



# Agenda

## Greenville City Council

August 24, 2009  
6:00 PM  
City Council Chambers  
200 West Fifth Street

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**I. Call Meeting To Order**

**II. Invocation - Council Member Spell**

**III. Pledge of Allegiance**

**IV. Roll Call**

**V. Approval of Agenda**

**VI. New Business**

**Public Hearings**

1. Crime in Greenville

**Other Items of Business**

2. Potential actions to address downtown crime issues

**VII. Adjournment**



# City of Greenville, North Carolina

Meeting Date: 8/24/2009  
Time: 6:00 PM

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**Title of Item:** Crime in Greenville

**Explanation:** On August 10, 2009, the City Council agreed to invite the public to make comments on crime in Greenville during the August 24, 2009 City Council meeting.

**Fiscal Note:** No direct cost to receive public comments.

**Recommendation:** Conduct a public hearing on crime in Greenville.

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# City of Greenville, North Carolina

Meeting Date: 8/24/2009  
Time: 6:00 PM

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**Title of Item:** Potential actions to address downtown crime issues

**Explanation:** At the request of the Mayor, City Council Members, and citizens, the City Attorney and City Manager have prepared the attached report on potential actions to address downtown crime issues.

**Fiscal Note:** Any fiscal impacts for specific actions are described in the attached report.

**Recommendation:** Receive a report from the City Attorney, City Manager, and other City staff on potential actions to address downtown crime issues.

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[Private Clubs Report](#)

[Memo\\_to\\_Mayor\\_and\\_CCM\\_re\\_Potential\\_Actions\\_to\\_Address\\_Downtown\\_Crime\\_Issues\\_838926](#)

TO: Mayor and City Council Members

FROM: Wayne Bowers, City Manager  
David A. Holec, City Attorney

DATE: August 19, 2009

SUBJECT: Potential Actions to Address Downtown Crime Issues

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Following the murders which occurred on June 30, 2009 in the downtown area, we received numerous inquiries from the Mayor, City Council Members, and citizens concerning potential actions which the City of Greenville may take in order to address issues resulting from the concentration of public or private clubs in the downtown area. The Police Department is required to commit significant resources to address such issues as crowd control, public intoxication, altercations, and potential violence in the downtown bar area on a regular and continuing basis (see the next section below).

The Police Department responded immediately to the events of June 30, 2009 by taking measures to increase the already significant law enforcement deployment dedicated to downtown when nightlife activities occur and by implementing a traffic plan to eliminate motor vehicle traffic on some streets at peak times. These temporary measures are designed to assist in addressing the adverse impacts in a responsive and preventive manner.

The City and Uptown Greenville coordinated a meeting with bar owners/operators and other local downtown businesses on July 1, 2009. At that meeting, a follow-up meeting was suggested to discuss downtown safety issues in more detail. Follow-up meetings coordinated by the Police Department were conducted on July 8 and July 29. A fourth meeting is scheduled for September 16, 2009. At the July 8 meeting, several attendees suggested that poor lighting created safety concerns in the downtown area. Representatives from the City and Greenville Utilities Commission conducted a nighttime survey of lighting conditions and agreed on several changes to improve lighting in the downtown area. The City authorized GUC to add 18 new lights and upgrade 12 existing lights. This work is in progress and is scheduled to be completed by August 31, 2009. Also, the Police Department has employed temporary lighting at a few strategic locations in the downtown area.

However, additional longer term preventive actions can be undertaken. The purpose of this memo is to set forth these potential actions for City Council's consideration.

#### **CITY LAW ENFORCEMENT RESOURCES CURRENTLY DEDICATED TO THE DOWNTOWN AREA**

The Greenville Police Department strategically deploys police officers in the downtown area of Greenville during peak periods when the nightlife activities occur. Traditionally, the Police Department utilizes an estimated 20 to 25 officers between the hours of 11 p.m. and 3 a.m. Wednesday through Saturday. The annual cost to the City of Greenville to provide this level of

service to this area is estimated to be in excess of \$400,000 (approximately 62% on duty and 38% overtime costs.) After June 30, 2009, the Police Department added two additional overtime officers each night (seven days per week). The additional overtime officers are assigned between 9 p.m. and 3 a.m. on Sunday through Wednesday, and 11 p.m. and 3 a.m. on Thursday through Saturday. These additional overtime officers increased the estimated annual cost for downtown law enforcement to \$528,000. Also, discussions were initiated with East Carolina University to augment City personnel with ECU officers each night from 10 p.m. to 3 a.m.

