



LYNCH & PINE
ATTORNEYS AT LAW

P: 401.274.3306
F: 401.274.3326
www.lynchpine.com

One Park Row
Fifth Floor
Providence, RI 02903

September 9, 2016

Council President Luis A. Aponte
City of Providence
City Hall
25 Dorrance St.
Providence, RI 02903

In Re: Board of Licenses

Dear Council President Aponte:

In March of this year the Providence City Council, through your Office, requested that the undersigned attorneys undertake a review of the Board of Licenses ["BOL" or "Board"] in order to identify any problems which might exist with regard to the policies and procedures of the BOL and, to the extent such issues were identified, propose systemic changes that can be implemented to improve the performance of the Board.

In order to accomplish these goals a thorough investigation of the current and past practices of the Board and a review of the policies and performance of the Board has been conducted. At this time we are prepared to recommend a number of significant changes in the manner in which the Board discharges its duties and obligations.

Background/Executive Summary

The importance of the City of Providence Board of Licenses to the economic and public safety climate of the city cannot be overstated. The Board is responsible for processing a broad range of license applications for the City of Providence as well as regulating the issuance, renewals, suspensions and revocations of a variety of licenses. The Board is charged with processing applications and renewals and is the sole authority charged with handling alleged violations of their rules and regulations.

This report has been requested in order to identify systemic problems that may exist with the BOL at present and to propose recommendations and solutions. It is abundantly clear that at present the Board is not serving the citizens of Providence at an acceptable or

IN CITY COUNCIL
SEP 15 2016

READ
WHEN UPON IT IS ORDERED THAT
THE SAME BE RECEIVED.
Louis J. Aponte CLERK

required standard, and that significant changes are necessary in several areas. Those areas have been identified in this report and recommendations for improvement are contained herein.

It cannot be stressed enough how important it is that the Board function and perform its duties at the highest professional level, following its own rules consistently, removing politics from the equation, creating a public-friendly environment, and holding accountable those who violate any rules, regulations or laws.

The Investigation

We have conducted an extensive investigation as part of this process. Meetings have been held with many of the interested parties and constituencies who are involved with the Board:

- Current Chair Juan Pichardo;
- former Chair, and current Board member, Johanna Harris; (three other Members of the Board were invited to speak with us, and did not reply);
- Legal counsel to the Board: Louis DeSimone Esq.;
- Board Administrator Serena Conley;
- Assistant City Solicitor Mario Martone Esq.;
- Sharon Steele, representing the Jewelry District Association;
- Anthony Santurri; a local club owner, who founded a group of nightclub owners called the Providence Responsible Nightlife Organization;
- Providence Police Chief, Col. Hugh Clements;
- City Council President Luis A. Aponte, City Council Majority Whip Jo-Ann Ryan, and City Council Chief of Staff Cyd McKenna.

In addition, among the documents reviewed have been the following:

1. Existing and Draft Operations and Procedure Manual for the Board of Licenses
2. BOL Cases Appealed to DBR 2015-2016
3. Decision and notes re: 101 North Main St. Condo Association DBR No. 16LQ003
4. Notes re: Tropicana hearing
5. Notes re: Rock & Rye Show Cause Hearing
6. Decision and materials re: Ice Lounge Hearing DBR No. 15LQ008
7. Notes/Articles re: Hookah Bars

8. Notes re: BOL Meeting with Mayor 2016
9. DBR Order re: Ocean State Hospitality Inc. d/b/a Fat Squirrel DBR No. 16LQ002
10. Other Documents/Materials relating to Fat Squirrel
11. BOL Year in Review Reports 2014 and 2015
12. Decision Pasha Lounge d/b/a Pasha Hookah Bar DBR No. 15LQ022
13. Decision The Rack Inc. d/b/a Smoke DBR No. 14LQ0057
14. Misc. Docket Sheets and materials provided by the office of the Board of Licenses
15. City Council Resolutions, 2012-present
16. Municipal Operations and Oversight Committee Meeting, minutes/audio 1/6/16
17. Agenda and materials re: BOL Retreat 10/3/15
18. Numerous Media Reports regarding the Board
19. Miscellaneous documents were received and reviewed from persons interviewed

Issues

During the course of this investigation a number of issues have been identified and will be addressed in this report. The following are the most significant issues that came up repeatedly during the course of this review. These issues require immediate attention, as the current status of the operation of this Board is substandard in many areas and the citizens of Providence deserve a substantially better performance from this important entity.

- **OPERATIONS AND PROCEDURES MANUAL**

The Board does have an "Operations and Procedures Manual," which is in the process of being updated by the legal counsel to the Board. In our opinion this is a good working document that requires several significant changes—the Board should officially adopt the changes and the key is for the Board and the License Office to live by the 'rules of the road' that the Operations and Procedures Manual directs, and update or modify as the Board determines to be necessary.

