

Entertainment Licensing

The provision of public entertainment, whether live or prerecorded, requires an annual license issued by the municipality. There are two sections of G.L. c.140 that primarily govern this issue. **General Laws Chapter 140, §181** applies to locations that do not have alcohol or common victualler licenses and present “theatrical exhibitions, public shows, public amusements and exhibitions of every description” for which an admission fee is collected. By contrast, **G.L. c.140, §183A** applies to licenses for establishments that do have an alcohol and/or common victualler license and that provide “any concert, dance, exhibition, cabaret or public show of any description”, regardless of whether there is a charge for admission. While licensing authorities have some discretion in this area, the denial of an entertainment license application requires a narrow finding based upon legitimate public health or safety concerns. In addition, in order to withstand a legal challenge, a decision to suspend or revoke an entertainment license must also have a compelling basis.

Section 181

This statute requires the license application to set forth all details of the event, particularly with regard to the extent that the “conditions or premises would affect the public safety, health or order.” Importantly, G.L. c.140, §181 provides a statutory presumption in favor of the grant of an entertainment license. Unlike virtually every other type of licensing statute, the burden of proof is on the licensing authority to show why the license should not issue. Thus, the record of the license hearing must contain substantial evidence of the anticipated public harm. See Konstantopoulos v. Town of Whately, 384 Mass. 123, 128 (1981). Section 181 provides that if a license is denied, the licensing authority must make a finding that:

issuance of such a license would lead to the creation of a nuisance or would endanger the public health, safety or order by:

- a) unreasonably increasing pedestrian traffic in the area in which the premises are located, or
- b) increasing the incidence of disruptive conduct in the area in which the premises are located, or
- c) unreasonably increasing the level of noise in the area in which the premises are located.

The licensing authority may impose conditions on an entertainment license, but “said conditions may only relate to compliance with applicable laws or ordinances, or to public safety, health or order, or to steps required to be taken to guard against creation of a nuisance or to insure adequate safety and security for patrons or the affected public.”

In summary, an entertainment license may be subject to reasonable conditions, but a license generally should not be denied unless the officials are convinced that no conditions can address the health and safety concerns. Conditions such as a police detail to handle traffic, a cut-off time for amplified music, and the provision of bathroom facilities would all be permissibly related to health and safety issues.

Section 183A

General Laws c.140, § 183A also establishes a presumption that the licensing authority will issue an entertainment license for events occurring in an establishment with an alcohol and/or common victualler license, unless significant problems are likely. In particular, to deny the license, the licensing authority must conclude that the activity at issue, whether by itself or in combination with other activities at the licensed premises, cannot be conducted in such a manner so as to (1) protect the employees, patrons, or public, whether inside or outside the premises, from “disruptive conduct, from criminal activity, or from health, safety or fire hazards”; (2) prevent unreasonable increases in the area noise level, whether from the activity or people leaving the premise; or, (3) prevent an unreasonable increase in foot or vehicle traffic, or vehicle parking. Where the statute specifically references noise, the licensing authority may consider outdoor music or amplification as a factor in assessing whether a particular activity will create an unreasonable noise increase. Conditions on a G.L. c.140, §183A license must again be aimed at preserving the “public health, safety and order.”

Sunday Entertainment

Significantly, G.L. c.140, §§181 and 183A licenses address public entertainment from Monday through Saturday only. Sunday entertainment is governed by G.L. c.136, §4, which is a holdover of the Commonwealth’s so-called “Blue Laws.” A Sunday license must be approved by the local licensing authority, as well as the Massachusetts Department of Public Safety. The municipality may impose a fee of up to \$20.00 per event, while the Department may impose a fee of \$5.00 per event. The following link on the Department’s website includes a Sunday license form and some “FAQs” on the subject: <http://www.mass.gov/ocabr/government/oca-agencies/dpl-lp/opsi/regulated-activities-special-licensing-.html>

Please contact Attorneys Brian W. Riley (briley@k-plaw.com) or Thomas W. McEnaney (tmcenaney@k-plaw.com) at 617.556.0007 with further questions on entertainment or general licensing issues.

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