



Legal Division

APPLICATION PROTEST POLICY

POLICY

It is the policy of the Texas Alcoholic Beverage Commission to provide every interested person, including the staff of the Commission, government officials and citizens of Texas, a full and fair opportunity to object to the issuance of an alcoholic beverage license or permit based upon legal grounds established under the Texas Alcoholic Beverage Code or other law.

In service to this policy, the Commission establishes a process by which protests to license and permit applications may be resolved in an efficient, timely, and consistent manner, giving due regard to the legal rights and interests of the Commission, industry, other government units, and the public.

This policy will be implemented to give full effect to the agency's core values of courtesy, service, integrity, and accountability.

DEFINITIONS

Protest: A written allegation that legal grounds exist justifying the denial of an original or renewal application for a license or permit.

Renewal Time: A period of 45 days prior to the expiration of the permit of license.

Initial Inquiry: A limited investigation into a protest, made as soon as reasonably practical after receipt of the protest. An initial inquiry is conducted to determine whether there is sufficient factual support for a protest to warrant an investigation.

Investigation: A thorough and objective inquiry and report of all facts relevant to the protest and any other matters that may bear on the question of whether applications for licenses or permits should be denied.

Receiving Office: The regional compliance supervisor or his/her designee is the receiving office for all protests other than those filed by the county tax assessors, city secretaries, and other state agencies.

The director of the licensing division is the receiving office for protests filed by the county tax assessors, the Texas Comptroller of Public Accounts, and other state agencies.

ROLES AND RESPONSIBILITIES

Protestant

- completes the TABC Protest Form and is available to provide additional information
- participates in the fact finding and litigation process if the protest proceeds to hearing

Applicant

- provides information as needed to help resolve the protest
- participates in the fact finding and the litigation process if the protest proceeds to hearing

Compliance Regional Supervisor

- appoints designee to perform his/her roles and responsibilities and provides designee's name to

regional enforcement captain and the appropriate legal services division

- oversees the filing and receiving of the protest and insures that the receiving office roles and responsibilities are executed in accordance with this policy
- insures all data entry is made to allow efficient processing and accurate status reporting
- consults with the legal services division as needed

Receiving Office

- insures that the TABC Protest Form is completed
- explains to the protestant the manner in which the protest will be processed by the Commission, including the staff member to whom the protest is referred for investigation
- notifies the applicant that a protest has been received
- performs necessary data entry to place a hold on the issuance of a license or permit to the implicated location and updates application computer record as needed
- communicates to the relevant Commission staff that a protest has been filed against an application
- consults with the legal services division as needed
- refers protest to the regional captain for initial inquiry

Licensing Division Director

- oversees the filing and receiving of the protest filed by the county tax assessor, the Texas Comptroller of Public Accounts, and other state agencies, and insures that the receiving office roles and responsibilities are executed in accordance with this policy
- appoints designee to perform his/her roles and responsibilities and provides designee's name to regional compliance supervisor and the appropriate legal services division
- signs Order Rejecting or Refusing Application to county judge
- participates in (or appoints his/her designee to attend) the semiannual review of the protest policy and is responsible for reporting results to the licensing division

Enforcement Regional Captain

- appoints designee to perform his/her roles and responsibilities and provides designee's name to regional compliance supervisor and the appropriate legal services division
- assigns protest for initial inquiry and full investigation as needed
- consults with the legal services division regarding initial inquiry and full investigation results
- insures all data entry is made to allow efficient processing and accurate status reporting

Investigator

- conducts initial inquiry and full investigation and completes the TABC Protest Inquiry/Investigative form with results of inquiry
- insures all data entry is made to allow efficient processing and accurate status reporting
- reports results of initial inquiry and full investigation, if required, to the regional captain or his/her designee
- consults with the legal services division as needed

General Counsel

- appoints designee to perform his/her roles and responsibilities and provides designee's name to
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the regional captain, regional compliance supervisor, and the licensing director

- reviews dismissals and case recommendations with appropriate staff
- oversees and supervises the prosecution of contested cases
- reviews and approves policy changes recommended by the semiannual review committee

