

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MEETING MINUTES  
MAY 12, 2021**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission (hereinafter “Commission”) Meeting held via teleconference at 400 East Tryon Road in Raleigh, North Carolina on May 12, 2021, beginning at 10:00 AM. The meeting was recorded, and a copy of the recording is on file at the Commission within the Legal Section.

**ROLL CALL**

Chairman A.D. Zander Guy, Jr. welcomed those who were joining the teleconference for the May 12, 2021 Commission Meeting and thanked them for their participation. Chairman Guy announced the ABC Commission office building would be undergoing a major roof renovation this summer. Chairman Guy explained, as the roof will need to be removed for replacement, the Commission will need to make adjustments to staffing. Fewer staff members will be able to be in the building, as they will be restricted to the first floor. The Commission also plans to have two modular units for staff and many will be working remotely.

Chairman Guy explained the Commission had hoped to reopen the building to the public in June, but safety issues due to the roofing project will limit access. However, the Commission will be able to admit permittees to meet with staff members by appointment only. The details will be made available on the website.

Chairman Guy recognized the employees of the Commission, explaining they are doing a great job adjusting to the changes being made to further enhance the Commission. Chairman Guy stated customer service is very important to the Commission. Chairman Guy added sales numbers through April had increased 32% and there were more than 700,000 deliveries in April, this was up 9%.

Chairman Guy thanked those who worked with the Commission, as partners, for their assistance. Chairman Guy introduced Commissioner Norman A. Mitchell, Sr. and Commissioner Karen L. Stout who were joining the meeting via teleconference and thanked them for their assistance to the Commission.

**MINUTES OF THE APRIL 14, 2021 COMMISSION MEETING**

Commissioner Stout made a motion to waive the reading of the minutes of the April 14, 2021 Commission Meeting into the record. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Commissioner Mitchell made a motion to approve the minutes of the April 14, 2021 Commission Meeting. Commissioner Stout seconded the motion. A vote was held, and the 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. 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. Chairman Guy stated he found no conflicts of interest.

## **I. HEARING CASES AND OFFERS IN COMPROMISE – 61**

Chairman Guy recognized General Counsel Stacey Carter-Coley. Mrs. Carter-Coley requested agenda case number 2 and case number 26 be removed and deferred to a future meeting agenda.

Chairman Guy requested a motion. Commissioner Stout made a motion to defer case number 2 and case number 26 to a future Commission meeting. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Mrs. Carter-Coley stated agenda case number 1, Champs Lounge, was a contested case assigned to Assistant Counsel Seth Kandl and had been heard by the Office of Administrative Hearings. Mrs. Carter-Coley stated staff recommended the Commission accept the Administrative Law Judge's final decision. Chairman Guy asked if anyone had questions.

As there were no questions, Commissioner Mitchell made a motion to follow staff's recommendation and impose the Judge's decision. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

Attorney Mark Cummings stated he represented MLK Discount Mart and he had not received an agenda. Mr. Cummings asked if this was the time to discuss his client's request regarding MLK Discount Mart. Mrs. Carter-Coley explained the agenda was available on the Commission's website and that the matter he wished to discuss was scheduled as the next agenda item. The matter was not part of the hearing cases or Offers in Compromise cases.

Attorney Michael Franchi stated he was present on behalf of his client Tommy's Food Mart. Mrs. Carter-Coley confirmed this was case number 35 on the agenda. Mr. Franchi explained the incident occurred in November when a tall guy with a beard entered his client's business without a mask and was sold alcohol though he was underage. Mr. Franchi stated his client had taken responsibility and completed RASP training. Mr. Franchi added his client had also taken responsibility for the criminal charges, paying the court costs and serving community service hours. Mr. Franchi asked for leniency on the penalty.

Chairman Guy thanked Mr. Franchi for participating and explained sales to underage persons are taken seriously by the Commission and it strives to be consistent on those charges. Chairman Guy stated the \$1,300.00 penalty is less than the usual penalty. Though the penalty may be painful, it is meant to discourage further sale to underage violations. Chairman Guy asked the Commissioners for their opinion.

Commissioner Mitchell stated he was concerned about the sale to underage and believed the penalty should remain the same. Chairman Guy asked Mr. Franchi if he had other comments before a motion was made and he stated he did not.

Commissioner Mitchell made a motion that the penalty should remain as stated. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

Mrs. Carter-Coley stated staff recommended the ratification of the remaining Offer in Compromise cases. Commissioner Stout made a motion to ratify the remaining Offers in Compromise. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Mrs. Carter-Coley asked if Mr. N. Patel of the business, Convenient Store, was present for the meeting. Mr. Patel stated he was present. Mrs. Carter-Coley explained to the Commission, Mr. Patel had asked that his case from the April Commission Meeting agenda be reopened. Mr. Patel explained they had taken training and asked for some leniency regarding the fine.

