



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

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COMMISSION MEETING

May 25, 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

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AGENDA

REGULAR COMMISSION MEETING

9:15 a.m. – May 25, 2010

5806 Mesa Drive
Austin, Texas 78731



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José Cuevas, Jr.
Presiding Officer-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Melinda S. Fredricks
Member-Conroe

Alan Steen
Administrator

Tuesday, May 25, 2010 – 9:15 a.m.

AGENDA

1. Call to Order	José Cuevas, Jr.
2. Approval of Commission Meeting Minutes of April 27, 2010	José Cuevas, Jr.
3. Administrator's Report: Administrator and Agency Activities, Budget Issues, Staff Achievements	Alan Steen
4. Introduction of Newly Hired Staff	Emily Helm
5. Approval of Petition by the City of San Antonio for Order Permitting Adoption of Local Ordinance Banning Open Containers in Central Business District, Under §109.35, Texas Alcoholic Beverage Code	Joan Bates
6. Presentation and Possible Action of the Findings of the Commission's Operations Internal Audit	Russell Gregorczyk
7. Approval of Report on the Status of Implementing FY 2009 Audit Recommendations	Russell Gregorczyk
8. Update on Comptroller's Post Payment Audit of the TABC	Shelby Eskew
9. Approval of TABC Strategic Plan for the FY 2011-2015 Period	Carolyn Beck
10. Approval to Publish Proposed New Rule 33.15, Use of Winery Festival Permit	Martin Wilson
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, July 27, 2010 Tuesday, August 24, 2010 Tuesday, October 26, 2010	José Cuevas, Jr.
14. Approval to Move November 23, 2010, Commission Meeting Date to Friday, November 19, 2010	José Cuevas, Jr.
15. Adjourn	José Cuevas, Jr.

MINUTES

REGULAR COMMISSION MEETING

9:15 a.m. – May 25, 2010

5806 Mesa Drive
Austin, Texas 78731



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COMMISSION MEETING MINUTES

May 25, 2010

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Tuesday, May 25, 2010, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING

OFFICER:

José Cuevas, Jr.

COMMISSIONERS

Melinda Fredricks

PRESENT:

Steven M. Weinberg, MD, JD

STAFF PRESENT:

Alan Steen, Administrator

Renee Andrews, Executive Assistant, Executive

Joan Bates, Attorney, Legal Services

Carolyn Beck, Director of Communications and
Governmental Relations

Sherry Cook, Assistant Administrator, Executive Division

Lieutenant James Debrow, Training Specialist, Training
Division

Luann Dickerson, Executive Assistant, Executive Division

Loretta Doty, Director, Human Resources Division

Shelby Eskew, Director, Business Services Division

Kathy Gersbach, Executive Assistant, Executive Division

Thomas Graham, Marketing Practices

Amy Harrison, Director, Licensing Division

Emily Helm, General Counsel, Legal Division

Tanya Jimenez, Administrative Assistant, Executive Division

Dexter K. Jones, Assistant Chief of Field Operations

Charlie Kerr, Director, Tax Division/Education
and Prevention

Lieutenant Roland Luna, Investigator, Office of
Professional Responsibility

Joel Moreno, Chief of Field Operations

Andy Pena, Director, Office of Professional Responsibility

Gloria Darden Reed, Executive Assistant, Executive Division
Loretta Smith, Assistant Director, Business Services Division
Rod Venner, Assistant Chief of Enforcement, Enforcement
Division
Jay Webster, Director, Information Resources Division
Martin Wilson, Assistant General Counsel, Legal Division

**GUESTS
PRESENT:**

Dewey Brackin, Gardere Wynne Sewell
M L Calcote, Republic National Distributing
Rick Donley, President, The Beer Alliance of Texas
Doug DuBois, Director of Government Relations,
Texas Petroleum Marketers and Convenience
Store Association (TPCA)
Alan Gray, Executive Director, Licensed Beverage
Distributors
Russell Gregorczyk, Internal Auditor, Jansen & Gregorczyk
Certified Public Accountants
Dacota Hazelwood, Chief Governmental Affairs Officer,
Texas Wine and Grape Association
Jay Howard, Hillco Partners
Lance Lively, Executive Director, Texas Package Stores
Association
Fred Marosko, Executive Director, Texas Package Stores
Association
John Newton, Analyst, Legislative Budget Board
Jim Ratzman, Auditor, Jansen & Gregorczyk Certified Public
Accountants
Robert Reyna, Assistant City Attorney, City of San Antonio,
Texas
Andy Rodriguez, Vice Lieutenant, San Antonio Police
Department, San Antonio, Texas
Shreya Shah, Assistant City Attorney, City of San Antonio,
Texas
Melody Woosley, Assistant Director, City of San Antonio,
Texas

CALL TO ORDER

The meeting of the Texas Alcoholic Beverage Commission was called to order at 9:17 a.m. by Presiding Officer José Cuevas.

APPROVAL OF COMMISSION MEETING MINUTES OF APRIL 27, 2010

Presiding Officer José Cuevas called for approval of the Commission meeting minutes of April 27, 2010. Commissioner Melinda Fredricks so moved to approve the minutes as written, and Commissioner Weinberg seconded. The motion carried.

ADMINISTRATOR'S REPORT: ADMINISTRATOR AND AGENCY ACTIVITIES, BUDGET ISSUES, STAFF ACHIEVEMENTS

Presiding Officer José Cuevas called upon Administrator Alan Steen for his report. After cordially welcoming the Commissioners back to Austin for another Commission meeting, Administrator Steen paused for a moment to introduce Mr. John Newton and Mr. David Repp, Analysts from the Legislative Budget Board (LBB). Mr. David Repp has been assigned to TABC as the new budget analyst.

Before the start of Administrator Steen's report, Presiding Officer Cuevas reminded the agenda speakers and presenters that their reports and PowerPoint presentations given during the commission meeting are merely for informational purposes. He stated that during the presentations, detailed discussions will not be conducted and asked for assistance from General Counsel Emily Helm who has his permission to interrupt during the course of the presentation if discussions occur. Presiding Officer Cuevas further stated that he is aware of the limited information that will be presented in the PowerPoint presentations, so he asked that highlights be given. During the course of the presentation, if any of the Commissioners require additional information that is not presented in the highlighted presentation, a more detailed report can be obtained outside of the meeting.

Administrator Steen's report was supported with a PowerPoint presentation.
(Attachment 1)

Administrator Steen briefed the Commission on a meeting with representatives of the Fiesta Commission in San Antonio to discuss their annual "Fiesta Celebration". "Fiesta® San Antonio" is a yearly event held in San Antonio during the month of April. Administrator Steen noted that TABC has seen a noticeable change in the sale to minors during the festival. The compliance rate is down.

The Fiesta Commission is considering serving spirits in some of the venues next year during the celebration. Administrator Steen and divisional staff in Enforcement, Licensing, Compliance, Education (Seller Server Training) and Region 5 will have an on-going dialogue with the Fiesta Commission working toward getting the festival in compliance for next year's celebration. He expects TABC to have a stronger presence during the festivities. A letter will be written to the Fiesta Commission to offer and discuss options to ensure public safety for the people attending and to outline TABC procedures and policies in regards to serving spirits in a public and family oriented venue.

Presiding Officer Cuevas asked if it would be appropriate to appoint a Commissioner and a committee, similar to the Super Bowl committee, for the Fiesta event. Administrator Steen stated this can be done at the Commission's request. He noted that the two events were different in scope. The Fiesta® San Antonio is an annual event that takes place in San Antonio and could probably have some world-wide exposure but not in the same capacity as the Super Bowl. He explained that the Super Bowl's local and state exposure would expand greatly and for a longer time before and after the events and would have a greater presence nationally and world-wide.

Administrator Steen stated that he felt that both events were equally important and if the Commission would like to create a Fiesta® San Antonio committee and to appoint a Commissioner, it would be done. He stated that the Commissioners could make a decision at a later time.

Presiding Officer Cuevas requested Fiesta® San Antonio placed on the agenda for the July commission meeting.

Administrator Steen continued his report with a brief overview of the Agency's budget. He reminded the Commission of last month's report by Business Services Director Shelby Eskew. Director Eskew's report outlined the recommended plan to identify savings in priority increments, totaling five percent of the general revenue, and general revenue dedicated appropriations for the 2010-2011 biennium. In Administrator Steen's PowerPoint, each cost savings item for FY 2010 and FY 2011 and the biennial savings were listed. TABC's reduction and confirmed amount returned is \$4,459,503 for the biennium.

Presiding Officer Cuevas commended Administrator Steen and his staff for a job well done.

Administrator Steen briefed the Commission of a letter received from the United States Border Patrol located near the Rio Grande City. He spoke of the escalating violence near the borders of Mexico and TABC's Ports of Entry bridges. He stated that recent increases in the violence have caused a drop in border traffic. Some of the Mexico border crossings are closing at 5:00 p.m.

Administrator Steen stated that TABC employee safety has become a major concern at the Ports of Entry bridges. Recent robberies on Mexico's side has had some of its citizens seeking safety at the Port of Entry bridges and TABC employees needed some type of protective equipment. Within 72 hours of the latest bridge violence, bulletproof vests were ordered for the four employees working at the Ports of Entry Bridge.

Assistant Administrator Cook and Director Kerr will draft an assessment and recommendation report referencing border safety for TABC employees at the Ports of

Entry bridges to Administrator Steen by June 15th. The report could include vests, pepper spray, bulletproof glass, and frequent runs to the bank to make deposits.

Presiding Officer Cuevas quizzed Administrator Steen on the cost of the bulletproof vest. Administrator Steen replied the cost is \$600 per vest with custom fitting required. Presiding Officer Cuevas asked how many employees needed vests. Administrator Steen stated the total is 107 to 110 employees which is the count from El Paso to Brownsville Ports of Entry.

Commissioner Weinberg commented that in the last few years the Agency was making revenue for the State of Texas. Currently, the Agency is losing revenue probably at the ratio of 2:1 and he feels taxpayers' money is being wasted. He questioned how many of the employees are certified peace officers and how many carry guns? Administrator Steen answered, "None" to both questions.

Commissioner Weinberg further commented that if a TABC employee is equipped with a vest, it will only protect his chest but it won't help if an employee is shot in head. He feels extremely uncomfortable with the violence at the border and if the employee needs a vest, then the employee should not be there. The amount of money collected is not worth a life lost.

Presiding Officer Cuevas stated that the Ports of Entry bridges serve as a deterrent in not allowing cigarettes and alcohol to flow across the borders without being stamped. He agrees employee safety should be a concern and commented that there is federal border patrol personnel close in some areas of TABC bridges to assist and support in the safety of the employees.

Administrator Steen agreed that the safety of TABC employees is very critical. He reiterated the charge in receiving the report assessing the Ports of Entry bridge by bridge. He stated that we should not rely on media accounts of the occurrences in those areas. The report will offer solid recommendations for employee safety. He added that employee training would be helpful in the areas of emergency response training, basically how to identify a potentially bad situation and respond quickly.

Commissioner Fredricks stated she shares the concerns voiced by Commissioner Weinberg, however she thinks it is wise to evaluate the bridges. She stated even if the Agency was making money, it is not worth the loss of life.

Commissioner Fredricks inquired on the training of the border employee. Would the employee be trained in the use of firearms? Administrator Steen responded negatively. He stated that in order for them to be armed, the employee would have to be certified peace officers. He mentioned that her idea might be good to bring forth during the 2012 legislative session.

Presiding Officer Cuevas requested the border assessment plan for security and safety to be an agenda item at the July commission meeting.

Administrator Steen's report included the announcement of the first meeting of the Super Bowl Committee on Thursday, June 3rd in Grand Prairie, Texas to prepare for Super Bowl XLV. A press release and information will be placed on TABC's website.

In concluding his report, Administrator Steen stated that the Excise tax has an increase of \$300,000 for the end of April and the numbers of retailers in business is up by 49. He expects that trend to continue in the upcoming month.

INTRODUCTION OF NEWLY HIRED STAFF

Presiding Officer José Cuevas called for General Counsel Emily Helm to introduce the newly hired employees in the Legal Division.

