of Frank M. Cardullo, doing business as The Wursthaus Restaurant, be rescinded, and that the City Manager hereby is requested to direct the Commissioner of Public Works to rescind the permit granted to Frank M. Cardullo, doing business as Wursthaus Restaurant allowing placement of ten summer lawn tables and chairs with umbrellas on the MBTA Plaza outside the Wursthaus Restaurant.

In City Council September 8, 1986.  
Failed of adoption by a yea and nay vote:-  
Yeas 4; Nays 5; Absent 0.  
Attest:- Joseph E. Connarton, Acting City Clerk.

A true copy;

ATTEST:-

*Joseph E. Connarton*

Joseph E. Connarton, Acting City Clerk.

Order # 9

#131-91

Councillor Duehay re: rescinding the order  
adopted by the City Council on May 14, 1984  
granting permission to the Wursthaus  
Restaurant for ten summer lawn tables on  
the MBTA Plaza.

In City Council,

August 4, 1986

C. Walsh

Charles Right

9/8/86

C. Duehay moved Revision

Order to Reconsider Failed

Roll Call

4-5-0