

**CITY OF WOBURN
JUNE 18, 2013 - 7:00 P.M.
REGULAR MEETING OF THE CITY COUNCIL**

Roll Call

Anderson	Gately
DiTucci	Haggerty
Drapeau	Mercer-Bruen
Gaffney	Raymond
Denaro	

VOTED to dispense with the reading of the previous meeting's Journal and to APPROVE.

MAYOR'S COMMUNICATIONS: None.

PUBLIC HEARINGS:

On the petition by Dave & Busters of Massachusetts, Inc., 2481 Manana Drive, Dallas, Texas 75220 for a special permits pursuant to the 1985 Woburn Zoning Ordinances, as amended, as follows: 1. Sections 5.1.72 and 8.3.2 to allow for its parking requirements to be met on a separate lot from the use to be served by allowing 104 parking spaces at Lot B, 275 Mishawum Road, 2. Section 5.1 Note 16 to allow for hours of operation consistent with the hours of operation approved by the Woburn License Commission 11:00 a.m. to 1:00 a.m. seven days per week, and 3. Section 5.1 Note 22 to allow for two hundred (200) coin operated, recreational, or entertainment machines, all at Lot A, 275 Mishawum Road. PUBLIC HEARING OPENED. A communication dated June 7, 2013 was received from Attorney Joseph R. Tarby, III, Murtha Cullina LLP, 600 Unicorn Park Drive, Woburn, Massachusetts 01801 as follows:

Re: Special Permit Petition of Dave & Buster's of Massachusetts, Inc., Lot A, 275 Mishawum Road, Woburn, Massachusetts

Dear Mr. Campbell:

I respectfully request that the City Council public hearing on this matter presently scheduled for June 18, 2013 be continued to the City Council meeting on July 16, 2013. If you need any further information, please contact me. Thank you.

Very truly yours, s/ Joseph R. Tarby, III

CITIZEN’S PARTICIPATION:

Request by Todd G. Elliott, 101 Munroe Avenue for citizen’s participation time to discuss land excavation clearing that has occurred near 103 Munroe Avenue.

COMMITTEE REPORTS:

LIAISON:

On the Order relative to special legislation entitled “An Act relative to the disability retirement of Woburn police officer Robert DeNapoli”, committee report was received “ought to pass, as amended with the amendment as follows: 1. That the words ‘80 percent’ in Section 2 be stricken and replaced with the words ‘100 percent’”

FINANCE:

On the Order to transfer the sum of \$370,000.00 from Unreserved Fund Balance Account to Fire Department Salary, Overtime and Legal Assistance Accounts, committee report received “ought to pass”.

On the Order to transfer the sum of \$965.00 from Conservation/Tree Program Account to Conservation/Property Maint Account, committee report received “ought to pass”.

On the Order to transfer the sum of \$40,000.00 from Cemetery Interest Fund Account to Cemetery Utility, New Equipment, Office Supplies, Equip/Bldg Maint, Tools/Supplies and Overtime Accounts, committee report received “ought to pass”.

On the Order to appropriate the sum of \$950,000.00 from Sale of Cemetery Lots Account to Cemetery Paving Account, committee report received “ought to pass”.

On the Order to transfer the sum of \$2,000.00 from Treasurer/Sick Leave Buy Back Account to Treasurer/Lock Box Fees Account, committee report received “back for action”.

On the Order to transfer the sum of \$4,758.50 from Assessor Salary Account to Purchasing Sick Leave Buy Back Account, committee report received “back for action”.

On the Order to transfer the sum of \$40,000.00 from Police Holiday Pay Account to Police Overtime Account, committee report received “back for action”.

On the Order to transfer the sum of \$37,000.00 from Police Reserves Account to Police Regular Salary Account and Police Court Overtime Account, committee report received “back for action”.

On the Order to transfer the sum of \$35,000.00 from Police/Ammunition, Lighting and Heat Accounts to Firearms Account, committee report received “back for action”.

On the Order to transfer the sum of \$1,500.00 from Police/Diesel Account to Police/Gas Account, committee report received “back for action”.