General Counsel Emily Helm introduced her staff and briefed the Commission on their work experience and job responsibilities at the Agency. Legal Division staff introduced was Assistant General Counsel Martin Wilson and Attorneys Matthew Clark, David Duncan, and John Sedberry.

Commissioner Weinberg quizzed General Counsel Helm's ability to determine when litigation is conducted by TABC attorneys or by the Attorney General's office. She stated that TABC attorneys will try administrative contested cases. When the Attorney General is sued as a state entity, TABC attorneys cannot practice as an attorney for TABC. TABC has to employ the services of the Attorney General to represent the State agency and the State of Texas. TABC attorneys represent the State Administrator at TABC.

Presiding Officer Cuevas and Commissioners Fredricks and Weinberg welcomed each of the employees and wished them success in their employment at the agency.

APPROVAL OF PETITION BY THE CITY OF SAN ANTONIO 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 Attorney Joan Bates for the presentation for the Approval of a Petition by the City of San Antonio. 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.

Attorney Bates introduced representatives from the City of San Antonio which included Ms. Melody Woosley, Assistant Director for the City of San Antonio, Department of Community Initiatives; Vice Lieutenant Andy Rodriguez, San Antonio Police Department; Mr. Robert Reyna, Assistant City Attorney, and Ms. Shreya Shah, Assistant City Attorney. Ms. Bates' presentation was supported with a PowerPoint. (Attachment 2)

Ms. 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.

Ms. 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.

Ms. 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.

Commissioner Weinberg commented that he appreciates the presence of the representatives from the City of San Antonio at the commission meeting. He feels that the environment in San Antonio will benefit from the approval of the petition.

Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved to approve the petition by the City of San Antonio for order permitting adoption of local ordinance banning open containers in Central Business District, under §109.35, Texas Alcoholic Beverage Code. Commissioner Fredricks seconded. The motion was made and seconded. The motion carried.

Presiding Officer Cuevas called for the "Haven for Hope" representative to come forward to address the Commission. Ms. Woosley briefly gave the Commission an overview of Haven for Hope which is a private non-profit organization aimed at transforming the lives of homeless men, women, and children in the San Antonio/Bexar County area. Partnering with 78 governmental, non-profit and faith-based agencies, Haven for Hope seeks to transform the lives of the homeless by addressing the root causes of homelessness through education, job training, and behavioral health services. While most shelters feed, clothe and shelter the homeless, Haven for Hope and its partners will provide critical social services to help the homeless become self-sufficient individuals on a long-term basis.

Commissioner Fredricks inquired about the funding for the project. Ms. Woosley stated through the collection of funds are received from local, state, federal and private donations, the \$100 million campus project has been successful.

PRESENTATION AND POSSIBLE ACTION OF THE FINDINGS OF THE COMMISSION'S OPERATIONS INTERNAL AUDIT

Presiding Officer Cuevas called upon Mr. Russell Gregorczyk, Internal Auditor, Jansen & Gregorczyk Certified Public Accountants for the presentation of the next agenda item. (Attachment 3)

Mr. Gregorczyk briefed the Commission on the primary purposes of the internal audit. He stated the audit was to evaluate the compliance with legal requirements regarding the operations of the Commission, in the effectiveness of processes for involving Commission members in the strategic direction and oversight of the agency, and with the processes for informing Commission members about agency activities and fiduciary matters.

Mr. Gregorczyk addressed an amendment in 2007 to the Texas Ethics Commission statute that requires each State agency to adopt an ethics policy and provide copies of the policy to each new officer of the agency no later than the third business day after the date the person qualifies for office. TABC has adopted the required ethics policy, but it has not been revised to reference State officers (Commission members) of the agency and members of the Commission have not been provided copies of the policy as required.

Mr. Gregorczyk recommends to the Commission to have the General Counsel determine whether changes to the TABC ethics policy are needed to cover State officers and if so, those changes should be made and copies of the TABC ethics policy should be provided to the commissioners.

Presiding Officer Cuevas asked for General Counsel Helm's opinion to this recommendation. General Counsel Helm has developed and distributed an "Ethical Standards and Conduct for State Officers" binder to each commissioner.

Under the Standards of Conduct; State Agency Ethics Policy, General Counsel Helm referenced:

Each State agency shall:

1. Adopt a written ethics policy for the agency's employees consistent with the standards prescribed by Subsection (a) and other provisions of this subchapter; and
2. Distribute a copy of the ethics policy and this subchapter to:
 - (A) each new employee not later than the third business day after the date the person begins employment with the agency; and
 - (B) each new officer not later than the third business day after the date the person qualifies for office.

General Counsel Helm stated documentation could not be found to corroborate where the ethics policy was given to the commissioners in the past. However, it is her intention to ensure that the policy will be distributed with signature confirmation of receipt to new officers in the future.

Presiding Officer Cuevas, Commissioners Weinberg and Fredricks concurred and instructed General Counsel Helm to meet with Commissioner Fredricks to develop and present an Ethical Standards and Conduct policy for State Officers for review and approval in July.

In a response to Mr. Gregorczyk's report, the Commission will:

- **Receive the policy binder as distributed by General Counsel;**
- **Instruct General Counsel to meet with Commissioner Fredricks to discuss the contents of the Ethical Standards and Conduct for State Officers;**
- **After reviewing information the Commission will discuss at the next commission meeting.**

Mr. Gregorczyk cited the following audit objectives:

- Determine if there is an effective process for the Commission's involvement in defining the agency's mission and strategic direction and developing the biennial legislative appropriation's request.

The audit found that TABC has developed an effective process for ensuring the Commission members' involvement in defining the agency's mission, setting the strategic direction of the agency and developing the biennial legislative appropriation's request. The commissioners provide input through their meetings with staff or the Administrator, receive timely updates from the Administrator, and are well informed and prepared to approve these key documents at the appropriate time.

Mr. Gregorczyk suggested the Commission's consideration to have a Commissioners' Retreat during the next Strategic planning cycle. He noted it to be impossible with today's agenda requesting the approval of the TABC Strategic Plan for the fiscal year 2011-2015 period, however, he suggested the Commission plan a retreat during the next strategic planning cycle.

Presiding Officer Cuevas, Commissioners Weinberg and Fredricks concurred with the recommendation and will work with Director Beck toward that effort. Mr. Gregorczyk reminded the Commission that the retreat would be subject to the open meetings act.

- Determine if an effective training and orientation program has been established for new Commission members.

Mr. Gregorczyk spoke well of TABC's training and orientation program established for new Commission members. He recommended the Commission attend an industry conference to gain a different perspective on the role of TABC and the impact the law and agency rules have on businesses in the alcoholic beverage industry. He noted for the Commission to be aware of other training opportunities available through other State agencies for appointees and Commission members they can attend if the training is relevant in performing their responsibilities as Commission members.

Presiding Officer Cuevas, Commissioners Weinberg and Fredricks concurred with the recommendation.

Presiding Officer Cuevas inquired from Administrator Steen on who is the contact person, someone to provide a calendar of events for an industry training conference. Administrator Steen responded Director Beck is the contact person.

- Determine if effective rule and policy making processes have been established for ensuring the Commission's involvement in the development and approval of agency rules and policies necessary to address statutory requirements and ensure the effective administration of agency functions.

Mr. Gregorczyk addressed the need to determine if effective rule and policy making processes have been established for ensuring the Commission's involvement in the development and approval of agency rules and policies necessary to address statutory requirements and ensure the effective administration of agency functions. He stated that each state agency is required to review and consider for re-adoption each of its rules no later than the fourth anniversary of the date on which the rules took effect and every four years after that date. The Commission adopted a Rule Review Plan at the September 26, 2008 Commission meeting, however, the minutes of subsequent meetings do not indicate review of these rules in accordance with the Plan. In addition, the Administrator noted that from 2003 to 2007, the Commission had not formally followed any type of rule review plan.

It is recommended that a new Rules Review Plan be developed and approved by the Commission and to review and readopt all agency rules at least every four years as required by statute. The General Counsel should ensure that the Plan is followed and should periodically report to the Commission on the status of completing the Rules Review Plan.

General Counsel Helm confirmed the failure to maintain and follow the Plan. She reported a new process will be reinitiated beginning with the new Plan on April 1, 2010.

As a response to Mr. Gregorczyk's audit recommendation, Presiding Officer Cuevas called for Assistant General Counsel Martin Wilson to present the 2010 Proposed Amended Rule Review Plan.

Assistant General Counsel Wilson briefly gave the Commission an interpretation of the Government Code statute that requires the Agency to review every rule within four years of its adoption. He stated that the focus of the rule review is to identify rules that need to be deleted. According to Assistant General Counsel Wilson, the statute requires the Agency to review the rules, but does not require the Agency to have a plan to review. Periodically, he intends to address the Commission with updated rule review information. Assistant General Counsel Wilson's PowerPoint presentation supported his report. (Attachment 4)

With additional comments, Administrator Steen stated that some rules have been in existence for many years and some of the rules will take time to gain approval. The process to draft, receive input from the external contacts, committee meetings, bring before the Commission, to list the rules in the public register, and get approval from the Commission may take some time to get adopted. Therefore, the target deadlines presented by Assistant General Counsel Wilson in the amended review plan may take longer to complete.

Presiding Officer Cuevas questioned whether the Commission meets the statute requirement by addressing the rule. General Counsel Helm answered affirmatively. She stated that when the rule is reviewed every four years if the Agency is working on them, the statute requirement is met; if the rule is reviewed and no longer needed, it is deleted and the statute requirement is met.

General Counsel Helm presented a list of options for the Commission to consider as recommended by the Internal Auditor:

1. The Commission can adopt the proposed schedule;
2. Report back to the Commission the progress on a proposed schedule;
3. The Commission does not have to adopt, but are aware of the proposal with quarterly or six month reports given to the Commission with timelines/amendments to be added;

4. Adopt a new schedule, proposed schedule is sufficient and report back to the Commission.

Commissioner Fredricks commented that there is more time needed to examine the rule review process and proposed schedule and she would not move to adopt the recommendation as presented.

Presiding Officer Cuevas' called for a motion. Commissioner Fredricks moved that a new rules review plan be developed and provided to the Commission and to review and readopt all agency rules at least every four years as required by statute. Commissioner Weinberg seconded and motion carried.

Other key audit observations, audit results, and significant recommendations were addressed in the attached Executive Summary.

APPROVAL OF REPORT ON THE STATUS OF IMPLEMENTING FY 2009 AUDIT RECOMMENDATIONS

Mr. Russell Gregorczyk continued to the next agenda item, the Approval of Report on the Status of Implementing FY 2009 Audit Recommendations.

Mr. Gregorczyk's report provided the results and recommendations noted during the internal audit follow-up review of recommendations made in the following internal audit reports: (Attachment 5)

- Performance Measurement System
- Excise Tax Section of the Tax Division
- Travel Policies and Procedures
- Accounting System and Accounting Internal Controls

Presiding Officer Cuevas called for a motion to the approval on the status of implementing fiscal year 2009 audit recommendations. Commissioner Fredricks moved that the Commission approve the report on the status of implementing fiscal year 2009 audit recommendations as presented. Commissioner Weinberg seconded and motion carried.

Commissioner Weinberg thanked the TABC staff in keeping the Commission up-to-date on Agency issues.

UPDATE ON COMPTROLLER'S POST PAYMENT AUDIT OF THE TABC

Presiding Officer Cuevas called for the next agenda item entitled "*Update on Comptroller's Post Payment Audit of the TABC.*"

Director Shelby Eskew provided the Commission with an overview of a recent Comptroller's audit in the Business Services Division. Every four to five years, the

Comptroller's office personnel visit the State agency and do an audit on the expenditure processing in the Accounting and Payroll systems. The Auditor examines the expenditures to ensure that all documentation and processes are reported accurately and according to the state and federal government guidelines. In addition to the expenditures, if the expenditure acquires an asset, it should be reported in the state inventory system. The Auditor checks to make sure the agency has reported that asset properly and is able to produce the information requested for that item.