- **CONDUCT OF ADVERSARIAL HEARINGS**

Based on personal observation and experience, as well as the interviews conducted, the conduct of the hearings needs to be formalized and improved. The hearing process itself needs to be more structured and conducted in a setting that promotes public confidence in the process. There is no way that the public can have confidence given the present structure. Hearings are informal and often disorganized, the appropriate administrative hearing standards are not consistently met, Board members are not properly prepared for the issues that are being decided, and hearings often become unwieldy and unprofessional in both appearance and in substance.

- LACK OF CONSISTENCY AND UNIFORMITY IN PENALTIES AND MANNER IN WHICH VIOLATIONS ARE HANDLED

In order to have an accountable and respected administration, there must be uniformity and consistency in the administration of justice. The problem with a lack of uniformity is that members of the public correctly perceive that certain entities are treated differently depending on the circumstances and personalities, which completely erodes public confidence in the system. In any judicial or quasi judicial setting, particularly those that address issues relating the economy of a city or the public safety climate, the administrative body must have the respect of the people they serve.

- RECORD KEEPING SYSTEM IS NOT UP TO DATE

The public is entitled to and deserves access to all important public records of the Board of Licenses. At present, the record keeping system is neither current nor accurate. An accurate and current system of keeping and recording data is an absolute necessity.

- OPEN MEETINGS ACT COMPLIANCE

It was noted during our interviews that the requirements of the Open Meetings Act RIGL § 42-46-1 et. seq. are not always met, and that violations occur with regard to proper notice, details in the agendas, and the timely and accurate posting of the minutes of the Board.

- POOR WEBSITE THAT IS NOT USER FRIENDLY

Both from personal observation and usage, as well as comments during this review, the website for the Board of Licenses needs to be improved, upgraded and made much more user-friendly. In today's day and age, a website is often the first contact that the public has with any entity, public or private. It is imperative that the BOL website reflect an organized, accurate, efficient, and well-run public entity.

- **RESOURCE ALLOCATION**

The police are responsible for bringing violators to the attention of the Board and then testifying if necessary. The law enforcement commitment to keeping Providence safe is never in doubt. However due to the inefficiency of the process, both at a prehearing stage and at the hearings themselves, the result is that police officers waste valuable time and resources at the Board on matters that do not necessarily require adversarial hearings.

Recommendations

1. Qualifications of the Board Chair

- a. The Chair of the Board and at least one other Member of the Board should be required to have a legal background with experience in litigation, as well as experience in the arbitration process and/or administrative hearing process.
- b. The Chair and other members of the Board should not be currently elected officials, as that creates an appearance of a conflict of interest (and potentially an actual conflict), which detracts from the impartiality and professionalism of the Board.
- c. The Chair should be responsible for the overall operation of the License Office, with oversight responsibilities for the License Administrator and staff; the Chair should also have supervisory responsibility over the Board.

2. Role of the Board Administrator

It is our recommendation that the Board Administrator responsibilities be as stated in Section 4 (G) of the Licensing Rules be modified, with the following changes:

“...to manage the Office of the Board of Licenses, direct licensing staff in their day-to-day duties, ensure that license application procedures maintain compliance with applicable laws, maintain a record of license violations, facilitate schedule prehearing conferences ~~and make sanction recommendations to the Board in connection therewith~~, coordinate the operation of the office of the Board of Licenses with other city departments, fully prepare the Board for all matters which appear on the agenda, consult with the pre-hearing officer, oversee the enforcement of penalties and collection of fines, implement all changes to city ordinances and/or regulations, and perform any other duty which may from time to time be delegated to the License Administrator by the Board.”

Additionally, the Board Administrator should devote all of his/her time to carrying out the responsibilities of the Board.

3. The Hearing Process

a. Change in Location for Board Meetings

It is the opinion of the undersigned that it is absolutely imperative for the Board to conduct its business in a room or location befitting the importance of the responsibilities which the Board is carrying out. Whether it is the Probate Courtroom located in City Hall, or another courtroom-type setting, the public cannot possibly be expected to have respect or confidence in a Board that meets in the current “room.” It is a totally inadequate venue which does not provide enough room for the litigants, their counsel, members of the public and other interested parties. The current location is so sub-standard that it is a wonder that the hearings are not more chaotic. Public perception is important, and the conduct and forum of the hearings themselves is central to that perception and confidence in the Board.

b. Record of Proceedings

All hearings should have a full and accurate record of the proceedings, whether by stenographic means or recording. All records of the proceedings shall be accessible to the public either through the Licensing Office or online, and this should be done immediately following a hearing.

c. Rules of Evidence

In conjunction with our recommendation regarding the qualifications of the Chair of the Board, it is also our recommendation that Rule 9 should state that:

“the rules of evidence as applied in civil cases in the Superior Courts of this state shall be followed to the every extent possible, the Board shall not be bound by the technical evidentiary rules, and shall be implemented by the Chairman in consultation with the Legal Counsel to the Board, who shall be in attendance at all hearings to provide legal advice and guidance.”

