COMMISSION MEETING

February 23, 2010

Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

José Cuevas, Jr., Presiding Officer
Midland

Steven M. Weinberg, MD, JD, Member
Colleyville

Melinda Fredricks, Member
Conroe
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agenda--TABC Commission Meeting – February 23, 2010</td>
<td>1</td>
</tr>
<tr>
<td>Minutes--TABC Commission Meeting – February 23, 2010</td>
<td>2</td>
</tr>
<tr>
<td>Attachment 1: Approval of Petition by the City of Vernon for Order</td>
<td></td>
</tr>
<tr>
<td>Permitting Adoption of Local Ordinance Banning Open</td>
<td></td>
</tr>
<tr>
<td>Containers in Central Business District, Under §109.35,</td>
<td></td>
</tr>
<tr>
<td>Texas Alcoholic Beverage Code</td>
<td></td>
</tr>
<tr>
<td>Attachment 2: Amnesty Policy Update</td>
<td></td>
</tr>
<tr>
<td>Attachment 3: Seller Server Briefing</td>
<td></td>
</tr>
<tr>
<td>Attachment 4: Budget Reduction Plan for 2010-2011 Biennium Briefing</td>
<td></td>
</tr>
<tr>
<td>Attachment 5: Minor Sting and After Hours Compliance Rate Update</td>
<td></td>
</tr>
<tr>
<td>Attachment 6: Cash/Credit Law Update</td>
<td></td>
</tr>
<tr>
<td>Attachment 7: Statement – Ms. Donna Mott, Owner</td>
<td></td>
</tr>
<tr>
<td>Texas Alcohol Beverage Seller School (TABSS)</td>
<td></td>
</tr>
<tr>
<td>Certification of Minutes</td>
<td>15</td>
</tr>
</tbody>
</table>
AGENDA

REGULAR COMMISSION MEETING

9:30 a.m. – February 23, 2010

5806 Mesa Drive
Austin, Texas 78731
**AGENDA**

1. **Call to Order**
   - José Cuevas, Jr.

2. **Approval of Commission Meeting Minutes of November 24, 2009**
   - José Cuevas, Jr.

3. **Introduction of Newly Hired Staff**
   - Alan Steen
   - Joel Moreno
   - Andy Pena
   - Bobby Gideon
   - Loretta Doty

4. **Approval of Petition by the City of Vernon for Order Permitting Adoption of Local Ordinance Banning Open Containers in Central Business District, Under §109.35, Texas Alcoholic Beverage Code**
   - Joan Bates

5. **Seller Server Training Plan Briefing**
   - Sherry Cook

6. **Budget Reduction Plan for 2010-2011 Biennium Briefing**
   - Shelby Eskew

7. **Policy Training Update**
   - Joel Moreno

8. **Minor Sting and After Hours Compliance Rate Update**
   - Joel Moreno

9. **Cash/Credit Law Update**
   - Dexter Jones

10. **Amnesty Policy Update**
    - Carolyn Beck

11. **Public Comment**
    - José Cuevas, Jr.

12. **Executive Session to Consult with Legal Counsel Regarding Pending and Anticipated Litigation Against the Agency and to Discuss the Duties, Responsibilities, and Evaluation of the Administrator (Govt. Code §551.071, §551.074)**
    - José Cuevas, Jr.

13. **Next Meeting Dates:**
    - **Tuesday, April 27, 2010**
    - **Tuesday, May 25, 2010**
    - José Cuevas, Jr.

14. **Adjourn**
    - José Cuevas, Jr.

**Note:**
- Items may not necessarily be considered in the order they appear on the agenda.
- Executive session for advice of Counsel (pursuant to §551.071 of the Government Code) may be called regarding any agenda item.
- Action may be taken on any agenda item.

**NOTICE OF ASSISTANCE AT PUBLIC MEETINGS**

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Renee Johnston at (512) 206-3217 (voice) (512) 206-3203 (fax), or (512) 206-3270 (TDD), at least three (3) days prior to the meeting so that appropriate arrangements can be made.
MINUTES

REGULAR COMMISSION MEETING

9:30 a.m. – February 23, 2010

5806 Mesa Drive
Austin, Texas 78731
COMMISSION MEETING MINUTES

February 23, 2010

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, February 23, 2010, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING
OFFICER: José Cuevas, Jr.
COMMISSIONERS PRESENT: Melinda Fredricks, Steven M. Weinberg, MD, JD

STAFF PRESENT: Alan Steen, Administrator

Joan Bates, Deputy General Counsel, Legal Services
Carolyn Beck, Director of Communications and Governmental Relations
Kimberly Briggs, Administrative Assistant, Compliance
Mindy Carroll, Assistant Director, Education and Prevention
Sherry Cook, Assistant Administrator
Darryl Darnell, Inspector
Lieutenant James Debrow, Training Specialist, Training Division
Loretta Doty, Director, Human Resources Division
Shelby Eskew, Budget Analyst, Business Services Division
Diana Gonzalez, Director of Tax and Education Division
Kathy Gersbach, Executive Assistant, Executive
Bobby Gideon, Director of Training, Training Division
Thomas Graham, Marketing Practices
Amy Harrison, Director, Licensing Division
Emily Helm, General Counsel, Legal Division
Sammy Henson, Training Specialist, Training Division
Tanya Jimenez, Administrative Assistant, Executive
Renee Johnston, Executive Assistant, Executive
Jo Ann Joseph, Assistant Director, Licensing Division
Dexter Jones, Assistant Chief of Field Operations
Lieutenant Roland Luna, Investigator, Office of Professional Responsibility
Joel Moreno, Chief of Field Operations
Earl Pearson, Chief of Staff
Andy Pena, Director, Office of Professional Responsibility
Elithia Rangel, Human Resources Specialist
Gloria Darden Reed, Executive Assistant, Executive
Lieutenant Albert Rodriguez, Investigator, Office of Professional Responsibility
Todd Talley, Quality Control Supervisor
Rod Venner, Assistant Chief of Enforcement, Enforcement Division
Jay Webster, Director, Information Resources Division