### **LEGAL FRAMEWORK OF STATE REGULATION OF ALCOHOL**

When considering potential actions, it is important to recognize that City Council has legal limitations on the actions which it may take. Council may only take such actions as it is authorized to take in accordance with State law. In particular, there are limitations which apply as a result of the provisions of the North Carolina General Statutes relating to alcoholic beverages.

The North Carolina General Assembly has established the laws relating to the sale of alcohol by the adoption of Chapter 18B of the North Carolina General Statutes. G.S. 18B-100 states that the intent of Chapter 18B is to “establish a uniform system of control over the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages in North Carolina” and that “except as provided in Chapter 18B, local ordinances establishing different rules on the manufacture, sale, purchase, transportation, possession, consumption, or other use of alcoholic beverages, or requiring additional permits or fees, are prohibited.” Additionally, G.S. 18B-801 provides that the ABC Commission issues all ABC permits and that the Commission has the sole power to determine the suitability and qualifications of an applicant for a permit and also has the authority to determine the suitability of the location to which the permit may be issued.

These statutory provisions limit the ability of cities to establish regulations relating to alcoholic beverages. Chapter 18B does authorize cities to regulate the consumption and possession of alcoholic beverages on city streets and city owned property (G.S.18B-300); to prohibit Sunday sales of alcoholic beverages from noon to 7 a.m. on Monday (except in establishments having a brown bagging or mixed beverages permit) (G.S. 18B-1004); and to regulate the location and operation of sexually oriented businesses consistent with constitutional limitations. (G.S.18B-904).

### **POTENTIAL ACTIONS**

Potential actions for City Council to consider to address issues resulting from the concentration of public or private clubs in the downtown area are as follows:

1) Establish a municipal service district in the entertainment district (public or private clubs in uptown area) with a levy of property taxes within the district to help defray the expense of providing law enforcement resources.

The significant cost to provide additional law enforcement resources in the downtown bar area is not a new issue. According to City records, a special tax to cover the cost of increased law enforcement in the downtown area has been considered since at least the early 1990's. An overview of the 1999 City Council Planning Session reiterated the issues expressed earlier in the decade and concluded: "We do have to beef up tremendously in Greenville with police personnel to cover the bar traffic, especially in the uptown area on Thursday, Friday, and Saturday nights." Both a bar tax and a municipal service district were considered in 1999, but no action was taken.

Although the City does not have the authority to levy a bar tax, Article 23 of Chapter 160A of the North Carolina General Statutes does authorize a municipality to levy a municipal service district tax. A city may levy property taxes within defined service districts in addition to those taxes levied throughout the city, in order to finance, provide, or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided, or maintained for the entire city. The requirements to establish such a district are the approval of a resolution defining the district, preparation of a report on the services to be provided and the boundaries of the proposed district, and the holding of a public hearing. A municipal service district tax becomes effective at the beginning of the next fiscal year (July 1) following adoption of the authorizing resolution. The permitted uses of municipal service district taxes include downtown revitalization intended to further the public health, safety, welfare, and convenience including the provision of city services at a higher level than provided in the remainder of the city. The provision of additional law enforcement services in the downtown area is an eligible expense to be paid from a municipal service district tax.

North Carolina General Statute 160A-542 limits the amount of taxes levied in a municipal service district to an amount that when added to the rate levied city wide would not exceed the general statutory maximum of \$1.50 per \$100 of assessed value. Since the general City tax rate is now 52 cents, the maximum municipal service district tax would be 98 cents.

The 16 bars located in the downtown area that have club licenses are located on 14 tax parcels. The total assessed value of real property for these 14 parcels is \$3,584,224. At the City's current tax rate of 52 cents, these parcels generate \$18,638 in real property taxes. Additional research would be necessary to determine the amount of personal property taxes on equipment and fixtures generated from these properties, but we estimate that this amount is much lower than the real estate taxes. Each one cent of taxes thus generates approximately \$358 in real property taxes from these parcels. The full permitted levy of 98 cents would generate approximately \$35,125 in real property taxes.

