

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
DECEMBER 9, 2020**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held via teleconference at 400 East Tryon Road in Raleigh, North Carolina on December 9, 2020, beginning at 10:00 AM. The meeting was recorded, and a copy of the recording is on file at the NC ABC Commission within the Legal Section.

ROLL CALL

Chairman A.D. Zander Guy, Jr. welcomed those who were joining the teleconference. Chairman Guy thanked those who regularly participated and stated they are important to the Commission. Chairman Guy added the suppliers and wholesalers participate to share their various concerns and perspectives. Chairman Guy called the December 2020 ABC Commission Meeting to order.

Chairman Guy stated Director Bryan House, the Branch Head of ALE, was unable to join as they were swearing in new agents; however, Assistant Director for Operations Israel Morrow was able to participate. Chairman Guy welcomed and thanked Assistant Director Morrow.

Chairman Guy announced the January 2021 and February 2021 ABC Commission Meetings would also be held virtually, as Governor Cooper has extended the Executive Order. Chairman Guy added it would likely be extended further.

Chairman Guy stated he was proud of the ABC Commission and its staff in their compliance with the Governor's orders while working through the pandemic, trying to maintain the safety of the employees and the public. Chairman Guy thanked HR Business Officer Burna Mattocks for her work and for making sure everyone was informed of the guidelines. Chairman Guy stated Department of Public Safety Secretary Hooks held a virtual meeting with the Department of Public Safety Director Chip Coon, who provided additional recommendations to enhance what was already being done to protect the employees. Chairman Guy stated the Commission is in the process of implementing some of those safety measures, as soon as the equipment arrives.

Chairman Guy stated the Commission continues to be diligent in addressing COVID-19 and reminded everyone to practice the three W's as we approach the holiday season. Chairman Guy thanked the employees for their work and stated the Commission, especially the Permits Section which has had staffing concerns, is trying to maintain the level of customer service expected of the ABC Commission for the permittees. Chairman Guy stated if anyone has concerns regarding permits, they should contact Deputy Director Terrance Merriweather. If there were legal concerns, they should contact General Counsel Stacey Carter-Coley.

Chairman Guy greeted Commissioner Karen L. Stout and Commissioner Norman A. Mitchell, Sr. who were joining the meeting via teleconference. Chairman Guy thank them for their work and recognized they are also feeling pressure from the public with telephone calls and correspondence. Chairman Guy stated he appreciated their dedication and support of the ABC Commission and its work.

MINUTES OF THE NOVEMBER 4, 2020 COMMISSION MEETING

Commissioner Stout made a motion to waive the reading of the minutes of the November 4, 2020 Commission Meeting into the record. Commissioner Mitchell seconded the motion. Motion passed.

Commissioner Mitchell made a motion to approve the minutes of the November 4, 2020 Commission Meeting. Commissioner Stout seconded the motion. Motion passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. §138A-35, Chairman Guy asked if there were any conflicts of interest or any conditions or facts which might create the appearance of a conflict of interest with respect to any matters on the agenda. Chairman Guy stated he found no conflicts of interest. Commissioner Stout stated she reviewed the agenda and found no conflicts of interest. Commissioner Mitchell stated he reviewed the agenda and found no conflicts of interest.

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 47

Chairman Guy recognized Mrs. Carter-Coley who stated there were no contested cases and there were forty-seven cases on the agenda. Mrs. Carter-Coley asked if anyone wished to speak to the Commission regarding a case. As no one responded, Mrs. Carter-Coley stated staff recommends the ratification of the Offers in Compromise.

Chairman Guy again asked if anyone wished to take the opportunity to speak to the Commission regarding a case. There were no responses.

Commissioner Stout made a motion to ratify the Offers in Compromise. Commissioner Mitchell seconded the motion. Motion passed.

II. ABC STORE LOCATION – DURHAM COUNTY ABC BOARD – (2525 Page Road, Lot 2, Morrisville, NC)

Administrator Agnes C. Stevens stated the Durham County ABC Board had requested approval from the NC ABC Commission for a new store.

Ms. Stevens stated on October 28, 2020, the NC ABC Commission received a request from the Durham County ABC Board, requesting approval to purchase property to open and operate an ABC Store at 2525 Page Road, Lot 2 in Morrisville, North Carolina. ABC Commission Audit/Investigation Assistant Director Edwin Strickland contacted Durham County ABC Board General Manager Niegel Sullivan to gather information needed for the investigative report.