On the Order to transfer the sum of \$19,521.41 from Police/Sick Leave Buy Back and Holiday Pay Accounts to Police/Detective Equipment Account, committee report received “back for action”.

On the Order to transfer the sum of \$42,235.29 from DPW/Admin Salary, Bldg Maint., Temp Help, Police Details, Prot. Clothing and Utilities Accounts to DPW Sick Leave Buy Back and Gas Accounts, committee report received “back for action”.

On the Order to transfer the sum of \$180,000.00 from BLS Receipts Account to Fire Regular Salary Account, committee report received “back for action”.

On the Order to transfer the sum of \$50,000.00 from Fire/Ambulance Salary, Overtime and Sick Leave Buy Back Accounts to Fire Regular Salary Account, committee report received “back for action”.

PUBLIC SAFETY AND LICENSES:

Petition by Checker Cab of Woburn Inc. for renewal of Taxi Cab License for three (3) vehicles, committee report received “back for action pending registrations”.

Petition by Landjet Inc. for renewal of Livery Licenses for (3) vehicles, committee report received “ought to pass”.

A communication dated June 13, 2013 was received from the Committee on Public Safety and Licenses as follows:

Re: City Council Committee on Public Safety and Licenses

At a meeting on June 12, 2013, the Committee on Public Safety and Licenses, in a discussion of taxi cab and livery licenses, voted as follows:

Motion was made and seconded to place a moratorium on outstanding licenses. The Vote was all in favor, (5-0).

It is this writer's understanding from the Committee's discussion, that committee would like to "freeze" any open/vacant licenses in order to work on proposed language to amend the existing ordinance pertaining to taxi cab and livery licenses.

Kindly contact me with any questions or should you required addition information.

s/Patricia Bergeron George, Clerk of Committees

ORDINANCES:

On the Order to amend 1989 Woburn Municipal Code, as amended, Title 2, Article XXVII, Section 2-180 relative to the base salary of the City Auditor, City Clerk, Clerk of City Council, Clerk of Board of Registrars of Voters, Human Resources Director, Library Director and City Solicitor, committee report was received "ought to pass".

On the Order to amend 1989 Woburn Municipal Code, as amended, Title 2, Article XXVII, Section 2-181 relative to the base salary of the DPW Superintendent, committee report was received "ought to pass".

NEW PETITIONS:

Petition by Woburn Cab Company Inc., 100 Ashburton Avenue, Woburn, Massachusetts 01801 for renewal of Taxi Cab License for three (3) vehicles.

Petition by Rosematwo, LLC, 10 Dorrance Street, Boston, Massachusetts 01219 for a special permit pursuant to Sections 8.7.2.10, 5.1.42, 8, 6.1 Note 8, and 12 of the 1985 Woburn Zoning Ordinances, as amended, to allow for the construction of a 10,000 square foot building addition to an existing warehouse facility, including loading docks and parking at 7 State Street.

COMMUNICATIONS AND REPORTS:

A communication dated June 12, 2013 was received from Joanne Collins, Director, Woburn Council on Aging along with a copy of the Director’s Report and the minutes of the Council on Aging for the month of May 2013.

A copy of a communication dated June 10, 2013 to Jordan Holt and Sean Kennedy was received from Building Commissioner Thomas C. Quinn, Jr. relative to the property located at 2K Gill Street and advising that there was a violation of the special permit for the property and notifying that operations were to cease and desist with respect to an accessory outdoor play area at the locus.

A communication dated June 5, 2013 was received from Patricia A. Leavenworth, P.E., District Highway Director, MassDOT, 519 Appleton Street, Arlington, Massachusetts 02476 as follows:

Woburn/Reading/Stoneham – I-93/I-95 Interchange Improvements

Dear Mr. Campbell:

This is in response to your letter requesting a representative attend the City Council meeting on August 6, 2013 to provide an update on the subject property.

I have referred your request to the Project Manager, Diane Madden, of the MassDOT Environmental Services Section located in our Boston headquarters. At this time we are conferring with the Federal Highway Administration (FHWA) regarding a schedule for the development of an Environmental Impact Statement (EIS). I have asked the Project Manager to contact you and arrange an appropriate time to brief the City Council. This contact would likely be after our negotiations with FHWA are complete.