GUESTS PRESENT:

Tom Conrad, Owner, Dram Shop School
Ed Correa, Trainer, Alamo Training
Rick Donley, President, The Beer Alliance of Texas
Doug DuBois, Director of Government Relations, Texas Petroleum Marketers and Convenience Store Association (TPCA)
Glen Garey, General Counsel, Texas Restaurant Association
Jay Howard, Hillco Partners
Lance Lively, Executive Director, TPSA
Tom Marino, Owner, Alamo Training
Fred Marosko, Executive Director, Texas Package Stores Association
Mignon McGarry, Consultant, Republic Beverage
Gloria Moore, Owner, A+ Alcohol Certification
Donna J Mott, Owner, TABSS
Scott Smith, Director of Training, Texas Restaurant Association
Julia Starkey
Scott Starkey
Ralph Townes, Senior Vice President, Glazer’s LBD
Randy Yarbrough, Wholesale Beer Distributors of Texas

CALL TO ORDER

The meeting of the Texas Alcoholic Beverage Commission was called to order at 9:45 a.m. by Presiding Officer José Cuevas.
APPROVAL OF COMMISSION MEETING MINUTES OF NOVEMBER 24, 2009

Presiding Officer José Cuevas called for approval of the Commission meeting minutes of November 24, 2009. Commissioner Steven Weinberg so moved to approve the minutes as written, and Commissioner Melinda Fredricks seconded. The motion carried.

INTRODUCTION OF NEWLY HIRED STAFF

Presiding Officer José Cuevas called for the introduction of the newly hired staff at the Agency. Administrator Alan Steen was first on the agenda to introduce the newly selected General Counsel Emily Helm. Ms. Helm replaces General Counsel Lou Bright who retired the last day of January 2010. Administrator Steen briefed the Commissioners on General Counsel Helm’s impressive work experience prior to her employment with the Agency.

On behalf of the Commission, Presiding Officer Cuevas welcomed Ms. Helm as the agency’s new general counsel and wished her successful tenure with the Commission.

Presiding Officer Cuevas stated that the Commission has been charged with the responsibility to oversee the operations of the Agency and, as in the past, the Commission and the Agency work together as a team for the betterment of the Agency and the People of the State of Texas.

Commissioner Weinberg congratulated Ms. Helm for being selected General Counsel.

Presiding Officer Cuevas thanked Commissioner Weinberg for travelling to Austin Headquarters and participating on the interview panel.

Chief Joel Moreno introduced Todd Talley, Quality Control Supervisor, and Administrative Assistant Kimberly Briggs. Mr. Talley will oversee and conduct quality assurance reviews of compliance functions throughout the state to ensure that all aspects of performance are consistent with policies, procedures, and philosophies of the Agency. Ms. Briggs has been hired to perform administrative assistant duties. Both of the new hires will report to Assistant Chief Dexter Jones in the Compliance Division.

Captain Andy Pena has hired two new investigators, Lieutenant Albert Rodriguez and Lieutenant Roland Luna. Captain Pena stated that their law enforcement background and investigative skills will be valuable assets to the Office of Professional Responsibility.
Training Director Bobby Gideon introduced three new training specialists; Lieutenant James Debrow, Mr. Sammy Henson and Ms. Esther Scott. Their vast training experience and knowledge will assist in development and support of the training needs throughout the agency. Ms. Scott was unable to attend the introduction of new hires as she was conducting in-service training for Region 5 in San Antonio, Texas.

Director Loretta Doty introduced Ms. Elithia Rangel as a newly hired employee in Human Resources. Ms. Rangel holds a certification as a Professional in Human Resources (PHR) and brings a wealth of knowledge and experience as the newly hired Human Resources Specialist.

Administrator Steen commented that the Agency strives to hire the most qualified applicants. He noted that posting, recruiting, interviewing, and the retention of high caliber employees is not an easy task. He further commented that the task has been easier to accomplish with interview panels with members such as Commissioner Weinberg, Director Doty, and Chief Moreno.

Presiding Officer Cuevas applauded the Agency’s hiring practices under the leadership of Administrator Steen. He was impressed with the newly hired employees’ talents, education, experience, professionalism and skill levels. He commended TABC’s commitment to maintain a high standard to recruit and employ the best applicant.

Presiding Officer Cuevas envisions the Texas Alcoholic Beverage Commission to be one of the top state agencies in the liquor industry and will become a model for other agencies throughout the country.