Ms. Stevens stated the proposed site is an out-parcel of the Alexander Village at Brier Creek Shopping Center. Ms. Stevens stated the site is zoned Commercial Center with Development Plan which allows for an ABC Store.

Ms. Stevens stated there are no personal or financial interests shared between the property owner and the Durham County ABC Board members. Ms. Stevens stated the board members have submitted financial disclosure forms. Ms. Stevens added the proposed building will have a loading dock.

Ms. Stevens stated the nearest school, Pleasant Grove Elementary School located at 3605 Pleasant Grove Church Road in Morrisville, is approximately 2.4 miles from the proposed location. Ms. Stevens added Brier Creek Elementary School located at 9801 Brier Creek Parkway in Raleigh is a similar distance from the proposed location. The nearest church, Catch the Fire Worship Center located at 2304 Page Road in Durham, is approximately .3 miles from the proposed location.

Ms. Stevens explained the nearest ABC Store is located at 2121 TW Alexander Drive in Morrisville, North Carolina, approximately 275 feet from the proposed location. It is also operated by the Durham County ABC Board and will closed upon the opening of the proposed store. The next nearest ABC Store is located at 7911 ACC Boulevard in Raleigh, North Carolina, approximately 2.2 miles from the proposed location. It is operated by the Wake County ABC Board.

Ms. Stevens stated notice to the public was properly posted on September 24, 2020. It was witnessed by Mr. Strickland and ABC Compliance Officer India Smith-Gray on November 6, 2020 and determined to meet the sign requirements. Ms. Stevens stated, as of November 16, 2020, no objections had been received by the Board regarding the new store. Ms. Stevens stated staff recommended approval of the proposed location.

Chairman Guy asked if anyone had questions or anyone from the Durham County ABC Board was present and wished to address the Commission. Chairman Guy greeted Mr. Sullivan who stated he appreciated the Commission's support of the Durham County ABC Board, and all the other Boards across the state of North Carolina during this difficult time. Mr. Sullivan stated the Durham County ABC Commission will continue growing to support the citizens of Durham County.

Commissioner Mitchell made a motion to approve the proposed location upon staff recommendation. Commissioner Stout seconded the motion. Motion passed.

III. PUBLIC HEARING ON PROPOSED PERMANENT MIXED BEVERAGES PERMITTEE TRANSPORT & DELIVERY RULES – 14B NCAC 15A .1405, .1802, .1903, .1904, AND 15B .0501

Chairman Guy stated the matter before the Commission was a public hearing on the permanent Mixed Beverages Permittee Transport and Delivery Rules proposed on October 7, 2020 and for which Notice of Hearing was published on November 2, 2020. Chairman Guy opened the hearing and recognized Walker Reagan, the rules coordinator, to provide an overview of the proposed rules for consideration. Mr. Reagan previously provided drafts of the proposed rules to the Commission.

Mr. Reagan explained, in 2019, the General Assembly amended G.S. §18B-303 exempting mixed beverages permittees and their employees, and employees of a local board, from having to obtain a Purchase-Transportation permit before transporting quantities of spirituous liquor or fortified wine to the mixed beverages permittee in excess of the quantities for which a permit is required under §18B-303(a).

Mr. Reagan stated, also in 2019, the General Assembly amended G.S. §18B-701(a) authorizing local boards to provide delivery of spirituous liquor to mixed beverages permittees using the local board's employees or an independent contractor hired by the local board. Mr. Reagan explained the local boards were also authorized to charge a fee to the permittee for those deliveries. Additionally, the statute was amended to allow a mixed beverages permittee to contract with an independent contractor to pick up their spirituous liquor orders from the local board and deliver them to the mixed beverages permittee.

Mr. Reagan explained Section 25(b) of S.L. 2019-182 directed the Commission to adopt rules to implement these changes including the fee local boards are allowed to charge for these deliveries, and the requirements independent contractors must meet to provide deliveries from the local board to the mixed beverages permittees, either as a local board contractor or the contractor of the mixed beverages permittee.

Mr. Reagan stated rules were needed to implement the new laws. Mr. Reagan explained a rule was needed to establish the conditions under which local boards may deliver spirituous liquor to mixed beverages permittees, either by use of their own employees or an independent contractor, including the hours deliveries can be made and the responsibility for the spirituous liquor while in transit between the board and the mixed beverages permittee's location.