If you have any questions regarding this matter please feel free to contact Ms. Diane Madden or Mr. Frank Suszynski, District Project Development Engineer.

Sincerely, s/Patricia A Leavenworth, P.E., District Highway Director

UNFINISHED BUSINESS OF PRECEDING MEETING: None.

APPOINTMENTS AND ELECTIONS: None.

MOTIONS, ORDERS AND RESOLUTIONS:

ORDERED

Be it ordained by the City Council of the City of Woburn that the 1989 Woburn Municipal Code, as amended, be further amended by deleting Title 5, BUSINESS LICENSES AND REGULATIONS, Article I in its entirety, and inserting in its place a new Article I. Automatic Amusement Devices, as follows:

I. AUTOMATIC AMUSEMENT DEVICES

5-1 Definitions.

The following terms shall have the meanings indicated:

AMUSEMENT DEVICE ROOM- A building or place containing five or more amusement devices, as defined herein.

AUTOMATIC AMUSEMENT DEVICE – any mechanism whereby, upon the deposit therein of a coin or token, credit card, debit card or swipe card, any apparatus is released or set in motion or put in a position where it may be set in motion for the purpose of playing any game involving, in whole or in part, the skill of the player, including, but not exclusively, such devices as are commonly known as pinball machines including free play pinball machines, electronic video games, computer generated video games and all game machines or devices similar thereto. The term "automatic amusement device " shall not include not include keno, beano, bingo, or other like games of chance with cash rewards or prizes, or any game established or licensed by the Massachusetts State Lottery, nor shall it include jukeboxes, rides, bowling alleys, or any device maintained within a residence for the use of the occupants thereof and their guests.

OWNER- A record owner, contract purchaser, lessee, assignee, bailee, receiver or trustee.

PERSON - One or more individuals, a corporation, partnership, association, trust or firm and any trustee, receiver or assignee.

5-2 License required.

- A. It shall be unlawful for any person having title to or responsibility for the maintenance or operation of any restaurant, public hall, store, place of amusement or any other place to which members of the public are invited, to maintain, operate or permit to be operated or maintained in the premises, any automatic amusement device without having first obtained a valid license from the License Commission, pursuant to the provisions of the ordinance
- B. No person shall maintain or operate an amusement device room as the exclusive use of any premises in the City.

- C. Nothing in this ordinance shall in any way be construed to authorize, license or permit any gambling devices whatsoever, or any mechanism that has been judicially determined to be a gambling device, or in any way contrary to law, or that may be contrary to any future laws of the Commonwealth of Massachusetts, as may be amended from time to time.
- D. An amusement device room may be allowed as an accessory use to a restaurant, as that term is defined by the Zoning Ordinances, subject to a permit(s) issued by the License Commission, and provided the amusement device room shall occupy no more than 49% of the total square footage of the licensed establishment which is open to the public. For the purposes of this chapter, the total square footage of the licensed establishment shall not include the kitchen, employee rooms, utility closets, storage areas, loading docks, or any other area which is not open to the public.

5-3 Application for License/Procedure.

- A. Any application for a license will be acted upon after a hearing before the License Commission (the "Commission") in accordance with the rules, regulations and procedures of the License Commission.
- B. The license commission shall conduct a public hearing in accordance with the provisions of M.G.L. c. 39, §23B, within forty-five days of the receipt by the License Commission of a properly completed application.
- C. The License Commission shall grant a license based upon the merits of each application.
- D. The application shall be accompanied by a plan identifying the street and number, all entrances and exits, the type of establishment and the exact location and number of the amusement device(s) to be licensed.
- E. No license shall be issued to any applicant unless he/she is over eighteen years of age and provides proof of United States citizenship or legal residence status as an alien. This provision shall similarly apply to any applicant acting as the authorized agent of a corporation, partnership, association or other business entity. In the case of a corporation, partnership, association or other business entity, the applicant shall provide a Certificate of Good Standing from the Office of the Secretary of State.
- F. When acting upon an application to operate an amusement device room, the License Commission shall consider, among other factors it may deem relevant, the following factors:
 - 1. The overall type of business conducted on site.

