



# NORTH CAROLINA BOARD OF BARBER EXAMINERS

## Memo

TO: Board members

FROM: Dennis Seavers

DATE: August 16, 2022

**SUBJECT: Staff comments on rulemaking for mobile barber shops**

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On July 25, I sent you a memo and draft rules related to mobile barber shops. I also shared the draft rules with the board inspectors for comments. Below are their comments for the board to consider when it discusses the draft rules on August 23. In some cases, I've added my own comments, normally to provide context or background or to help the board identify the rule that would need to be amended.

### **ALCOHOL IN MOBILE BARBER SHOPS**

An inspector suggested that the board should prevent alcoholic beverages from being served in mobile barber shops or for there to be open containers. The inspector believed that open containers may present a public-safety issue, both in the performance of barber services and the operation of the vehicle.

#### *Executive director comments:*

The board may be able to prohibit alcohol under G.S. § 86B-20(c), which includes authorization for the board to "adopt rules for the operation ... of mobile barbershops, including standards for ... safety and sanitary requirements." The prohibition would best fit under draft Rule 06L .0201.

The board should be aware that open-container laws don't prohibit all instances of open containers in vehicles, so if the board wants to prevent open containers in mobile barber shops, it may not be able to rely on existing open-container laws and may need to propose additional rules. The board should also consider whether there are circumstances when it's acceptable to have alcohol in a mobile barber shop, such as when no barber services are being provided (e.g., parked at the owner's residence during off hours).

## **DISPOSAL OF WASTEWATER**

There was some concern about how mobile barber shops will handle wastewater. Although there's a rule that requires mobile barber shops to comply with all federal, state, and local laws concerning disposal of wastewater, the inspectors were worried about shops that would violate the laws. One inspector recommended a rule requiring shops to keep a log of how they empty their "gray" and "black" tanks.

### *Executive director comments:*

If the board wants to propose a requirement to keep a log, the best approach would be to add it to proposed Rule 06L .0205 and change the rule title to "Reporting requirements for mobile barber shops."

As suggested in the July 25 memo, the board would have three options under the proposed rules: (1) levy civil penalties of \$500 for each instance of noncompliance with laws about the disposal of wastewater; (2) take disciplinary action, such as license revocation or suspension; and (3) refer the matter to other government authorities that have jurisdiction and may have stronger enforcement tools. These options aren't mutually exclusive.

The board could consider insurance requirements that deal with wastewater disposal (or that hold licensees responsible for noncompliance with wastewater-disposal laws), but this would need to be an area for further research.

The board could also offer educational information to applicants that addresses proper disposal of wastewater.

## **SINKS IN BARBER SHOPS**

An inspector raised the question of the impact of the legislation and draft rules on the sink requirements for brick-and-mortar barber shops. He wanted to know whether barber shops would be able to have portable sinks rather than sinks with plumbing that goes into the sewer system.

### *Executive director comments:*

The inspector raises an important point: if the board wants barber shops to continue to meet the current plumbing requirements for sinks, then it'll need to adopt rules. In the past, this requirement appeared in statute, but that statute has been amended. Without new rules, barber shops won't be prohibited from using portable sinks with reservoirs instead of plumbing. (Technically, barber shops can use "portable" sinks now, but they must be connected to the plumbing system.) The board could put such a requirement either in Rule 06L .0103 or in Rule 06L .0107 (changing the title to "Lavatories and Sinks").

## **APPRENTICES IN MOBILE BARBER SHOPS**

An inspector suggested that there be stiffer penalties for apprentices working in mobile barber shops without a registered barber present than for apprentices in barber shops. As with other draft rules that have stiffer civil penalties for mobile barber shops, the idea is that it's harder to catch violations in mobile barber shops, so the penalties should be harsher.

*Executive director comments:*

If the board agrees with the inspector, it should change Rule 06O .0104.

## **TEMPORARY PERMITS**

An inspector raised the question of whether holders of temporary permits (e.g., recent barber-school graduates) would be able to work in mobile barber shops. The draft rules don't address the issue, and the assumption was that they could work in mobile barber shops. However, the board may want to consider the possible issues with temporary permits being issued for individuals to work in mobile barber shops.

## **MONTHLY ITINERARY REPORT**

Under the new legislation and the draft rules, mobile barber shops will be required to submit itineraries showing their location each day they'll be operating. During discussions with an inspector, the question came up whether the report should also indicate the anticipated time of day for each location. Having that information would help the inspectors locate a mobile barber shop that plans to move throughout a particular day.

The July 25 memo said:

The board may want to consider whether it'll allow mobile shops to update their itineraries if circumstances change. It may be difficult for mobile shops to know a month in advance where they'll be, although it's clear that the new board will have the authority to establish this requirement. Rule .0205 could be updated to allow changes to the itinerary, perhaps with a certain amount of advance notice. At the same time, the board should keep in mind that the closer to the actual date that the itinerary can be modified, the harder it'll be for the staff to plan inspections.

All the inspectors agreed that the board should allow shops to modify their itinerary after the end-of-month submission deadline. As one inspector noted, the less flexibility the board gives the mobile shops to alter their schedules, the more likely they are to "go rogue" and violate laws prohibiting them from operating in unreported locations.

## LENGTH OF VEHICLES

Rule 06L .0120 requires vehicles to be either (a) motor homes or (b) self-contained, self-supporting, enclosed mobile vehicles that are at least 24 feet in length. As explained in the July 25 memo, this 24-foot requirement for vehicles other than motor homes represents the larger-sized sprinter vans.

An inspector noted that there are illegal mobile barber shops operating now that don't have a toilet and won't be able to get licensed by the board. The inspector wasn't taking issue with the proposed rule, but simply observing that these illegal shops won't be able to straighten out their licensure situation. The inspector believed that the 24-foot length would be appropriate, given the requirement for a toilet.

### *Executive director comments:*

The legislation requires mobile barber shops to have toilets. Under § G.S. 86B-20(e), a "mobile barbershop must be equipped with a functional sink and toilet facilities and must maintain an adequate supply of clean water and wastewater storage capacity." The board should consider whether the 24-foot requirement is reasonable, given that there must be a toilet.

## QUESTIONS

This section includes questions that came up during discussions with the inspectors. They were more requests for information and clarification than comments on the proposed rules. I'm including them here—along with the responses—since the information may be useful to the board and the public.

### **1. Will non-barbering businesses be prohibited in mobile barber shops?**

As with barber shops, there must be a substantial partition between the mobile barber shop and another business, apart from cosmetology and shoe-shining. Cosmetology salons currently can't operate in mobile vehicles, and mobile vehicles are too small to accommodate a business that's within the mobile vehicle but still separated from the barber shop. Therefore, as a practical matter, mobile barber shops will only be able to provide barbering and shoe-shining services. If the law changes for cosmetology salons, then mobile barber shops might be able to be dually permitted.

### **2. Will cosmetologists be able to work in mobile barber shops?**

This will be a question for the Board of Cosmetic Arts Examiners to answer. Currently, mobile vehicles cannot be licensed as mobile salons, but any questions about where cosmetologists may perform services will need to be referred to that board.

### **3. How will inspectors know the locations of mobile barber shops?**

Based on the data submitted by those shops, reports can be generated for the geographical area in which an inspector will be working on a particular week, just as inspectors get reports for geographical areas for brick-and-mortar barber shops.