The final observation deals with the internal controls systems set up at the agency. The audit is done to ensure that the Agency is not in any type of risk in the accounting or payroll systems.

Director Eskew gave kudos to Assistant Director Loretta Smith and staff in Business Services for their hard work and dedication. Thanks to Charlie Kerr, who was the Director at the time of the audit.

Director Eskew's audit findings, audit recommendations, and agency responses were supported by a PowerPoint presentation. (Attachment 6)

Presiding Officer Cuevas complimented Director Eskew for a good presentation and a job well done.

Commissioner Weinberg concurred.

APPROVAL OF TABC STRATEGIC PLAN FOR THE FY 2011-2015 PERIOD

Carolyn Beck, Director of Communications, was asked to come forward for her presentation by Presiding Officer Cuevas. Director Beck sought the Commissioners' approval of the TABC Strategic Plan for the fiscal year 2011-2015 periods.

Director Beck opened her presentation with an overview of the strategic plan. She spoke on the statewide strategic planning process that began in 1992 with the issuance of a statewide vision to focus the resources, efforts and direction state government to common goals and a future-oriented vision for which to strive. The elected leadership of the state clearly indicates that the government's mission must be limited and its priorities clear. The agency's mission and agency goals and strategies provide the decisions based on such priorities. Director Beck stated not only are the agency's mission and goals a focal point, but also its vision, philosophy, cornerstones, and guiding principles.

Director Beck outlined highlights that were supported in her PowerPoint presentation which included:

New and Improved Strategic Planning Process in 2008

- All-Inclusive with industry representative input

- Decentralized system in which Regions and POE developed management goals based on employee feedback and Survey of Employee Engagement outcomes
- Specific focus on developing management goals
- Established objectives with broad goals and plans to reach goals
- Accountability with planning of quarterly meetings to ensure goals are being met
- Transparency with more public involvement

Director Beck gave the Commission an insight of the strategic planning meeting's progress. She was excited in finalizing the 2010 process for presentation to the Commission for their vote of approval at the May commission meeting:

2010 Strategic Planning Process

- January – Division Directors and field supervisors met to review results from Survey of Employee Engagement (Name changed from Survey of Organizational Excellence)
- February/March – Managers presented survey results to employees and held brainstorming meetings.
- April – Division Directors and field supervisors met again to develop internal management goals.
- April – Invited industry/community to present status of 2008 goals and gather feedback to develop new goals. (35 participants were at meeting)
- May – Finalize document (Agenda item - May 25, 2010 Commission meeting)

In concluding her report, Director Beck spoke on finalizing for approval the recommended performance measures to the Legislative Budget Board (LBB). If the LBB does not accept the recommended performances measures, Director Beck will have to resubmit the actual performance measures for the next two years. She stated that the May Commission meeting would be the last opportunity to finalize this report for approval by the Commission. The report's submission date to the Governor's Office and the Legislative Budget Board is July 2nd.

Director Beck emphasized the importance in the implementation of the strategic plan and follow up to make sure the Agency stays on task.

Commissioner Weinberg quizzed Director Beck on the schedule to remain on task. Director Beck stated her recommendation for the next two years is to conduct meetings every other quarter and submit written goals. Each goal has a goal sponsor in which a divisional director or supervisor is responsible. After submission of the goals, the goals will be posted on the Agency's intranet.

Commissioner Weinberg inquired if the Agency has the capability of video conferencing. Administrator Steen answered affirmatively, however it is limited. He stated a savings in travel expenses could be realized if video conferencing could be

utilized. Administrator Steen suggested that IRD's Director, Jay Webster or Assistant Administrator Cook could research the pros and cons of using Skype.

Assistant Administrator Cook stated that IRD is in the process of getting estimates to expand and take advantage of video conferencing equipment as a cost saving tool for the Agency. IRD is in the process of implementing SharePoint that may have additional advantages for collaborative meetings.

Presiding Officer Cuevas commented on the bounded Strategic Plan 2011-2015. He read a section of the Strategic Plan document pertaining to the demographics in Region 1, on page 24:

"Proximity to Mexico brings additional challenges, especially for the southern portions of the region. Those parts are predominately Hispanic, both culturally and in terms of the ethnic makeup of the population. Spanish is often the first and primary language, rather than a secondary one. Agency employees who live and work in these areas have to be sensitive to cultural differences and able to communicate with local citizens."

Presiding Officer Cuevas stated that because the paragraph implies that because they are Hispanic, therefore it brings challenges. He says that could occur in any metropolitan city in the state. As a Hispanic, Presiding Officer Cuevas feels offended by the statement and asked for it to be deleted from the document. Director Beck stated she would act affirmatively to his request.

Presiding Officer Cuevas called attention to another area of concern within the survey dealing with the improvement of the agency's organizational needs. He questioned some of the terms frequently noted on the survey in several of the divisions. The terms noted were: fairness, internal communication, pay, and management concerns. He asked if there appears to be a weakness in communicating internally or externally or do we have leadership problems.

Director Beck explained that sometimes it was a lack of communication; accessing the communication from the executive and having it given in the same text or manner in which it was intended. She stated in an effort to remedy that issue, Administrator Steen has a weekly email that is sent to TABC employees agency-wide. It's written in a cordial tone and is sets out to be informative to dispel rumors and any agency misconceptions.

Chief Joel Moreno commented that the Enforcement Division has a quarterly newsletter published to dispel miscommunication of information. He and his division directors are being more visible in the field and have travelled around the state to visit regional offices. Chief Moreno's focus is to improve communication from headquarters to field operations.

Presiding Officer Cuevas questioned what is meant by the term “management” as indicated in the survey. Director Beck stated the term has two different constructs in the survey. One is the supervisor and one is management. The supervisor when asked was the person who managed them on site (day to day operations) and usually scored higher on the survey. Whereas, management is the person at headquarters. She stated obviously the communication issue is better with the person who is at the site on a day to day basis than management who may have an occasional visit.

Presiding Officer Cuevas quizzed Chief Moreno on how the communication gap issue is being resolved. Chief Moreno stated that district meetings are being held and the information is funneled down to the compliance officers and agents. A field operations newsletter is also published.

Administrator Steen stated that from the Austin headquarters, regional and district offices when meetings are held, agendas, minutes, and reports are being used as an informative tool and distributed to the Agency employee. The intent is to communicate and convey the same message if an employee is at the meeting or across the state.

Commissioner Fredricks commented that minutes written can convey a different meaning for those persons who are at the meeting versus those who may read them. Administrator Steen agreed, however, the minutes are proofed for accuracy and clarification in meaning before being released for publication. The perception of “fairness” is a concern to change from the survey’s standpoint.

Commissioner Weinberg mentioned that “pay” was another issue at the top of the survey list. He noted that it has come up from two years ago. Commissioner Weinberg stated that having a retreat for the Commissioners in conjunction with a strategic planning session is a good idea. He asked Director Beck when would be a good time. She replied during the months of March or April two years from now.

Presiding Officer Cuevas called for a motion. Commissioner Weinberg moved that the Commission approve the TABC Strategic Plan for the Fiscal year 2011-2015 period with changes. Commissioner Fredricks seconded and the motion carried.

APPROVAL TO PUBLISH PROPOSED NEW RULE 33.15, USE OF WINERY FESTIVAL PERMIT

Presiding Officer Cuevas called upon Assistant General Counsel Martin Wilson for the next presentation.

General Counsel Wilson briefed the Commissioners on the proposed new rule relating to the Use of Winery Festival Permit. This new section establishes the

procedures a winery festival permit holder must use to notify the commission before offering wine for sale.

The Texas Alcoholic Beverage Code §17.03 requires that the holder of a Winery Festival Permit must notify the commission before offering wine for sale under the permit, and authorizes the commission to adopt rules and establish procedure related to the notification. Wine may be sold under the permit only on certain occasions and for a limited number of days in a specified period.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the section will be in effect, there will not be an impact on state or local government. She also states that in those first five years, the public will benefit because the procedures winery festival permit holders must follow are clarified and those procedures utilize commission resources efficiently.

APPROVAL TO MOVE NOVEMBER 23, 2010, COMMISSION MEETING DATE TO FRIDAY, NOVEMBER 19, 2010

Presiding Officer Cuevas called for a motion to approve the move of the November 23, 2010, Commission meeting date to Friday, November 19, 2010. Commissioner Weinberg so moved and Commissioner Fredricks seconded.

PUBLIC COMMENT

Presiding Officer Cuevas opened the floor for public comments. No one came forward to address the Commission.

EXECUTIVE SESSION

The regular open session of the Texas Alcoholic Beverage Commission was recessed at 11:24 a.m., May 25, 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, §551071, §551.074).

The Texas Alcoholic Beverage Commission concluded its executive session at 12:15 p.m., May 25, 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, July 27, 2010, Tuesday, August 24, 2010 and Tuesday, October 26, 2010. There will not be a meeting in September.

ADJOURNMENT

Presiding Officer Cuevas called for a motion to adjourn. Commissioner Fredricks so moved and Commissioner Weinberg seconded. The motion was made and seconded. The motion carried, and Presiding Officer Cuevas announced that the meeting was adjourned at 12:16 p.m.

Attachment 1

**Administrator's Report: Administrator and
Agency Activities, Budget Issues, Staff
Achievements**

ADMINISTRATOR'S REPORT

Fiesta Celebration – San Antonio

SALE TO MINOR COMPLIANCE DOWN

- Working to include seller server training and TABC Education and Prevention during next celebration

FIESTA COMMISSION CONSIDERING SPIRITS IN SOME VENUES NEXT YEAR

- Travel to see some of the venues
- Meet with present president
- Develop letter to discuss options and our ideas on better compliance

Total TABC Reduction: \$4,459,503

Cost Savings Item	FY 2010 Savings	FY 2011 Savings	Biennial Savings
1. Lapsed Funding for POE Bridges	\$156,062	\$ 0	\$156,062
2. Lapsed Salary Savings Recognized	200,644	0	200,644
3. Transfer to Texas Dept of Agriculture	0	250,000	250,000
4. Gasoline and Utilities Reduction	155,000	73,937	228,937
5. Cap Budget-Seller Server Training	219,120	32,957	252,077
6. Cap Budget-Case Management	145,600	0	145,600
7. Cap Budget-Excise Tax Automation	558,717	136,313	695,030

Total TABC Reduction: \$4,459,503

Cost Savings Item	FY 2010 Savings	FY 2011 Savings	Biennial Savings
8. Staff Augmentation	\$110,000	\$100,000	\$210,000
9. Cap Budget-Hardware/Software Acq	30,000	30,000	60,000
10. Ports of Entry Cost Savings	100,000	0	100,000
11. Cap Budget-Fleet Acquisition	0	571,750	571,750
12. Cap Budget-Public Safety Equipment	73,794	173,794	347,588
13. Freeze Civilian Positions	179,357	358,712	538,069
14. Freeze CPO Positions	<u>234,582</u>	<u>469,164</u>	<u>703,746</u>
Totals	\$2,262,876	\$2,196,627	\$4,459,503

Ports of Entry and Border Violence

- Received Letter from the US Border Patrol
- Issued Vests to 4 Employees Within 72 Hours
- Directed Assessment of Violence by Port
- Recent Developments:
 - Traffic Down by 80%
 - Mexico Closing at 5:00 p.m.
 - Increased Gang Violence for Money

Super Bowl Meeting

Thursday, June 3, 2010

A Little Good News

- Excise tax is up by \$300,000 for the end of April
- Retailers up by 49 for the end of April

Attachment 2

**Approval Of Petition By The City of San Antonio
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 SAN
ANTONIO,
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.
 - ✦ *Distinguish from Penal Code Sec. 49.031. Possession of Alcoholic Beverage in Motor Vehicle, etc.*

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.