The total taxable value of all the real property located in the four blocks bounded by Evans Street, 4<sup>th</sup> Street, Reade Street, and Reade Circle is \$12,573,658. At the City's current tax rate of 52 cents, this four-block area generates \$65,383 in real property taxes. Again, additional research would be necessary to determine the amount of personal property taxes on equipment and fixtures generated from these properties, but we estimate that this amount is much lower than

the real estate taxes. Each one cent of taxes thus generates approximately \$1,257 in real property taxes in this area. The full permitted levy of 98 cents would generate approximately \$123,222 in real property taxes from this area.

2) Enter into an agreement with the local ABC Board which would result in City law enforcement officers assisting local ABC officers in their enforcement of ABC Commission rules on establishments which have ABC permits.

North Carolina General Statute 18B-1008 authorizes the North Carolina Alcoholic Beverage Control Commission to establish Rules relating to ABC permits. These rules are contained in the North Carolina Administrative Code. The rules establish mandatory requirements for private clubs and restaurants in connection with the sale of alcoholic beverages. A copy of these Rules relating to private clubs is attached. Article 5 of Chapter 18B provides that Alcohol Law Enforcement agents (State of North Carolina law enforcement officers) and local ABC officers (Pitt County ABC Board law enforcement officers) have the authority to enforce the ABC laws including the Rules established by the ABC Commission relating to ABC permits. City law enforcement officers do not have the authority to enforce the Rules established by the ABC Commission relating to ABC permits. Additionally, City law enforcement officers do not have the authority, in order to procure evidence of violation of ABC laws, to investigate the operation of each licensed premises for which an ABC permit has been issued, to make inspections that include the viewing of the entire premises and to examine the books and records of the permittee unless the City has a contract with the local ABC Board to assist in the enforcement of the ABC laws. If City law enforcement officers had this authority, there would be additional resources available to enforce these Rules.

The provisions of G.S. 18B-501(d) and 160A-288 authorize the City and the local ABC Board to enter into a mutual aid agreement for the provision of temporary assistance by City law enforcement officers to the local ABC officers. While working with the local ABC officers pursuant to such an agreement, City law enforcement officers would have the same jurisdiction, powers, rights, privileges and immunities as the local ABC officers. This option is dependent upon the Pitt County ABC Board agreeing to enter into the agreement with the City.

Additionally, a more 'permanent' arrangement could be agreed upon if a local act was enacted which authorized the local ABC board to contract with a city police department "in addition to hiring local ABC officers." Currently, G.S. 18B- 501(f) provides that "instead of hiring local ABC officers," a local ABC board may contract with a local police department for the enforcement of ABC laws and, when such a contract exists, the officers of the police department have the same authority to inspect as local ABC officers. Since the Pitt County ABC Board has hired local ABC officers, the local act would be necessary for this more 'permanent' arrangement. This option would be dependent upon the Pitt County ABC Board agreeing to seek this local act, the local act being enacted, and the Pitt County ABC Board agreeing to enter into the contract.

The Mecklenburg County ABC Board has such a local act and such a contract. As a result of this, the City of Charlotte has 13 law enforcement officers operating pursuant to the contract with ABC enforcement authority. This is considered as being effective at placing resources where the most serious problems are located. The Greenville Police would be interested in pursuing a

similar arrangement with the Pitt County ABC Board to use existing officers to assist in enforcing the State alcoholic beverage laws.

3) Enact an ordinance which establishes the procedure for the City to refuse to issue, as allowed by G.S. 105-113.71, a local license for the sale of beer and wine if the applicant committed any or permitted any act that would be grounds for suspension or revocation of its ABC permit under G.S. 18B-104.

North Carolina General Statute 18B-901 provides that all ABC permits are issued by the North Carolina Alcoholic Beverage Control Commission. G.S. 18B-901(d) states the Commission has the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit and has the authority to determine the suitability of a location. To be a suitable place, the establishment must be in compliance with all building and fire codes. Additionally, G.S. 18B-901(c) lists other factors which the Commission is to consider in determining whether the applicant and the location are suitable. These factors are to be considered (but are not mandated to be followed) by the Commission in making its determination. The City has the opportunity to comment on the applicant and the location prior to the ABC Commission making its determination.

