

# ELIZABETH POLICE DEPARTMENT GENERAL ORDERS



**VOLUME: 3**

**CHAPTER: 26**

**# OF PAGES: 9**

## ALCOHOLIC BEVERAGE CONTROL

**EFFECTIVE DATE:**

**April 5, 2022**

**ACCREDITATION STANDARDS:**

**BY THE ORDER OF:**

**Chief Giacomo Sacca**

**BY AUTHORITY OF:**

**Police Director Earl J. Graves**

**SUPERSEDES ORDER #:**

### PURPOSE:

The purpose of this policy is to set forth guidelines for officers who are conducting criminal investigations, administrative investigations, and administrative inspections in their enforcement of NJ Statutes, N.J.S.A. 33:1-1 et seq., (*Title 33 - Intoxicating Liquors*) and NJ Administrative code, N.J.A.C. 13:2-1.1 et seq., (*Title 13, Chapter 2 - Division of Alcoholic Beverage Control*) regarding the regulation of alcoholic beverage products.

### POLICY:

This policy will establish uniform guidelines for inspection and enforcement activities involving the municipality's licensed alcoholic beverage establishments. This policy applies to all NJ Division of Alcoholic Beverage Control (NJABC) licenses issued to a business in this municipality upon the affirmative referendum of the Mayor and Council (the issuing authority). The following types of NJABC Class C, Plenary Retail alcoholic beverage licenses fall within the jurisdiction-of the issuing authority:

- |  |            |
|--|------------|
| 1) Plenary Retail Consumption Club License                 | Type 31    |
| 2) Plenary Retail Consumption with Broad Package Privilege | Type 32    |
| 3) Plenary Retail Consumption License                      | Type 33    |
| 4) Seasonal Retail Consumption License                     | Type 34/35 |
| 5) Plenary Retail Consumption -Hotel/Motel                 | Type 36    |
| 6) Plenary Retail Consumption -Theater                     | Type 37**  |
| 7) Limited Retail Distribution                             | Type 43    |
| 8) Plenary Retail Distribution                             | Type 44    |

### PROCEDURE:

#### I. CHANGE IN OWNERSHIP OR LOCATION INVESTIGATIONS

- A. The Elizabeth Police Department is primarily responsible for enforcement of Title 33 (*Intoxicating Liquors*) and Title 13, Chapter 2 of the NJ Administrative Code (*Division of*

*Alcoholic Beverage Control*) as it relates to NJABC Class C, Plenary Retail Alcoholic Beverage licenses that are issued by the Mayor and Council (the issuing authority) and located within municipal boundaries.

- B. Investigations for the issuance of new licenses, the person to person, or place to place transfer of existing licenses, or a change in corporate structure of an existing license shall be conducted by the Elizabeth Police Department. The purpose of the investigation is to ensure that the applicant(s) are qualified to own a license according to the standards established by law, administrative regulations and policies of the Director, NJABC and that all sources of funds used in the transaction are disclosed.
1. The president of a corporation, the managing member of a limited liability company (LLC), the managing partner of a limited or general partnership (LP), or the person identified as the primary purchaser in the transaction shall complete, under oath, the Supplemental Questionnaire-Part One and provided the Elizabeth Police Department.
  2. All persons listed on page "10A" of the NJABC license application (the 12-page application) shall complete Supplemental Questionnaire -Part Two and provide it to the Elizabeth Police Department.
  3. All persons listed on page "10A) of the NJABC license application, shall be provided with the "Liquor License Application Procedure" of the Elizabeth Police Department. Each person shall sign the document, witnessed by a member of the Department. The original of each shall be included in the investigation file. A photocopy of the signed document shall be provided to the person signing.
  4. All persons listed on page "10A" of the NJABC license application shall sign a "Release of Information" form. The original of each shall be included in the investigation file. Photocopies of the document may be provided to any external agency requesting the authorization to release personal information concerning applicant.
  5. All persons listed on page "10A" of the NJABC license application shall be fingerprinted as an "applicant" employing the procedures specified by the NJ Division of State Police, State Identification Bureau.
- C. A person cannot have involvement in the alcoholic beverage industry that has been convicted of a crime of moral turpitude. The term moral turpitude denotes a serious crime from the viewpoint of society and usually contains elements of dishonesty, fraud, or depravity. All crimes of the 1<sup>st</sup> through 4<sup>th</sup> degrees are presumed to be crimes of moral turpitude unless otherwise determined by the NJABC Director pursuant to an eligibility determination request. Acceptance into the NJ Pre-Trial Intervention Program (PTI) or a downgrade of the offense to a disorderly persons offense are not convictions or crimes as defined in the Alcoholic Beverage Act.
1. A person who has been convicted of a crime of moral turpitude and who has received an expungement of the conviction by a Judge of the Superior Court, is permitted involvement in the alcoholic beverage industry.
  2. A person who has been convicted of a crime of moral turpitude and who has received an Order of Disqualification Removal issued by the Director, NJABC, is permitted involvement in the alcoholic beverage industry.

