



**GARLAND**

**INTERNAL AUDIT**

# **Firewheel Mixed Beverage Permit Compliance Audit**

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# Table of Contents

	<u>Page</u>
Authorization .....	1
Objective, Scope and Methodology .....	1
Overall Conclusion.....	3
Background.....	3
Opportunities for Improvement .....	5

## **Authorization**

We have conducted an audit of the Firewheel Alcohol Sales. This audit was conducted under the authority of Article VII, Section 5 of the Garland City Charter and in accordance with the Annual Audit Plan approved by the Garland City Council.

## **Objective**

The objective of Firewheel's audit is to determine if management is in compliance with Texas Alcoholic Beverage Commission (TABC) Code and Rules.

## **Scope and Methodology**

We conducted this compliance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our audit scope focused on the date Garland Foundation for Development received their Mixed Beverage Permit, February 28, 2011 through September 30, 2012.

To adequately address the audit objectives, we:

- Obtained and reviewed the latest TABC's Alcoholic Beverage Code and Rules
- Obtained and reviewed the latest Title III of the Americans with Disabilities Act (ADA) to determine if GFDC was in compliance with the ADA and TABC Code. TABC Code Sec. 11.495 states premises where alcoholic beverages are sold or served must be reviewed for compliance with Title III of the Americans with Disabilities Act of 1990
- Verified the facility possessed a Food and Beverage Certificate
- Determined if the permit was displayed in a conspicuous place
- Determined if various warning signs were appropriately displayed
- Confirmed privileges were limited to the licensed premises
- Proved the purchase and transportation of distilled spirits were purchased from a local distributor
- Tested to ensure alcoholic beverages are covered by an invoice, and invoices are maintained on the premises for two years
- Tested on hand distilled spirits to ensure containers have a serially numbered identification stamp issued by the commission
- Reviewed stamps to ensure they were invalidated

- Tested to determine if personnel would prevent alcoholic beverages from leaving the building
- Verified the facility adhered to the sale of liquor credit restrictions
- Observed that draft beer dispenser signs were on each faucet indicating the name or brand of the product
- Compared the gross receipts tax reports with sales tax reports to ensure if the gross receipts of mixed beverages sold are 50% or less of the gross receipts from the premises.
- Verified mixed beverage gross receipts tax was performed accurately and timely
- Verified the facility does not employ minors by comparing their date of birth
- Confirmed seller server certificate requirements are maintained by using the TABC server certificate inquiry on the TABC website
- Contacted the police department to determine if the facility had an incident in which a Breach of the Peace should have been reported
- A reviewed was performed to ensure that the facility maintains exclusive occupancy and control of the licensed premises
- Inquired if the facility reports any changes relating to control of personnel
- Reviewed the Cartage Permit to ensure it was current
- Verified if complimentary alcoholic beverages are recorded and included in sales
- A review of the general ledger was made to ensure alcoholic beverage license and permit surcharges were paid timely
- A review of gross receipts tax records were made to ensure they are maintained for two years on the licensed premises
- Tested source documentation for gross receipt tax to ensure it is in accordance to Rule 41.50
- Inquired to determine if beverages lost through theft or disaster are reported
- Sent undercover personnel to test:
  - containers were not refilled,
  - the hours for wholesale delivery and consumption were within code
  - if the facility carded individuals you would consider to be 40 years or younger
  - if alcohol was served after 10:00 a.m. on Sunday with food only
  - if gift certificates could be used to purchase alcohol
- Performed a gap analysis of receipts to determine if all sales were accounted for and documented in the Sales Tax Report.
- Observed and inquired to determine advertising standards are performed in accordance to TABC Rule 45.24
- Determined there were no blinds and barriers in the openings or doors
- Verified the facility performs criminal history background checks according to TABC Code 109.532
- Verified receipts of liquor are maintained according to TABC Code 206.01

## **Overall Conclusion**

A review of TABC Code disclosed areas in which compliance could be strengthened. The root cause for the issues in the report appears to be a lack of management monitoring, follow-up and training on a consistent basis to ensure GFDC is in compliance with TABC Code and Rules. TABC Code and Rules are vast and written in general terms and are often hard to interpret which may have been a catalyst for a lack of follow-up.

Management was provided additional Opportunities for Improvement to enhance internal controls. These were not considered significant to the objectives of the audit but warrant the attention of management. Consequently, they do not appear in this report.