**APPROVAL OF PETITION BY THE CITY OF VERNON FOR ORDER PERMITTING ADOPTION OF LOCAL ORDINANCE BANNING OPEN CONTAINERS IN CENTRAL BUSINESS DISTRICT, UNDER §109.35, TEXAS ALCOHOLIC BEVERAGE CODE**

Presiding Officer José Cuevas called upon Deputy Counsel Joan Bates for the presentation for the Approval of a Petition by the City of Vernon. The petition is for an Order Permitting Adoption of a Local Ordinance, banning open containers in their Central Business District, under §109.35, Texas Alcoholic Beverage Code.

Deputy Counsel Joan Bates polled the audience for a representative from the City of Vernon in attendance at the meeting. There being none, she proceeded with her PowerPoint presentation. (Attachment 1)
Deputy Counsel Bates briefed the Commission on the details of the petition:

**Alcoholic Beverage Code §109.35, Allows the governing body of a city to petition the Commission to prohibit:**

- The possession of an open container;
- The public consumption of alcoholic beverages;
- In the Central Business District of the city.

Deputy Counsel Bates defined “Central Business District” and “Open Container” for the Commission according to the code:

**Central Business District: 109.35 (d)**

A compact and contiguous geographic area of a municipality in which at least 90% of the land issued or zoned for commercial purposes and that is the area that has historically been the primary location where business is transacted.

**Open Container: 109.35 (e)**

An open container is a container that is no longer sealed.

This definition is to distinguish the difference between the transportation penal code violation for having an open container and from a criminal violation in having an open container.

Deputy Counsel Bates stated that the city’s requirements in determining whether or not the city qualifies in prohibiting consumption in the central business district have been met. She stated the city is petitioning the Commission for an order and the Central Business District has presented a map, plat, or diagram showing the prohibition.

If the diagram properly identifies the Central Business District, the Commission is being asked to approve and issue the Order without further consideration. Deputy Counsel Bates included a list of items that the Order may not prohibit, as it pertains to the possession of an open container or consumption of alcoholic beverage in:

- Motor Vehicle;
- Residential structures;
- Licensed premises locations;
- Buildings not owned by the city;
- Located in the Central Business District.

Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to approve the petition. Commissioner Fredricks seconded for discussion. The motion was open for further discussion.
After a brief discussion of the requested Order, Deputy Counsel Bates stated that if the Commission finds that the documentation submitted by the City of Vernon is in order, the Commission can approve the petition. If the City of Vernon does not adopt the Order, it will not have any authority to enforce it.

Deputy Counsel Bates is proposing to list the cities that have adopted the local ordinance banning open containers on the TABC Public website. Most of the cities on the banned list have posted signs in areas that read, “Alcoholic Beverages Prohibited in this Area.”

**Presiding Officer Cuevas called for a motion to approve. All were in favor and the motion carried.**

**AMNESTY POLICY UPDATE**

Presiding Officer Cuevas called upon Director Carolyn Beck for an update on the Amnesty Policy. Director Beck introduced the parents of Carson Starkey, Scott and Julia Starkey to the Commission before giving the update. Presiding Officer Cuevas asked Mr. & Mrs. Starkey to approach the podium and welcomed them to the meeting. Director Beck’s report was supported by a PowerPoint presentation. (Attachment 2)

Director Beck stated that on December 2, 2009, TABC adopted a Medical/Good Samaritan Amnesty Policy. On December 2, 2008, Carson Starkey died of alcohol poisoning following a fraternity hazing ritual at California Polytechnic State University in San Luis Obispo. Carson was 18 years old, finishing his first semester of college. She stated that when Carson lost consciousness, his fraternity brothers did not seek assistance from the medical professionals for fear of getting in trouble. Without medical assistance, Carson died.

Director Beck cited “TABC agents will not cite minors for illegal possession or consumption of alcoholic beverages if an individual seeks assistance because of a medical emergency or because a person has been a victim of sexual assault or other violent crime.” She posed a question asking “why publicize a medical amnesty policy that other law enforcement agencies don’t have to follow?” Director Beck outlined the following points to support the answer for that question:

- To encourage discussion concerning the dangers of an alcohol overdose;
- To encourage discussion concerning the signs of alcohol poisoning;
- To encourage discussion concerning the consequences of delaying a call to 911;
- To encourage discussion concerning the policies of other law enforcement agencies.
Director Beck reported that several cities, organizations, college/universities, and newspapers are in support of this policy.

The Lubbock Avalanche-Journal wrote:

“We support a new amnesty policy for minors who call for help if a friend who’s been drinking is in danger. It offers a common-sense approach to dealing with potentially life-threatening situations.” (January 20, 2010)

The San Antonio Express News wrote:

“The TABC made the right decision...Texas’ new Medical/Good Samaritan Amnesty policy could help save lives.” (December 14, 2009)

In 2004, Director Beck noted that another college student, Lynn Gordon “Gordie” Bailey died just three weeks after arriving on campus of alcohol poisoning. The “Gordie” Foundation, named in his honor, released information from a study conducted at Cornell University. It revealed an increase in the number of alcohol related calls for assistance with the establishment of the medical amnesty policy.

Director Beck emphasized the need to become educated on the signs of alcohol poisoning and the dangers involved in hazing on college campuses.