Mrs. Carter-Coley requested the Commission reopen the case and reduce the penalty by \$200.00, the customary allowance after taking the training.

Commissioner Mitchell made a motion to reduce the fine upon staff recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed. Mr. Patel thanked the Commission and said it would not happen again.

## **II. REVIEW PURSUANT TO N.C.G.S. §18B-904(e) – FAZAL AND SONS, INC. T/A MLK DISCOUNT MART**

Mrs. Carter-Coley stated attorney Mark Cummings wished to speak on behalf of his client MLK Discount Mart regarding the Summary Suspension. Mrs. Carter-Coley added this case was assigned to Assistant Counsel Rachel Spears who was available for questions.

Mr. Cummings requested the Commission lift the Summary Suspension which had been in place on his client's business since February. Mr. Cummings explained there had been some movement in the case. Mr. Cummings stated there were three possible ways to have the Summary Suspension lifted. The business could develop a plan with local law enforcement and ALE; appear before the Commission; or, file a petition with the Office of Administrative Hearings and the Administrative Law Judge may rule to end the suspension after the case is heard.

Mr. Cummings stated he and his client had met with and worked with the Greensboro Police Department to develop a plan to alleviate some of the issues as they believed this would be the quickest way to lift the Summary Suspension. Mr. Cummings explained his client had accepted and followed the Greensboro Police Department's recommendations: update the video system; install more cameras inside and outside the store; and, provide unfettered online access to the video surveillance system to the Greensboro Police Department.

Mr. Cummings stated during his initial conversation with Ms. Spears, the plan seemed to be appropriate and acceptable. However, there was uncertainty regarding which ALE office would sign off on the plan, the local ALE District office or ALE Headquarters. Mr. Cummings stated Ms. Spears had informed him the local ALE office could not sign off on the plan though the plan had met all of the recommendations of the Greensboro Police Department.

Mr. Cummings explained a contested case had been filed on his client's behalf with the Office of Administrative Hearings and the hearing was scheduled for July 1, 2021. Mr. Cummings stated his client had been unable to fully operate his store since February 5<sup>th</sup> due to the Summary Suspension.

Mr. Cummings stated he found errors with the basis of this Summary Suspension and the requirements of §18B-904(e)(4). Mr. Cummings explained, at the time of the execution of the search warrant, five or more

people were to be charged with the named violations, but only one individual was charged at that time. The violations listed in this statute include, gambling, disorderly conduct, prostitution, controlled substance, or felony criminal counterfeit trademark laws, as the offenses at an ABC permitted establishment that are grounds for commencing a contested case. Mr. Cummings stated the other people charged were not on the premises at the time the warrant was executed.

Mr. Cummings stated a prehearing statement had been filed with the Office of Administrative Hearings and an amended prehearing statement had also been filed and just recently received. He stated he had not had an opportunity to review it. Mr. Cummings added, a petition filed by the Commission with the Office of Administrative Hearings stated the location was unsuitable and a hazard to the neighborhood. Mr. Cummings explained this case had not yet made it to prehearing statements. Mr. Cummings stated it was separate from the basis for the Summary Suspension.

Mr. Cummings again stated, local law enforcement had signed off on his client's plan to make sure MLK Discount Mart is operating correctly. Mr. Cummings stated the store has been unable to sell alcohol for three months and added his client had not violated the Summary Suspension during this time. Mr. Cummings asked the Commission to lift the Summary Suspension as he believed the Administrative Law Judge would rule on it during the hearing on July 1, 2021.

Mrs. Carter-Coley stated ALE Agents from the Greensboro office were participating in the meeting. Special Agent in Charge Mike Klingenschmidt introduced himself and Special Agent Taylor Fisher, the case agent, to provide an overview of the case.

Special Agent Fisher stated numerous complaints regarding the location had been received by the Greensboro Police Department and ALE. The complaints concerned gang-related activities, drug activities and violence taking place at the location. SA Fisher stated an undercover operation spanning twelve to thirteen days was initiated, taking place at this establishment and another ABC permitted establishment nearby. As a result, MLK Discount Mart generated eight arrests of patrons of the business. Five of those arrested were known validated gang members and three were known to be associates of those validated gang members. SA Fisher explained a total of one hundred and thirty (130) charges resulted from the arrests of the eight individuals.

SA Fisher explained, in addition to those eight patrons arrested, three employees of the business were arrested. Of the three employees, one was the permittee of MLK Discount Mart and another was a member of his family. The three employees had a combined eleven charges, including allowing controlled substances violations, failure to superintend, drug paraphernalia and counterfeit merchandise. SA Fisher referred to the statute stating upon execution of the search warrant, five or more persons had been arrested and criminally charged for the named violations. SA Fisher stated all eight of the patrons were arrested for controlled substance violations which took place at the location. Additionally, one of the employees also had four counts of controlled substance violations.