## **Background**

“The Garland Foundation for Development, Inc. (GFDC) was organized to aid, assist, and act on behalf of the City in the performance of its governmental functions to promote the common good and general welfare of the City, and to promote, develop, encourage and maintain government facilities, public works projects, commerce and economic development in the City.

All powers of GFDC are vested in a Board of Directors consisting initially of the nine members of the City Council of the City. Each Director, including initial Directors, shall serve a term commensurate and concurrent with the term of office the respective City Council member then holds, or until his or her successor is appointed by the City Council of the City; provided, however, upon the death or resignation or removal of a Director, the City shall appoint a replacement Director to serve for the unexpired term of offices, if any, of the replaced Director. The Mayor of the City is the President.”<sup>1</sup>

“The Firewheel Golf Course is a premier facility with two clubhouses, Branding Iron and Grill 64 snack bar, a pro shop, driving range and practice facility. The facility offers 63 holes of golf consisting of the Old Course, the Lakes Course and the Bridges Course. In July 2010, the City entered into a new management agreement that allowed the City to retain all revenue generated from the Golf Park, including the Branding Iron and Grill 64 snack bar. Also, the City assumed responsibility for the food, beverage, and alcohol costs associated with these facilities. In order to buy and sell alcohol, the City needed to acquire a Mixed Beverage Permit from the Texas Alcoholic Beverage Commission. At the recommendation of the City Attorney's Office, the Mixed Beverage Permit for the Firewheel Golf Park was acquired by the GFDC rather than the City of Garland.

To meet the alcohol permit requirements, all food and beverage services at the Golf Park are provided under the GFDC. As a result, in FY 2010-11, the operations of

the Branding Iron restaurant, Grill 64 snack bar, food and beverage cart service, along with catering for tournaments and special events became a function of GFDC. GFDC receives all the revenue derived from these services and is responsible for all related expenses.”<sup>2</sup>

“The Alcohol Serving Agreement states, they will only serve alcoholic beverages during the following hours of sale or service at Firewheel Golf Park:

- Monday – Friday: 7 a.m. – Midnight
- Saturday: 7 a.m. – Midnight
- Sunday: Noon to Midnight (10 a.m. – noon only in conjunction with the service of food.”<sup>3</sup>

Please note this review was requested by Bryan Bradford, Assistant City Manager. He wanted to verify that GFDC was in compliance with TABC regulations. Additionally, Firewheel had a Food and Beverage Manager for a very short period of time during the audit and they were in the process of finding a replacement.

Source:

<sup>1</sup> GFDC Articles of Incorporation

<sup>2</sup> The City of Garland 2011-12, Annual Operating Budget

<sup>3</sup> GFDC Alcohol Serving Agreement

## Opportunities for Improvement

During our audit we identified certain areas for improvement. Our audit was not designed or intended to be a detailed study of every relevant system, procedure, and transaction. Accordingly, the Opportunities for Improvement section presented in this report may not be all-inclusive of areas where improvement might be needed.

### Finding # 1

#### Condition (The way it is)

Internal audit utilized undercover personnel to determine if Branding Iron and Grill 64 personnel were carding everyone who appeared to be 40 years of age or under. GFDC's Alcohol Serving Agreement states employees must check the I.D. of anyone who appears to be under age 40 with no exceptions. Both undercover personnel, who were in their twenties, ordered alcoholic beverages on five occasions and were not carded by several different employees at both facilities.

#### Criteria (The way it should be)

In review of GFDC's Alcohol Serving Agreement, it revealed that each employee who serves liquor is required to sign an Alcohol Serving Agreement indicating they read the policy. GFDC's Alcohol Serving Agreement states that, "I will not serve alcoholic beverages to anyone under the age of 21 at any time. I will check the I.D. of anyone who appears to be under the age of forty (40) with no exceptions. A valid driver's license or photo ID issued by a government agency are the only valid proofs of age that I can accept."

#### Cause (Difference between condition & criteria)

The employees failed to comply with GFDC policy.

#### Effect (So what?)

Since GFDC is not carding, we could be in violation of TABC Code. TABC Code Sec. 106.3 states, "A person commits an offense if with criminal negligence he sells an alcoholic beverage to a minor." TABC Code Sec. 106.06 states selling to a minor and furnishing alcohol to a minor are both class A misdemeanors. TABC Code Sec. 521.351 states making alcohol available to a minor also includes a driver's license suspension of 180 days.

#### Recommendation

Management should ensure that employees card everyone who appears to be under 40 years of age and take action for repeat occurrences.

