



COMMISSION MEETING

June 27, 2008

Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

*John Steen, Chairman
San Antonio*

*José Cuevas, Jr., Member
Midland*

*Steven M. Weinberg, MD, JD, Member
Colleyville*

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AGENDA

REGULAR COMMISSION MEETING

10:30 a.m. – June 27, 2008

5806 Mesa Drive
Austin, Texas 78731



Alan Steen
Administrator

TEXAS ALCOHOLIC BEVERAGE COMMISSION
5806 Mesa Drive, Suite 185
Austin, Texas 78731

John Steen
Chairman-San Antonio

José Cuevas, Jr.
Member-Midland

Steven M. Weinberg, MD, JD
Member-Colleyville

Friday, June 27, 2008
10:30 a.m.

AGENDA

1. Call to Order	John T. Steen, Jr.
2. Approval of Commission Meeting Minutes of May 23, 2008	
3. Administrator's Report: Administrator and Agency Activities, Budget Issues, Staff Achievements	Alan Steen
4. Approval of TABC Strategic Plan for Fiscal Years 2009-2013	Carolyn Beck
5. Imaging, Two-Year Renewal, and Licensing Re-engineering Updates	Sherry Cook Amy Harrison
6. Region 5 Update	Richard Jauregui Karen Smithwick
7. Approval to Publish Proposed Amendments to §33.23, Relating to Alcoholic Beverage License and Permit Surcharges	Joan Bates
8. Approval to Publish Proposed New Rule, §33.25, Relating to Alcoholic Beverage License and Permit Fees and Surcharges	Joan Bates
9. Approval to Publish Proposed New Rule, §33.26, Relating to Manufacturer's Agent's Warehousing Permit Fee	Joan Bates
10. Adoption of Repeal of Current Rule, §37.60, Relating to Standard Penalty Chart	Joan Bates
11. Public Comment	John T. Steen, 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)	John T. Steen, Jr.
13. Next Meeting Date: Friday, July 25, 2008	John T. Steen, Jr.
14. Adjourn	John T. Steen, Jr.

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

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

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



MINUTES

REGULAR COMMISSION MEETING

10:30 a.m. – June 27, 2008

5806 Mesa Drive
Austin, Texas 78731



COMMISSION MEETING MINUTES

June 27, 2008

The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Friday, June 27, 2008, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING OFFICER: John Steen

COMMISSIONERS

PRESENT:

José Cuevas, Jr.
Steven M. Weinberg, MD, JD

STAFF PRESENT:

Alan Steen, Administrator

Joan Bates, Deputy General Counsel, Legal
Carolyn Beck, Public Information Officer, Executive
Lou Bright, General Counsel, Legal Services
Sherry Cook, Assistant Administrator
Bobby Gideon, Captain, Office of Professional
Responsibility
Diana Gonzalez, Director of Tax Division
Roy Hale, Planner, Business Services
Amy Harrison, Director of Licensing
Joe Iagnemmo, System Support Specialist,
Information Resources
Linda Jackson, Administrative Assistant, Compliance
Richard Jauregui, Captain, San Antonio Region 5
Tanya Jimenez, Administrative Assistant, Executive
Renee Johnston, Executive Assistant, Executive
Dexter Jones, Assistant Chief of Field Operations
Jo Ann Joseph, Assistant Director of Licensing
Charlie Kerr, Director of Business Services
Joel Moreno, Chief of Field Operations
Karen Smithwick, Regional Compliance Supervisor,
San Antonio Region 5
Rod Venner, Assistant Chief of Enforcement
Jay Webster, Director of Information Resources

GUESTS PRESENT:

Matt Anthony, 360 Training
Janiece Attal, 360 Training
M.L. Calcote, Republic National Distributing Company
Gerald Franklin
Kimberly Frost
Alan Gray, Licensed Beverage Distributors
Kim Haney
Julie Harker, Office of the Governor
Fred Marosko, Texas Package Stores Association
A.R. Schwartz, Attorney, Licensing Agents
Patricia Shipton
Tom Spilman, Vice President, Wholesale Beer
Distributors
Don Walden, Attorney for TWGGA
Sharra Weaver, Weaver's License Service
Randy Yarbrough, Wholesale Beer Distributors of
Texas

CALL TO ORDER

Presiding Officer and Chairman John Steen called the meeting of the Texas Alcoholic Beverage Commission to order.