Know the signs:

- Person cannot be roused
- Slow breathing
- No response to pinching skin
- Vomiting while sleeping
- Irregular breathing
- Low body temperature
- Bluish skin color, paleness
- Seizures

In concluding her presentation, Director Beck noted that we have a responsibility to know the danger signals of alcohol poisoning. Do not wait for all symptoms to be present. If you delay in calling for medical assistance, that person may die and never leave an unconscious person alone, always stay with them.

Mr. & Mrs. Starkey thanked the Commission, Administrator Steen and Director Beck for their support in developing an educational campaign on alcohol poisoning.

Commissioner Weinberg proposed the development of an educational brochure on the amnesty policy bearing the name, “The Carson Starkey Amnesty Policy.” This suggestion was favorably received by Mr. and Mrs. Starkey.

Presiding Officer Cuevas and Commissioners Fredricks and Weinberg posed for a photograph with Mr. and Mrs. Starkey. The Commission thanked them for being present at the meeting and restated TABC’s support to heighten the awareness of alcohol poisoning through their son’s story.
SELLER SERVER BRIEFING

Presiding Officer Cuevas called upon Assistant Administrator Sherry Cook, for the next presentation. Assistant Administrator Cook’s report included a Power Point detailing the time-line for the seller server program. (Attachment 3)

Assistant Administrator Cook reported that she and key personnel within the Education and Prevention Department are in the process of redefining the rules and regulations for the Seller Server Training program. The need to review the rules resulted from an internal audit, in addition to a periodic rule review the Commission undergoes. As part of the process, the curriculum will also be updated to ensure standardization and quality within the program.

Assistant Administrator Cook stated that an effort had been made to have the rules ready for publication as an agenda item for the February commission meeting. However, due to concerns received from our stakeholders, a decision was made to delay publication while we worked together to reach resolution to various concerns.

Assistant Administrator Cook and the Education and Prevention personnel have established the following time-line for the seller/server project:

- February 22 Meeting Notification (save the date notification)
- February 26 Distribute rules to our stakeholders
- March 5 Stakeholder review (Draft rules)
- April 27 Approval to publish for public comment
- May 14 Published for public comment (30 day period)
- July 27 Rule adoption
- July/August Training: Auditors & Schools

Assistant Administrator Cook committed to monitor the established timelines very closely and report.

Commissioner Fredricks commented that she is surprised that in years past there had not been structured standards within seller server training. Commissioner Fredricks went on to ask if the seller server training standards are known publicly, and if they are why wouldn’t they be include in the training. She can see why the Commission needs to have and regulate standards, necessary in bringing the highest possible quality to the program, which in turn furthers the Commissions public safety efforts. Commissioner Fredricks acknowledged that the Agency is sensitive to our stakeholders and we are certainly not trying to put them out of business by the adoption of the new rules. However, the Agency has a responsibility through its Seller Server Training program to have a curriculum that is current and compliments the alcohol industry and the people we serve.

Commissioner Weinberg asked Assistant Administrator Cook when the Seller Server Training changes started. She replied that this process had been on-going for
several months. She explained that the changes were slated to be brought before the commission in February, however due to public comments made during the November Commission meeting, the process was halted to allow more time to gather stakeholder input.

Assistant Administrator Cook stated that she along with the Education and Prevention staff and the Legal Division have been working diligently towards a draft set of the rules to present at a stakeholder meeting scheduled for March 5th.

Commissioner Weinberg asked if the concerns brought forward by the training schools have been addressed. Assistant Administrator Cook answered affirmatively. She believes there is adequate time to resolve outstanding concerns, between meeting with the stakeholders and the final adoption of the rules in July.

**BUDGET REDUCTION PLAN FOR 2010-2011 BIENNIAL BRIEFING**

Presiding Officer Cuevas asked for Shelby Eskew, Budget Analyst in Business Services Division, to give her report. Ms. Eskew’s PowerPoint presentation supports her report. (Attachment 4)

Ms. Eskew briefed the Commission about the receipt of a letter sent by the Governor’s Office requesting each state agency to submit a plan to identify savings in priority increments, totaling five percent of the general revenue, and general revenue dedicated appropriations for the 2010-11 biennium. Ms. Eskew stated that TABC’s reduction amounts to $4,459,503 for the biennium and would result in eliminating several projects that were funded in the last legislative session. The projects to be eliminated if the reduction is implemented would be Seller/Server Training, Excise Tax, Staff Augmentation and Case Management. In addition, the Agency has frozen several headquarters positions as well as a number of CPO positions along with the operational costs associated with these positions.

Presiding Officer Cuevas asked Chief Moreno about the vehicles the Commission is currently purchasing and if we were considering potential cost savings. Administrator Steen responded by saying the Commission would be purchasing vehicles that were smaller in size, less expensive and more fuel efficient.

Commissioner Weinberg asked Ms. Eskew to explain why the Seller Server Training program previously reported would be eliminated. Assistant Administrator Cook clarified by stating her report outlined the changes being made to the Seller/Server program as it pertains to the standards, curriculum and rules. The budget reduction being discussed by Ms. Eskew has to do with automation.

Commissioner Weinberg complimented Ms. Eskew for a good report. He feels that the Commission is performing a good job in fiscal conservatism for the people and the State of Texas.
POLICY TRAINING UPDATE

Presiding Officer Cuevas called upon Chief Joel Moreno of Field Operations for the next agenda item.

