



City of Wilmington Central Business District
Policies and Practices

**For recommendations and objections to ABC
Permit Applications under under NCGS §18B-
901(b),**

**For recommendations regarding existing ABC
Permits under NCGS§18B-904(e),**

and

**For City Refusal to Issue a License under
NCGS§105-113.71.**

September __, 2010

Introduction

Nightlife entertainment presents both a blessing and a curse to the CBD. It benefits our downtown with a lively, popular nightlife that can enrich the lives of our residents and guests. However, it also is a source of crime and has damaged the reputation of downtown in the minds of our residents.

The dichotomy is not a recent revelation. For years citizen committees have reported the need to make changes in the CBD to better control nightlife as a safe and clean experience for both the night revelers as well as the residents of the CBD and its surrounding neighborhoods. Moreover, the domination of nightlife venues in the CBD is seen as contributing to the decline of retail stores.

Our problems are not unique. Density of alcohol outlets is connected to alcohol related harms including drunk driving, loitering, public disturbances and vandalism. (See e.g. Campbell AC, Hahn RA, Elder RA, et al. *The effectiveness of limiting alcohol outlet density as a means of reducing excessive alcohol consumption and alcohol-related harms*. Am J Prev Med 2009;37(6):556–69.) Cities large and small throughout the world have dealt with, or are dealing with, the same density related problems we experience in our CBD.

The steps taken in other cities were studied by a broad-based task force of citizens in 2009 as part of the Wilmington Downtown Inc. Nightlife Task Force. The policies established herein are founded in the experiences of those cities; modified to meet the legal structure of alcohol regulation in North Carolina. Further, these policies have been informed by formal and informal input by outlet operators, landlords, retail business operators, industry consultants, and residents.

At the State level, although there has been no loosening of centralized regulation from Raleigh, a change in administration within the Alcohol Beverage Commission (ABC) has led to a new cooperative spirit between Raleigh and municipalities that enables the reforms set forth in this policy. Special recognition goes to Chairman Jonathan Williams for his insights and viewpoints on the issues addressed.

This policy addresses the full range of areas of City influence and participation in the ABC permitting process.

First, it sets forth a recommended procedure to seek the City's recommendation on an initial ABC permit application. The procedure is designed to avoid a surprise disapproval after an applicant has expended time and money on outlet improvements. An applicant may choose not to use this method, but does so at her own risk of later disappointment.

Second, it defines the City policy on outlet density and location suitability within the CBD. These are parameters sought out by the ABC that have never before been defined on the local or state level.

Third, it sets forth Best Practices for landlords to follow to protect their investments in the outlets they lease.

Fourth, it sets City policy on continuation of existing licenses and asserts City intention to employ its full authority under North Carolina statutes.

The goal of this policy is to preserve those parts of our downtown nightlife that benefit the City and its residents while addressing those issues contributing to its tarnished reputation.

Policy and Procedure for City recommendations and objections to All City Permit Applications under NCGS §18B-901(b).

Voluntary Form 001 Preliminary Review Procedure

NCGS §18B-901(b) and ABC Commission Form 001 invite the City to approve or disapprove of ABC license applicants and locations. The City is invited to object based on “fact, record, law or reputation.” The objection may lead to a license denial by the ABC Commission. Potential licensees are at risk, therefore, of committing to substantial lease obligations and capital improvements only to be denied a license based on an unfavorable City opinion. To avoid this detrimental circumstance, the City initiates the following voluntary internal procedure for ABC Form 001 preliminary review.

1. The City Manager shall appoint, in his discretion, City staff, including Police and Fire Department personnel, and other persons including, but not limited to, an industry representative, CBD resident, and non industry business representative, to serve as City Form 001 review Committee to advise the City Manager on applicant conformance to the policies herein.
2. Applicants may seek Form 001 preliminary review prior to committing to a lease or initiating any capital improvements. If applicants proceed with financial commitments prior to preliminary approval, the applicant proceeds at his own risk of an unfavorable City recommendation.
3. Applicants shall submit the following information for preliminary review:
 1. Applicant name, corporate or LLC name (if any), trade name, former trade name (if any), date of birth, NC Driver License Number, Social Security Number,
 2. Location identification by address including suite if any,
 3. A copy of the proposed lease,
 4. Landlord identifying information,
 5. Occupancy limit estimate of the proposed location,
 6. Types of ABC licenses sought,
 7. Such other and further information deemed necessary by the Committee in its discretion.
4. The Committee may, at their discretion, require a personal interview of the applicant and/or landlord.
5. The Committee shall review the applicant's submission against the nine factors of NCGS§18B-901(c) in light of the City policies on permit density and suitability below.
6. The Committee, upon City Manager approval, shall inform the applicant and landlord in writing of its preliminary opinion of applicant and location suitability. If the opinion objects to either the location or applicant, the applicant will be notified of the facts, record, law or reputation causing the negative opinion.
7. Upon applicant submission of ABC Form 001 and Form 002, in the absence of any substantial change in facts or circumstances, the Committee will review the Form 002 for compliance with all code approvals, and, if compliant, will make recommendations to the City Manager in accordance with the preliminary review.

Any applicant who elects not to seek preliminary review shall be reviewed under the same standards set forth above upon submission of ABC Form 001 and Form 002. Preliminary Review shall be available for all ABC license applicants in the City.

In those cases where the Committee recommends denial and the City Manager concurs, it is

the intention of the City to intervene in, and otherwise support, any subsequent administrative or judicial action on that recommendation by the Commission.