APPROVAL OF COMMISSION MEETING MINUTES OF MAY 23, 2008

Chairman Steen called for approval of the Commission meeting minutes of May 23, 2008. Commissioner José Cuevas so moved, and Commissioner Steven Weinberg seconded. The motion carried.

ADMINISTRATOR'S REPORT

Chairman Steen called upon Administrator Steen to provide the Administrator's report on agency activities, budget issues, and staff achievements. Administrator Steen reported the following:

- The agency has worked with the Department of Public Safety on securing the wireless connectivity needed for the 40 in-car computers, which will provide access to more secure data and more information to agents; installation of the laptops is now going forward.
- The "Perfect World Pilot Project" to be presented by Sherry Cook, Assistant Administrator, and Amy Harrison, Director of Licensing Division, later on the agenda, is an attempt to provide employees with more flexible work hours.

This is intended to create a working environment more conducive to their needs that will help with life issues that affect job performance. This project in turn provides better productivity and efficiency in working towards the licensing backlog issue.

- The Career Ladder Workgroup, headed up by Loretta Doty, Director of Human Resources Division, is looking into various ways to motivate and recognize employees, such as allowing flex-time. Surprisingly, money was not identified by most employees as a preferred recognition method. Some of the recommendations will be reported in the Legislative Appropriations Request as well as in additional reports in the future.
- The fiscal year end has brought to light that 16% of agency contracts utilized HUBs (Historically Underutilized Businesses).
- One-hundred-five (105) agency employees from Austin and Dallas have received in-service training. There has been excellent feedback on the training, and staff are considering some new ideas for future in-service training, particularly with regard to the new agent training.
- The following challenges were reported:
 - The transition of the licensing function from under Enforcement to Compliance, as recommended in the Sunset report, and the combining of Enforcement and Compliance into Field Services, has caused a temporary backlog in processing applications in the field. However, a plan is being worked out so that the backlog should be taken care of by the end of summer 2008.
 - Gas prices have created a hardship on the agency's budget. In addition, the Comptroller's Office has raised the mileage reimbursement rate. However, there are strategies being worked on to lower gas usage, such as partnering up agents, carpooling, and using bicycle patrols for special events. Chief Moreno and his staff will soon be offering suggestions and recommendations on these topics as the budgets have already been set for 2008 and 2009.
- Postings to hire new agents have been opened. Nearly 30 agents will be hired statewide in two different sets. Statewide advertising is being utilized to attract qualified applicants.
- Administrator Steen discussed the use of other law enforcement resources. For example, the Dallas Police Department has 4,000 officers in Dallas County as compared to 20 TABC agents. An avenue to combine the information from both agencies (as well as other law enforcement agencies) that better enables TABC to utilize the resources is being developed so that agents can more

easily recognize problematic locations and focus efforts to bring them into compliance.