The Rules of Evidence are used and followed in the appeals before DBR; they are regularly used in administrative hearings throughout the State. In conjunction with our recommendation regarding the qualifications of the Chair to preside over contested hearings, the Rules of Evidence should be applied by the Board, and a Chair with the necessary qualifications will be in a position to make the necessary rulings during the hearing process. This will not only make the hearings more professional and efficient, but it will reduce the number of appeals to DBR that have merit.

d. Scheduling

The Board should also schedule hearings once or twice a month at night. When a licensing matter directly impacts a residential neighborhood it is critical that the hearing be scheduled at night, in order to allow the appropriate public participation. This will promote greater convenience for the public, more neighborhood input, and in turn greater transparency for the system and how the Board performs it job. We heard from a number of the constituency groups on this point. Many people have commented to us, both informally and formally, about the difficulty of attending a hearing in the afternoon, being forced to take time from work and other responsibilities. Just as many Municipal Courts hold night sessions, it is our recommendation that, in conjunction with a new location, a more public-friendly schedule can only add to the professionalism and respect which the Board has.

e. **Formalize the Process for New License Applications and Transfer of License Applications**

New license applications and applications for the transfer of licenses properly go before the Board for consideration and decision. Based on our review this process should be made more formal and structured. We therefore recommend:

1. Witnesses who appear before the Board in these hearings should be sworn in, so that there is accountability for the representations and statements that are made by an applicant and/or witnesses;
2. Legal Counsel to the Board should develop standardized questions and areas of inquiry for the Board's use in making their decision on an application;
3. Establish and adopt formal guidelines for public comment on an application in order to promote consistency in the hearing process. These guidelines should be incorporated into the Operations and Procedures Manual.

f. **Professional Conduct**

In accordance with the above, all licensees and attorneys who appear before the Board shall be expected to conduct themselves with proper decorum appropriate to a quasi-judicial/judicial forum, and be subject to the discipline of the Board for the failure to do so.

4. **Schedule of Penalties– Consistent discipline**

In order to promote public confidence, penalties must be administered in a fair and consistent manner, with respect to all methods of discipline including fines, suspension, and revocation. The Board should:

- a. Develop and promulgate "Guidelines" for the imposition of penalties, and these should be published; these Guidelines should be updated and revised

as necessary every two years if in the discretion of the Board, such revisions are necessary; there should be contained within these Guidelines a clear and decisive path to the revocation of a license, with due process protections afforded to the licensee through this process;

- b. In addition, a complete, accurate and current record of the licensee's history should be available for the Board and for public inspection.

5. **Addition of a "Pre-hearing Officer" Position**

It is our recommendation that a position titled "Pre-Hearing Officer" be established. This could be accomplished by amending the Definitions in Section 4, as well as Section 6, Rules 2, 2.2 and 2.2.1 of the Operations and Procedures.

The responsibility of this position would be to adjudicate matters that do not require a full hearing before the Board and to perform his/her responsibilities in conformity with the penalty Guidelines established by the Board. As we have stated in Recommendation # 6, prehearing conferences should be the rule, not the exception, and working with the License Administrator, the police, the City Solicitor's office, the responsibility of the prehearing officer will be to handle and adjudicate matters that do not require an adversarial hearing.

This recommendation is in complement to Recommendation #3 wherein we have stated that the Administrator should administrate and insure that the office runs efficiently for the public, but the Administrator should not get into substantive decision-making.

The Rules provide for pre-hearing conferences in Rule 2.2 of Section 6, wherein it states:

"The Board may schedule a prehearing conference prior to a Show Cause Hearing."

In our view, this should be amended to read:

"The prehearing officer shall schedule a prehearing conference prior to a Show Cause Hearing, unless good cause exists or unless it is impractical to schedule a prehearing conference prior to the Show Cause Hearing."

6. Pre-Hearing Conferences

Rule 2.2 provides for the scheduling of "prehearing conferences." For the Board not to regularly conduct pre-hearing conferences is an inefficient use of resources. Given the number of cases the Board has to deal with annually it is a completely unrealistic manner of conducting the Board's business. A significant percentage of cases can be resolved at this level, allowing the Board to conduct hearings on the important cases that affect the citizens of Providence.