Chief Moreno gave a brief policy training update. The Enforcement Manual was completed in October 2009. The goal after the completion of the manual was to instruct training supervisors on the contents of the manual and the supervisors would instruct every peace officer in the agency. He believes the newly hired training specialists will assist in enhancing the training component for the law enforcement personnel.

Chief Moreno stated that the purpose of the policy is to continue to emphasize the agency’s mission, vision, and Guiding Principles and the four cornerstones. He said accountability at every level has been emphasized regardless of their enforcement rank.

Administrator Steen stated that the gap in the miscommunication of the “hearsay policy” has been halted with the completion of the policy manual and being available to every peace officer. Every peace officer has the manual readily available for his reference and the training component is being reinforced. Administrator Steen believes that Chief Earl Pearson, Director Bobby Gideon, Captains, Sergeants, Lieutenants, and other command staff are capable and committed to promoting and emphasizing the importance of the agency’s training initiatives.

MINOR STING AND AFTER HOURS COMPLIANCE RATE UPDATE

Chief Joel Moreno spoke on the details contained in the PowerPoint presentation of the Minor Sting and After Hours Compliance Rate update. (Attachment 5)

Chief Moreno attributed the rise in compliance in the area of minor stings to partnering with the retailers through education.

Commissioner Weinberg commented that it seems that with the change in the philosophy of the Agency, the success rate for the enforcement division appears to be changing in the right direction. Chief Moreno answered affirmatively.

Chief Moreno also stated that improvement has occurred due to changes in the work hours for the enforcement personnel. He felt if there was not a complaint that required investigating, there was no need to waste time waiting for something to happen. His strategy will focus on investigating nuisance areas where complaints had been filed and bring them into compliance.
**CASH/CREDIT LAW UPDATE**

Presiding Officer Cuevas called upon Thomas Graham in Marketing Practices to come forth for the Cash/Credit Law Update. (Attachment 6)

Mr. Graham’s presentation was supported with information regarding Enforcement and Compliance key outcome measures. He outlined the credit law changes:

- House Bill 2560 --- May 2009
- New Rule --- July 2009
- Automation --- September 2009
- Decentralization --- December 2009
- New Penalties --- February 2010

With the credit law changes, Mr. Graham stated he has noticed significant improvement from the retailers who were frequently on the delinquent list.

Commissioner Weinberg asked for a representative from the industry to come forth and address the Commission on whether the changes have been an improvement or a hindrance to them.

Mr. Fred Marosko, Executive Director, Texas Package Stores Association, stated that progress has been made for the industry and the Agency. He said that the process has not been without its difficulties for both sides; however, it has been worked out. The dialogue with Administrator Steen and his staff has been good. The Agency has brought issues to the table for the industry and the industry had issues as well. Some of the issues have been resolved and others are in the process of being resolved. Mr. Marosko says the industry understands the reasons for the changes being made, though not totally in agreement. He complimented Administrator Steen and his staff and is looking forward to more productive progress.

Mr. Graham outlined the new credit law penalty chart that will initiate administrative processes:

- Allows 6-month adjustment period
- Administrative sanction begins February 1st
- Permittees receive six warnings
- On 7th warning and subsequent violations, suspension or civil penalty occur.

Included in Mr. Graham’s report was a listing of sanctions with a monetary schedule of charges per day that will be enforced.

Presiding Officer Cuevas quizzed Mr. Graham if there had been a decrease of offenders on the delinquent list with the implementation of the new credit/cash law. Mr. Graham answered he did not think it would have made the difference that it has. He stated that when the notices were mailed out with the sanctions and penalties that
would go into effect starting on February 1st, there was an immediate change in how the retailers started to conduct their businesses. The notable change can be seen within habitual offenders who are now paying their bills on time.

Presiding Officer Cuevas asked if there have been any small businesses affected by the change. Mr. Graham responded that he had not noticed any change for the small business owner.

Assistant Chief Dexter Jones stated that the decrease of offenders on the delinquent list can be attributed to them adjusting to the new policy.

Commissioner Weinberg commented that a lot of good has been done by Assistant Chief Jones and his staff in creating a dialogue with Mr. Marosko and other industry members to formulate a mutual policy. He hopes the Agency has created a policy that helps the industry collect from those delinquent retailers who don’t pay their bills.

**PUBLIC COMMENT**

Presiding Officer Cuevas opened the floor for public comments. Presiding Officer Cuevas offered for the Commission’s record and minutes a typed statement from Ms. Donna Mott, Owner, Texas Alcohol Beverage Seller School (TABSS).

Mr. Rick Donley, President, The Beer Alliance of Texas, came forward to address the Commission. Mr. Donley thanked the Commission for their vision, technology, and support in the industry issues. He also thanked Administrator Steen and Thomas Graham for their concerted effort to ease an issue with the statutory requirement that beer distributors must retain the hard copies of sales invoices. Mr. Donley and Administrator Steen agree that there is a cost savings and efficient way of conducting business in the industry and this information can be provided to the Commission using the electronic storage of invoices.

Presiding Officer Cuevas stated that the industry is an essential part for the State of Texas. He agreed that if the electronic processing of the invoices is more efficient and less costly, the Commission is eager to accommodate the industry.