- Administrator Steen reviewed some statewide trends (Attachment 1):
 - Prohibited hours inspections have more than doubled from FY 2007 to FY 2008.
 - Priority lists have helped increase the accountability for businesses and allow agents to more easily identify which locations need increased inspections.
 - Public safety violations related to prohibited hours have decreased due to having priority lists which help enable establishments to come into compliance voluntarily.
 - Agents' increased efforts have resulted in an elevated number of criminal warnings, with a decrease in the number of criminal cases filed.
 - The frequency of administrative violations has declined, including a lesser number of repeat offenders. In comparison, this number is significantly lower than criminal enforcement violations because administrative violations are based on establishments and criminal enforcement violations directed to individual patrons.
 - Recidivism rates will eventually decline as businesses are brought into compliance. Chairman Steen inquired as to what standards accompanied warnings given by agents and if these were dispersed based on agent discretion. Administrator Steen explained that within agent discretion, warnings are usually given to persons who are not in blatant disregard for the law.
 - More minor stings have been conducted in FY 2008 than FY 2007. We will continue to report compliance rates and determine if any changes need to occur in the minor sting procedures.
 - The number of permits and licenses issued is increasing at a rate of one percent per year.
 - In FY 2007, applications were processed in an average of 68 days. This has increased to an average of 74 days in FY 2008. We believe this is due to an increase in the number of applications processed. Because the resources available are fixed, the more applications we process, the longer it takes to process them. We expect the length of time it takes to process an application to go back down as the volume of applications decreases and the licensing process is streamlined.

- The number of complaints filed against employees has decreased by 20% over the last year. The percentage of complaints related to rudeness has remained around 49%, even as the total number of complaints has gone down. The agency is implementing recommendations made by Director Bobby Gideon of the Office of Professional Responsibility in an attempt to further reduce the number of rudeness complaints.

Commissioner Cuevas asked if this number for rudeness complaints seemed high for law enforcement. Administrator Steen replied that this has not been compared with other agencies; however, **this information would be obtained and reported on the future.**

- Pending administrative cases for litigation for FY 2008 is steadily declining and is considerably less than the number of cases in 2007.
- Cigarette and alcohol taxes collected by Ports of Entry are down and we believe this is contributed to fewer people vacationing in the border area because of increased gas prices and fewer people crossing the border because of an increase in the criminal activity on the Mexican side of the border.

- Some of the agency's current Initiatives that involve employees, federal government, stakeholders, permittees, and other state agencies include:
 - In-car deployment
 - Blackberry PDA deployment
 - Network security initiatives
 - Final clean-up of ARTS
 - Licensing re-engineering
 - Public Safety Interoperable Communications Grant
 - Imaging
 - Perfect World Project
 - Completion of the Ports of Entry automation project
 - Ports construction projects
 - Two-year renewal
 - Operation Recover and Restore (which is the licensing backlog)
 - Streamlining excise tax audit procedures
 - Streamlining Compliance Procedures Manual
 - On-line time and leave
 - Automation of excise tax
 - Employee retention plan
 - Protests
 - Office of Professional Responsibility--implementation of new application to track and monitor complaints and investigations
 - Legislative Appropriations Request
 - Strategic Plan

Administrator Steen concluded that all of these active initiatives could not be implemented without the labor of the employees, assistance of several state and federal agencies, as well as input from individuals within the industry.

Commissioner Cuevas responded with excitement and support regarding the initiatives. He then inquired as to the current procedures involving vehicle use by agents and how the planned fuel conservation and cost reductions efforts would affect operations. Chief Moreno explained previous procedures and how the changes were being implemented by agents, such as sharing vehicles and reducing the amount of trips into the district office. Commissioner Cuevas then asked what the new reimbursement rate was for mileage. Charlie Kerr, Business Services Division Director, replied that it had increased from fifty and one-half cents to fifty-eight and one-half cents per mile.

Commissioner Cuevas then inquired as to the normal usage rate of HUBs across the state; Mr. Kerr responded that TABC was well above the agency's and the state average goals in utilizing these businesses. Commissioner Cuevas asked as to the status of hiring a recruiter. Administrator Steen informed him that the posting had been removed due to a lack of qualified applicant pool and that it will either be reposted or reevaluated.

Commissioner Cuevas inquired about a criminal case involving child pornography. Administrator Steen provided background to the case and agent, Paul Morgan, who was responsible for reporting the potential offense and the subsequent arrest that was made. Commissioner Cuevas praised the agent and other agents who have recently performed in an exemplary manner. **He requested that an award or distinction of honor be created to praise agents and employees for "above and beyond" accomplishments.** Commissioner Cuevas then praised Administrator Steen for all the improvements in the agency that have come about due to the Strategic Plan.