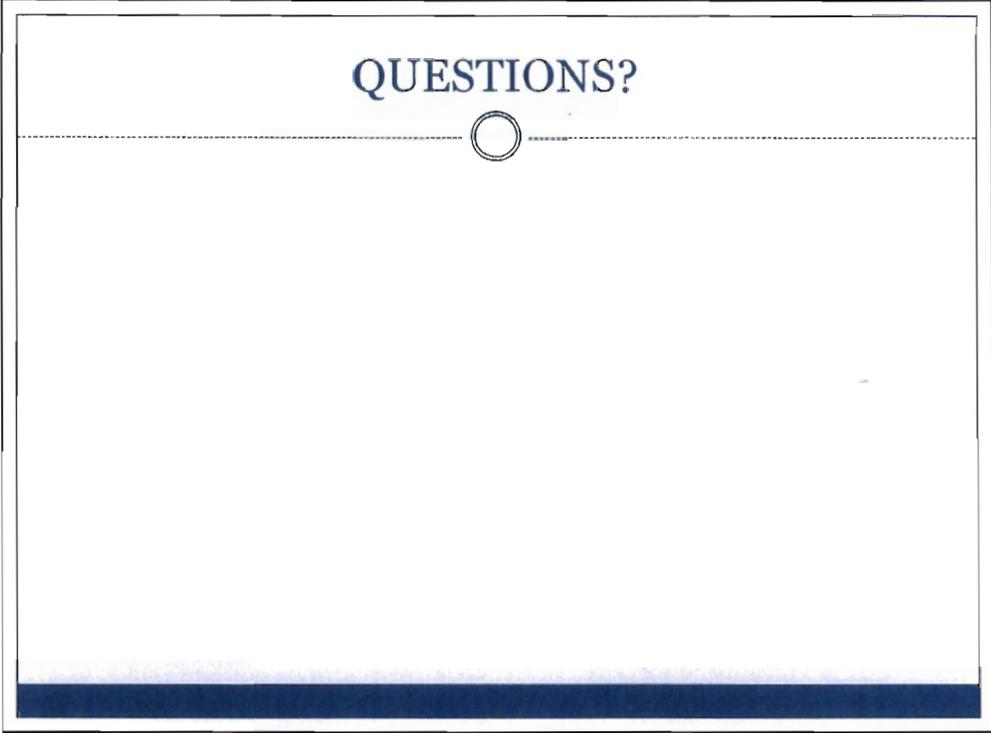
This has been done.

COMMISSION'S DUTIES



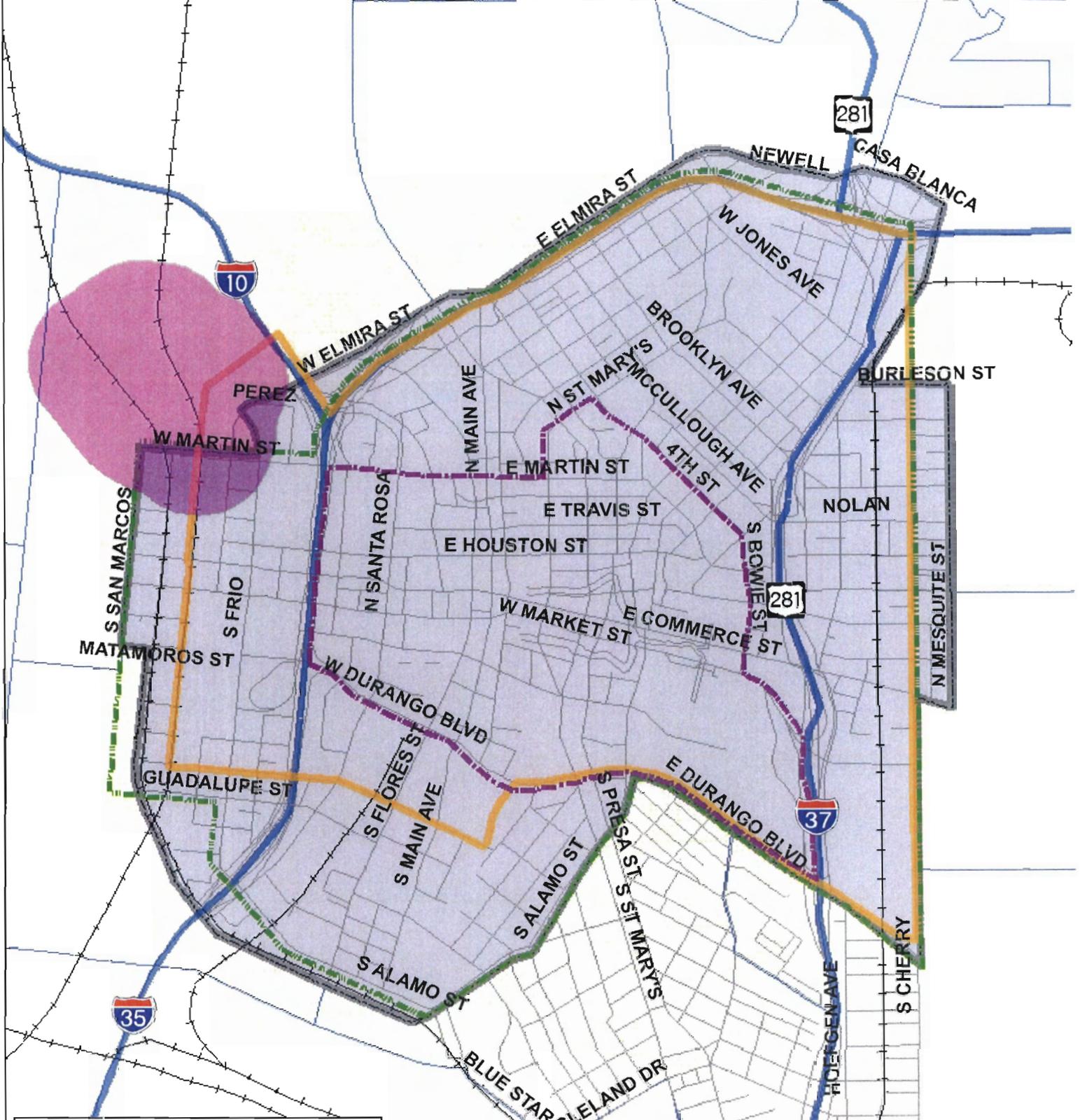
- If the diagram properly identifies the CBD;
 - The Commission shall Approve and Issue the Order,
 - Without further consideration.

QUESTIONS?



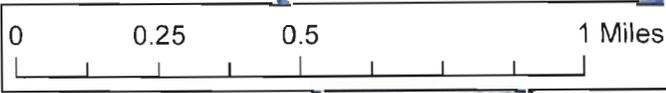
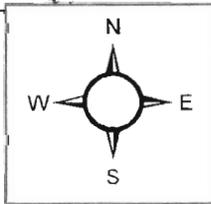
The image shows a large rectangular box with a thin black border. At the top center of the box, the word "QUESTIONS?" is written in a blue, serif font. Below the text, a horizontal dashed line spans the width of the box. In the center of this dashed line is a small, empty circle. The bottom portion of the box is filled with a solid dark blue color.

San Antonio Central Business District



Legend

- 1000 Foot Buffer - Haven for Hope
- Current Central Business District
- Current No Lying in the R.O.W. Zone
- Downtown UDC District
- Proposed Central Business District
- Railroads



ORDER

Before the Texas Alcoholic Beverage Commission for consideration is the Petition of the City of San Antonio, State of Texas, for adoption of an Order.

The Commission finds:

Section 109.35, Texas Alcoholic Beverage Code authorizes the governing body of a municipality to determine that the possession of an open container or consumption of alcoholic beverages in their central business district is a risk to the health and safety of the citizens of the municipality.

The Commission takes judicial notice of Ordinance # 2010-04-15-0327 passed by the City Council and approved by the Mayor of the City of San Antonio, Texas, on April 15, 2010. The ordinance documents the City of San Antonio's determination that the possession of an open container or public consumption of alcoholic beverages in the City's Central Business District poses a risk to the health and safety of its citizens. A map of the Central Business District for the City of San Antonio is attached.

The petition of the City of San Antonio, Texas for an order of the Commission to prohibit the possession of an open container or public consumption of alcoholic beverages in the City's Central Business District poses a risk to the health and safety of its citizens, is properly submitted, and without further consideration the petition is approved.

No further action is required by the City of San Antonio, Texas to give this order the force and effect of law.

IT IS, THEREFORE, ORDERED THAT:

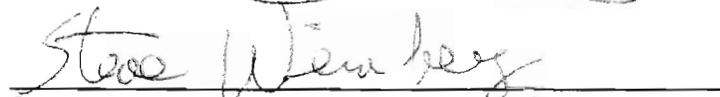
THE POSSESSION OF AN OPEN CONTAINER OR PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES IS PROHIBITED IN THE CENTRAL BUSINESS DISTRICT, THE CITY OF SAN ANTONIO, STATE OF TEXAS.

This order is issued and is effective on May 25, 2010.

TEXAS ALCOHOLIC BEVERAGE COMMISSION



Jose Cuevas, Presiding Officer



Steven M. Weinberg, MD, JD, Member



Melinda S. Fredricks, Member

Attachment 3

**Presentation and Possible Action of the Findings
of the Commission's Operations Internal Audit**

**Texas Alcoholic Beverage Commission
Internal Audit of the
Commission's Operations**

Final Draft Report

April 19, 2010

As Prepared by
Jansen & Gregorczyk
Certified Public Accountants

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TABC Internal Audit of the Commission's Operations– Final Draft Report– April 19, 2010

Jansen & Gregorczyk
Certified Public Accountants

Telephone
(512) 268-0070

P. O. Box 601
Kyle, Tx. 78640

April 19, 2010

Commission Members
Texas Alcoholic Beverage Commission

The following report provides the results and recommendations noted during the internal audit of the Commission's Operations.

The internal audit was conducted in accordance with generally accepted government auditing standards and *Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors.

Signed Copy on File

Jansen & Gregorczyk
Certified Public Accountants

EXECUTIVE SUMMARY

Audit Purpose

The primary purposes of the internal audit were to evaluate compliance with legal requirements regarding the operations of the Commission, effectiveness of processes for involving Commission members in the strategic direction and oversight of the agency, and processes for informing Commission members about agency activities and fiduciary matters.

Key Audit Observations

- An amendment in 2007 to the Texas Ethics Commission statute (Government Code Section 572) requires each state agency to adopt an ethics policy and provide copies of the policy to each new officer of the agency not later than the third business day after the date the person qualifies for office. TABC has adopted the required ethics policy, but it has not been revised to reference state officers (Commission members) of the agency and members of the Commission have not been provided copies of the policy as required.
- TABC has not complied with the statutory requirement to review existing agency rules over a four year period. In 2008, a Rule Review Plan was approved, but it has not been followed.
- TABC has developed effective processes for ensuring the Commission members' involvement in defining the agency's mission, setting the strategic direction of the agency and developing the biennial legislative appropriation's request.
- An effective training and orientation program has been established for new Commission members.

- There is an established process for approval of the operating budget by the Commission each year and there is an effective process for reporting to the Commission on the operating budget status during the year.
- The TABC follows an effective rule-making process that ensures that the Commission is involved the development and approval of agency rules and policies necessary to address statutory requirements and ensure the effective administration of agency functions.
- The TABC has developed a comprehensive and effective management reporting system for keeping the Commission informed about the agency operations and fiduciary matters.
- The Commission meetings are conducted in accordance with legal requirements and the Commission minutes adequately reflect the actions taken during Commission meetings.

Significant Recommendations

- The Commission should have the General Counsel determine whether changes to the TABC ethics policy are needed to cover state officers and if so those changes should be made and copies of the TABC ethics policy should be provided to the commissioners.
- A new Rules Review Plan should be developed and approved by the Commission to review and readopt all agency rules at least every four years as required by statute. The General Counsel should periodically report to the Commission on the status of completing the Rules Review Plan.

Commission's Response

- To be included in the Final Report.

AUDIT PURPOSE & SCOPE

The primary purposes of the internal audit of were to evaluate compliance with legal requirements regarding the operations of the Commission, effectiveness of processes for involving Commission members in the strategic direction and oversight of the agency, and processes for informing Commission members about agency activities and fiduciary matters.