**EXECUTIVE SESSION**

The regular open session of the Texas Alcoholic Beverage Commission was recessed at 11:43 a.m., February 23, 2010, and an executive session was held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, Sections §551.071 and §551.074.
The Texas Alcoholic Beverage Commission concluded its executive session at 1:47 p.m., February 23, 2010, and resumed the open regular session. No final action, decision or vote was made in executive session.

NEXT MEETING

Presiding Officer Cuevas announced the next meeting dates are scheduled for Tuesday, April 27, 2010 and Tuesday, May 25, 2010. There will not be a meeting in March.

ADJOURNMENT

Presiding Officer Cuevas called for a motion to adjourn. Commissioner Weinberg so moved and Commissioner Fredricks seconded. The motion carried, and Presiding Officer Cuevas announced that the meeting was adjourned.
Attachment 1

Approval Of Petition By The City of Vernon For Order Permitting Adoption Of Local Ordinance Banning Open Containers In Central Business District, Under §109.35, Texas Alcoholic Beverage Code
Petition for Order

CITY OF VERNON
STATE OF TEXAS

Legal Authority

Alcoholic Beverage Code §109.35
Allows the governing body of a city to petition the commission to PROHIBIT:
- The possession of an open container;
- The public consumption of alcoholic beverages;
- In the central business district (CBD) of the city
DEFINITIONS

- “Central Business District”
  - a compact and contiguous geographic area of a municipality in which 90% of the land is used or zoned for commercial purposes, and
  - The area has historically been the primary location where business is transacted in the city.

- “Open Container”
  - A container that is no longer sealed.

CITY’S REQUIREMENTS

- Make a determination that:
  - Possession of an open container, or
  - Public consumption of an alcoholic beverage,
  - In the Central Business District,
  - Is a risk to the health and safety of the citizens of the city.

  This has been done.
CITY’S REQUIREMENTS

- Petition the Commission for an Order;
- Attach a map, plat or diagram showing CBD covered by the prohibition.

This has been done.

COMMISSION’S DUTIES

- If the diagram properly identifies the CBD;
  - The Commission shall Approve and Issue the Order,
  - Without further consideration.
- The Order *may not prohibit* the possession of an open container or consumption of alcoholic beverages in:
  - MOTOR VEHICLES;
  - RESIDENTIAL STRUCTURES;
  - LICENSED PREMISES LOCATED;
  - BUILDINGS NOT OWNED BY THE CITY;
  - LOCATED IN THE CBD.
“TABC agents will not cite minors for the illegal possession or consumption of alcoholic beverages if an individual seeks assistance because of a medical emergency or because a person has been a victim of sexual assault or other violent crime.”
Why announce an amnesty policy?
To encourage discussion.

- Dangers of alcohol overdose.
- Signs of alcohol poisoning.
- Consequences of delaying a call to 911 when someone needs help.
- Policies of other law enforcement agencies.

**Did we succeed?**

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<thead>
<tr>
<th>City/Region</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Associated Press</td>
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<tr>
<td>National Public Radio</td>
</tr>
<tr>
<td>Amarillo, Lubbock</td>
</tr>
<tr>
<td>Austin</td>
</tr>
<tr>
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<tr>
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</tr>
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<tr>
<td>San Antonio</td>
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<tr>
<td>Tyler, Longview, Jacksonville</td>
</tr>
<tr>
<td>Waco, Temple, Killeen, Fort Hood, Belton</td>
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</tbody>
</table>
We support a new amnesty policy for minors who call for help if a friend who's been drinking is in danger. It offers a common-sense approach to dealing with potentially life-threatening situations."

_Lubbock Avalanche-Journal – 1/20/10_

“The TABC made the right decision… Texas' new Medical/ Good Samaritan Amnesty policy could help save lives.”

_San Antonio Express News – 12/14/09_
Carson Starkey
1990 - 2008

Live with urgency.
Help one another.
Live in community.
Make a difference.

Lynn Gordon “Gordie” Bailey
1986 – 2004

Save a Life.
Make the Call.
www.gordie.org

Gordie died just three weeks after arriving on campus.
The Gordie Foundation reports that, “A 2006 study conducted at Cornell University (Lewis & Marchell) revealed that one such medical amnesty policy dramatically increased the number of alcohol-related calls for assistance to emergency services, and that psycho-educational interventions following those calls more than doubled over a two-year period from 22% to 52%.”
November 2009, the Governor of New Jersey signed a bill into law that created a statewide alcohol amnesty policy.

According to the Gordie Foundation, an underage person dies in an alcohol-related incident every two hours.

http://www.gordie.org/Education/Memorial-Wall.aspx#

• December 2, 2008 – 18-year-old native Austinite Carson Starkey at California Polytechnic University in San Luis Obispo (fraternity hazing).

• October 7, 2007 – 18-year-old Nikolas Gallegos of Stephen F. Austin State University.

• August 30, 2006 – 19-year-old James “Jamie” Leonard of St. Edward’s University in Austin.
• December 20, 2005 - 18-year-old Phanta "Jack" Phoummarath of The University of Texas at Austin (fraternity hazing).

• September 17, 2004 - 18-year-old Dallas native Gordie Bailey at The University of Colorado in Boulder (fraternity hazing).

• Person cannot be woken up
• Slow or irregular breathing
• Appears confused or in a stupor
• Low body temp, bluish skin color, paleness
• No response to pinching the skin
• Seizures
• Vomiting while sleeping

Signs of Alcohol Poisoning
What’s Next?