Chairman Steen commended Administrator Steen for his report and requested that **Chief Moreno report at the next meeting on the strategies planned for handling the fuel cost issue.** Commissioner Weinberg asked about the number of FlexFuel vehicles that were in the agency's the fleet. Charlie Kerr responded that there are 28 FlexFuel-capable cars that are used by Headquarters and supervisors and they have a 40% improvement in mileage rating over the Ford Crown Victorias. **Commissioner Weinberg requested that E85 be used whenever possible and that the fueling locations be identified so they could be utilized by employees.** **Chairman Steen requested that the mileage/fuel cost savings strategies be reported at the next Commission meeting.**

Chairman Steen then inquired if the rudeness complaints were a realistic and legitimate problem. Administrator Steen responded that he thought rudeness may be a concern with some agents and that the complaints have been tracked to

reflect that specific area of complaint. With this information, training is being increased and focused on customer service to encourage a more positive public image and professionalism. Chairman Steen noted that there are times when an agent must take control of a situation, which may be interpreted by others as rudeness. **Chairman Steen requested that this be looked into and reported at the next Commission meeting.**

APPROVAL OF TABC STRATEGIC PLAN FOR FISCAL YEARS 2009-2013

Chairman Steen called upon Carolyn Beck, Public Information Officer. Ms. Beck stated that she had previously presented the draft Strategic Plan and asked if there were any questions or additional comments from the Commissioners. Being none, **Chairman Steen called for a motion to approve the strategic plan. Commissioner Weinberg so moved, and Commissioner Cuevas seconded. The motion carried.** The Commissioners commended Ms. Beck and staff on the excellent plan.

IMAGING, TWO-YEAR RENEWAL, AND LICENSING RE-ENGINEERING UPDATES

Assistant Administrator Sherry Cook and Licensing Division Director Amy Harrison were called upon to provide updates on current initiatives in the Licensing Division (Attachment 2).

Ms. Harrison presented the Perfect World Hours Pilot Program, in which employee work hours are adjusted to maximize quality time on the job and to meet employees' personal needs. Chairman Steen stated that it was an innovative way of thinking for a government entity. Commissioner Weinberg expressed his hope that the initiative could be expanded in the future for some employees to be able to work from home.

Ms. Harrison reported on the imaging project, which will have many benefits, some of which include improved customer service, enhanced online file retrieval, and the ability to offer more services to more customers.

Ms. Cook reported on the Licensing Re-engineering Project, which is called "Project Evolution." She included information on meetings involving industry members and other stakeholders for input on improving the current licensing process. Commissioner Weinberg commented positively on the efficiency and speed of progression in which this project was taking place. Commissioner Cuevas then called upon Jay Webster, Director of Information Resources, who discussed how the agency has laid a good foundation for the projects.

Commissioner Weinberg inquired about the education and training required for the two-year licensing. He encouraged Licensing to include in the training

explanations and clarifications to assist license and permit holders in understanding the new billing. Commissioner Weinberg recommended that a prorated refunding process be considered in order to return fees to persons and businesses that cancel their permits before the two-year deadline. The requirements to make proposals and suggestions to legislation were discussed.

Ms. Cook concluded the presentation by acknowledging Administrator Steen in providing the latitude to staff to accomplish their goals. The Commissioners commended staff for their work on the innovative initiatives.

REGION 5 UPDATE

Chairman Steen called upon Captain Richard Jauregui and Regional Compliance Supervisor Karen Smithwick to provide the Region 5 Update (Attachment 3). Captain Jauregui described the composition of Region 5, several outstanding cases and events involving TABC Region 5 agents, and examples of partnerships with other agencies. Ms. Smithwick described how Region 5 Compliance staff were working to assist in the agency's public safety mission and fulfilling the new TABC vision. She then described the Compliance Division's make-up throughout Region 5. Commissioner Cuevas asked about Region 5's high number of rudeness complaints. Captain Jauregui stated that he was looking into this and would work with Bobby Gideon to address any issues. Captain Jauregui noted that many of the investigations he was involved in resulted in being unfounded or not sustained. Commissioner Cuevas reiterated Chairman Steen's earlier remarks that an agent who must take control of a situation may be perceived as rude, when in fact, the agent is not being rude. Commissioner Weinberg also noted that there is a challenge for the region, being that it is a border region. Chairman Steen discussed that Region 5 staff were well regarded within the San Antonio region community.