The scope of the audit included review, analysis and/or testing of the following areas:

- laws governing operations of the Commission;
- processes for obtaining Commission involvement in developing the mission statement and strategic plans;
- training programs for Commission members;
- budgeting and reporting system;
- rule and policy-making processes;
- management reporting system; and
- Commission meetings and meeting minutes.

Specific audit objectives were developed and coordinated with TABC management and the commissioners. These audit objectives and the results of our audit work are presented in the next section, "Audit Results and Recommendations."

AUDIT RESULTS & RECOMMENDATIONS

The results and recommendations of the internal audit work are presented in this section for each of the seven audit objectives that were established and coordinated with TABC executive management and the commissioners.

Audit Objective 1: Determine if TABC has established effective processes for ensuring compliance with statutory requirements related to the operations of the Commission.

TABC has established effective processes for ensuring compliance with statutory requirements related to the operations of the Commission and TABC is operating in compliance with all significant statutory requirements, except for two issues as discussed below.

An amendment in 2007 to the Texas Ethics Commission statute (Government Code Section 572) requires each state agency to adopt an ethics policy and provide copies of the policy to each new officer of the agency not later than the third business day after the date the person qualifies for office. TABC has adopted the required ethics policy, but it has not been revised to reference state officers (Commission members) of the agency and members of the Commission have not been provided copies of the policy as required.

TABC has not complied with the statutory requirement to review existing agency rules over a four year period. In 2008, a Rule Review Plan was approved, which scheduled the review for the remainder of the Commission meetings in calendar years' 2008 and 2009. The review of all agency

rules was not completed during this time frame as discussed in more detail in Audit Objective 5.

Recommendation 1: The Commission should have the General Counsel determine whether changes to the TABC ethics policy are needed to cover state officers and if so those changes should be made and copies of the TABC ethics policy should be provided to the commissioners.

Commission Response: (To be provided by the commissioners at the May 2010 Commission meeting and incorporated into the final report.)

Audit Objective 2: Determine if there is an effective process for the Commission's involvement in defining the agency's mission and strategic direction and developing the biennial legislative appropriation's request.

TABC has developed effective processes for ensuring the Commission members' involvement in defining the agency's mission, setting the strategic direction of the agency and developing the biennial legislative appropriation's request. The commissioners provide input through their meetings with staff or the Administrator, receive timely updates from the Administrator, and are well informed and prepared to approve these key documents at the appropriate time. Currently input is individually by each Commission member in separate meetings or telephone calls with the Administrator and/or management staff since having more than one member present constitutes a Commission quorum and requires posting as an open meeting.

One commissioner suggested that a retreat with staff would be an effective way for the

commissioners to be able to provide their collective input in to the development of the Strategic Plan. This would require posting the retreat as an open meeting since a quorum of the Commission members would be present, but this might provide a more effective means of obtaining the commissioners' ideas regarding the strategic direction of the agency.

Recommendation 2: *The Commission should consider having a Commission retreat for developing Commission input into the agency Strategic Plan. If the timeline for a Commission retreat is not feasible for completing the current Strategic Plan, it should be considered as a component of the next strategic planning process.*

Commission Response: (To be provided by the commissioners at the May 2010 Commission meeting and incorporated into the final report.)

Audit Objective 3: *Determine if an effective training and orientation program has been established for new Commission members.*

An effective training and orientation program has been established for new Commission members. The agency usually devotes about one-and-a-half to two days for an orientation of the new Commission member to the agency. New commissioners are introduced to every key person in the management team and receive a brief overview of their division and its function within the agency. These orientation schedules are well planned and coordinated. New Commission members receive information about the agency as required by statute.

All Commission members must complete training on Open Meetings and Open Records within 90 days of their first Commission meeting. All Commission members have received this training. Other voluntary training opportunities are available to Commission members. The Texas Ethics Commission offers an on-line training program on ethics in state government for appointees. The Governor's Office offers a broad-based seminar for new appointees once or twice a year (usually once in even years and twice in odd years). It is by invitation for those persons who have been appointed in the last year. Staff members of the Governor's Office, a representative from the Office of the Attorney General, and representatives from the Texas Ethics Commission make presentations to the new appointees. This is a one day seminar, and there is no fee to attend, other than for lunch. Travel arrangements and expenses are borne by the agency.

One Commission member noted that since Commission members can have no ties to the alcohol beverage industry, that some type of attendance at an alcoholic beverage industry conference would be useful in understanding TABC's regulatory role and its impact on the industry.

Recommendation 3: *The Commission should consider recommending to any new Commission member that they attend an industry conference to gain a different perspective on the role of TABC and the impact the law and agency rules have on businesses in the alcoholic beverage industry. In addition, the Commission should be made aware of all training opportunities that are available through other state agencies for appointees and Commission members so they can attend any training they believe is relevant or important*

in performing their responsibilities as Commission members.

Commission Response: (To be provided by the commissioners at the May 2010 Commission meeting and incorporated into the final report.)

Audit Objective 4: *Determine if there are effective processes for approval of the operating budget by the Commission, reporting to the Commission on the operating budget status during the year and amending the operating budget when necessary.*

There is an established process for approval of the operating budget by the Commission each year and there is an effective process for reporting to the Commission on the operating budget status during the year. The operating budget is the key financial performance document used by management and the Commission. The Commission has granted the Administrator the authority to adjust and revise the budget as necessary during the fiscal year. Changes in the budget strategies made during the year are reported to the Commission.

Recommendations: *None.*

Audit Objective 5: *Determine if effective rule and policy making processes have been established for ensuring the Commission's involvement in the development and approval of agency rules and policies necessary to address statutory requirements and ensure the effective administration of agency functions.*

The TABC follows an effective rule-making process that ensures that the Commission is

involved in the development and approval of agency rules and policies necessary to address statutory requirements and ensure the effective administration of agency functions; however, there is one component of the overall process that requires better oversight to ensure compliance with the Texas Government Code as discussed below.

Administrative rules undergo an extensive review by operating management and legal staff before being provided to the Commission members. The minutes of the Commission meetings from January 2009 until February 2010 were reviewed to determine compliance with the requirements for adopting administrative rules for the TABC. During this timeframe, there were 17 actions on rules, including repeals, new rules, and amended rules. These rules were adopted in open meetings in which proper public notice was given. They were properly submitted to the Texas Register, were published in the Texas Register as proposed rules, were published in the Texas Register as adopted rules, and become effective 20 days after being submitted to the Texas Register as adopted rules. The Commission followed all the legal requirements for adopting these rules.

The Texas Government Code Section 2001.039 requires each state agency to review and consider for re-adoption each of its rules no later than the fourth anniversary of the date on which the rules took effect and every four years after that date. The Commission adopted a Rule Review Plan at the September 26, 2008 Commission meeting. However, the minutes of subsequent meetings do not indicate review of these rules in accordance with the Plan. This failure to maintain and follow the Plan was confirmed by the General Counsel. In

TABC Internal Audit of the Commission's Operations- Final Draft Report- April 19, 2010

addition, the Administrator noted that from 2003 to 2007, the Commission had not formally followed any type of rule review plan. The General Counsel reports that the process will be re-initiated, beginning with a new Plan beginning April 1, 2010.

The Commission is less involved in internal policy development, but is provided information by the Administrator when new policies are developed and adopted.

Recommendation 4: *A new Rules Review Plan should be developed and approved by the Commission to review and readopt all agency rules at least every four years as required by statute. The General Counsel should ensure that the Plan is followed and should periodically report to the Commission on the status of completing the Rules Review Plan.*

Commission Response: (To be provided by the commissioners at the May 2010 Commission meeting and incorporated into the final report.)

Audit Objective 6: *Determine if an effective management reporting system has been established for keeping the Commission informed about the agency operations and fiduciary matters.*

The TABC has developed a comprehensive and effective management reporting system for keeping the Commission informed about the agency operations and fiduciary matters. The Administrator provides a comprehensive written report to each commissioner each month. Regular presentations are made by TABC managers at the Commission meetings regarding various fiduciary and performance topics. Incidents involving the agency or its agents

that may appear in local media are conveyed to Commission members as quickly as possible.

Recommendations: *None.*

Audit Objective 7: *Determine if the Commission meetings are conducted in accordance with legal requirements and if the Commission minutes adequately reflect the actions taken during Commission meetings.*

The Commission meetings are conducted in accordance with legal requirements and the Commission minutes adequately reflect the actions taken during Commission meetings. The notices for the meeting and the agendas are properly published, and the minutes properly document the activities of the Commission during the meetings. Executive sessions are properly announced and documented, certified agendas are prepared and maintained in accordance with the Government Code §551.303 and §551.304.

Recommendations: *None.*

Attachment 4

**Texas Alcoholic Beverage Commission Amended
Rule Review Plan**

2010 Proposed Amended Rule Review Plan

Presented by Martin Wilson,
Assistant General Counsel

Texas Alcoholic Beverage Commission Amended Rule Review Plan

Pursuant to the Texas Government Code §2001.039

Chapters	Review Date
Chapter 32. Subchapter A. Grants General Provisions	January 2011 Mindy Carroll
Chapter 32. Subchapter B. Grant Budget	January 2011 Mindy Carroll
Chapter 32. Subchapter C. Grant Funding	January 2011 Mindy Carroll
Chapter 32. Subchapter D. Grant Administration	January 2011 Mindy Carroll
Chapter 32. Subchapter E. Grant Monitoring and Audits	January 2011 Mindy Carroll

Texas Alcoholic Beverage Commission Amended Rule Review Plan

Pursuant to the Texas Government Code §2001.039

Chapters	Review Date
Chapter 33. Licensing	January 2011 Amy Harrison
Chapter 35. Enforcement	August 2010 Rod Venner / Chief Moreno / Steve Greinert
Chapter 36. Gun Regulation	August 2010 Rod Venner / Chief Moreno
Chapter 39. Ports of Entry	September 2010 Charlie Kerr / Santos Saldana
Chapter 41. Auditing	September 2010 Steve Greinert / D.K. Jones

Texas Alcoholic Beverage Commission Amended Rule Review Plan

Pursuant to the Texas Government Code §2001.039

Chapters	Review Date
Chapter 45. Subchapter A. Standards of Identity Distilled Spirits	June 2010 D.K. Jones / Thomas Graham / Steve Greinert / Chief Moreno
Chapter 45. Subchapter B. Standards of Identity Wine	June 2010 D.K. Jones / Thomas Graham / Steve Greinert / Chief Moreno
Chapter 45. Subchapter C. Standards of Identity Malt Beverages	June 2010 D.K. Jones / Thomas Graham / Steve Greinert / Chief Moreno
Chapter 45. Subchapter D. Advertising and Promotion All Beverages	June 2010 D.K. Jones / Thomas Graham / Steve Greinert / Chief Moreno

For further information, please contact:

**Martin Wilson, Assistant General Counsel,
Texas Alcoholic Beverage Commission
P. O. Box 13127
Austin, Texas 78711**

**Call Direct: (512) 206-3489 or Email to
martin.wilson@tabc.state.tx.us**

Texas Alcoholic Beverage Commission Amended Rule Review Plan

Pursuant to the Texas Government Code §2001.039, the Commission files the following amended rule review plan.

CHAPTERS	REVIEW DATE
Chapter 32. Subchapter A. Grants General Provisions	January 2011 Mindy Carroll
Chapter 32. Subchapter B. Grant Budget	January 2011 Mindy Carroll
Chapter 32. Subchapter C. Grant Funding	January 2011 Mindy Carroll
Chapter 32. Subchapter D. Grant Administration	January 2011 Mindy Carroll
Chapter 32. Subchapter E. Grant Monitoring and Audits	January 2011 Mindy Carroll
Chapter 33. Licensing	January 2011 Amy Harrison
Chapter 35. Enforcement	August 2010 Rod Venner / Chief Moreno / Steve Greinert
Chapter 36. Gun Regulation	August 2010 Rod Venner / Chief Moreno
Chapter 39. Ports of Entry	September 2010 Charlie Kerr / Santos Saldana
Chapter 41. Auditing	September 2010 Steve Greinert / D.K. Jones
Chapter 45. Subchapter A. Standards of Identity Distilled Spirits	June 2010 D.K. Jones / Thomas Graham / Steve Greinert / Chief Moreno
Chapter 45. Subchapter B. Standards of Identity Wine	June 2010 D.K. Jones / Thomas Graham / Steve Greinert / Chief Moreno
Chapter 45. Subchapter C. Standards of Identity Malt Beverages	June 2010 D.K. Jones / Thomas Graham / Steve Greinert / Chief Moreno
Chapter 45. Subchapter D. Advertising and Promotion All Beverages	June 2010 D.K. Jones / Thomas Graham / Steve Greinert / Chief Moreno

For further information, please contact Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711 or call (512) 206-3489 or email to martin.wilson@tabc.state.tx.us.