With respect to the rules contained in the Operations and Procedures the following changes are recommended:

Participation in Prehearing Conference

- a. In Rule 2.2.3, strike the language that "The licensee may refuse to participate"...and require that the licensee be required to participate in the prehearing conference, if in the opinion of the Pre-Hearing Officer, a prehearing conference is required.
- b. In Rule 2.2.4, it should read "The ~~Board~~ Pre-Hearing Officer ~~may~~ shall order the licensee to appear at a ~~Show Cause Hearing without first permitting a~~ prehearing conference, unless good cause exists or unless it is impractical to schedule a prehearing conference prior to the Show Cause Hearing."
- c. In Rule 2.2 it should read: "The Pre-Hearing Officer ~~Board~~ shall whenever practical or unless good cause exists to bypass a prehearing conference, schedule a prehearing conference prior to a Show Cause Hearing"...

7. Independent Audit

An independent audit should be conducted immediately; this should cover the collection of fines/penalties, and all other records and statistics of the License Office, including applications, letters of notification, license transfers, communications to licensees, agendas, minutes of meetings, records regarding violations, and online postings. A list of those licensees who are not in good fiscal standing shall be published so that a renewal does not occur for any licensee unless outstanding fiscal issues are addressed. In the course of our interviews it became apparent that the

“system” for the collection of fines/penalties really doesn’t exist; the lack of enforcement of penalties with any degree of regularity is totally substandard, and this not only creates an accountability issue with the Board, but a fiscal issue for the City.

8. Compliance with Rhode Island’s Open Meetings Act

It was noted from a variety of individuals interviewed that the following goals must be met:

- a. Accurate Scheduling of all Board Meetings
- b. Timely Public Notice of Board’s Agenda
- c. Accurate Minutes of Meetings
- d. Improvements to the Board’s Website
- e. Accurate and Up to Date Database of All Board Records
- f. Annual Audit/Report to the Public of Compliance with the Open Meetings Act
- g. Yearly Training for the License Office Staff on Open Meetings Issues

In order for the public to have confidence in the workings of the Board, it is imperative that the Open Meetings Act be complied with all the time, and that there be accurate and accessible agendas, minutes, and records of the Board. All boards, agencies and public bodies are required to follow the law as stated in the Open Meetings Act.

9. Establish an “Information Technology” Position

In order to achieve the goals described herein, we are also recommending that an “Information Technology” position be created within the License Office. The primary responsibilities of the IT Specialist would be to oversee and be responsible for all website, database and public information issues within the License Office. This should include but not be limited to making the website customer-friendly and easy to navigate. The responsibilities should also include a section for public education on the website, wherein ‘fact sheets’ about the various licenses which the Board approves would be explained to the public. The public information section should also include a description of the responsibilities of the Board and the Operations and Procedures which govern the Board’s actions.

This IT position would report to the License Administrator, but working with the License Administrator and office staff, would have responsibility for ensuring that the goals cited above are achieved.

10. Training of Board Members

Interviews with interested parties revealed a concerning absence of formal, certified training given to the members of the Board and its full time staff.

We propose that the Board receive a full range of training on all the issues relevant to the efficient and professional operation of the Board, including but not limited to:

- Professional certified training on the relevant state statutes, city ordinances , and relevant rules and regulations; this should be undertaken immediately for Board members and staff;
- Training on the Operations and Procedures of the Board per the 'manual';
- Ethics training, which should be mandatory for all Board members and the entire staff;
- Any new member of the Board should receive training immediately upon their appointment to the Board;
- All the members of the Board and its paid staff should receive mandatory annual training in all relevant policies, procedures, laws and ordinances.

11. Annual Report

The City Charter requires that the Board present an Annual Report which covers all activities that the Board engaged in during the calendar year. The Board must adhere to the mandates of the Charter.


Conclusion

We are available to discuss, comment and answer questions on these recommendations.

It is clear that the Board of Licenses is an extremely important decision-making body within city government. The issues that the Board addresses on a weekly basis are relevant to the business climate in the City of Providence, as well as the public safety climate. **It cannot be emphasized enough that the success of any city is dependent on the economic vitality of the business districts and the livability of its neighborhoods.**

These eleven recommendations which we are proposing are the most significant proposals that we believe will improve the operation, efficiency and accountability of the Board, as well as the public perception of the Board. It is our opinion that these proposals should be implemented as soon as possible, with the goal of restoring public confidence in the Board, and improving the operation of the Board in these many areas.

Respectfully submitted,


Jeffrey B. Pine Esq.
Matthew Dawson Esq.

cc: Cyd McKenna, City Council Chief of Staff