

**TABC DOCKET NO. 580083**

CHANGING TIMES MANAGEMENT LLC	§	BEFORE THE TEXAS
D/B/A CHANGING TIMES	§	
PERMIT(S) NO. MB666159, PE & LB	§	ALCOHOLIC
	§	
JEFFERSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-09-3321)	§	BEVERAGE COMMISSION

**ORDER ADOPTING AMENDED PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** on this 19th day of August 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on May 1, 2009 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on July 7, 2009. The Proposal for Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

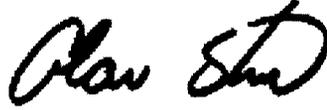
**IT IS THEREFORE ORDERED** by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's permits and/or licenses be **CANCELED FOR CAUSE**.

This Order will become final and enforceable on September 14, 2009 unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

**SIGNED** on August 19, 2009.

On Behalf of the Administrator,



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

Honorable Judge Rex A. Shaver  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 N. Loop West, Suite 111  
Houston, Texas 77018  
**VIA FACSIMILE: (713) 812-1001**

Changing Times Management, LLC  
d/b/a Changing Times  
**RESPONDENT**  
602 N. 23rd St.  
Beaumont, Texas 77706  
**VIA U.S. FIRST CLASS MAIL**

Shelia A. Lindsey  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Enforcement Division

SAL/aa

**SOAH DOCKET NO. 458-09-3321**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>VS.</b>	§	
	§	<b>OF</b>
<b>CHANGING TIMES MANAGEMENT LLC</b>	§	
<b>D/B/A CHANGING TIMES</b>	§	
<b>PERMIT/LICENSE NO.</b>	§	
<b>MB 666159, PE &amp; LB</b>	§	
<b>JEFFERSON COUNTY, TEXAS</b>	§	
<b>Respondent</b>	§	
	§	
<b>JEFFERSON COUNTY, TEXAS</b>	§	
<b>(TABC CASE NO. 580083)</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**AMENDED PROPOSAL FOR DECISION**

This Amended Proposal For Decision is issued to correct an error contained in the original Proposal For Decision. The staff of the Commission (Staff) was represented by its counsel, Shelia Lindsey and not by Sandra Patton. This is the only correction contained in this Amended Proposal For Decision.

The staff of the Texas Alcoholic Beverage Commission (TABC or Commission) brought this enforcement action against Changing Times Management, LLC d/b/a Changing Times (Respondent) for an offense committed in violation of TEX. ALCO. BEV. CODE ANN. (Code) § 28.06 (c) & (d).

The alleged violation occurred on or about July 28, 2008 when Respondent, its agent, servant, or employee knowingly possessed or permitted possession of alcoholic beverages not covered by invoice.

This Proposal for Decision finds the allegation by TABC to be proven and adopts the recommendation of the staff that the license be cancelled.

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### I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this matter convened on May 1, 2009, at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas. The staff of the Commission (Staff) was represented by its counsel, Shelia Lindsey. Respondent did not appear. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the ALJ has incorporated those allegations into the findings of fact without further discussion.

The Commission and SOAH have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

### II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS

TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2) provides that, Petitioner may suspend or cancel a permit for violation of a provision of the Code or of Petitioner's rules.

Pursuant to TEX. ALCO. BEV. CODE ANN. § 28.06 (c) & (d), no holder of a mixed beverage permit, nor officer, agent or employee of a holder may knowingly possess or permit to be possessed on the licensed premises any alcoholic beverage not covered by an invoice from the supplier from whom the alcoholic beverage was purchased. Petitioner shall cancel the permit of any permittee found by the commission or administrator, after notice and hearing, to have violated or to have been convicted of violating Subsection (c) of this section.

Staff introduced three exhibits into evidence:

Exhibit 1 is the affidavit of Amy Harrison, TABC Licensing Department Director, that Mixed Beverage Permit, MB-666159 which includes the Beverage Cartage Permit and Mixed

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Beverage Late Hours Permit, was issued to Changing Times Management LLC, doing business as Changing Times, 2590 N. 11<sup>th</sup> Street, Beaumont, Jefferson County, Texas, by the Commission. The record states that the mailing address of the permit holder is 602 N. 23<sup>rd</sup> St., Beaumont, Texas 77706-4942.

Exhibit 2 is a copy of the Notice of Hearing mailed to Respondent at 602 N. 23<sup>rd</sup> St., Beaumont, Texas 77706-4942 on March 30, 2009 by certified mail return receipt requested, article number 7006 0810 0000 2143 5869 advising that the hearing was set for May 1, 2009 at 11:00 a.m. at the offices of the State Office of Administrative Hearings (SOAH) in Houston, Harris County, Texas.

Exhibit 3 is the Postal Service return receipt bearing US Postal Service certified mail article number 7006 0810 0000 2143 5869 and attached copy of the envelope addressed to Respondent at 602 N. 23<sup>rd</sup> St., Beaumont, Texas 77706-4942 and marked "Return To Sender, Unclaimed, Unable To Forward."

### III. DISCUSSION

In light of the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TAC § 155.501 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§ 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 155.501, the allegation presented in the Notice of Hearing is deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. As admitted, the allegation supports the conclusion that Respondent violated the TEX. ALCO. BEV. CODE as mentioned in the notice and that the penalty is appropriate.

### IV. FINDINGS OF FACT

1. Respondent holds a Mixed Beverage Permit MB-666159 which includes the Beverage Cartage Permit and Mixed Beverage Late Hours Permit, issued to Changing Times

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Management LLC, doing business as Changing Times, 2590 N. 11<sup>th</sup> Street, Beaumont, Jefferson County, by the Commission. The record states that the mailing address of the permit holder is 602 N. 23<sup>rd</sup> St., Beaumont, Texas 77706-4942.

2. On or about July 28, 2008, Respondent or Respondent's agent, servant, or employee, knowingly possessed or permitted possession of alcoholic beverages not covered by invoice.
3. The Notice of Hearing notified Respondent of the date, time, and place of the hearing; of the statutes and rules involved; the legal authorities under which the hearing is to be held, and of the matters asserted.
4. On May 1, 2009, a hearing convened before ALJ Rex A. Shaver at 2020 North Loop West, Suite 111, Houston, Texas 77018.
5. The Notice of Hearing contained language in 12-point type informing Respondent that if it failed to appear at the hearing, the factual allegations against it would be deemed admitted as true, and the relief sought in the notice of hearing might be granted by default.
6. Petitioner appeared and was represented by Shelia Lindsey, Staff Attorney. Respondent did not appear.

#### V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Petitioner) has jurisdiction over this matter pursuant to Subchapter B of Chapter 5 and § 61.71 of the TEX. ALCO. BEV. CODE (the Code).
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Service of proper and timely notice of the hearing was effected upon Respondent pursuant to the Code § 11.63; TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052 and 2001.054(c); and 1 TAC § 155.501.
4. Based on Findings of Fact Nos. 1 through 6, and Conclusion of Law Nos. 1 through 3, Staff is entitled to a default judgment against Respondent pursuant to 1 TAC § 155.501.
5. The permit and certificate should be cancelled.

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Signed on July 7, 2009.



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**REX A. SHAVER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**