Policy Defining Density and other Conditions of Suitability to the Central Business District for ABC Permit Applications under NCGS §18B-901(b) and (c).

Under NCGS §18B-901(b) and (c), the ABC Commission seeks City recommendations on issues regarding suitability. Specifically, the ABC seeks opinions on outlet density, and the suitability or detriment to a neighborhood from the location of a licensee's business. ABC regulations do not specify any standards for these uniquely local issues.

In order to provide the ABC with consistent, fact-based recommendations on density and suitability, the City sets forth the standards that shall guide the City Manager, through the Committee, on ABC permit applications.

Density

It is the duty of the City to ensure that ABC outlet density within the neighborhood of the CBD does not exceed the capacity of public facilities including, but not limited to, parking, traffic, police, fire, and sanitation services. The Police Chief, local news outlets and the Nightlife Task force have reported the excessive capacity of late night (12 am to 3 am) ABC Private Clubs as defined under NCGS §18B-1000(5) ("Clubs"). The density of Clubs, the number of large capacity Clubs and the total late night capacity have stretched the adequacy of public facilities.

Accordingly, the City sets the following density standards for new location ABC Clubs within the CBD.

- High Capacity Clubs – (Clubs with a projected maximum occupancy greater than 100) Shall not be recommended for ABC license approval if any part of any existing ABC licensee* is within a 330 foot radius measured from the property line or lines of the proposed location intersecting the public rights-of-way.
- Standard Capacity Clubs – (Clubs with a projected maximum occupancy less than or equal to 100) shall not be recommended for ABC license approval if any part of existing ABC licensees* with a cumulative maximum occupancy of 300 are within 330 feet measured from the property line or lines of the proposed location intersecting the public rights-of-way.

The City recognizes that existing ABC license locations (Those licensed as of July 1, 2010) have some expectation of location suitability upon transfer of outlet ownership. Accordingly, the above density restrictions will not apply to existing locations provided existing locations are re-licensed as a Club within one year of the prior licensee termination. Compliance with suitability standards set forth below will be required of new licensees to ensure that existing locations continue to be suitable to the neighborhood.

Suitability

Suitability in a mixed use neighborhood like the CBD requires operational compatibility with

* Excluding licenses issued under GS 18B-1001(8); 1001(9); 905; 1002; and 1100.

other ABC outlets, retail businesses, and residents. The City has an established noise ordinance and zoning code and the Wilmington Fire Department has set maximum occupancy limits for outlets. Wilmington Downtown Inc. has supplied the City with a Task Force report created by a broad-based group of CBD stakeholders. That report provides the City with recommended “Best Practices” (attached as Exhibit A) for ABC outlet operations in the CBD. The WDI proposed Best Practices were inspired by efforts in other cities that faced problems comparable to our CBD. The City Council accepts the advice of these stakeholders and adopts these as the Best Practices for ABC outlet operation in the CBD.

The City Noise ordinance, zoning code, building capacity occupancy limits and the Best Practices, together with the body of State ABC laws, inform operators clearly of the standards for clean and safe operation of ABC outlets in the CBD.

Accordingly, to be rated “suitable” to operate in the CBD, all ABC applicants and existing operators must demonstrate, as applicable to outlet operation and operator character, no pattern of non-compliance with:

1. City Noise Ordinance,
2. City Zoning Code,
3. Fire Department occupancy limits,
4. All other statutes and laws,
5. State ABC Laws, and
6. Wilmington's CBD “Best Practices.”

Application review staff will inform applicants of these standards. To receive a positive City recommendation on Form 001, applicants shall confirm their agreement to comply.

Landlord Best Practice

The landlords of ABC outlets have an interest in tenant compliance with City density and suitability standards. The City anticipates that landlords will use all means available to them to ensure tenant adherence to City standards. Based on landlord input, the City adopts these “Best Practices” for landlords to gain and retain City evaluation of suitability. Landlord compliance with these practices will be considered in staff evaluation of site suitability:

1. Incorporate compliance with City suitability standards as material terms of your lease.
2. Require tenants to provide current landlord contact information to the City Manager's office. The City will endeavor, but does not guarantee, to inform landlords of tenant violations and deviations from suitability standards.
3. Stay informed and aware of your tenant's operational conduct.
4. Take action to enforce lease covenants when tenants deviate from laws and best practices.

Suspensions and Revocations

NCGS§18B-904(e) provides that the ABC may suspend or revoke a permit if it finds the location no longer suitable or that the operation of the business at that location is detrimental to the neighborhood. The City, through the City Manager as recommended by the Committee, will, when circumstances warrant, advise ABC of operators that are at locations no longer suitable or who operate

at the detriment of the neighborhood. City advice on suspension or revocation will be based on a weighing of all factors demonstrating a pattern of non-compliance, relevant to outlet operation and operator character, with:

1. CBD “Best Practices,”
2. Noise ordinance citations,
3. Violations of Occupancy Limits,
4. Breaches of the peace associated with the premises,
5. Violations of ABC Laws,
6. Violations of Municipal Codes, and
7. Violations of any other laws.

In those cases where the Committee recommends revocation or suspension and the City Manager concurs, it is the intention of the City to intervene in, and otherwise support, any subsequent administrative or judicial action on that recommendation by the Commission.

Policy Under NCGS§105-113.71

Notwithstanding any of the foregoing, the City reserves the right to refuse to issue a license in accordance with NCGS§105-113.71.

Sunset Provision

Unless otherwise rescinded by Council, this policy shall expire by its own terms, with no further action required by Council, 48 months from the date adopted.

Adopted by resolution of the Wilmington City Council, September , 2010.