APPROVAL TO PUBLISH PROPOSED NEW RULES/AMENDMENTS

Chairman Steen Called upon Deputy General Counsel Joan Bates to present the rules (Attachment 4).

Ms. Bates highlighted each of the four proposed rules. After discussion, it was agreed by the Commissioners to defer repeal of current rule §37.60, relating to the standard penalty chart, until the proposed replacement could be presented at the July Commission meeting. Ms. Bates also addressed Commissioner Weinberg's earlier suggestion to refund fees and surcharges of the two-year licenses at a prorated amount if a permittee voluntarily cancelled the license/permit before it expired. She clarified that statute prohibits the agency from prorating fees and surcharges, except in cases of local option elections that cause a permittee to go out of business or if the agency rejects or refuses the permit. She noted the administrative burden that would be placed on the agency if it were to refund fees

for everyone who went out of business. After presentation of the proposals, it was decided that each would be voted on individually:

- Approval to publish proposed amendments to §33.23, relating to alcoholic beverage license and permit surcharges. **Commissioner Cuevas so moved and Commissioner Weinberg seconded. The motion carried.**
- Approval to publish proposed new rule §33.25, relating to alcoholic beverage and license and permit fees and surcharges. **Commissioner Weinberg so moved and Commissioner Cuevas seconded. The motion carried.**
- Approval to publish proposed new rule §33.26, relating to manufacturer's agent's warehousing permit fee. **Commissioner Weinberg so moved and Commissioner Cuevas seconded. The motion carried.**

PUBLIC COMMENT

Chairman Steen asked if there was anyone in the audience who wished to provide public comment. No one registered or expressed a desire to provide any public comment.

EXECUTIVE SESSION

Chairman Steen made the announcement that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 12:19 p.m., June 27, 2008, and an executive session would be 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, §§551.071 and 551.074.

Chairman Steen announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being June 27, 2008, and the time, 12:38 p.m. No final action, decision, or vote was made in the executive session.

NEXT MEETING

Chairman Steen announced the next meeting date, Friday, July 25, 2008.

ADJOURNMENT

Chairman Steen called for a motion to adjourn. Commissioner Cuevas so moved and Commissioner Weinberg seconded. The motion carried, and Chairman Steen announced that the meeting was adjourned.

Attachment 1

Trends

ENFORCEMENT

Prohibited Hours Inspections

	FY 2007 thru May 31	FY 2008 thru May 31	Percent Change
CPO Works Hours Devoted to Activity	2,119	3,504	65.4%
Inspections Conducted	3,925	6,867	75.0%
<u>Inspections Resulting in:</u>			
Discovery Prohibited Hours Violations	176	210	19.3%
Discovery Public Safety Violations	212	282	33.0%
Inspection Refusal	3	5	66.7%
<u>Percent Inspections Resulting in:</u>			
Discovery of Prohibited Hrs Violations	4.5%	3.1%	-31.8%
Discovery of Public Safety Violations	5.4%	4.1%	-24.0%

ENFORCEMENT

Prohibited Hours Inspections (*continued*)

	FY 2007 thru May 31	FY 2008 thru May 31	Percent Change
Retail Locations Inspected	2,517	4,395	74.6%
Priority Locations Inspected	909	977	7.5%
Inspected Retailers with Prohibited Hours Violations	139	187	34.5%
Inspected Retailers - Prohibited Hours Violations Found 2+ Times	14	10	-28.6%
Inspected Retailers with Public Safety Violations	174	250	43.7%
Inspected Retailers - Public Safety Violations Found 2+ times	24	16	-33.3%