• Continuing to educate the public on alcohol poisoning and hazing.

• Working with Scott and Julia Starkey.

• Challenging other law enforcement agencies to reconsider their own policies.
Seller/Server Rule Review

RULE REVIEW

February 22  Meeting Notification
February 26  Distribute rules to our stakeholders
March 5     Stakeholder review (Draft rules)
April 27    Approval to publish for public comment
May 14      Published for public comment (30 day period)
July 27  Rule adoption

July/Aug  Training: auditors & schools

QUESTIONS
Attachment 4

Budget Reduction Plan for 2010-2011 Biennium Briefing
Budget Reduction Plan for FY 2010-11

Total TABC Reduction  $4,459,503

<table>
<thead>
<tr>
<th>Cost Savings Item</th>
<th>FY 2010 Savings</th>
<th>FY 2011 Savings</th>
<th>Biennial Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Lapsed Funding for Ports of Entry Bridges</td>
<td>$156,062</td>
<td>$0</td>
<td>$156,062</td>
</tr>
<tr>
<td>2. Lapsed Salary Savings Recognized</td>
<td>200,644</td>
<td>0</td>
<td>200,644</td>
</tr>
<tr>
<td>3. Transfer to Texas Dept. of Agriculture</td>
<td>0</td>
<td>250,000</td>
<td>250,000</td>
</tr>
<tr>
<td>4. Gasoline and Utilities Reduction</td>
<td>155,000</td>
<td>73,937</td>
<td>228,937</td>
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<tr>
<td>5. Cap Budget-Seller Server Training</td>
<td>219,120</td>
<td>32,957</td>
<td>252,077</td>
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<tr>
<td>6. Cap Budget-Case Management</td>
<td>145,600</td>
<td>0</td>
<td>145,600</td>
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</tbody>
</table>
Total TABC Reduction  $4,459,503

<table>
<thead>
<tr>
<th>Cost Savings Item</th>
<th>FY 2010 Savings</th>
<th>FY 2011 Savings</th>
<th>Biennial Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Staff Augmentation</td>
<td>$110,000</td>
<td>$100,000</td>
<td>$210,000</td>
</tr>
<tr>
<td>9. Cap Budget-Hardware/Software Acq</td>
<td>30,000</td>
<td>30,000</td>
<td>60,000</td>
</tr>
<tr>
<td>10. Ports of Entry Cost Savings</td>
<td>100,000</td>
<td>0</td>
<td>100,000</td>
</tr>
<tr>
<td>11. Cap Budget-Fleet Acquisition</td>
<td>0</td>
<td>571,750</td>
<td>571,750</td>
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<tr>
<td>12. Cap Budget-Public Safety Equip.</td>
<td>173,794</td>
<td>173,794</td>
<td>347,588</td>
</tr>
<tr>
<td>13. Freeze Civilian Positions</td>
<td>179,357</td>
<td>358,712</td>
<td>538,069</td>
</tr>
<tr>
<td>14. Freeze CPO Positions</td>
<td>234,582</td>
<td>469,164</td>
<td>703,746</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>$2,262,876</strong></td>
<td><strong>$2,196,627</strong></td>
<td><strong>$4,459,503</strong></td>
</tr>
</tbody>
</table>

**Questions**
Attachment 5

Minor Sting and After Hours Compliance Rate Update
JOEL MORENO
CHIEF OF FIELD OPERATIONS

Minor Sting and After Hours Compliance Rate Update

Minor Stings & Results
September - December

Recidivism for Sale to Minor Offenses
September - December

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>w/ Prior Minor Sting Case in Previous 12 mo</td>
<td>982</td>
<td>990</td>
<td>822</td>
<td>488</td>
<td>375</td>
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<tr>
<td>Recidivism Rate After 12 mo</td>
<td>9.98%</td>
<td>16.76%</td>
<td>11.05%</td>
<td>11.87%</td>
<td>12.00%</td>
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<tr>
<td>w/ Prior Minor Sting Case in Previous 24 mo</td>
<td>77</td>
<td>133</td>
<td>129</td>
<td>85</td>
<td>67</td>
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<tr>
<td>Recidivism Rate After 24 mo</td>
<td>12.70%</td>
<td>22.04%</td>
<td>20.24%</td>
<td>18.14%</td>
<td>17.87%</td>
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<tr>
<td>w/ Prior Minor Sting Case in Previous 36 mo</td>
<td>16</td>
<td>134</td>
<td>147</td>
<td>58</td>
<td>85</td>
</tr>
<tr>
<td>Recidivism Rate After 36 mo</td>
<td>17.04%</td>
<td>24.10%</td>
<td>20.62%</td>
<td>20.39%</td>
<td>21.33%</td>
</tr>
</tbody>
</table>
Inspections Targeting Prohibited Hours Offenses & Their Results