#### Management Response

Concur

#### Action Plan

Wait staff have been counseled and signage is being installed to alert patrons that Firewheel will card anyone appearing to be under 40 years of age. Firewheel is currently seeking a Food and Beverage Manager.

<b>Implementation Date</b>
March 30, 2013



## Finding # 2

### Condition (The way it is)

GFDC did not use the "Taxable Sales Amount" reported on its "Sales Tax" report (as stated in TABC Code Sec. 28.18) during its monthly review process of determining if alcohol sales constitute less than half of gross receipts.

### Criteria (The way it should be)

TABC Code Sec. 28.18 states, "A holder of a mixed beverage permit may be issued a food and beverage certificate by the commission if the gross receipts of mixed beverages sold by the holder are 50 percent or less of the total gross receipts from the premises. In determining compliance the comptroller shall compare the permittee's gross receipts tax reports with the permittee's sales tax reports for the premises."

### Cause (Difference between condition & criteria)

The Accounting Administrator performed the calculation using sales numbers from the general ledger in Quick Books.

### Effect (So what?)

TABC guidelines specifically state you must compare the gross receipts tax reports with the sales tax reports to make the calculation. If alcohol sales constitute more than half of gross receipts, GFDC may lose their Mixed Beverage Permit.

### Recommendation

The facility should compare the gross receipts tax reports with the sales tax reports to make the calculation.

### Management Response

Concur

### Action Plan

The calculation is currently being performed using the gross receipts tax report and the sales tax reports.

### Implementation Date

November 30, 2012

### Finding # 3

#### Condition (The way it is)

A review of the process for employment background checks revealed personnel are allowed to go to work before the background check is completed.

A review of the three most recent new hires disclosed issues which should have been followed up on before hiring the individual. Sufficient follow up has not been performed.

#### Criteria (The way it should be)

The facility should wait to employ personnel until their background check has been completed.

Issues which need further research should be completed and an additional background check performed if needed before the individual is hired.

#### Cause (Difference between condition & criteria)

The facility is in a hurry to put someone to work and does not wait for the background check to clear.

Additionally, the person receiving the background check is reviewing for a red flag from Employment Background Investigations, Inc. (EBI) and is not following up on issues which need attention.

#### Effect (So what?)

GFDC may be employing personnel who may be a sex offender, has a felony or misdemeanor or be an illegal alien.

#### Recommendation

Personnel should not be allowed to go to work before the background check is completed and all issues which need further investigation are resolved.

#### Management Response

Concur

#### Action Plan

The Firewheel management staff has been counseled and the HR function has been centralized with one person to increase oversight and control.

#### Implementation Date

November 30, 2012

## Finding # 4

### Condition (The way it is)

GFDC did not report changes in officers or directors to the Board to the TABC Commission by affidavit within 10 days of the event of changing or adding officers or directors.

Please note upon Internal Audit's notification GFDC took immediate action and reported the changes to TABC.

### Criteria (The way it should be)

TABC Rule 41.48 states, "In each instance in which this section requires information to be reported to the commission, such information shall be conveyed by affidavit from an officer of the corporation or unincorporated association and shall be due in the offices of the commission within 10 days of the event, unless the administrator shall allow or direct a different method or time."

### Cause (Difference between condition & criteria)

GFDC was unaware that they were to report changes of the Board to the commission.

### Effect (So what?)

TABC Rule 41.48 states if the persons jointly or severally controlling such corporation were, while so situated, not qualified for the issuance of a mixed beverage permit individually, the administrator shall immediately cancel said permit; provided, however, that if the administrator affirmatively finds to his satisfaction that no participant acted with intent to circumvent this rule or related provisions of the Alcoholic Beverage Code, he shall not cancel said permit but may, in his discretion, suspend said permit for a period not exceeding 60 days or dismiss the cause; and the administrator is hereby authorized in such cases to issue a conditional order, but no conditional status shall exceed one year beyond the entry of the order.

### Recommendation

GFDC should report all changes of the Board to the commission on a timely basis. A mechanism should be established to ensure timely notification is made to the commission.

### Management Response

Concur

### Action Plan

TABC will be notified after each City Council election.

### Implementation Date

November 30, 2012

## Finding # 5

### Condition (The way it is)

GFDC was on the IBS System until August 27, 2012. Our field work began a couple of weeks after they went on the new Club Profit System. In an effort to determine all sales were accounted for in the old IBS System, a review of receipts, voids and split tickets for each Branding Iron and Grill 64 restaurants were reviewed. The gap analysis revealed there were significant missing receipts in the ticket number sequence. It disclosed there were approximately 5% missing receipts for both Branding Iron and Grill 64. Branding Iron had 1,309 out of 29,055 receipts missing and Grill 64 had 1,073 receipts out of 22,084 missing. These missing receipts could represent deleted sales in the system; however, we were unable to verify this.