3. If an individual questions whether the offense is a crime of moral turpitude, he must apply to the NJABC Director by Petition of Eligibility to receive a written determination.
- .
- D. All persons listed on page "10A" of the NJABC License Application shall not be otherwise prohibited for holding a NJABC license except:
    1. The applicant shall not be currently employed as a Nj police officer or peace officer. A police or peace officer would be a person who has the legal authority to serve a warrant.
    2. The applicant shall not be currently employed by the State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control.
    3. An alcoholic beverage manufacturer, distiller, winery, brewery, distributor, importer, or wholesaler shall not currently employ the applicant.
    4. All questions as to an applicant's qualification to hold a NJABC license shall be referred to the NJABC Enforcement Bureau for a written legal opinion.
  - E. The background investigation shall include a review of the entire business transaction between all involved parties. At a minimum, the review shall include:
    1. Examination of the Contract of Sale, signed by all parties to ensure that only the parties listed in the license application are involved in the sale.
    2. Examination of the lease or mortgage documents to ensure that the new licensee will have a present possessory interest in the license premise and to ensure that there is no prohibited lien on the license.
    3. Examination of the deposit check to ensure that the deposit funds are from sources controlled by the applicants.
    4. Examination of all notes to ensure that the funds are borrowed by the buyers, the terms are consistent with that of an arms-length business transaction, and to ensure that there is no prohibited lien on the license.
    5. Examination of the individual applicant's funds used in the business transaction to ensure that they were derived from legitimate, legal sources, including, but not limited to, a review of the three most recently filed Federal income tax returns.
  - F. Upon completion, a report summarizing the change in ownership investigation shall be prepared and forwarded through the chain of command to the Chief of Police for review and approval.
    1. Approval: If the findings of the investigation support the approval of the ownership change, the report shall list a short summary of the business transaction, the licensee and the applicant's names, and a statement that all are qualified to hold a license and that the source of funds for the transaction have been verified.

2. Denial: if the findings of the investigation support the denial of the ownership change the report shall detail the specific information supporting the denial.
3. The report, or summary, shall be forwarded to the municipal attorney for use in the licensing process by the Mayor and Council.