ENFORCEMENT

Criminal Enforcement Actions - Prohibited Hours Offenses

	FY 2007 thru May 31	FY 2008 thru May 31	Percent Change
Violations Documented	602	571	-5.1%
Warnings Issued	91	120	31.9%
Cases Filed	511	451	-11.7%

ENFORCEMENT

Administrative Enforcement Actions - Prohibited Hours Offenses

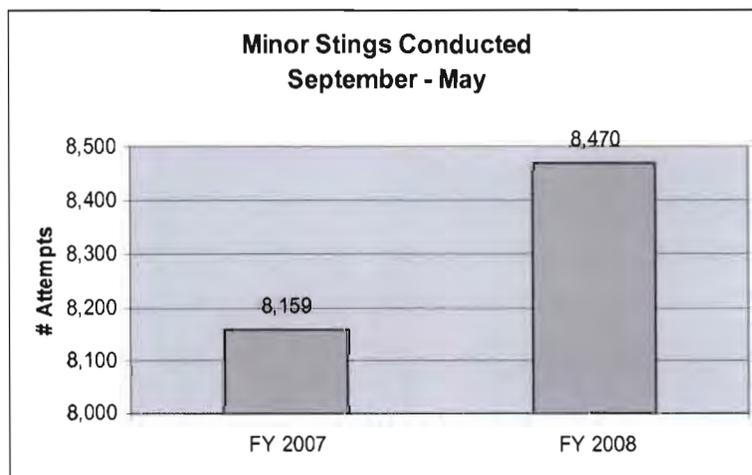
	FY 2007 thru May 31	FY 2008 thru May 31	Percent Change
Violations Documented	253	240	-5.1%
Warnings Issued	54	56	3.7%
Cases Filed	199	185	-7.0%
Cases Docketed to Date	196	174	-11.2%

ENFORCEMENT

Prohibited Hours Administrative Cases – Recidivism Rates

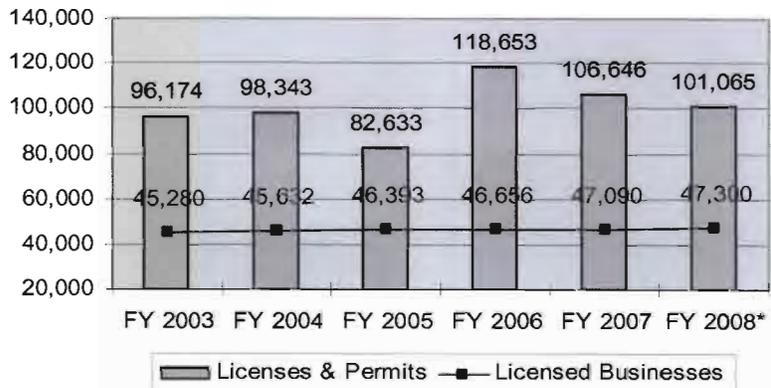
	FY 2007 thru May 31	FY 2008 thru May 31	Percent Change
Retailers Charged	184	178	-3.3%
<u>w/ Prior Prohibited Hrs Case in Previous 12 mo.</u>	46	46	0.0%
Recidivism Rate After 12 mo.	25.0%	25.8%	3.4%
<u>w/ Prior Prohibited Hrs Case in Previous 24 mo.</u>	66	52	-21.2%
Recidivism Rate After 24 mo.	35.9%	29.2%	-18.6%
<u>w/ Prior Prohibited Hrs Case in Previous 36 mo.</u>	74	64	-13.5%
Recidivism Rate After 36 mo.	40.2%	36.0%	-10.6%