Attachment 5

**Approval of Report on the Status of Implementing
FY 2009 Internal Audit Recommendations**

**Texas Alcoholic Beverage
Commission
Report on the Status of
Implementing
FY 2009 Internal Audit
Recommendations**

FINAL REPORT

As Approved by the Commission on

May 25, 2010

As Prepared by
Jansen & Gregorczyk
Certified Public Accountants

**Internal Audit Report on the Status of Implementing FY 2009 Audit Recommendations-
Final Report- May 25, 2010**

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**Internal Audit Report on the Status of Implementing FY 2009 Audit Recommendations-
Final Report- May 25, 2010**

**Jansen & Gregorczyk
Certified Public Accountants**

**Telephone
(512) 268-0070**

**P. O. Box 601
Kyle, Tx 78640**

May 25, 2010

Commission Members
Texas Alcoholic Beverage Commission

The following report provides the results and recommendations noted during the internal audit follow-up review of recommendations made in the following internal audit reports:

- Performance Measurement System
- Excise Tax Section of the Tax Division
- Travel Policies and Procedures
- Accounting System and Accounting Internal Controls

The follow-up review was conducted in accordance with generally accepted government auditing standards and *Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors.

Signed Copy on File

Jansen & Gregorczyk
Certified Public Accountants

**Internal Audit Report on the Status of Implementing FY 2009 Audit Recommendations-
Final Report- May 25, 2010**

Executive Summary

Four internal audits were completed during FY 2009. Each of these audits contained recommendations for corrective actions or improvements to agency operations. The purpose of this report is to indicate the status of implementation of recommendations made in these internal audit reports. The chart below summarizes the status of implementing the recommendations in each report. Implementation status categories are those developed by the State Auditor's Office and include the following:

- **Fully Implemented (F):** Successful development and use of a process, system, or policy to implement a prior recommendation.
- **Substantially Implemented (S):** Successful development but inconsistent use of a process, system, or policy to implement a prior recommendation.
- **Incomplete/Ongoing (O):** Ongoing development of a process, system, or policy to address a prior recommendation.
- **Not Implemented (N):** Lack of a formal process, system, or policy to address a prior recommendation.

Audit	Recommendation #														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Performance Measurement System Audit- 4/28/09	O	O	O	O	O	O	O								
Excise Tax Section of the Tax Division Audit- 4/28/09	F	F	F	F											
Travel Policies & Procedures Audit- 5/19/09	F	O	F	F	F	F	F	F	F	F	F				
Accounting System & Internal Controls Audit- 8/25/09	F	F	F	F	F	F	F	F	F	F	F	F	F	F	F

As indicated on the summary chart, TABC management has done a good job of implementing the internal audit recommendations made in FY 2009. All but two of the recommendations that are incomplete/ongoing are the result of the need for approval of new agency performance measures by the Legislative Budget Board and Governors Budget and Planning Office and TABC has done all of the work that can be done on these audit recommendations.

Internal Audit of the Performance Measurement System

As Approved by the Commission on April 28, 2009

Recommendation 1: Management should work with the LBB and the GOBPP to establish key performance measures for Goal 3, To ensure compliance with the Alcoholic Beverage Code in the manufacturing, importing, exporting, transporting, storing, selling, serving, and distributing of alcoholic beverage, Strategy 1, Compliance Monitoring, that satisfy the criteria of good performance measures as specified in the Guide to Performance Measure Management.

TABC Management Response: Management concurs with the assessment and recommendation, and will continue to work with the Legislative Budget Board (LBB), the Governor's Office of Budget, Planning, and Policy (GOBPP), and the appropriate legislative committees in order to secure approval for the new measures that the agency has previously proposed for this strategy and to have those new measures designated as the key measures for the strategy.

Status: Incomplete/Ongoing. The proposed performance measures have been developed with appropriate definitions. The agency continues to work with the LBB and the GOBPP regarding the proposed changes to performance measures. No additional implementation efforts can be made until a decision is made by the LBB and the GOBPP regarding the requested changes.

Recommendation 2: Because the agency's strategic plan covering the Fiscal Years 2010 – 2011 biennium has already been completed, TABC should work with the LBB and, if necessary, appropriate staff members of the Legislative Appropriations Committee of the 82nd Legislative Session to revise the agency's appropriation budget structure, including its performance measures, to better align with its operational organization.

In recommending revisions to the budget structure and performance measures, management should consider recommending inclusion of the enforcement and compliance activities as separate strategies within the same appropriation goal to enable better coordination between the Enforcement and Compliance Divisions in achieving the goals of Field Operations. Separate performance measures should be established for the significant activities within each of the two strategies. Additionally, the Tax Division's activities currently accounted for within the Compliance Monitoring strategy should be transferred to a goal that would encompass strategies regarding tax and fee collections as well as ports of entry responsible for regulating the personal importation of alcoholic beverages and cigarettes.

The proposal for changes should be in writing, explain the agency's justification for the changes, and focus on key measures because this is where decision-makers' interest is centered. The proposal should facilitate review by providing, preferably, a side-by-side layout of the current budget structure and measures, proposed changes, and explanations. The proposal should

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justify the loss of historical data, if necessary, and allow for dual reporting of the current and proposed budget structure, including performance measures, during a transition period.

The proposed changes should be made to the LBB and GOBPP at the same time as other strategic plan revisions are made during the spring and summer of even number years.

TABC Management Response: Management concurs with the audit recommendation. Management will attempt to secure the recommended budget structure and performance measure changes during the strategic planning cycle for the FY 2012 – 2013 biennium (Spring-Summer 2010).

Status: Incomplete/Ongoing. Any revision of the basic Strategic Plan structure will take considerable time because the LBB and GOBPP have to approve such changes and advise legislative committees of the change.

***Recommendation 3:** In working with the LBB and staff members of the Legislative Appropriations Committee, TABC should emphasize the importance of establishing measures that have been developed and implemented related to public safety to be key measures. Management should also emphasize that the performance targets for the existing key measures are unreasonable and need to be reduced considering the need for resources to be directed to enforcement and compliance activities relating to protecting the public safety, such as conducting inspections of high risk or priority locations, to better align the agency's priorities with its mission that was revised pursuant to the Sunset recommendation.*

TABC Management Response: Management concurs with the recommendation and is already working with the LBB and Legislature to change both the targets for current Enforcement key measures and to replace the existing key measures for the strategy with alternative measures that are more directly related to the agency's risk-based public safety initiatives. Management will make every effort to secure the approvals necessary to implement the auditor's recommendation during the strategic planning cycle for the FY 2012 – 2013 biennium.

Status: Incomplete/Ongoing. The agency has made a concerted effort to get changes made to Key Performance Measures and other performance measures that are elements of the agency's Strategic Plan for FY 2012-2013. Some of these measures are already used internally in management reporting.

***Recommendation 4:** Management should establish an initiative to identify and collect external data for the purposes of identifying benchmarks and outcomes to help the agency identify best practices for detecting serious public safety violations and measure the impact of its enforcement activities on public safety.*

TABC Management Response: Management concurs with the recommendation and will work with the National Liquor Law Enforcement Association (NLLEA), the member agencies of that organization, and other law enforcement agencies to identify meaningful benchmarks.

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Status: Incomplete/Ongoing. The TABC is working with the NLLEA and other law enforcement agencies to identify meaningful benchmarks.

***Recommendation 5:** In connection with Recommendations 2 and 3, management should recommend and explain the need to eliminate the compliance monitoring strategy's key outcome, output and efficiency measures and recommend the use of appropriate replacement measures to allow for more specific identification of the activities currently included in the key measures. The more granular measures should exclude costs and activities not relating to compliance monitoring, such as the number and cost of Tax Division's reports analyzed, and provide management feedback relative to the compliance monitoring goals to increase its chances of achieving these goals and to serve as a basis for decision making purposes. The more granular measures should include outcome, output and efficiency measures relating to the following activities:*

- *Education and instruction*
- *Inspections*
- *Regulatory Audits*
- *Investigation Audits, with distinction between the cursory nature of audits designed to ensure compliance and investigative audits that are much more in-depth and time consuming*

The recommended measures should distinguish between risk-based activities that focus on public safety versus other "non-public safety" activities with both types of activities having their own measures.

TABC Management Response: Management concurs with the auditor's recommendation and notes that some granular output and outcome measures are already in place for this strategy and are in use for internal purposes, if not for external reporting. New efficiency measures, however, are still needed, and the existing granular output and outcome measures need to be fine-tuned to better distinguish between public safety and regulatory enforcement activities. Management will make every effort to have the measures constructed, tested, and approved as part of the agency's FY 2012–2013 Strategic Plan.

Status: Incomplete/Ongoing. The proposed performance measures have been developed with appropriate definitions. The agency continues to work with the LBB and the GOBPP regarding the proposed changes to performance measures. No additional implementation efforts can be made until a decision is made by the LBB and the GOBPP regarding the requested changes.

***Recommendation 6:** In connection with Recommendations 2 and 3, management should review and revise, where appropriate, performance measure definitions to ensure their clarity and specifically define the composition of each measure. Minimally, the composition of the activities included in the compliance monitoring strategies needs to be clarified. Additionally, a clear definition of applications should be incorporated in the performance measure definition of the*

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License output measure, Number of Applications Processed, to ensure consistency in how applications are counted between field offices and headquarters, and reported to LBB.

TABC Management Response: Management concurs with the auditor's recommendation. The approved FY 2010 – 2011 definitions for the compliance monitoring strategy's composite measures are far less ambiguous than the definitions used in past years, and the agency is already seeking additional changes to add more clarity even as it seeks to replace the current composite key measures with new key measures that are more granular in nature. Management also agrees that a more clear and consistent definition is needed for the term "application" and that external and internal measures that pertain to the number of applications handled should be referring to the same unit of analysis. Any external approvals needed to implement the recommendation will be requested as part of the agency's Strategic Plan for the FY 2012– 2013 biennium. the changes to their superiors.

Status: Incomplete/Ongoing. The proposed performance measures have been developed with appropriate definitions. The agency continues to work with the LBB and the GOBPP regarding the proposed changes to performance measures. No additional implementation efforts can be made until a decision is made by the LBB and the GOBPP regarding the requested changes.

Recommendation 7: *Management should develop and implement the performance measures discussed below to obtain additional feedback relative to its goals, to increase its chances of achieving the goals, and to serve as a basis for decision making purposes. These measures should be recommended for legislative approval in connection with Recommendations' 1 and 2 above; however, they should be developed regardless of approval by the LBB to provide management the information it needs to effectively manage its operations. The measures to be developed and implemented are as follows:*

- *the more granular measures referenced at Recommendation 5 above.*
- *appropriate outcome, output and efficiency measures for the newly created Tax Division.*
- *efficiency measures based on only costs or other quantifiable units of costs such as time (man hours) over which program management has control to complement, if not replace, the key efficiency measures for the License, Enforcement and Compliance divisions. The efficiency measures of the Enforcement and Compliance divisions should provide drill-down information regarding the efficiency of public safety inspections and other activities that result in public safety violations or separate measures should be developed to provide this information.*
- *appropriate outcome, output and efficiency measures regarding activities relating to processing prioritized, or public safety, complaints.*
- *outcome measures for education and instruction provided by the Enforcement and Compliance divisions.*

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The measures should be developed in accordance with the guidelines established by the Guide to Performance Measure Management. Once management is satisfied the measures meet the specified criteria for a good performance measure, the measures should be implemented with appropriate targets, reported on a regular basis to management and the governing commission, and used as a basis for assessing and improving performance.