Mr. Reagan stated rules were needed to set the conditions under which an independent contractor may be used to make deliveries, including holding a motor vehicle carrier certification and carrying indemnity and fidelity insurance insuring the spirituous liquor during the delivery. Mr. Reagan explained the rules were needed to establish the process for a local board to determine a fee structure for fees charged for deliveries made by the local board to mixed beverages permittees. Additionally, the rules would establish the conditions a mixed beverages permittee and their independent contractor must meet before the independent contractor is allowed to pick up the mixed beverages permittee's orders from the local board and deliver them to the mixed beverages permittee.

Mr. Reagan explained the public comment period for the rules is through January 4, 2021; therefore, the Commission can consider the rules for adoption at the January meeting.

Chairman Guy asked if anyone participating or from the public wished to speak to the Commission regarding the rules. As no one responded, Chairman Guy closed the public hearing.

IV. CONSIDERATION OF ADOPTION OF PERMANENT ALLOW CERTAIN ORDERS OF ELIGIBLE DISTILLERY PRODUCTS RULES – 14B NCAC 15A .1304 - .1305, .1403 AND .1407

Chairman Guy stated the matter before the Commission was consideration of the adoption of the permanent Allow Certain Orders of Eligible Distillery Products Rules. Chairman Guy recognized Mr. Reagan to provide an overview of the proposed rules for consideration. Mr. Reagan previously provided drafts of the proposed permanent rules to the Commission.

Mr. Reagan stated the permanent Allow Certain Orders of Eligible Distillery Products Rules were proposed by the Commission at its meeting on August 12, 2020 and submitted to the Office of Administrative Hearings on August 17, 2020. Mr. Reagan explained the proposed rules, the notice of public hearing and notice of the public written comment period were published in the NC Register on September 15, 2020. Mr. Reagan added they were posted on the ABC Commission's website and emailed to the ABC Commission's rulemaking email list on August 18, 2020.

Mr. Reagan stated the public hearing was properly noticed for November 4, 2020 at 10:00 am and was held at that time. Mr. Reagan added no members of the public spoke at the public hearing and the public comment period was noticed to end on November 16, 2020. No written comments were received by the Commission concerning these rules.

Mr. Reagan explained the statutory time periods after publication for holding a public hearing of at least 15 days and the receiving of written comments of at least 60 days had been complied with. Mr. Reagan

stated, after publication, staff found an error in a rule citation in the new Rule 15A .1407 which had been corrected in the version of the rule before the Commission.

Mr. Reagan stated the Commission may now consider the rules for adoption during its current meeting. Mr. Reagan explained staff recommends the Commission adopt the permanent Allow Certain Orders of Eligible Distillery Product rules as published in the NC Register, with the changes presented. Staff recommends the Commission direct the rules be filed with the Office of Administrative Hearings for approval by the Rules Review Commission and publication in the NC Administrative Code. Mr. Reagan stated staff further recommends the Commission authorize staff to make any non-substantive changes in the adopted rules as needed prior to publication, including spelling, punctuation, grammar and other technical changes and corrections.

Chairman Guy asked if anyone had any questions or public comments regarding the permanent Allow Certain Orders of Eligible Distillery Products Rules. There were no responses from the meeting participants.

Commissioner Stout made a motion the ABC Commission adopt the permanent Allow Certain Orders of Eligible Distillery Products Rules as published in the North Carolina Register with the change recommended and presented by staff and the recommendations of the staff regarding the rules. Commissioner Mitchell seconded the motion. Motion passed.

V. CONSIDERATION OF ADOPTION OF PERMANENT DISTILLERIES ISSUE PURCHASE-TRANSPORTATION PERMIT RULES – 14B NCAC 15A .1706, .1801, .2103 - .2104

Chairman Guy stated the matter before the Commission was the consideration of the adoption of the permanent Distilleries Issue Purchase-Transportation Permits Rules. Chairman Guy recognized Mr. Reagan to provide an overview of the proposed rules for consideration. Mr. Reagan previously provided drafts of the proposed rules to the Commission.

Mr. Reagan explained the proposed permanent Distilleries Issue Purchase-Transportation Permits rules were proposed by the Commission during its meeting on August 12, 2020. Mr. Reagan stated the proposed rules were submitted to the Office of Administrative Hearings on August 13, 2020 and posted on the ABC Commission's website and emailed to the ABC Commission rulemaking committee email list on August 17, 2020. Mr. Reagan added the proposed rules, the notice of public hearing and notice of the public comment period were published in the NC Register on September 15, 2020.