ENFORCEMENT



LICENSING

**Comparison: Licenses & Permits Issued
and Licensed Texas Businesses**

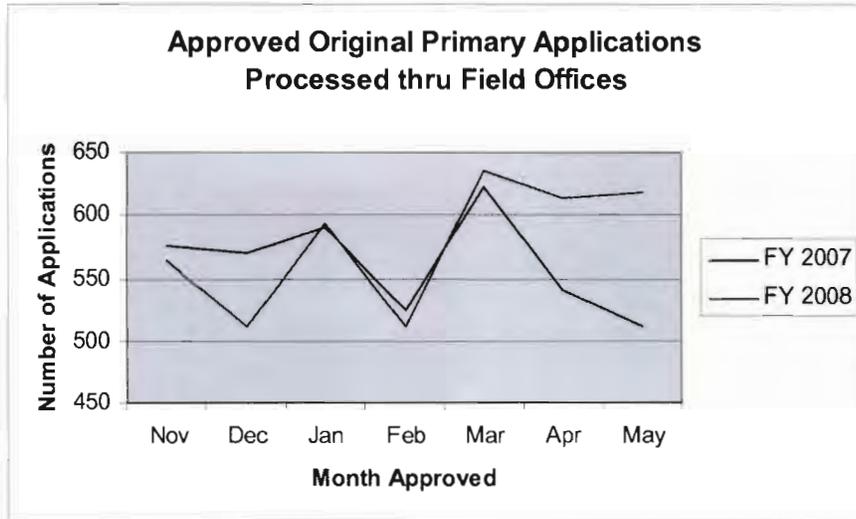


LICENSING

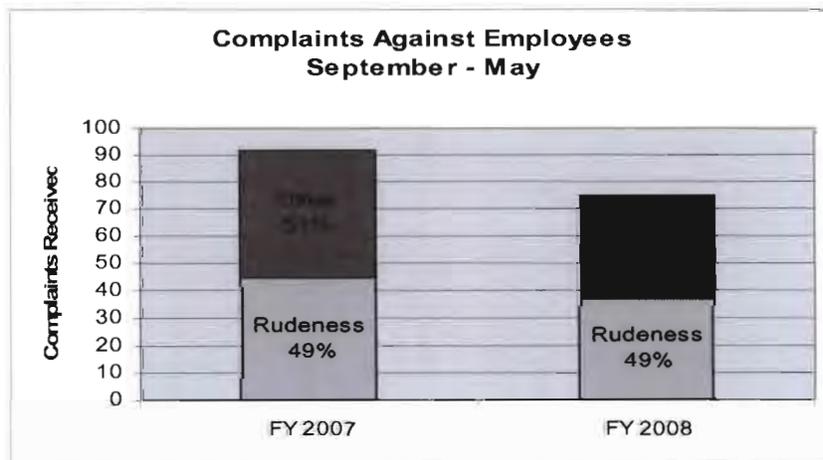
**Average Number of Days to Approve
Original Primary Applications
Processed thru Field Offices**