TABC Management Response: Management concurs with the recommendation, and with regards to measures used for internal reporting purposes, management will implement the recommendation immediately. Changes to externally reported measures will, of course, first have to be approved by the LBB, the GOBPP, and the appropriate legislative committees. Management will seek to obtain the necessary approvals during the next strategic planning cycle, which will start in Spring 2010.

Status: Incomplete/Ongoing. As noted, the process for implementing changes to the basic structure of the Strategic Plan and the related performance measures is slow. Periodic reassignment of the agency's analysts with the LBB and GOBPP contribute to lack of continuity, and resistance to change by the LBB, the GOBPP, and other legislative committees contribute to the difficulty in getting performance measures changed.

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Internal Audit of the Excise Tax Section of the Tax Division

As Approved by the Commission on April 28, 2009

***Recommendation 1:** The Excise Tax Section should eliminate calculation of the 2% discount for vendors that do not claim the discount.*

TABC Management Response: Agree. Recommendation has been implemented.

Status: Fully Implemented.

***Recommendation 2:** The Excise Tax Manager should initial and date the Allocated Revenue Reports each month and retain all necessary supporting documentation of discrepancies and corrections that are made to the Applied Revenue Reports. These changes should be incorporated into the current procedures and documented in the Excise Tax Manual.*

TABC Management Response: Agree. Recommendation has been implemented.

Status: Fully Implemented.

***Recommendation 3:** Chapter 19 of the Excise Tax Manual should be updated to include the current procedures used for collecting delinquent excise tax revenues. The procedures should include the process for verifying that all delinquent filers on the monthly late filer report have been sent the required delinquent notification letters and appropriate follow-up actions have been taken.*

TABC Management Response: Agree. Recommendation has been implemented.

Status: Fully Implemented.

***Recommendation 4:** The Excise Tax Manual should be updated to provide detailed procedures for label approval applications, temporary membership cards (Audit Objective 6) and liquor identification stamps (Audit Objective 7).*

TABC Management Response: Agree. Recommendation has been implemented.

Status: Fully Implemented.

Internal Audit of Travel Policies and Procedures

As Approved by the Commission on May 19, 2009

***Recommendation 1:** The formal travel policies should be expanded to include the specific policies regarding cost effective travel, including policies embedded in the Comptroller's TexTravel web site. TABC should also update its travel policies to include current references to the state's travel laws and rules provided by the State Comptroller of Public Accounts.*

TABC Management Response: Management concurs with the recommendation. The agency will have relevant travel policies added to the policies manual.

Status: Fully Implemented.

***Recommendation 2:** TABC should develop travel policies and procedures for those policies it would like to have in place to conserve limited travel funds or for other purposes that may be more restrictive than the State general travel policies. The agency's travel policy should include examples of the types of expenditures that are not reimbursable such as gasoline for the use in a personal vehicle and flat rates for meal expenses that are not based on actual costs. TABC should also develop and implement a policy and procedures regarding out-of-state travel.*

TABC Management Response: Management concurs with the recommendation. The agency has recently proposed paying partial per diem for non-overnight travel and will incorporate this policy with other internal policies that are more restrictive than the general policies of the State. An out of state travel policy will also be developed.

Status: Incomplete/Ongoing. The travel policy was updated in January 2010, but a policy for out-of-state travel is still being developed.

***Recommendation 3:** Supervisors should question employees whose travel vouchers charge meal expenses that do not appear to be based on actual meal expenses.*

TABC Management Response: Management concurs with the recommendation. The director of Business Services will send out a memo reminding supervisors to scrutinize travel vouchers before approving.

Status: Fully Implemented.

***Recommendation 4:** The General Counsel should research the issue of the amount of compensatory per diem to which Commissioners are entitled and provide the Business Services Division a written legal interpretation as the basis for any future payments.*

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TABC Management Response: The agency will research the issue on compensatory per diem and will reduce the per diem reimbursement to the amount currently in statute until such time a legal interpretation is made.

Status: Fully Implemented.

***Recommendation 5:** A policy and procedures for the payment of Commissioners' compensatory per diem should be developed to provide reasonable assurance the payments are correct and adequately supported. Processing procedures should include a secondary review and approval of all pending compensatory payments by a responsible employee other than the preparer of the compensatory payments. The review and approval should include consideration of the completeness and accuracy of the payments including the payments being in compliance with statutory requirements, adequately supported, and posted to the proper period.*

TABC Management Response: Management concurs with the recommendation. The division has implemented a second review procedure to validate payment accuracy and will develop a written policy for the payment of Commissioner's compensatory per diem.

Status: Fully Implemented.

***Recommendation 6:** TABC should recover compensatory per diem payments paid to the TABC Commissioners in error.*

TABC Management Response: The duplicate payments for compensatory per diem made for the November 2008 Commission meeting will be recovered by not paying the two Commissioners compensatory per diem until the overpayments are recovered.

Status: Fully Implemented.

***Recommendation 7:** The travel advance fund procedures should be updated to reflect current practices regarding the issuance of travel advance checks and to include procedures for the deposit of travel advance reimbursements to the travel advance bank account.*

TABC Management Response: Management concurs with the recommendation. A policy will be developed.

Status: Fully Implemented.

***Recommendation 8:** The travel advance fund bank reconciliations should be performed on a monthly basis to provide reasonable assurance of the accuracy of the accounting and bank records as well as to identify travel reimbursements due from employees.*

TABC Management Response: Management concurs with the recommendation.

Status: Fully Implemented.

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***Recommendation 9:** Business Services should ensure that the travel advance fund is reimbursed by TABC employees on a timely basis by notifying the employee and if necessary the employee's supervisor when excess funds are not returned by the established deadline.*

TABC Management Response: Management concurs with the recommendation. A directive will be distributed advising supervisors approving such payments that they will be responsible for ensuring the timely return of excess funds. Business Services will follow up on all delinquent reimbursements.

Status: Fully Implemented

***Recommendation 10:** TABC should revise its travel policy and procedures to require employees on agency travel to submit their actual receipts for lodging, airfare and rental cars with their travel vouchers. The policy should also emphasize the requirement that employees must document all travel activities, including the use of direct pay vendors and reservation cancellations, on their travel vouchers.*

TABC Management Response: Management concurs with the recommendation. A formal policy will be developed requiring receipts on direct billed travel.

Status: Fully Implemented.

***Recommendation 11:** The Business Services Division should develop a procedure to provide reasonable assurance that direct pay vendors are not reimbursed without the same level of proof that would be required as the supporting documentation for the reimbursement of a state employee for the same expense, as required by TexTravel. One strategy the agency may want to consider is an addition to the standard travel voucher that documents all planned and actual use of direct pay vendors and establishes the formal expectation that employees must complete the addition and attach all related direct pay vendor receipts before travel reimbursements are made to the employee.*

TABC Management Response: Management concurs with the recommendation. The division will develop a method to ensure sufficient documentation is presented with all travel vouchers and that employees are required to submit receipts for all direct billed travel.

Status: Fully Implemented.

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Internal Audit of Accounting System & Accounting Internal Controls

As Approved by the Commission on August 25, 2009

***Recommendation 1:** Management should request the Commission to clarify the motion to approve the operating budget each year to include authorizing management to make changes that are authorized by the General Appropriations Act. Suggested language might be "The Commission authorizes the Administrator, or his designee, to make transfers among appropriation line items and capital budget items in accordance with the General Appropriations Act as necessary to implement the budget."*

TABC Management Response: Management agrees with finding and has implemented the recommendation as read by Commissioner Weinberg into the record in the July 2009 Commission Meeting.

Status: Fully Implemented.

***Recommendation 2:** If it appears that purchase of evidence expenditures may exceed \$50,000 in FY 2010 or FY 2011, the Business Services Director may need to obtain the concurrence of the Legislative Budget Board and Comptroller's Office based on the legislative intent to increase the amount up to \$62,200. The next Legislative Appropriations Request should request a change in Rider 6 to reflect the correct amount.*

TABC Management Response: Management agrees as this was an oversight on the agency's part. The Legislative Budget Board has been made aware of the issue and we will need to make the rider change during the next Appropriations Request.

Status: Fully Implemented.

***Recommendation 3:** The Fiscal Services and Purchasing departments should develop a process to ensure that vendor invoices are paid timely when issues regarding the paperwork necessary to approve and make payments.*

TABC Management Response: Fiscal Services will continue to work with the Purchasing Department to ensure that invoices are paid in a timely manner by developing processes to gather supporting documentation more timely. Invoices are now being logged in with payment due dates listed as well as the receiving area assisting in gathering field and headquarters receiving reports to expedite the payment process.

Status: Fully Implemented.

***Recommendation 4:** Purchasing should implement the following change to improve the efficiency of processing invoices by accounts payable:*

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- a. *At the beginning of each fiscal year, Purchasing should provide new purchase order numbers and update the amount of funds available for ongoing purchases that span fiscal years.*
- b. *Purchasing should use purchase order amendments to change the purchase orders terms that affect payment processing and purchase change notices for changing all other purchase order terms.*

TABC Management Response: In response to Recommendation 4, to improve efficiencies and assist in the payment processing, the TABC Purchasing Department agrees with the recommendation:

- a. Beginning with FY 2010, the TABC Purchasing Department shall implement a new purchase order number for all contracts and indicate the previous contract purchase order number(s) and renewal terms for reference and retention, as well as the funding for current, past and future fiscal years.
- b. Effective immediately, the TABC Purchasing Department shall ensure amendments shall be utilized to change the purchase orders internally with no negative impact on the vendor for payment(s). Amendment shall only be utilized to make changes to existing contracts, which have been competitively bid, where the purchase order has not been sent to the vendor. The Purchase Order Change Notice (POCN) form is designed for specific uses. It shall not be used if the issuance of a new purchase order would achieve the requested action in a more efficient and economical manner. When freight is required, the TABC Purchasing Department shall insert a declaration in the purchase order to allow for estimated freight charges. The purchase order will allow an amount "not to exceed", so the vendor will not over inflate the charges. Any amount over the estimated freight charge indicated shall require added funding and a POCN.

Status: Fully Implemented.

***Recommendation 5:** The FSD should ensure that all non-LE documents are processed and deposited in the State Treasury within the required three working days. For problem documents that need to be returned for further information, the reason should be recorded and the document date stamped a second time when received again by FSD. The document and funds should be processed and deposited within three working days of final acceptance of the document.*

TABC Management Response: The Fiscal Services Department will ensure that all non-LE documents received in the division are date stamped when received and with subsequent dates as recommended.

Status: Fully Implemented.

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Recommendation 6: *At least two different individuals should be responsible for approving purchase of evidence requests, certifying the funds availability and signing the checks. Two signatures should be required on purchase of evidence checks.*

TABC Management Response: The Fiscal Services Department will ensure that there are two signatures on the checks and that the individual who certifies the funds as being available is not the same individual who signs the check.

Status: Fully Implemented.

Recommendation 7: *Reconciliations of petty cash and purchase of evidence bank statements with FSD's records and with USAS should be completed within 30 days of the date of the bank statements.*

TABC Management Response: Due to low activity in the purchase of evidence bank accounts, the Fiscal Services Department has been reconciling the bank accounts quarterly for a number of years. Based on this recommendation, fiscal services will begin reconciling bank statements on a monthly basis.

Status: Fully Implemented.

Recommendation 8: *The Fiscal Services Department should inquire as to whether Bank of America will waive the bank charges for the purchase of evidence account as is currently done for the petty cash account.*

TABC Management Response: The Fiscal Services Department has in the past attempted to get the service charges waived on the purchase of evidence account and our request was denied. We will attempt again to have the service charges waived on this account.

Status: Fully Implemented. The agency attempted again to have the bank charges waived, but was again denied.

Recommendation 9: *Human Resources and Fiscal Services should ensure that all required information on the personnel action forms is completed before the forms are submitted to payroll for processing.*

TABC Management Response: The Human Resources Division is updating the Personnel Action Form Guide. The updated instructions will be included in the instructions for the online system.