Mr. Reagan stated the public hearing was properly noticed for November 4, 2020 at 10:00 am and was held on that date. Mr. Reagan stated no members of the public spoke during the public hearing and the written comment period was noticed to end on November 16, 2020. Mr. Reagan stated no written comments had been received by the Commission regarding the rules.

Mr. Reagan explained the statutory time periods after publication for holding a public hearing of at least 15 days and the receiving of written comments of at least 60 days had been complied with. Mr. Reagan stated the Commission may consider the adoption of the rules during its current meeting.

Mr. Reagan stated staff recommended the Commission adopt the permanent Distillers Issue Purchase-Transportation Permits rules as published in the NC Register and as presented. Mr. Reagan stated staff recommends the Commission direct the rules be filed with the Office of Administrative Hearings for approval by the Rules Review Commission and publication in the NC Administrative Code. Mr. Reagan

added staff recommends the Commission authorize staff to make any non-substantive changes to the adopted rules prior to publication.

Chairman Guy asked if anyone wished to comment on the rules. As no one wished to address the Commission, Commissioner Mitchell made a motion that the Commission adopt the permanent Distilleries Issue Purchase-Transportation Rules as published in the NC Register as presented by staff and the recommendations of the staff regarding the rules. Commissioner Stout seconded the motion. Motion passed.

VI. CONSIDERATION OF ADOPTION OF PERMANENT COME TO REST RULES – 14B NCAC 15C .0602 AND .0607

Chairman Guy stated the matter before the Commission was consideration of the adoption of the permanent Come to Rest Rules. Chairman Guy recognized Mr. Reagan to provide an overview. Mr. Reagan previously provided drafts of the proposed permanent rules to the Commission.

Mr. Reagan explained the permanent Come to Rest Rules were proposed during the Commission's meeting on September 9, 2020. Mr. Reagan stated the rules were posted on the ABC Commission's website and emailed to the ABC Commission rulemaking email list also on September 9, 2020. Mr. Reagan added the proposed rules, the notice of public hearing and notice of the public written comment period were published in the NC Register on October 1, 2020.

Mr. Reagan stated the public hearing was properly noticed for November 4, 2020 at 10:00 am and the public comment period was noticed to end on November 30, 2020. Mr. Reagan confirmed the public hearing was held on November 4, 2020 and no members of the public spoke during the public hearing.

Mr. Reagan stated the statutory time periods after publication for holding a public hearing of at least 15 days and the receiving of written comments of at least 60 days were complied with. Mr. Reagan explained three written comments were received during the public comment period and had been provided to the members of the Commission.

Mr. Reagan explained Terrie Beirne, Eastern Counsel for the Wine Institute, sent the Commission a statement by email on November 3, 2020 regarding the proposed permanent rule 14B NCAC 15C .0602. In summary, Ms. Beirne stated the Wine Institute is opposed to the adoption of the rule, as the rule will micromanage how wine passes through the wholesaler warehouses. Ms. Beirne stated the rule will slow down the pace of wine deliveries triggering higher product costs which will result in higher consumer wine prices. Ms. Beirne added it was a solution in search of a problem and if adopted, could change a minor enforcement issue into a much larger business problem for licensees.

Mr. Reagan stated the Commission had received an email from M.A. de la Mata, President of Alliance Wine Corporation, initially on October 30, 2020. Mr. Reagan stated Mr. de la Mata amended and resent the email on November 4, 2020 in which he withdrew his previous objection to the proposed permanent Rule 14B NCAC 15C .0602. Mr. Reagan explained Mr. de la Mata expressed his concern the repeal of 14B NCAC 15C .0602(c), while necessary as duplicative of statute, may give the regulated public the impression that under the amended rule, malt beverage and wine suppliers may ship directly to the retailers bypassing wholesalers in violation of the three-tier system. Mr. Reagan stated Mr. de la Mata asked that the Commission include an annotation to the repealed rule explaining the reason for the repeal and reference the statute that requires malt beverages and wine pass through a wholesaler before being sold to a retail permittee. Mr. Reagan added Mr. de la Mata also requested the Commission mail the adopted amended rule and an explanation to every member of the trade in North Carolina.

Mr. Reagan stated the third comment was a November 30, 2020 email from the Beer and Wine Wholesalers Association, in which Kris Gardner the General Counsel and Tim Kent, the Executive Director, expressed the Association's support for the proposed amendments. Mr. Reagan added, Mr. Kent stated the changes to the rule are consistent with the Commission's long held interpretation of the law and would not change the way wholesalers currently do business in this State. Mr. Kent also stated the rule will formalize in rule one of the protections in the State's regulated three-tier system.