Reviewing Attorney

- provides legal counsel to divisions throughout the protest process
- interviews the protestant and applicant as needed during the legal review process
- communicates and explains the disposition of the protest in writing to the protestant and applicant
- insures all data entry is made to allow efficient processing and accurate status reporting
- initiates a contested case as warranted
- prepares Order Rejecting or Refusing Application to county judge if appropriate
- attends hearings for all contested cases initiated because of a protest filed with the Commission, and may attend other protest hearings as a mediator, facilitator, or subject matter expert
- communicates and explains TABC's role in protest hearings to judge, protestants, and applicant

Deputy General Counsel

- conducts semiannual review of protest process and is responsible for reporting review results to executive management team

Field Operations Chief

- participates in (or appoints his/her designee to attend) the semiannual review of the protest policy and is responsible for reporting results to the enforcement and compliance divisions

Director of Policy and Planning

- participates in (or appoints his/her designee to attend) the semiannual review of the protest policy and is responsible for reporting results to the appropriate staff members

Support Assistant Administrator

- participates in (or appoints his/her designee to attend) the semiannual review of the protest policy and is responsible for reporting results to the appropriate staff members

TABC Administrator

- reviews and approves policy changes recommended by the semiannual review committee

PROCESS OVERVIEW

A protest may be filed by any person or entity at any time during the application process but prior to the issuance of the permit/license. A protest filed before an application packet is received by the Commission will be held by the receiving office until an application is received.

In order to insure that a protest on an existing permit or license receives proper consideration, it must be received 45 days before the permit or license expires.

An initial inquiry is completed within ten working days from the receipt of the protest. If justified, the full investigation is then completed within sixty days of the assignment of the initial inquiry.

At the completion of an investigation, the Commission staff, acting through legal counsel, will determine if sufficient evidence exists to allow a reasonable person to conclude there are legal grounds to deny the application.

- If there are insufficient grounds for the protest, the protest will be dismissed. The Legal services
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division will inform all interested parties of the dismissal and the reasons therefore.

- If sufficient grounds for the protest exist, the Legal services division will initiate a contested case before the State Office of Administrative Hearings or County Judge, as appropriate.

Throughout the course of the protest process, all involved Commission staff members will take reasonable steps to insure that the applicant, protestant, and other staff members are informed as to the status and progress of the protest. Commission staff members will also take all reasonable steps to insure that community members, organizations, or representatives of other governmental bodies are informed of, and have access to this policy and other laws, regulations, and information relevant to the filing and prosecution of protests.

TABC will conduct semiannual reviews of all protests filed with the agency and make adjustments to the policy, process and procedures to insure that the policy and its implementation reflect the Commission's core values and effectively serve the purpose of this policy.

FILING AND RECEIVING OF A PROTEST

A citizen, government official, other entities, and Commission staff acting as protestant must file their protest in writing by completing the TABC Protest Form with the appropriate Commission office, or by submitting a letter that outlines the legal grounds for the protest.

Protests will be filed with the compliance supervisor for the region in which the applicant or license/permit holder is located.

Protests from the county tax assessor, the Texas Comptroller of Public Accounts, and other state agencies will be filed with the director of the licensing division. If filed at renewal time, the protest will be referred to the legal services division and be handled through the agency's administrative case process. If not at renewal times, the licensing director or his/her designee will place a hold on implicated location. At renewal time, if the protest is still valid, it will be referred to the legal services division and handled through the administrative case process.

Commission staff will assist protestants in completing the protest form, if needed. TABC employees receiving an oral statement of protest will direct the protestant to the appropriate form, protest information, and to the appropriate receiving office.

The receiving office's responsibilities include the following:

- Insure that the TABC Protest Form is completed.
- Provide protestant a copy of, or access to, this policy and relevant provisions of the Alcoholic Beverage Code.
- Explain the manner in which the protest will be processed by the commission, including the staff member to whom the protest is referred for investigation.
- Notify the applicant that a protest has been received.
- Perform necessary data entry to place a hold on the issuance of a license or permit to the implicated location and update application computer record as needed.
- Communicate to the relevant Commission staff that a protest has been filed against an application.

The receiving office will refer the protest to the regional captain or his/her designee for initial inquiry and, if justified, investigation.

The receiving office will make such consultations as are necessary with representatives of the Legal services divisions or other Commission personnel.

PROTEST INVESTIGATION

The regional captain or his/her designee will assign the protest to an investigator within the Enforcement section, the Compliance section, or the combination of both as deemed best by the assigning staff member. Throughout the course of the investigation, the regional captain, compliance supervisor,

designees, or the investigator shall consult with legal counsel and other members of the Commission staff as appropriate and necessary.