2. Whether alcohol is to be served on the premises.
3. Whether the Building Commissioner has approved the proposed layout of the automatic amusement devices after consideration of the applicable Building Codes including Plumbing and Electrical.
4. The layout of the restaurant and amusement device room and whether the amusement device room is separated from the rest of the establishment.
5. The means by which the applicant proposes to restrict minors under the age of 18 on the site, unless the parent or guardian of such minor provides written consent, and/or as required by MGL c. 140, §. 179.
6. The reputation and character of the applicant and general manager.
7. The presence and use of public safety details as an integral part of the establishment's business plan.
8. Whether granting the license will unreasonably increasing increase pedestrian or vehicular traffic in the area in which the premises are located.
9. Whether granting the license will increase the incidence of illegal or disruptive conduct in the area in which the premises are located.
10. Whether granting the license will unreasonably increase the level of noise in the area in which the premises are located.
11. Whether granting the license will otherwise significantly harm the legitimate protectable interests of the affected citizens of the City.

5-4 Fee.

The license fee per machine shall be one hundred dollars (\$100.00) per year

5-5 License to be Displayed.

- A. The license shall be posted permanently and conspicuously in the premises wherein the amusement devices are to be located
- B. If the licensee moves the place of business to another location within the City, the license may be transferred to the new location only upon reapplication to the License Commission in accordance with the provisions of this ordinance.

- C. The license shall not be transferred or assigned. Specifically, but not by way of limitation, a license shall not run with the premises, nor shall sale of the premises effectuate a transfer of the license.

5-6 Operation of Amusement Devices.

- A. The owner of any amusement device within the City shall comply with all provisions of law, ordinance, rule or regulations applicable thereto and relating to the conduct of the business in connection with which the game is used and the use and maintenance of the premises where it is located.
- B. The owner of the amusement device shall maintain good order on the premises at all times. The failure to maintain good order may be grounds for the suspension or revocation of the license. The lack of good order on the premises shall include but not be limited to the following.
 - 1. Fighting and rowdy behavior.
 - 2. Possession or consumption of alcoholic beverages, except where the premises are licensed for on-premises consumption thereof.
 - 3. Gambling.
 - 4. Permitting the use of any controlled substance possession of which is prohibited by Massachusetts Law.
- C. The owner of an amusement device shall not permit it to be played or operated after 10:00 p.m. by a person under the age of 16 unless accompanied by and under the supervision of a parent or other guardian over the age of 21.
- D. The owner of an amusement device shall not allow it to be available for use or used unless it is under the control of and supervised by a person at least 18 years of age, who shall ensure that it is operated in compliance with this ordinance.
- E. A person under the age of 16, unless accompanied by and under the supervision of a parent or other guardian over the age of 21, is not permitted to operate amusement devices during normal school hours (as established by the School Committee or appropriate authority) on weekdays only exclusive of holidays.
- F. No cash awards shall be offered or given in any contest, tournament, league or individual play on any amusement device, and no such game shall be permitted.
- G. Any premises in the City containing an amusement device or devices, when open for the transaction of business, shall be subject to inspection by any police officer.

5-7 License commission rules and regulations.

- A. All meetings convened by the Licensing Commission shall take place no earlier than 5:30 P.M. on a week day.
- B. The license commission may issue rules and regulations for the use of automatic amusement devices consistent with the Massachusetts General Laws and applicable ordinances, in the interest of public safety to guard against creation of a nuisance or to insure adequate safety and security for the patrons or the affected public.

5-8 Penalty and Enforcement

Violations of this Ordinance shall be subject to a fine of two hundred (\$200.00) for each violation. Each violation of this Ordinance shall constitute a separate offense, and each day that any such violation continues shall constitute a separate offense. The Police Chief or his designee, and any Woburn Police Officer and the Building Commissioner shall have authority to enforce the provisions of this title. Any alleged violation of this Ordinance may, in the sole discretion of the enforcing agent, be made the subject matter of noncriminal disposition proceedings commenced by such agent in accordance with M.G.L. c.40, §21D.

s/Alderman Anderson

Motion made and 2nd to ADJOURN.