SA Fisher stated they were arrested the day before the execution of the search warrant in conjunction with numerous other individuals associated with the case. SA Fisher again stated, eight of the arrests were of patrons of the business and it was the location where the controlled substance transactions took place.

Chairman Guy thanked SA Fisher. SA Fisher added, the location receives numerous calls for violent activity, gang activity and drug violations each week. SA Fisher stated ALE had provided to the Commission, affidavits from members of the Greensboro Police Department and from members of the community. The affidavits show the location is a detriment to the community due to the shootings taking place at the business. A nearby church came forward regarding the location and stated they did not feel safe, even for Sunday morning services. SA Taylor stated, since the permits were suspended, there had

been only one call for service regarding a violent action. This call to service resulted in the recovery of a stolen firearm by the Greensboro Police Department and an ensuing vehicle chase resulted in a loss of life. The persons in the car involved in that event were some of the same patrons arrested as a result of this investigation and were validated gang members. This was in comparison to the numerous calls for service at the location and complaints received prior to the suspension.

Chairman Guy thanked the agents for their comments and, as the location is in their district, asked for ALE's recommendation regarding the request. SAC Klingenschmidt stated ALE believes the business is no longer suitable to hold ABC permits and is a detriment to the neighborhood and a drain on the resources of local and state law enforcement agencies. SAC Klingenschmidt stated ALE recommends the case should be heard at OAH and an Administrative Law Judge should make a decision. Chairman Guy asked if the Commissioners had any questions and both Commissioner Stout and Commissioner Mitchell stated they did not. Chairman Guy asked if Mr. Cummings had any other comments.

Mr. Cummings thanked the Commission for the opportunity to be heard. Mr. Cummings stated he and his client take issue with the allegations made. He added that the affidavits were a surprise and should have been shared. Mr. Cummings stated he believed all parties should follow the rule of law and his client had followed it. Mr. Cummings stated the work of the Commission is supported by the community in a fair and open process and the Commission should use common sense. Mr. Cummings also questioned why, if the allegations were true, and the Summary Suspension had taken place in February, that it would take until May to allege that they were a detriment to the neighborhood. Mr. Cummings stated his client had been a permit holder for three years and that due process is important in the decision.

Chairman Guy stated the Commission had heard the presentation of Mr. Cummings and the recommendation of ALE and asked for a motion regarding either lifting the suspension or leaving it in place.

Commissioner Mitchell made a motion to leave the Summary Suspension in place. Commissioner Stout seconded the motion. A vote was held, and the motion passed. Chairman Guy thanked Mr. Cummings and the ALE Special Agents.

### **III. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B – 1116(b) – TROLLEY BARN BREWERY, LLC AND LEGION BREWING COMPANY, LLC**

Chairman Guy recognized Mrs. Carter-Coley regarding the exemption request. Mrs. Carter-Coley stated staff recommended this request be deferred to a future Commission meeting.

Commissioner Stout made a motion to move the request to the next Commission meeting. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

### **IV. AMENDMENT TO EXEMPTION ORDER – CRAFT REVOLUTION, LLC; BOLD ROCK PARTNERS, LP; ET AL**

Mrs. Carter-Coley stated this request is for an amendment to an exemption order previously granted to Craft Revolution and Bold Rock. Mrs. Carter-Coley added Assistant Counsel Bob Nauseef was present if there were questions and the requesting attorney was also present.

Attorney Erin Mosley stated she was with Nexsen Pruet and was present on behalf of Bold Rock Partners. Ms. Mosley explained the request was for an amendment to the existing exemption, as Bold Rock wished

to open a new brewery and winery location at 39 Lexington Avenue in Asheville. Ms. Mosley added the location will also include a retail component.

Ms. Mosley explained the existing exemption order for Bold Rock Partners and Craft Revolution applied to specific locations and adding another location would require a request to the Commission for an amendment. Ms. Mosley stated this request for an amendment was simply to add the new location and no other changes were requested at this time.

Mr. Nauseef stated staff recommended approval of the amendment to the exemption order.

Commissioner Mitchell made a motion to follow the staff recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed. Ms. Mosley thanked the Commission.

**V. ABC STORE LOCATION – BURNSVILLE ABC BOARD**  
*(701 West Main Street, Burnsville, NC)*

Chairman Guy recognized Deputy Commissioner Terrance L. Merriweather to provide an overview of the Burnsville ABC Board's request for an ABC Store relocation. Mr. Merriweather stated on March 9, 2021, the Burnsville ABC Board requested approval from the Commission to purchase property to relocate an ABC Store. Mr. Merriweather explained the new store located at 701 West Main Street in Burnsville would replace the store located at 683 West US Highway 19 East Bypass in Burnsville. Mr. Merriweather stated on March 10, 2021, Commission Auditor Ralph Ray contacted Burnsville ABC Board General Manager Brian Franklin to gather information needed for the investigative report.