### Criteria (The way it should be)

All receipts/sales are accounted for in the IBS system.

### Cause (Difference between condition & criteria)

The root cause cannot be identified since GFDC no longer has a contract with the previous IBS vendor.

### Effect (So what?)

Because there are missing receipts, the sales total could be inaccurate.

### Recommendation

To prevent missing receipts, a report should be initiated for the new Club Profit System which should be ran, reviewed, and monitored on a monthly basis to ensure all receipts are accounted for to negate potential improprieties.

### Management Response

Concur

### Action Plan

This issue was unique to the IBS POS previously used at Firewheel and appears to be tied primarily to situations where a ticket would be split between two patrons. The problem appears to have been resolved with the new POS.

### Implementation Date

November 30, 2012

## Finding # 6

### Condition (The way it is)

The Health Risks Warning Sign, warning the dangers associated with drinking alcoholic beverages during pregnancy, was not on the door or located anywhere in the men's restrooms at both buildings. The signage for the women's restrooms was displayed on the wall next to the restroom exit door and on the countertop at both buildings. It was not on the door.

### Criteria (The way it should be)

Sec. 11.042 of the TABC Code require the holder of a permit authorizing the sale of alcoholic beverages for on-premises consumption to display a warning sign on the door to each restroom on the permitted premises that informs the public of the risks of drinking alcohol during pregnancy.

### Cause (Difference between condition & criteria)

Management stated they had been on the doors previously, however, they probably moved them from the door because they had a problem keeping them on the door.

### Effect (So what?)

GFDC will be in violation of Sec. 11.042 TABC Code if health risk warnings of dangers associated with drinking alcoholic beverages during pregnancy are not posted on the door of each restroom. TABC Code 34.1 states, "An act or failure to act which results in a violation of the code or rules that represents a threat to the public health, safety, or welfare will be assessed sanctions and penalties."

### Recommendation

Management needs to ensure the Health Risks Warning Signs are appropriately displayed on the door to the men's and the women's restrooms.

### Management Response

Concur

### Action Plan

Sign holders will be mounted on the doors and the warning signs moved. Signage is also being added to the on course restroom facilities.

### Implementation Date

December 31, 2012

## Finding # 7

### Condition (The way it is)

TABC offers TABC certified courses for servers and bartenders. The classes cover the laws concerning the sale or service of alcoholic beverages to minors and intoxicated customers as well as techniques to prevent such sales. There were multiple issues concerning TABC server certified courses:

- Certifications at GFDC were not always received from an approved TABC school. One employee did not have a TABC approved school certification.
- 3 out of 12 (25%) employees did not receive a TABC certification within 30 days of their hire date.
- There was one issue where an employee came on board certified, but shortly thereafter did not have a current certificate for almost three months. The employee was hired 10/01/11 and her certificate expired 10/06/11. She did not receive her current certificate until 12/29/11.
- There is currently not a system for certifications to be scheduled for renewal.

### Criteria (The way it should be)

TABC Code Sec. 106.14 states, "the actions of an employee shall not be attributable to the employer if:

- (1) the employer requires its employees to attend a commission approved seller training program;
- (2) the employee has actually attended such a training program; and
- (3) the employer has not directly or indirectly encouraged the employee to violate such law.

"Training programs are monitored by the TABC Commission to determine if the schools are presenting the programs as approved and certified by the TABC.

GFDC's Alcohol Serving Agreement requires a TABC certification within 30 days of their hire date.

### Cause (Difference between condition & criteria)

- GFDC did not ensure their employees selected a TABC Approved Seller Training Program.
- There was not sufficient monitoring to ensure new hires received a TABC certification within 30 days of their hire date.

- There was not sufficient monitoring to ensure personnel stay current on their server certificate.
- A lack of organization on management's part to ensure TABC Code is adhered to.

**Effect (So what?)**

Trained sellers, servers, and managers are better able to identify and prevent sales of alcoholic beverages to minors, and intoxicated persons. Training programs are monitored by the Commission to determine if the schools are presenting the programs as approved and certified by the TABC.

**Recommendation**

Management should ensure that:

1. Employees consistently use an on-line approved TABC school.
2. Personnel receive a TABC certification within 30 days of their hire date.
3. Personnel stay current on their server certificate.
4. A schedule is maintained to ensure timely renewal is performed.