Although the ABC Commission has the sole authority to issue an ABC retail permit, G.S. 105-113.71 authorizes City Council to refuse to issue a local license for the retail sale of beer and wine if City Council finds, after notice and hearing, that there are grounds for suspension or revocation of the permit under G.S. 18B-104. Grounds for suspension or revocation include any violation of any statute in Chapter 18B or Article 2C of Chapter 105 or the Rules issued by the ABC Commission pursuant to the provisions of Chapter 18B. Only local licenses relating to retail sale of beer and wine are included in this authority since these are the only local licenses relating to alcoholic beverages which the City is statutorily authorized to issue. Additionally, this statute authorizes City Council to refuse to issue the annual license only. This statute does not authorize City Council to revoke or suspend a license after issuance. G.S. 18B-113.70(b) provides that the annual licenses issued are for the period from May 1 to April 30.

The Town of Chapel Hill has adopted an ordinance which sets forth the procedure to implement this authority. Although Chapel Hill has not used this authority to refuse to issue a license, the existence of the ordinance and the fact that it may be utilized has likely resulted in some applications not being submitted when an establishment has not been able to comply with ABC laws.

4) Enact an ordinance which establishes a requirement that each public or private club provide security personnel (either off-duty law enforcement or security officers licensed by the State) for the establishment in certain defined circumstances.

Public or private clubs attract a significant number of patrons and experience has demonstrated that the activities of the patrons often create the need for law enforcement personnel resources. Public intoxication, noise, disorderly conduct, assaults and similar problems are recurring issues which are connected primarily with the routine congregation of persons within and around such establishments. The City has dedicated a significant amount of law enforcement personnel resources to address this issue in the downtown area. Having each establishment provide its own



security personnel will enable any issues to be addressed promptly and lessen the burden upon City law enforcement personnel.

This relationship between patrons at an establishment and the need for the establishment to provide security was recognized when the dining and entertainment establishment zoning ordinance was enacted by City Council. This ordinance requires that such an establishment, which is located within 500 feet of a residential zoning district boundary and which provides or utilizes amplified sound after 11 p.m., is to employ either a uniformed off-duty law enforcement officer or a uniformed security guard and control professional licensed in accordance with the provisions of Chapter 74C of the North Carolina General Statutes. The number required to be employed is at least one (1) if the occupancy of the establishment is between 50 and 200 and at least two (2) if the occupancy is 200 or greater. The personnel are to be located outside in order to disperse the crowd and direct traffic.

A similar measure could be established for public or private clubs. Any such ordinance would need to apply to public or private clubs whether or not alcoholic beverages are sold. Rather than having the requirement imposed by a zoning ordinance as a required condition of a special use permit, it could be imposed by an ordinance applicable to all such establishments within the criteria set forth in the ordinance whether the establishment is pre-existing or not. This means that it would not be a zoning ordinance but instead would be an ordinance adopted pursuant to the City's general ordinance-making power authorized by G.S. 160A-174. Such an ordinance establishes a requirement or rule of conduct applicable to all establishments which fall within its purview.

5) Enact an ordinance which prohibits the employment by public or private clubs of bouncers who have been convicted of certain crimes.

Besides the utilization of either off-duty law enforcement or security officers licensed by the State, public or private clubs use bouncers to promptly address issues which occur in an establishment. The appropriate response by these bouncers is important since an over-zealous response may create a safety problem. Ensuring that the bouncers employed do not have certain criminal convictions would likely help reduce such over-zealous responses. The method for oversight of this prohibition would be requiring the public or private clubs to submit to the Police Department for each bouncer a criminal record check based upon fingerprints from the North Carolina State Bureau of Investigations. Due to the time it takes to secure such a criminal record check, a grace period should be allowed for submitting the check (possibly 30 to 60 days). The crimes which could be enumerated to disqualify a bouncer from employment could be any violation of law relating to homicide, assault, affray or communicating threats, any violation of law relating to the use, possession or sale of alcoholic beverages or any controlled substances, any violation of law involving the use or possession of a weapon, and any violation of law relating to prostitution. This ordinance would apply to all establishments whether pre-existing or not. The authority for this ordinance is the City's authority to regulate businesses as authorized by G.S. 160A-194 and the City's general ordinance-making power authorized by G.S. 160A-174. Any such ordinance would need to apply to public or private clubs whether or not alcoholic beverages are sold.