The assigned investigator will conduct **an initial inquiry** to determine if sufficient objective basis for the protest exists to warrant a full investigation. The initial inquiry should include, but is not limited to the following:

- Collection of all relevant documents concerning the applicant, the applicant's business, or the implicated location in the possession of the Commission or other government entities;
- An interview of the protestant and others sufficient to determine the factual basis of the protest, if any.

The investigator's activities regarding the initial inquiry, any collected documents, statements of protestants, and other witnesses will be reported and tracked in the agency-wide computer system. The initial inquiry will be completed within ten working days from the date of assignment to the investigator. If additional time is needed, a request for an extension of time must be submitted and approved by the regional captain or his/her designee.

The investigator reports the outcome of the initial inquiry to the regional captain, or his/her designee, and to the appropriate Legal services division reviewing attorney if the protest is unfounded.

If the investigator concludes that there are insufficient grounds to warrant a full investigation, and the assigned attorney agrees with the investigation's conclusion, the protest will be dismissed.

The assigned attorney will communicate the dismissal and reasons therefore to the protestant and applicant in writing, after allowing the protestant to provide additional grounds for the protest as may be reasonable and appropriate. All non-confidential portions of the initial inquiry report will be provided to the protestant and applicant.

The Legal services division will insure that all data entry is made accurately to allow efficient further processing of the application and an accurate report of the status and conclusion of the protest.

If the investigator concludes that there is sufficient factual support for the protest to justify a complete investigation, the investigator will conduct such investigation.

Investigations will be completed within sixty days of assignment of the initial inquiry, unless an extension of time is granted by the regional captain or his/her designee. Investigations will be reported and tracked in the agency's investigative reporting software.

The investigator will conduct a thorough investigation of all aspects of the protest and of any other potential grounds of protest revealed by the investigation. The investigator will fairly, completely and accurately report all aspects of the investigation.

A protest investigation report should contain, but is not limited to, the following matters:

- A copy of the protest form or other articulation of the protest grounds;
 - A copy of the Initial Inquiry Report and conclusion;
 - A statement of any other ground of protest revealed during the investigations;
 - Statements or copies of all laws and regulations implicated by the protest;
 - A narrative description of all investigative activities undertaken;
 - Copies of all relevant documents from the Commission, protestant, applicant, or other governmental entities;
 - Photographs, charts, and diagrams as needed;
 - A complete history of the applicant, the business and the location as related to alcoholic
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beverage commerce and regulation, to include the basis and resolution of any prior protests;

- Statement of all witnesses or written report of oral statements;
- Name, identifying information, and knowledge of all actual or potential witnesses.

The investigator is responsible for insuring that all necessary consultations with legal counsel or other members of the Commission staff are conducted during the investigation.

Upon completion of the protest investigation report, the report will be referred to the regional captain or his/her designee for review and approval. On approval, the report will be referred to the Legal services division assigned to that district.

The regional captain or his/her designee will insure that all data entry is made accurately to report the status of the protest to all interested agency personnel. The regional captain or his/her designee will also inform the protestant and applicant of the referral of the protest to the legal services division and provide contact information for the receiving legal services office.

LEGAL REVIEW

The general counsel or his/her designee will receive and assign the investigation to a reviewing attorney for review and action.

In reaching his/her conclusion, the reviewing attorney will engage in all necessary consultations with the protestant, the applicant, other Commission staff, and/or city and/or county personnel as he/she may deem necessary or advisable.

After review and consultation, the reviewing attorney will determine if there is sufficient evidence from which a reasonable person could conclude that legal grounds exist to deny the application.

If insufficient grounds are found to exist, the reviewing attorney will communicate this conclusion and the reasons therefore, to the protestant in writing and, as appropriate, orally. The reviewing attorney will provide the protestant with opportunity to provide additional support for the protest as reasonable and appropriate.

If, after consultation with the protestant, there are insufficient grounds to initiate a contested administrative case, the protest will be dismissed. The reviewing attorney will insure that all data entry is made necessary to record the resolution of the protest and allow the efficient processing of the application. The reviewing attorney will communicate the resolution of the protest and the reasons therefore to the protestant and applicant in writing.