Mr. Reagan explained, in response to the concern's raised in Mr. de la Mata's email, he spoke with the Office of Administrative Hearings regarding the possibility of the Commission adding any additional annotation to the rules to explain the reasons for the repeal of 15C .0602(c). Mr. Reagan stated he was advised that neither the Administrative Procedures Act nor the rules of the Office of Administrative Hearings made provisions for this type of annotation. Mr. Reagan conveyed this information to Mr. de la Mata and added he would include an explanation during the Commission Meeting as a record for the explanation of the change. Mr. Reagan stated subparagraph (c) repeats the language in G. S. 18B-1303(a) almost verbatim and therefore does not need to, nor under the Administrative Procedures Act is it allowed, to be repeated in the rule. Mr. Reagan explained the repeal of the rule does not change the law, after the repeal wholesalers will continue to be prohibited from selling to retailers outside their assigned territory as is the current law.

Mr. Reagan stated the Commission could consider the adoption of the rules during the December meeting. Mr. Reagan added Mr. Kent and Mr. Gardner were participating in the call and he had not heard from Mr. de la Mata or Ms. Beirne or if they wished to comment during the meeting. Mr. Reagan stated staff recommended the Commission adopt the permanent Come to Rest Rules as published in the NC Register and as presented. Mr. Reagan explained staff also recommended the Commission direct the rules be filed with the Office of Administrative Hearings for approval by the Rules Review Commission and publication in the NC Administrative Code and authorize staff to make any non-substantive changes in the adopted rules as needed before publication.

Mr. Reagan asked if the Commission had any questions. Chairman Guy thanked Mr. Reagan for his work on the rules and asked if there were any questions from the participants or a member of the public. No one expressed a desire to address the Commission regarding the proposed rule.

Commissioner Stout made a motion the ABC Commission adopt the permanent Come to Rest Rules, as published in the North Carolina Register and as presented by staff with their recommendations regarding the rules. Commissioner Mitchell seconded the motion. Motion passed. Chairman Guy thanked Mr. Reagan for his work on the rules.

VII. UPDATE OF WAREHOUSE RFP

Chairman Guy recognized Ms. Stevens to provide an update on the warehouse Request For Proposal. Ms. Stevens stated the RFP for Warehouse Storage and Distribution was on schedule and under review at the time. Ms. Stevens explained the Warehouse Services RFP was issued on September 29, 2020 and a mandatory site visit held on October 12, 2020. Ms. Stevens stated the RFP proposal deadline was November 12, 2020.

Ms. Stevens explained the details of the RFP were confidential while the process was underway. Ms. Stevens added the process was being managed by the Department of Public Safety's Purchasing and Logistics Group. Ms. Stevens stated the current warehouse contract is in place through June 30, 2021.

Ms. Stevens explained the project to install vertical racking to increase the storage capacity in the Raleigh warehouse is moving forward under the oversight of the DPS Central Engineering and the State Construction Office. Ms. Stevens added the State Construction Office expects to publish the bid requirements in early January 2021.

Chairman Guy asked if there were any questions regarding Ms. Stevens' report and no one responded with questions.

VIII. OTHER BUSINESS

Mrs. Carter-Coley requested the Commission consider dates for future Commission Meetings. Mrs. Carter-Coley proposed Wednesday, March 10, 2021 as the date of the March meeting and Wednesday, April 14, 2021 as the date of the April meeting for the Commission's consideration.

Chairman Guy explained to the Commissioners the proposed meeting dates should be scheduled so the public can be aware of the dates in advance. Commissioner Mitchell made a motion to approve the March and April dates for the Commission Meetings. Commissioner Stout seconded the motion. Motion passed.

Chairman Guy stated there was a possibility these future meetings would also be held virtually depending upon any future Executive Orders and Governor Cooper's recommendations. Chairman Guy added the scheduling information would be shared when the Commission was notified.

Chairman Guy asked Ms. Stevens and Mrs. Carter-Coley if there was any other business. They stated there was no other business. No one participating in the meeting responded with any additional business.

Chairman Guy wished everyone a Merry Christmas and a Happy New Year and that all would be safe. Chairman Guy thanked everyone for participating and the December 2020 ABC Commission Meeting was adjourned.

Approved at the January 13, 2021 Commission Meeting

/S/ A.D. "Zander" Guy, Jr.
A.D. "Zander" Guy, Jr., Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

/S/ Caroline Y. Washburn
Caroline Y. Washburn for the Legal Section