The City has similar requirements in place for taxicab drivers, tow operators, charitable solicitors, and solicitors and peddlers.

- 6) Enact an ordinance which requires that public or private clubs have a certain percentage of their building front comprised of non-opaque material so as to open up the establishment.

Many of the buildings where public or private clubs are located have little or no windows located at the front of the building. Requiring these establishments to have a certain percentage of non-opaque material at their building front would open up the establishment. A more open establishment would be a deterrent to bad behavior and also would be beneficial to the overall appearance of downtown. The ability of visitors to “see and be seen” is one of the key aspects of personal safety in an urban setting. Visitors to the downtown area are more likely to feel secure when interior activities can be recognized and when lighting is emanating from both the buildings and the streets. An active, well lit environment where there are many “eyes on the street and on the establishment” from both inside and outside the building would promote safety. There may need to be a phase-in period for an establishment to meet such a requirement since for some buildings, this may involve some building renovations. This ordinance would apply to all businesses whether pre-existing or not. The authority for this ordinance is the City’s general ordinance making power authorized by G.S. 160A-174. Any such ordinance would need to apply to public or private clubs whether or not alcoholic beverages are sold.

The City currently has a similar requirement for pool halls.

- 7) Enact a zoning ordinance which establishes a minimum separation requirement for the location of public or private clubs in order to reduce the adverse impact which is caused by the concentration of such clubs.

The concentration of public or private clubs within an area has an adverse impact from a land use perspective in addition to the adverse impact that the concentration creates for law enforcement purposes. There are sixteen (16) public or private clubs located in approximately a four (4) block area of the downtown area. Establishment of a separation requirement in the zoning ordinance would disperse these uses and minimize their adverse impact. A separation requirement would apply to the location of new establishments and the expansion of existing establishments. Current establishments would be grandfathered. A separation requirement would not have an immediate impact but it would ensure that additional public or private clubs would not be located in the immediate area.

The City of Fayetteville has a 500 foot separation requirement for public or private clubs.

- 8) Enact a zoning ordinance which expands the Downtown District Overlay to include the area where the public or private clubs are concentrated so no new clubs can be established in this area.

In 1998, an ordinance which established a Downtown Subdistrict Overlay was enacted. The Downtown Subdistrict Overlay prohibits a public or private club from being located within the overlay area. Expansion of this overlay would have a similar effect as the separation

requirement. It would prohibit the location of new establishments and the expansion of existing establishments. Existing establishments would be grandfathered.

9) Enact a zoning ordinance which amends the Table of Permissible Uses so that a public or private club is not a permitted use in the CD downtown commercial district so that no new public or private clubs can be established in the area.

Public or private clubs are a permitted use upon receipt of a special use permit in the following zoning classifications: CD downtown commercial district, CDF downtown commercial fringe district, CG general commercial district, and CH heavy commercial district. So long as a use is permitted in a zoning classification which provides reasonable locations for the use, it is not necessary for the use to be permitted in all zoning classifications. Eliminating the use of a public or private club as a permitted use in the CD downtown commercial district would have a similar effect as the separation requirement and expansion of the overlay district. It would prohibit the location of new establishments and the expansion of existing establishments. Existing establishments would be grandfathered.

10) Enact an ordinance which establishes a temporary moratorium on the issuance of any development approval for a public or private club in the downtown area while the City Council considers the enactment of an ordinance to address the conditions caused by the concentration of public or private clubs.