Mr. Merriweather stated the property is zoned for commercial use. The property is owned by High Five Hospitality Holdings, LLC which is owned by Mayfair Properties, LLC and Properties on Main, LLC. Mr. Franklin informed Mr. Ray, David McIntosh is one of the owners of Properties on Main, LLC and is the brother of R. L. McIntosh, a Burnsville ABC Board Member. Mr. Franklin explained Mr. R. L. McIntosh has and will abstain from any vote related to the purchase of the property. Mr. Franklin stated there are no shared financial interests between the ownership and the Burnsville ABC Board. Mr. Ray received financial disclosure forms from the two board members and the chair of the Burnsville ABC Board.

Mr. Merriweather stated the nearest school, Mountain Heritage High School located at 333 Mountain Heritage High School Road in Burnsville, is approximately 1.2 miles southwest from the proposed location. The nearest church, West Burnsville Baptist Church located at 222 West Burnsville Church Road in Burnsville, is approximately 1,500 feet northwest of the proposed location.

The notice to the public was posted on March 8, 2021, witnessed by Mr. Ray on March 16, 2021, and the sign was determined to meet ABC requirements. Mr. Merriweather stated, as of April 12, 2021, no objections had been received by the Board. Mr. Merriweather stated staff recommended approval of the proposed location for the Burnsville ABC Board.

Chairman Guy asked if the Commissioners had questions regarding the proposed location or if anyone else wished to comment. There were no questions or comments. Chairman Guy thanked Mr. Ray for his report.

Commissioner Mitchell made a motion to approve the proposed location upon staff recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

**VI. ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD**  
*(11870 University City Boulevard, Charlotte, NC)*

Mike Tully, the Chief Finance Officer for the Mecklenburg County ABC Board stated he was present. Mr. Merriweather stated on April 1, 2021, the Mecklenburg County ABC Board requested approval from the Commission to purchase property to open and operate an ABC Store at 11870 University City Boulevard in Charlotte, North Carolina. Mr. Merriweather explained the proposed location would replace the store located at 9749 University City Boulevard which is approximately 2 miles away. Mr. Merriweather stated Commission Compliance Officer Eric McClary compiled the information needed for the investigative report.

Mr. Merriweather explained the property is owned by EM & C Investments, LLC. On April 22, 2021, Mr. McClary confirmed with the ownership there are no personal or financial interests shared between the property owners and the Mecklenburg County ABC Board members. Mr. Merriweather stated on April 26, 2021, Mr. McClary confirmed the property is zoned Commercial and allows for an ABC Store.

Mr. Merriweather stated the nearest school, University Meadows Elementary School, located at 1600 Pavilion Boulevard, is approximately 1.7 miles away. The nearest church, Back Creek Church Ministry, located at 1821 Back Creek Church Road, is approximately 1.3 miles away. Mr. Merriweather explained the nearest ABC Store is located approximately 2 miles away and will be closed upon the opening of the proposed store.

Mr. Merriweather stated the sign announcing the ABC Board's intention to open an ABC Store was posted on March 30, 2021. The sign was witnessed by Mr. McClary and ABC Auditor Edwin Strickland on April 7, 2021. Mr. Merriweather stated as of April 12, 2021, no comments or objections had been received and staff recommends approval of this store.

Chairman Guy asked if there were any questions or if Mr. Tully wished to make any comments. As there were none, Commissioner Stout made a motion to approve the proposed location upon staff recommendation. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed. Chairman Guy thanked Mr. Tully for attending.

**VII. OTHER BUSINESS**

Chairman Guy stated staff had requested the Commission consider dates for future Commission Meetings. Chairman Guy explained the proposed August meeting date, August 11, 2021, was the customary second Wednesday of the month.

Commissioner Stout made a motion to accept August 11, 2021 as the date for the August Commission Meeting. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Chairman Guy asked Mrs. Carter-Coley and Mr. Merriweather if there was any additional business, and both stated there was not. Chairman Guy thanked everyone for participating and for their interest in the meeting. Chairman Guy also thanked the Commission staff and the Commission's partners. Chairman Guy ensured transparency and stated he would give people the opportunity to be heard. Chairman Guy asked again if anyone else wished to speak to the Commission. There were no responses.

Commissioner Mitchell made a motion to adjourn the May 2021 Commission Meeting. Commissioner Stout seconded the motion. A vote was held, and the motion passed. Meeting adjourned.

*Approved at the June 9, 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