If there are sufficient grounds on which to initiate a contested administrative case, the reviewing attorney will further determine whether the Commission will remain neutral in the case or act as an advocate for the denial of the application, giving due consideration to the recommendations of the local and state government officials. This determination will be made by reference to the following criteria:

- whether the investigation reveals mandatory grounds for denial;
- whether the investigation reveals a continuing disregard for legal standards by the applicant or those associated with the management of the applicant's alcoholic beverage business;
- whether there are reasonable grounds to conclude that granting the application will present a distinct and ongoing threat of the public health, safety, and welfare.

The attorney's conclusion in this regard and the reasons therefore, will be communicated in writing to the protestant and applicant.

When the reviewing attorney determines that sufficient grounds exist for the initiation of a contested administrative case, the attorney will take all necessary steps to file and docket such case in accordance with the policies and standards of the legal service division.

If initiation of a contested case requires rejection of the application and referral to the County Judge for hearing, the attorney will prepare the order for the director of licensing's signature. The director of

licensing will distribute the order as necessary and appropriate.

When the protest case is filed with the administrative law judge, the reviewing attorney will communicate to the judge, protestant, and applicant in writing explaining the role the Commission will play in the ensuing litigation: facilitator and information resource for the judge and parties or advocate in opposition to the application.

In all contested cases initiated because of a protest filed with the Commission, an attorney representing the Commission will attend the hearing and all proceedings related to the case unless excused from attendance by the administrative law judge or the general counsel.

PROTEST PROCESS REVIEW

A protest process review will be conducted on a semiannual basis and reported to the executive management team by March 15 and September 15, for the following purposes:

- To review and analyze selected protests processed by the agency in the preceding quarter in order to determine the effectiveness of the policy and its implementation throughout the state.
- To analyze the number, type, and outcomes of the receiving procedure, the protest investigation, and legal review.

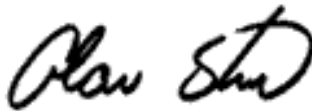
The deputy general counsel will chair the committee. The committee membership will consist of representatives from the compliance, enforcement, executive, legal, licensing, and policy and planning divisions. If the committee recommends changes to the established policy, the director of policy and planning will update the policy document and submit the document for approval to the agency administrator and the general counsel after consulting with the executive management team.

The final findings and result of the protest process review will be documented in a report and published to the executive management team. The divisional representatives will be responsible for distributing the report in their divisions and implementing any approved changes.

FORM

The attached form is to be used when filing a protest. Any change to the form or use of other communications (letters to the protestant, applicant, and local officials) must be approved by the Legal services division. [TABC Protest Form](#)

Approved By:



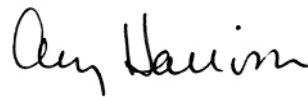
Administrator

Approved Date:

12-15-08



General Counsel



Director of Licensing

Texas Alcoholic Beverage Commission Protest Form

Protest Guidelines:

- Use this form to object to TABC issuing or renewing a permit to sell alcoholic beverages.
- **Complete all required sections** on the Protest Form and submit for filing with your closest TABC Office.
- Attach any supporting documentation if available.
- For more information about Protests or to locate the nearest TABC Office visit:
<http://www.tabc.state.tx.us/contact/default.htm>

If you file a protest, you cannot remain anonymous. The Commission will only disclose your identity and contact information as required by law.

Required: Protestant Contact Information:

Protest is being filed by: Individual Group

Date: _____

Individual Name or Group Name: _____

Name of Point of Contact for Group: _____

Mailing Address: _____

City: _____ State: _____ Zip Code: _____

Phone: Day: () - Evening: () - Other: () -

Email Address: _____

Required: Applicant / Current Business:

Name of Business: _____

Business Address: _____

City: _____ State: _____ Zip Code: _____

Phone: () - Other: () -

Name of Business Owner(s), if known: _____

Required: Grounds for Protest: (Select all that apply)

<input type="checkbox"/> Traffic	<input type="checkbox"/> City/County Ordinance – type _____
<input type="checkbox"/> Noise – type _____	<input type="checkbox"/> False Ownership _____
<input type="checkbox"/> Criminal Activity _____	<input type="checkbox"/> Illegal sales of alcohol – type _____
<input type="checkbox"/> Other - Type _____	<input type="checkbox"/> Nuisance _____

Explain each selection (above) for legal ground for protest. Be as specific as possible and attach additional page if necessary.

Have you attempted to resolve the problem with the business owner? If yes, please explain: Yes No