North Carolina General Statute 160A-381(e) authorizes City Council to adopt a temporary moratorium on any City development approval required by law. The duration of the moratorium is to be reasonable in light of the specific conditions that warrant the imposition of the moratorium and may not exceed the period of time necessary to correct, modify or resolve such conditions. A moratorium would not apply to any project for which a valid building permit has been issued, any project to which a special use permit application has been filed, or any project for which substantial expenditures have been made in reliance on a prior administrative or quasi judicial approval. When a moratorium is established, the following must be expressly stated:

- (1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.
- (2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

11) Enact a zoning ordinance which amortizes the nonconforming status (for zoning purposes) of public or private clubs so that these clubs would be required to secure the special use permit which new clubs must obtain and be subject to the annual review condition.

The conditions which apply to a special use permit for public or private clubs were revised in 2006 and provided for the annual review of the special use permit to determine and ensure annual compliance with applicable laws, codes, and ordinances including, but not limited to, noise regulations, litter control regulations, fire codes, nuisance and public safety regulations, and special use permit conditions of approval. The review is handled initially by the director of community development who provides a report to the Board of Adjustment. If the Board determines there is an issue of compliance, it can order a rehearing on the special use permit. If it determines that there is not an issue of compliance, then the special use permit continues and is reviewed again by the same process in a year. This review method simply provides a mechanism to annually review each club without being burdensome on the clubs that comply.

There are seven (7) clubs in the downtown area which are not subject to this review method since they were in existence prior to the establishment of the requirement to receive a special use permit. A club's legal non-conforming status could be amortized so that it would be subject to the requirement. The public or private club would still be allowed to operate, but it would be subject to the special use permitting process including the annual review method. An amortization period of at least one (1) year would be sufficient to impose this requirement.

12) Enact a zoning ordinance which amortizes the public or private clubs in the downtown area.

It is possible to fully amortize a use so that the use would be eliminated if the use is a nonconforming use. This requires a sufficient period of time for the amortization to occur so that the owner is able to recoup the owner's investment. Amortization of the public or private club use would require a significant amortization period of at least five years. After the amortization period expires, the use must cease and the owner may convert the use to another use which is a practical use of the property and which has a reasonable value. In order for this to be a potential action, public or private clubs must be a nonconforming use in the zoning district classification which is applicable to the downtown area (the CD downtown commercial district). There is an issue with amortization of the use since the ABC Commission is not mandated to comply with local zoning ordinances when it makes permitting decisions.

13) Adopt a resolution which makes a written request to the Board of Elections for an election on permitting on-premises sales of malt beverages, unfortified wine, and mixed beverages so that an election is conducted with the results of the election possibly determining that these sales would no longer be permitted.

North Carolina General Statute 18B-601(c)(1) authorizes City Council to make a written request to the Pitt County Board of Election relating to the sales of alcoholic beverages. North Carolina General Statute 18B-604(f) provides that when the sale of any alcoholic beverage that was previously lawful becomes unlawful because of an election, the sale of that alcoholic beverage shall cease 90 days after certification of the results of the election. This option is dependent upon a majority vote at the election determining that such sales will not be permitted within the City. Although this is an option, it is not a realistic option since it would result in the prohibition of on-premises sales of malt beverages, unfortified wine, and mixed beverages in all establishments including restaurants.

14) Seek legislation from the North Carolina General Assembly which would provide more authority for municipalities in addressing the inappropriate location of establishments which sell alcoholic beverages.

15) Seek legislation from the North Carolina General Assembly which would authorize the implementation by the City of additional revenue sources to defray the expense which the City incurs as a result of the adverse impacts caused by establishments which sell alcoholic beverages.

### **ADDITIONAL POTENTIAL ACTIONS REVIEWED**

In addition to the potential actions listed above, other actions were reviewed. However, these actions were determined to not be legally appropriate. These actions include the following:

1. Limit the hours of operation of public or private clubs so that they would be required to close earlier. G.S. 18B-1004 establishes the hours which alcoholic beverages at establishments which have malt beverage, wine or mixed beverage permits may be sold (7:00 a.m. to 2:00 a.m.) and be consumed (7:00 a.m. to 2:30 a.m.). The City could not establish an earlier time when an establishment which has ABC permits may not sell alcoholic beverages.
2. Limit the age of persons who can enter a public or private club to persons 21 years of age or older. G.S. 18B-300 provides that the purchase, consumption and possession of malt beverages and unfortified wine for individuals for their own use is permitted to individuals 21 years old or older. There is no age restriction on persons who may enter establishments which have ABC permits. Establishing an age restriction for entrance into a public or private club would not be legally supportable.
3. Establish a curfew for the downtown area so that no person could be within the area during a certain period of time starting earlier than the time which alcohol is allowed to be sold. The City has established a youth protection ordinance (curfew) which applies to the entire city including the downtown area. Extending the curfew to all persons in the downtown area would not be legally supportable.
4. Increase the privilege license fee charged to public or private clubs to help defray the City's law enforcement expenses devoted to the downtown area. The City only has the legal authority to levy a privilege license fee as permitted by State statute. North Carolina General Statute 105-113.77 establishes the allowable amount of a City privilege license for on premises malt beverages as \$15 annually and for on premises wine as \$15 annually. G.S. 105-113.70(d) prohibits a City from levying a privilege license on mixed beverages. G.S. 105-37.1 establishes the allowable amount of a City privilege license for giving, offering or managing any form of entertainment or amusement for which an admission fee is charged and that is not otherwise taxed or specifically exempted as \$25. G.S. 160A-211 and G.S. 105-62 establishes the allowable amount of a City privilege license for selling

prepared food as \$25 for a business with less than 5 seats and \$85 for a business with 5 seats or more. The City may not levy any license fee in excess of the amounts authorized by law.

5. Prosecute a public nuisance action similar to the recent action prosecuted against convenience stores. The public nuisance action is an extraordinary action authorized by Chapter 19 of the General Statutes. A Chapter 19 public nuisance action against the public or private clubs in the downtown area at this time would not be legally supportable.

#### 04 NCAC 02S .0107 SPECIAL REQUIREMENTS FOR PRIVATE CLUBS

(a) Definition A private club is a private facility organized and operated by a person, association or corporation solely for a social, recreational, patriotic or fraternal purpose. Use of the facility shall not be open to the general public but shall be limited to members of the private club and their guests.

(b) Typical Characteristics. Although a facility need not possess all of the following characteristics to qualify as a private club, each is typical of a bona fide club and the Commission will consider the extent to which a facility possesses these characteristics in deciding whether to issue, suspend, or revoke a Brownbagging, Fortified Wine or Mixed Beverages Permit:

- (1) Membership is subject to clearly stated requirements that tend to show a common bond among members;
- (2) Some limit related to the size of the facility is placed on total membership;
- (3) All members may and do participate in its organizational affairs, including the selection of officers or directors at reasonably frequent intervals;
- (4) The club operates pursuant to a charter, articles of association, constitution, or similar basic document and has adopted by-laws, copies of which are provided to each member;
- (5) The club has clearly stated objectives of a social, recreational, patriotic or fraternal nature and its activities advance those objectives;
- (6) Membership entitles a person to significant privileges other than the consumption of alcoholic beverages;
- (7) Most members hold full rather than limited memberships;
- (8) Facilities and activities other than those customarily related to the consumption of alcoholic beverages are available to members;
- (9) Some limits are placed on the number of times a guest may use the facility;
- (10) Guests constitute a relatively small portion of the users of the facility.

(c) Mandatory Requirements To qualify as a private club, a facility shall meet the following requirements concerning membership:

- (1) collect an annual membership fee separate from any admission or cover charge, no dues from which may be more than 30 days past due;
- (2) maintain a written policy on the granting of full and limited memberships;
- (3) require each prospective member to complete a written application that contains questions directly related to the applicant's interest in the social, patriotic, fraternal or recreational purpose of the club, the applicant's qualifications for membership, and the applicant's background;
- (4) retain each completed application, if approved, in the organization's permanent records as long as the individual's membership continues;
- ~~(5) grant no membership sooner than three days after receipt of application;~~
- (6) issue written or printed evidence of membership to each member, which evidence of membership or other reasonably reliable document of identification shall be in the possession of each member present on the licensed premises;
- (7) maintain on the premises a current alphabetical roster of all members and their complete addresses;

(8) maintain and provide to each member a written policy concerning the use of facilities by guests

(d) Permit Application Procedures. For a private club to obtain a Brownbagging, or Fortified Wine or Mixed Beverages Permit, the applicant shall submit to the Commission the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which shall include the full names and addresses of all officers and directors (including those chosen by the membership), and the manager;
- (2) the written policy on granting of full and limited memberships;
- (3) a copy of the membership application form;
- (4) a copy of the membership card or certificate to be issued to members;
- (5) the written policy on use of facilities by guests; and
- (6) the charter, articles of incorporation, constitution, or other basic documents, and the by-laws, if any.