Status: Fully Implemented.

Recommendation 10: *A system should be developed to track personnel action forms including assigning sequential numbers to the PAFs throughout a fiscal year. An Excel spreadsheet could*

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be developed so that departments/individuals could complete a column with the date of approval by each department. This would enable Human Resources and Fiscal Services to track the PAF through the approval process and provide information to payroll on how many approved PAFs there should be for any given month.

TABC Management Response: In July 2009, the Business Services Division along with the Human Resources Division began utilizing an excel spreadsheet to track PAFs. Numbers are manually assigned designating the Month and Year they were received along with the dates the PAFs were forwarded to Business Services, Human Resources and the Executive Divisions for approval.

Status: Fully Implemented.

***Recommendation 11:** Fiscal Services should develop a spreadsheet reconciliation process to identify all payroll changes between months. This should be done by division, with supporting documentation for each change maintained by division for easy reference and for review by the Accounting Manager before the final payroll is released for payment.*

TABC Management Response: The Fiscal Services Division has already implemented the reconciliation process as recommended.

Status: Fully Implemented.

***Recommendation 12:** Fiscal Services and Human Resources should use a consistent procedure for payment of overtime to agents regardless of the source of funds that will be used to pay the overtime. All payroll actions should be initiated with a PAF with the overtime detail sheet used as supporting documentation.*

TABC Management Response: The Business Services Division will require a PAF to be submitted before paying any overtime and continue to maintain the supporting documentation.

Status: Fully Implemented.

***Recommendation 13:** The Fiscal Services Department should establish a master schedule of external reports due dates to ensure that reports are submitted by the established deadline. Automated Budget and Evaluation System of Texas (ABEST) screens that document report due dates and the date when a report has been completed in ABEST should be printed and retained in the relevant report files.*

TABC Management Response: The Business Services Division will create a master schedule of required reports as well as due dates and date of completion. Additionally, a copy of each completed report will be maintained for supporting documentation.

Status: Fully Implemented.

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***Recommendation 14:** All procedures should be reviewed and updated at least every two years (an annual review is preferable). Documentation of the review should be indicated in the Table of Contents, even if no changes to the procedure are made.*

TABC Management Response: The Business Services Division had conducted a review of all procedures in January 2009 and procedures that needed updated were revised at that time; however, procedures that had no changes were not noted in the Table of Contents. When conducting the annual review of the procedures, BSD will document on the Table of Contents that all procedures were reviewed at that time.

Status: Fully Implemented.

***Recommendation 15:** The following specific procedures should be updated to address omissions identified during the internal audit:*

a. Procedures' 190301 and 190303 should be updated to incorporate standard language that applies to all deposits whether they are processed through the License Ease system or are processed manually. Each procedure should document the staff position responsible for each task, the supporting documentation needed and a reference to all systems used to complete the deposit process.

b. Procedure No. 080105 for Reconciling Purchase of Evidence should include the requirement to enter bank charges into USAS in a timely manner and include the requirement to reconcile the bank statements and checking account with USAS Comptroller Object Code 07295 and Agency Object Code 6440 every month.

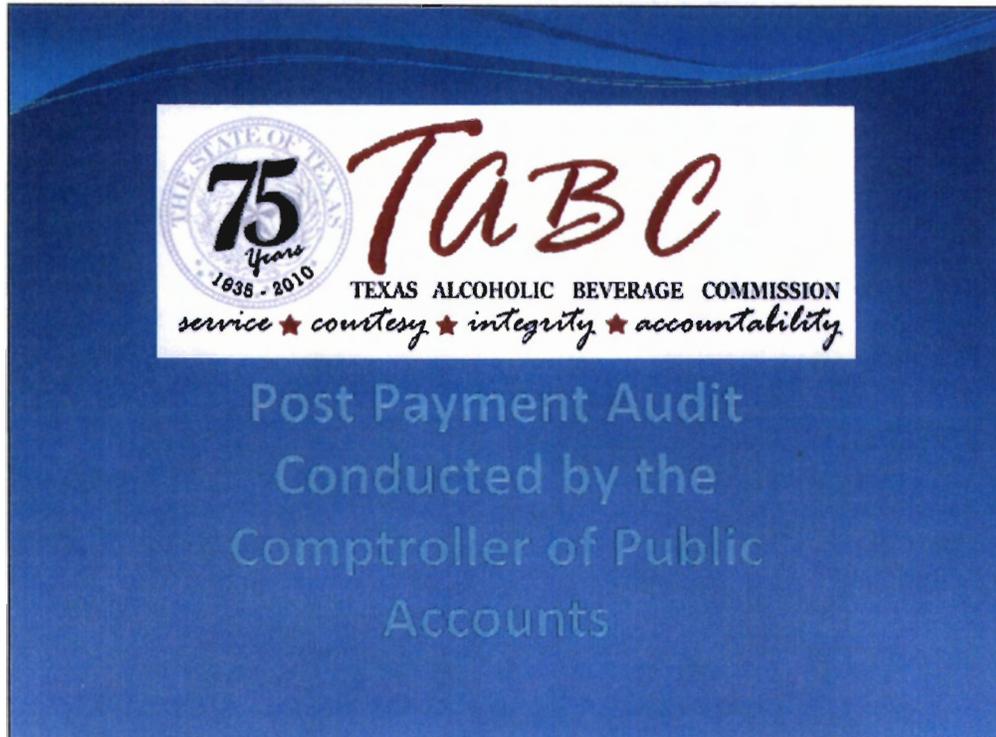
c. Payroll procedures should be updated and revised to clearly define the types of supporting documentation need to support payroll changes, all processing steps and responsibilities for reviewing and verifying information on the PAF, and a requirement that all overtime payments are processed using a PAF.

TABC Management Response: The Business Services Division will update the procedures as recommended.

Status: Fully Implemented.

Attachment 6

**Update on Comptroller's Post Payment Audit of
the TABC**



Audit Finding: Nine Employee files were missing prior state service documentation.

Audit Recommendation: Update employee records to reflect actual state service that was not self-reported by employee. In addition, the agency needs to stress the importance of disclosing this information during the new employee orientation process.

Agency Response: Although the employees noted had not disclosed their prior state service to the agency, the Commission agrees with the recommendation and has implemented procedures to be followed during new employee orientation that addresses the importance of disclosing not only prior state service but higher education service as well.

Audit Finding: Purchase order created after invoice was received.

Audit Recommendation: The Commission must ensure that documentation of the agreement is prepared at the time of ordering the goods or services from the vendor.

Agency Response: The Commission agrees with the recommendation and has sent an interoffice memo to all employees reminding them not to order services or goods prior to having an approved purchase order giving them authority to do so.

Audit Finding: Prompt payment and payment scheduling errors.

Audit Recommendation: The Commission must ensure that correct due dates are entered and payment information is submitted for processing in a timely manner to avoid incurring interest liabilities.

Agency Response: The Commission agrees with the recommendation and the payment processing department has implemented procedures whereby all data entry is being reviewed by at least two employees prior to the payment being released. Additional training will be provided to accounts payable staff responsible for processing payment to ensure that the Prompt Payment and Payment Scheduling Guidelines are followed according to policy.

Additional Areas Reviewed with No Audit Findings ✖

- Travel Transactions – Reviewed travel transactions for compliance with the General Appropriations Act, TexTravel and other statutes.
- Security – Reviewed internal control structure and no areas of risk were identified.
- State Property Accounting (SPA) Review – Reviewed a limited number of fixed assets acquired during audit period to test for accurate reporting in SPA and to verify existence of assets. All assets were located and verified as recorded.

Questions

Attachment 7

**Approval of TABC Strategic Plan for the Fiscal
Year 2011-2015 Period**

Strategic Planning

Carolyn R. Beck, Director of Communications



Commission Meeting
May 25, 2010

Why do a strategic plan?

**It's
Fun!!!**



Why do a strategic plan?



- ▶ 1991 - Texas initiated a process of strategic planning for all state agencies.
- ▶ Agencies submit plans every two years.
- ▶ Planning horizon is five years.
- ▶ Agencies may engage in planning on a continual basis and may adjust plans internally as changing conditions dictate.

How do we benefit?

- ▶ Clarifies purpose and direction.
- ▶ Creates common goals.
- ▶ Allows priority-based resource allocation.
- ▶ Communicate our goals, directions and outcomes to various audiences – internal and external.



Aspects of the Strategic Plan

- ▶ Overview of Agency
- ▶ Mission, Vision, Philosophy, Cornerstones, Guiding Principles
- ▶ Internal / External Assessment
 - Fiscal Aspects
 - Technological Developments
 - Economic Variables
 - Legal Issues
 - Key Organizational Events
 - Opportunities for Improvement – Management Goals
- ▶ Program Initiatives



Focus on Technology

- ▶ Technology Initiative Alignment
Tie technology initiatives to agency strategies
- ▶ Implementing the Texas Transformation
Tie technology initiatives to the state strategic plan for Information Resources Management



David Brandon

Performance Measures

- ▶ TABC Goals, Objectives, Strategies, Performance Measures
- ▶ Five-Year Projections for Outcome Measures
- ▶ Performance Measure Definitions

Roy Hale



Other Required Info

- ▶ Agency Planning Process
- ▶ Staffing Analysis and Workforce Plan
- ▶ Survey of Employee Engagement
- ▶ Internal Policy on HUB

Carolyn



New and Improved Process (Again)

- ▶ All-Inclusive
- ▶ Decentralized
- ▶ Specific Focus
- ▶ Established Objectives
- ▶ Accountability
- ▶ Transparency



Resources

- ▶ Agency Subject Matter Experts
- ▶ Employee Feedback
- ▶ Stakeholder Input
- ▶ Survey of Employee Engagement
- ▶ Progress on Previous Goals



Employee Involvement

- ▶ January – Division directors and field supervisors met to review results from Survey of Employee Engagement.
- ▶ February/March – Managers statewide presented survey results to employees and held brainstorming meetings.
- ▶ April – Division directors and field supervisors met again to develop internal management goals.



Accomplishments since 2008

- ▶ Increased internal communication
- ▶ Career ladder, pay increases, administrative leave
- ▶ Increased training opportunities
- ▶ Enhanced work environments



New HQ Management Goals

1. Improving employee pay and incentives.
2. Improving internal communication.
3. Revamping employee evaluation process.
4. Improving training opportunities.
5. Improving IT systems.



New Field Management Goals

- ▶ Increasing communication and consistency of messages through more district/regional meetings with agendas and minutes
- ▶ Cross-training
- ▶ Finding new/better ways to acknowledge and reward employee contributions



Stakeholder Involvement

- ▶ April – Invited industry/community to present status of 2008 goals and gather feedback to develop new goals. (35 participants)



Accomplishments since 2008

- ▶ Increased communication with industry
- ▶ Licensing re-engineering
- ▶ Risk-based enforcement
- ▶ New process for public complaints
- ▶ Revamping cash/credit law
- ▶ Positive public exposure (website, PSA's, Facebook, press releases)



External Management Goals - 2010

1. Continue to improve communication with industry to facilitate education and voluntary compliance.
2. Work with stakeholders to continue prevention and education programs, including prevention of underage drinking and over-service.
3. Continue to streamline the licensing process to reduce cost and time involved.
4. Identify high-risk businesses by using non-public-safety violations as a indicators that public safety violations may be occurring.

The Next Steps

- ▶ Finalize Performance Measures
- ▶ Submission Due Date:
July 2, 2010
- ▶ Implementation and
Follow-Up





Questions / Comments

CERTIFICATION

REGULAR COMMISSION MEETING

9:15 a.m. – May 25, 2010

5806 Mesa Drive
Austin, Texas 78731



TABC

TEXAS ALCOHOLIC BEVERAGE COMMISSION

service ★ courtesy ★ integrity ★ accountability

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 May 25, 2010.

A handwritten signature in black ink, appearing to read "Alan Steen".

Alan Steen
Administrator

Sworn and subscribed before me this the 8th day of July 2010.



A handwritten signature in blue ink, appearing to read "Gloria Darden Reed".

Gloria Darden Reed
Notary in and for Travis County