September - December

Recidivism for Prohibited Hours Offenses
September - December

<table>
<thead>
<tr>
<th>Period</th>
<th>FY 2006 (Thru Dec.)</th>
<th>FY 2007 (Thru Dec.)</th>
<th>FY 2008 (Thru Dec.)</th>
<th>FY 2009 (Thru Dec.)</th>
<th>FY 2010 (Thru Dec.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>w/o Prior</td>
<td>74</td>
<td>81</td>
<td>114</td>
<td>60</td>
<td>33</td>
</tr>
<tr>
<td>Prior Prohibited Hours Case in Previous 12 mo.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recidivism Rate After 12 mo.</td>
<td>6.75%</td>
<td>9.94%</td>
<td>9.85%</td>
<td>7.60%</td>
<td>3.00%</td>
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<tr>
<td>w/o Prior</td>
<td>6</td>
<td>6</td>
<td>13</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>Prior Prohibited Hours Case in Previous 24 mo.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recidivism Rate After 24 mo.</td>
<td>8.10%</td>
<td>9.82%</td>
<td>11.10%</td>
<td>7.50%</td>
<td>9.00%</td>
</tr>
<tr>
<td>w/o Prior</td>
<td>8</td>
<td>11</td>
<td>14</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>Prior Prohibited Hours Case in Previous 36 mo.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recidivism Rate After 36 mo.</td>
<td>10.61%</td>
<td>13.10%</td>
<td>12.21%</td>
<td>10.0%</td>
<td>9.09%</td>
</tr>
</tbody>
</table>
Attachment 6

Cash/Credit Law Update
Credit Law Changes

- HB2560 – May 2009
- New Rule – July 2009
- Automation – September 2009
- Decentralization – December 2009
- New Penalties – February 2010

Notices of Default Processed

1st Quarter Results
FY 2009 and 2010

Notice of Default Processed

<table>
<thead>
<tr>
<th>FY2009 - By Hand</th>
<th>FY2010 - By Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>25000</td>
<td>20000</td>
</tr>
<tr>
<td>20000</td>
<td>15000</td>
</tr>
<tr>
<td>15000</td>
<td>10000</td>
</tr>
<tr>
<td>10000</td>
<td>5000</td>
</tr>
<tr>
<td>5000</td>
<td>0</td>
</tr>
</tbody>
</table>
Notices of Default Actually Published

1st Quarter Results
FY 2009 and 2010

Down by 1/2

Result of Automation

- Eliminated 2 HQ FTEs
- Moved positions to field
  - Auditor
  - Administrative Assistant
Administrative Processes

Administrative:
- Allowed 6 month adjustment period
- Administrative Sanction Begins February 1st
- Permittees receive 6 warnings
- On 7th (and subsequent) violations, receive suspension or civil penalty

Sanctions

Seven violations in a 12-month period = administrative penalty as per Rule 34.3

- 7th violation: 2-5 days suspension or a $300 per day civil penalty
- 8th violation: 4-10 days or $300 per day civil penalty
- 9th or subsequent violation: 12-30 days or $300 per day
Attachment 7

Statement – Ms. Donna Mott, Owner
Texas Alcohol Beverage Seller School (TABSS)
1. The market will be overrun by new schools that just have to buy a program, take an online test and set up shop.

2. Will certification become mandatory?

3. Our businesses are worthless. Those of us who have worked to build our business for 20+ years suddenly are not able reap the benefits that investment. There seems to be no concern from TABC about putting some TABC-approved schools out of business.

4. Will current schools be treated as “new business” or will be treated as renewals?

5. How much will the TABC-created program cost us? How much are the certificates? We already schedule, cancel our classes on line and enter trainee data; therefore, the burden of that expense is removed from Seller Training. Will we be able to use the certificates we have already purchased from TABC?

6. How many schools are in compliance? Why would you think the schools who failed to follow the rules in the past will follow the rules in the future?

7. I have worked to make my program unique by including more than the basic requirements. I have gone to the expense of creating a video and have added current events to make the class relevant. I add (with a program modification) new laws and rules that pertain to the class even though it is not required by TABC. With the TABC-created curriculum, all the courses are exactly alike.

8. Will there be ANY exception for not giving a three business day notice of the class? If someone calls on Thursday for a big class on Monday, we can’t do it. Those people are left working uncertified because TABC won’t make an occasional exception to their three business day rule. And we don’t get the income. Who does that benefit?

9. Will there be ANY exception to submitting our reports within seven days? We have computer crashes—just like TABC does. We have work overload; we have accidents; we get sick; we have emergencies. Most of us are mom and pop schools. We don’t have an office staff. It appears that TABC has not looked at this situation from the school side to see what kind of repercussions there will be to our schools and livelihoods with the “no exception” policy.

10. When will all this go into effect?

11. I am truly disappointed that all schools are being punished by the actions (or lack of actions) by some of the schools.

12. I respectfully suggest that the curriculum & the tests be written in a manner that they can be understood by people who are not highly educated. Use simple words and simple phrases.

13. If TABC makes public important information like the Carson Starkey Amnesty Policy, why do we have to make a program modification? It would seem like the Agency would want the schools to disseminate this type information to the public.

Submitted by Donna Mott - TABSS
CERTIFICATION

REGULAR COMMISSION MEETING

9:30 a.m. – February 23, 2010

5806 Mesa Drive
Austin, Texas 78731
STATE OF TEXAS

COUNTY OF TRAVIS

This certifies that the attached is a true copy of the proceedings of the Texas Alcoholic Beverage Commission meeting held on February 23, 2010.

Alan Steen
Administrator

Sworn and subscribed before me this the 25th day of March 2010.

Gloria Darden Reed
Notary in and for Nueces County