**Management Response**

Concur

**Action Plan**

One certification provider will be used by all wait staff going forward and a log kept by management to monitor expiration dates.

**Implementation Date**

November 30, 2012

## Finding # 8

### Condition (The way it is)

Once a year Firewheel relinquishes their rights to the mixed beverage permit for one day and allows Guns and Hoses to purchase a Daily Temporary Mixed Beverage Permit which allows them to bring their alcohol onto Firewheel's premises.

A review of the Guns and Hoses contract disclosed there was to be absolutely no outside alcohol brought onto Firewheel's premises which included beer, liquor, wine and wine coolers, and they were to be served by Firewheel's TABC certified staff as stated in the contract.

Alcohol was brought onto the premises by Guns and Hoses and the alcohol was served by Gun and Hoses TABC certified servers.

### Criteria (The way it should be)

The existing contract should have been re-written or amended.

### Cause (Difference between condition & criteria)

An inquiry with management disclosed the contract was not updated to reflect the changes which were made after the contract was written.

### Effect (So what?)

Contract terms were violated.

### Recommendation

Any changes to an existing contract should be made before an event takes place.

### Management Response

Concur

### Action Plan

The staff has been counseled and management will monitor future contracts.

### Implementation Date

November 30, 2012



## Finding # 9

### Condition (The way it is)

A formal comprehensive policy has not been written directly for Firewheel. When we asked for a copy of the policy, the facility gave us one document employees sign as an attestation of being told to perform certain functions.

Because of the large number of findings regarding TABC Code and Rules, a checklist should be established and a routine verification of TABC compliance should be reviewed at least quarterly. As new pertinent issues arise, they should be added to the checklist.

### Criteria (The way it should be)

Formalized comprehensive principles or rules to guide decisions and achieve rational outcomes should be written to assist in objective decision making. They should be operational in nature and can be objectively tested.

A routine verification of compliance to TABC Code and Rules should take place.

### Cause (Difference between condition & criteria)

Management has not written comprehensive policies directly for Firewheel. For example, safety, human resources and alcohol related policies.

There has been a lack of monitoring of TABC Code and Rules.

### Effect (So what?)

There are no principles or rules to guide decisions and achieve rational outcomes.

Because TABC Code and Rules are very numerous and the code and rules change, a lack of monitoring could cause an issue of non-compliance with TABC Code and Rules.

### Recommendation

Comprehensive policies should be established and written by management, and documented review by personnel should be maintained.

A checklist for TABC Code and Rules should be established by management and a routine verification of TABC compliance should be reviewed at least quarterly. The completed verified checklist should be sent to the Assistant City Manager for review quarterly. A report of any violations should be immediately sent to the Assistant City Manager.

### Management Response

Concur

<b>Action Plan</b>
This will be made a priority for the food and Beverage Manager once hired.
<b>Implementation Date</b>
March 31, 2013

## Finding # 10

### Condition (The way it is)

During our walkthrough it was noted that liquor inventory was not secure. The following issues were noted:

- The inventory storage area was open upon our review, and through inquiry we discovered it was left open during business hours.
- The security camera does not view the liquor inventory room and housekeeping has keys to the inventory.
- It was noted that overflow inventory was being maintained in the Tournament and Events Directors office. In one instance, she was not in her office, the door was shut, the light turned off, and the door was unlocked.

### Criteria (The way it should be)

Liquor inventory must be secure to safeguard assets.

### Cause (Difference between condition & criteria)

GFDC uses a closet as an inventory room and a pantry; therefore, it is open during the day so the cooks can get items out of the pantry. They do not have enough storage area to maintain all liquor in the inventory closet, and the overflow is put in the Tournament and Events Director's office.

### Effect (So what?)

Two cases of beer were missing prior to our entrance conference meeting. This is a family restaurant, and as such is not restricted to minors. The fact that alcohol is maintained in the Tournament and Events Director's office could possibly allow a minor to take alcohol without being detected.

### Recommendation

Liquor inventory must be secured. The liquor inventory room should have a security camera viewing the door to the inventory room and a limited number of personnel should have access to inventory. If overflow is going to be maintained in the Tournament and Events Director's office, the office should be locked when she is not in the office and upon her departure for the day.

### Management Response

Concur

### Action Plan

Alcohol inventory issues will be addressed to ensure proper oversight and security within the limited space available at the facilities.

### Implementation Date

March 31, 2013