## II. INSPECTIONS

- A. Routine administrative inspections of all premises licensed by the municipal issuing authority to sell, serve, deliver and/or consume alcoholic beverages shall be conducted by officers so designated in writing by the Chief of Police of the Elizabeth Police Department. At a minimum, an annual inspection of each licensed premise shall be completed no later than 30 days prior to the annual renewal meeting of the issuing authority. Such meeting must occur on, or before, June 30<sup>th</sup> of each year. Additional inspections can be ordered by the Chief of Police or his/her designee.
  1. The authority to conduct inspections is N.J.S.A. 33:1-35. The purpose is to detect administrative violations of either N.J.S.A. 33:1-1 et seq., or N.J.A.C. 13:2-1.1 et seq. Such violations could result in the suspension or revocation of the issued alcoholic beverage license.
  2. Inspections may be conducted on any day of the year, at any hour of the day.
  3. The assigned officer(s) shall only inspect those portions of the property that is licensed, as specified on page three of the most recently filed NJABC standard alcoholic beverage license retail application on file with the Municipal Clerk. Any inspection of un-licensed portions of the property shall only be done with the expressed permission of the licensee or the licensee's agent.
  4. The assigned officer(s) shall use the various inspection forms developed by the NJABC Investigations Bureau to ensure uniformity in the inspection process.
    - a. If contaminated alcoholic beverages (fruit flies, etc.) are discovered, the bottle will be shown to the person in charge of the licensed premise. If the person acknowledges the contamination, the contents shall be destroyed by pouring down a drain. If the person in charge does not acknowledge the contamination, the bottle shall be confiscated as evidence, A property slip shall be prepared, listing all f the bottles of contaminated product confiscated. The property receipt shall note if the contaminated bottle contained a "screened" or "ball bearing" pourer. A copy of the receipt shall be left at the licensed premise.
    - b. If any items, including but not limited to, banners, table cards, menus, business records and/or the employee list are seized by the assigned officer(s), a property slip shall be completed in a manner consistent with departmental evidence collection policy.
    - c. If any document requested by the assigned officer(s) cannot be produced at the time of inspection, the officer(s) shall complete and issue to the licensee or licensee's agent a NJABC Seven Day Notice. The completed notice will specify the records to be produced, the name of the officer and departmental contact information for the licensee to arrange production within seven days. The notice shall include the

warning that failure to produce the documents within the seven-day period could result in an enhanced administrative penalty.

- d. Upon completion of the inspection, the assigned officer(s) shall leave a “NJABC” form, Notice of Inspection”, or similar type notice at the licensed premise.

### III. ADMINISTRATIVE INVESTIGATIONS

- A. Investigations may be conducted when information is received by the Department and there is reason to believe that administrative violations may have occurred, or are occurring, and the evidence to prove a violation may not be effectively collected by use of an inspection.
  1. The authority to conduct inspections is N.J.S.A. 33:1-35. The purpose is to detect administrative violations of either N.J.S.A. 33:1-1 et seq., or N.J.A.C. 13:2-1.1 et seq. Such violations could result in the suspension or revocation of the issued alcoholic beverage license.
  2. The assigned officer(s) may examine, under oath, any and all persons and compel by subpoena the attendance of witnesses and the production of books, records, accounts, papers, and documents of any person or persons to further the investigation. Administrative subpoenas issued shall be consistent in format with those in use by the NJABC.
  3. If any items, including but not limited to, banners, table cards, menus, business records and/or the employee list are seized by the assigned officer(s) during the course of an investigation, a property slip shall be completed in a manner consistent with departmental evidence collection policy.

### IV. ADMINISTRATIVE CODE VIOLATIONS

- A. The investigating officer will prepare an Investigation Report, containing the facts supporting an alleged violation(s). The report shall be forwarded to the officer in charge for the review.
- B. The officer in charge will review the report and forward the report and recommendations for enforcement action(s) to the Chief of Police. The Chief of Police shall recommend possible enforcement actions to the Elizabeth Municipal Attorney. All Notice of charges, beginning an enforcement action against a licensee, shall be prepared by the Municipal Attorney. Possible enforcement actions are:
  1. **Warning Letter:** A warning letter may be issued to the licensee for first time minor record keeping or permit violations where the presumed individual penalties as noted in N.J.S.C. 13:2-19.11 do not exceed a one day suspension and cumulatively do not exceed five days. A warning letter shall not be issued for any violation involving the health, safety, or welfare of the public, unless there are compelling mitigating issues. A warning letter shall not be issued for any violation where the presumed penalty as noted in N.J.A.C. 13:2-19.11 is revocation of the license.
    - a. The warning letter shall contain the name of the licensee, the address and trade name of the establishment, the NJABC twelve digit license number and a listing of the violations, including the date and time of occurrence. The warning letter shall be signed by the Elizabeth Municipal Clerk.