*History Note: Authority G.S. 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(5); 18B-1008; Eff. January 1, 1982; Amended Eff. July 1, 1992; February 1, 1986; May 1, 1984.*

#### **04 NCAC 02S .0234 PRIVATE CLUBS: GENERAL PROHIBITIONS; GUESTS**

(a) Neither a private club permittee nor his employee shall:

- (1) allow any person who is not a member or a bona fide guest of a member to be present as a patron on the premises of a private club; or

~~(2) grant membership to the private club to any person earlier than three days from the receipt of his application for membership.~~

(b) "House" Guests. No private club permittee or his employee shall admit patrons as "house" guests.

(c) Employee Member. An employee who is also a member of the private club shall not admit a patron as his guest while that employee is on duty

(d) A member shall designate his own guest. If a member accepts a patron as his guest at the behest of the private club mixed beverages permittee or employee, then the Commission shall consider that member to be acting as the permittee's agent.

*History Note: Authority G.S. 18B-207; 18B-1008; Eff. July 1, 1992*

#### **04 NCAC 02S .0235 PRIVATE CLUBS; RECIPROCAL MEMBERSHIPS**

A private club permittee may offer reciprocal memberships to bona fide members of other private clubs under the following conditions:

- (1) Reciprocity may extend only to members of private clubs holding Mixed Beverages or Brownbagging permits issued by the Commission.



- (2) All clubs participating in reciprocal membership arrangements shall enter into a written agreement setting forth the terms of their arrangement, and each club shall adopt rules governing the use of their facilities by reciprocal members. The agreement and rules shall be filed with the Commission and made a part of the permittees' files
- (3) Private clubs entering into such agreements shall be located in different counties.
- (4) A member of another club who is granted a reciprocal membership shall be required to show a valid membership card indicating he is a bona fide member of the reciprocal club each time he enters the facility.

*History Note:* Authority G.S. 18B-207; 18B-1008;  
Eff. July 1, 1992.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

SESSION LAW 2009-381  
HOUSE BILL 1228

AN ACT TO CLARIFY THE AUTHORITY OF THE ABC COMMISSION TO ADOPT  
RULES CONCERNING PRIVATE CLUBS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 18B-1008 reads as rewritten:

**"§ 18B-1008. Rules concerning retail permits.**

The Commission is authorized to use broad discretion in further defining the kinds of places eligible for permits under this Article. The rules may state the kind and amount of food that shall be sold to qualify in each category, the relationship between food sales and other receipts, the size of the establishment required for each category, the kinds of facilities needed to qualify, the kinds of activities at which alcoholic beverages may not be sold, and any other matters which are necessary to determine which businesses are bona fide establishments of the kinds listed in G.S. 18B-1000. Rules concerning private clubs may also ~~include, but need not be limited to, include~~ requirements that the club have a membership committee to review all applications for membership, that the club charge membership dues substantially greater than what would be paid by a one-time or casual user, that the club restrict use by nonmembers, and that the club provide facilities or activities other than those directly related to the use of alcoholic beverages. ~~beverages, and that the club have a waiting period for membership. A waiting period required by the Commission shall not exceed 30 days."~~

**SECTION 2.** The Alcoholic Beverage Control Commission shall examine on a continuing basis the record of violations and noncompliance with Commission rules for ABC establishments operating as private clubs, and shall report its findings to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee. The report shall be submitted prior to the convening of the 2011 Regular Session of the General Assembly, and shall include the period from July 1, 2009, through December 31, 2010.

**SECTION 3.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21<sup>st</sup> day of July, 2009.

s/ Walter H. Dalton  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Beverly E Perdue  
Governor

Approved 12:10 p.m this 31<sup>st</sup> day of July, 2009

