



March 7, 2024

MEMORANDUM

TO: Mayor and Members of City Council

THROUGH: Lachelle H. Pulliam, Interim City Attorney

FROM: Joshua Hall, Police Attorney

SUBJECT: Nuisance Businesses

This memorandum is in response to a Council member request for options to address nuisance businesses. The City of Fayetteville is authorized to abate nuisances pursuant to the general “police-power” provisions of Chapters 19 and 160A of the North Carolina General Statutes. This memorandum will briefly explain the differences between the two types of nuisance abatement processes.

N.C.G.S. § 160A-174 and N.C.G.S. § 160A-193

Under § 160A-174, a city may by ordinance define, prohibit, regulate, or abate (correct/resolve) acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city. This means the City has general “police-power” to determine what is a nuisance, require that the nuisance is corrected, and authorize the City to correct it. Pursuant to this statute, the Fayetteville City Code outlines numerous activities that are nuisances. For example, Chapter 16 of the City Code addresses “Abandoned, Junked, and Nuisance Vehicles.

Further, pursuant to N.C.G.S. § 160A-193, “a city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety.” Summary action is understood to mean that a city may take action to correct the problem without adhering to certain procedural safeguards first.

The City Code does not address acts that constitute a nuisance, other than displaying sexually explicit materials to minors. The remainder of the nuisance ordinances relate to the condition of the property.

N.C.G.S., Chapter 19

Chapter 19 nuisances are called “criminal nuisances” and include the activities of prostitution, gambling, illegal possession or sale of drugs or alcoholic beverages, and repeated acts that constitute a breach of the peace. Abatements under Chapter 19 involve a civil action that is filed with the court system regarding specific illegal activity. Abatement under this state statute provides for a civil action that would effectually close a property deemed to be a nuisance. This type of nuisance abatement is often used against businesses. For example, the City of Fayetteville

has successfully enforced abatement under Chapter 19 involving Club Riddmiz, Up Top Sports Lounge and Basement Lounge located on Fort Bragg Road in 2013; Cambridge Arms Apartments located off McPherson Church Road in 2013; and the Palomino located on Owen Drive in 2009.

Investigations into Chapter 19 violations generally begin with law enforcement due to repeated calls for service or undercover investigations into criminal activity at a property. The North Carolina Alcohol Law Enforcement Division (“ALE”) has a Nuisance Abatement Team whose primary mission is to investigate, in conjunction with local law enforcement, nuisances that arise under Chapter 19. ALE special agents conduct interviews, research property titles, conduct research utilizing law enforcement reports and records, prepare affidavits, and present that information to local law enforcement for a determination about whether to file a civil action. The City’s partnership with ALE in conducting these investigations saves the City many hours of preparation as the ALE agents conduct a majority of the investigation.

Options

1. Hire a dedicated police attorney to identify and bring actions against nuisance properties. This allows the City to control the process and eliminates any delays related to working with outside entities.
2. Advocate for the state legislature to expand Chapter 19 to address issues with ownership changes and properties next to nuisance businesses (parking lots).
3. Oppose ABC license issuance and renewal for problem establishments and known operators that close one establishment and open another.
4. Seek Chapter 19 enforcement but not request business to close; for example, an order could provide for the suspension of an ABC license as a first offense, with other penalties the City could enforce without returning to court if problems persist. Subsequent penalties could include requiring parking, security guards, and license plate readers on the property.
5. Clarify the City Code to define “nuisance business” and prohibit certain acts. This provides cost-effective enforcement of nuisance businesses. This option also allows for enforcement over a shorter period of time.

JH