- b. Issuance of a warning letter will require that the licensee take remedial action within 15 days of receipt of the letter.
  - c. The Warning letter may be served on the license by members of the Elizabeth Police Department or sent to the licensee by the U.S. Postal Service Certified Mail with Return Receipt Requested.
- 2. Suspension of license:** For more serious violations, charges shall be filed against the licensee seeking a recommended suspension of the licensee's privilege to engage in any alcoholic beverage activity.
- a. The Department will meet with the Elizabeth Municipal Attorney to discuss the recommended charges. The Municipal Attorney shall prepare a Notice of Charges, which shall be consistent with a format recommended by the NJABC and signed by the Elizabeth Municipal Clerk.
  - b. The Notice of Charges may be served on the license by members of the Elizabeth Police Department or sent to the licensee by the U.S. Postal Service Certified Mail with Return Receipt Requested.
  - c. While the Elizabeth Police Department is not bound by the presumed penalties detailed in N.J.A.C. 13:2-19.11, it is the policy of the Department to recommend suspension terms to the issuing authority that is consistent with terms imposed by the NJABC.
  - d. Testimony and the introduction of evidence shall be provided by officers from the Elizabeth Police Department at all hearings held before the issuing authority and shall be consistent with the procedures established by the NJABC and detailed in the *Alcoholic Beverage Control Handbook for Municipal Issuing Authorities*.
- 3. Revocation of License:** In those matters where the presumed penalty is revocation the Elizabeth Police Department shall file charges seeking a recommended revocation of the licensee's alcoholic beverage license.
- a. The Department will meet with the Elizabeth Municipal Attorney to discuss the recommended charges. An additional review of the facts shall be made to determine if the issuing authority will also seek de-licensure of the property for a two year period (i.e. no alcoholic beverage activity could be conducted on the physical property by any licensee for a two year period.) The Municipal Attorney shall prepare a Notice of Charges, which shall be consistent with a format recommended by the NJABC and signed by the Elizabeth Municipal Clerk.
  - b. The Notice of Charges may be served on the license by members of the Elizabeth Police Department or sent to the licensee by US Postal Service Certified Mail, return receipt requested.
  - c. While the Elizabeth Police Department is not bound by the presumed penalties detailed in N.J.A.C. 13:2-19.11, it is the policy of the Department to recommend a revocation of the license to the issuing authority when it would be consistent with terms imposed by the NJABC.
  - d. Testimony and introduction of evidence shall be provided by officers from the Elizabeth Police Department at all hearings held before the issuing authority and

shall be consistent with the procedures established by the NJABC and detailed in the *Alcoholic Beverage Control Handbook for Municipal Issuing Authorities*.

## V. ANNUAL RENEWAL OF LICENSES

- A. All alcoholic beverage licenses issued by the City of Elizabeth expire at 12:01 a.m., July 1<sup>st</sup> of each year, unless renewed by the municipal issuing authority, through the passage of a municipal resolution. The business of reviewing and renewing the alcoholic beverage licenses are normally accomplished at the June meeting of the issuing authority. Unless the license is renewed or has received an Ad Interim permit issued by the NJABC Director prior to July 1<sup>st</sup>, the business must cease all alcoholic beverage activity until such time as the license is renewed or a permit issued. The issuing authority has three options to consider for each licensee:
1. **Renewal of License:** The issuing authority may renew the license, with no restrictions, for a one year period commencing July 1<sup>st</sup> and expiring on June 30<sup>th</sup> of the following year.
  2. **Imposition of Special Conditions at Renewal:** The issuing authority may renew the license for a one year period commencing July 1<sup>st</sup> and expiring on June 30<sup>th</sup> of the following year, but place conditions (restrictions) on the operation of the alcoholic beverage business. The issuing authority must establish a basis to impose conditions and must be based upon an existing condition or business practice that is contrary to the public's health, safety, or welfare. Once imposed, the special conditions are valid for a term concurrent with the license. In order to continue the special conditions must be renewed on an annual basis. Imposition of special conditions triggers certain appeal rights to the NJABC by the licensee.
  3. **Denial of License Renewal:** The issuing authority may deny the renewal of the license. A basis to deny the renewal must be included in the resolution denying the renewal. A denial or renewal triggers certain appeal rights to the NJABC by the licensee.
- B. The Elizabeth Police Department shall forward to the Department's ABC Unit a copy of all reports detailing a call for service at a license premise.
1. The assigned officer(s) shall review every call for service to determine if the event may be a violation of State law, NJABC regulations, or municipal ordinances. For example, an Emergency Medical Services call for a patron complaining of chest pain and shortness of breath would not be indicative of a violation. However, an Emergency Medical Services call for a patron suffering from suspected alcohol poisoning may be indicative of a violation.
  2. In all incidents where a violation is suspected, the assigned officer(s) shall conduct a follow-up investigation to determine if a violation has occurred.
  3. All calls for service where a violation has been documented shall be filed in a permanent record maintained by the unit for each licensee in the municipality.
  4. The assigned officer(s) shall prepare a report detailing a summary of the violations against each licensee. The report may include the findings of any inspections conducted by unit personnel during the current license period, any trends detected in the analysis of the data, the Department's response to the incidents, and any recommendations that

the Department would make to the issuing authority relating to the imposition of special conditions at renewal or the denial of license renewal. The report shall be forwarded to the officer in charge for review and approval. The report shall then be forwarded to the Chief of Police for review and approval. The approved report shall be provided to the Elizabeth Municipal Attorney for distribution to members of the issuing authority at least fifteen days before the scheduled public meeting at which renewals of alcoholic beverage licenses are to be placed on the agenda.

## **VI. SOCIAL AFFAIRS, CATERING, EXTENSION OF PREISES AND TEMPORARY STORAGE PERMITS.**

A. The NJABC issues four permits that allow the sale, storage or consumption of alcohol that fall outside the usual day-to-day business practices of licensed establishments:

1. **Social Affairs Permit:** This permit is issued to a bona fide, non-profit organization that wishes to hold a fundraising event that encompasses the sale of alcoholic beverages. The monies that are raised in the event shall be used for civic, religious, educational, or other purposes that are not for personal or business or business profit gain.
2. **Catering Permit:** Whenever a retail licensee wishes to sell alcoholic beverages in open containers off its licensed premises, an application must be submitted for a catering permit authorizing such sales. Only a total of 25 social affairs and catering permits may be issued to any one physical location in a calendar year.
3. **Extension of Premises Permit:** A licensee who wishes to hold an event in an area that is off the licensed premises, but on property that is contiguous to it, may apply for an Extension of Premise Permit. The application includes information regarding the nature of the event, the location, and justification for the permit.
4. **Temporary Storage Permit:** When a licensee requires additional storage space due to fire, power failure, remodeling, etc., an application for a Temporary Storage Permit may be submitted. The permit allows the non-permanent storage of alcoholic beverages off the licensed premise.

B. The applications for the above listed permits are submitted to and endorsed by the Municipal Clerk and the Chief of Police before being submitted to the NJABC. Prior to the Chief of Police's endorsement, the police department ABC Unit shall review the permit. The permitting process allows the Chief of Police to deny the permit or to impose any condition at the time of issuance deemed necessary and proper to accomplish the directives of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq. Specifically the application should be reviewed to determine if conditions should be imposed to address issues involving the health, safety, and welfare of the public. Specific areas to be addressed are:

1. Sale to or consumption of alcoholic beverages by persons under the legal age to possess or consume alcoholic beverages.
2. Preventing the over-consumption of alcoholic beverages by persons attending the event.
3. Securing the alcoholic beverage products and the area in which it is stored, prepared, served, and consumed to prevent unauthorized use or consumption.



## **VII. CRIMINAL INVESTIGATIONS INVOLVING LICENSED PREMISES**

- A. In any matter where violations of the State's criminal law are suspected, no member of the Elizabeth Police Department shall use the authority to conduct warrantless searches (N.J.S.A. 33:1-35) without first consulting the County Prosecutor through the chain of command.
- B. When criminal activity occurs on a licensed premise, the investigating officers will forward a complete copy of the finalized case file through the chain of command to the Department ABC Unit.
  - 1. The ABC Unit will review the file to determine if administrative violations occurred as a result of criminal activity.
  - 2. If administrative violations were noted, the assigned officer will follow procedures outlined in Section IV (Administrative Code Violations) of this General Order.
  - 3. Before the filing of any administrative charges against the ABC license, the assigned officer will consult with the assigned criminal prosecuting attorney (municipal prosecutor or county prosecutor) to determine if the filing of charges will have a negative impact on the criminal prosecution. Charges shall not be filed if their filing will negatively impact the criminal prosecution.