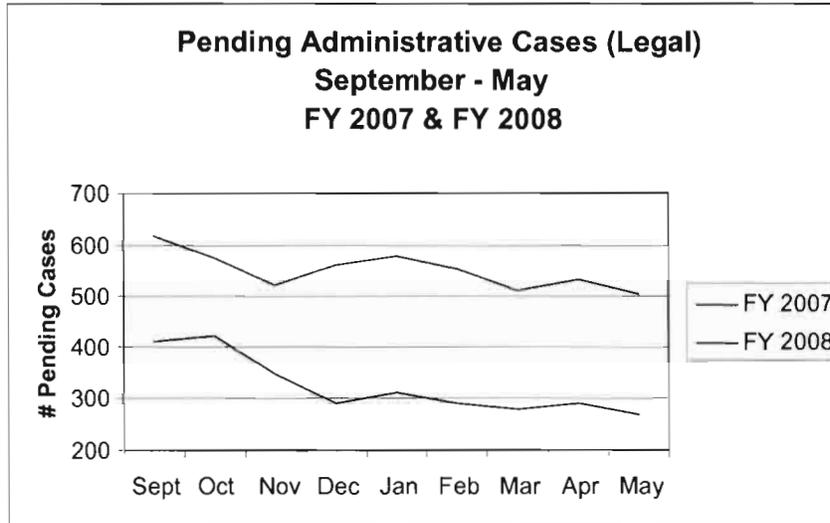
LICENSING



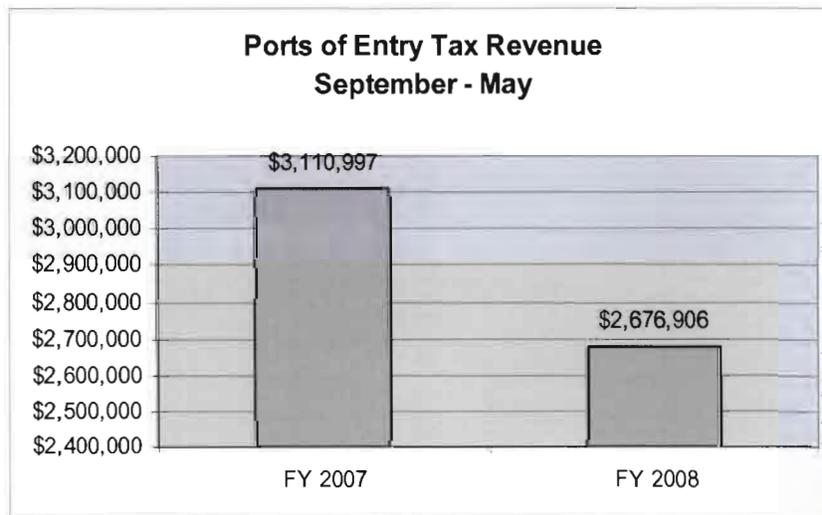
OFFICE OF PROFESSIONAL RESPONSIBILITY



LEGAL

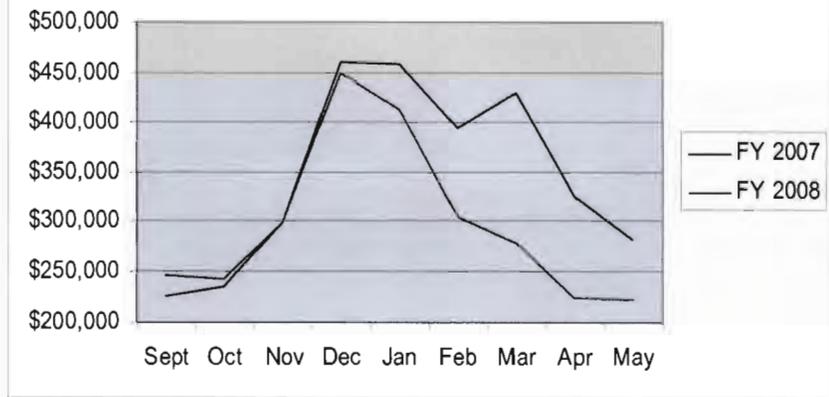


TAX



TAX

Ports of Entry Tax Revenue September - May



Attachment 2

**Imaging, Two-Year Renewal, and Licensing
Re-engineering Updates**

Licensing On the Move



Perfect World Hours Pilot Program

- Adjust work hours to maximize quality time on the job and meet employee's personal needs
- Serve TABC customers more effectively

Perfect World Hours Pilot Program

- Employees on Work Incentive Schedule for Employees (WISE): 17
- Employees with staggered hours: 21
- Employees with regular hours: 7

Imaging

Licensing Division

- Estimated 37,607 linear inches of paper to convert; Each inch about 361.2 pages, both sides
- Over 106,000 files to be scanned

Imaging Benefits

- Better customer service by reducing current response of about 10 minutes to just seconds for file retrieval
- Enhanced online file retrieval by TABC staff
- Remote accessibility of file information for TABC personnel
- Ability to offer more services to more customers
- Disaster recovery promoting longevity and preservation of records

Two-Year Renewals

Implementation Plan

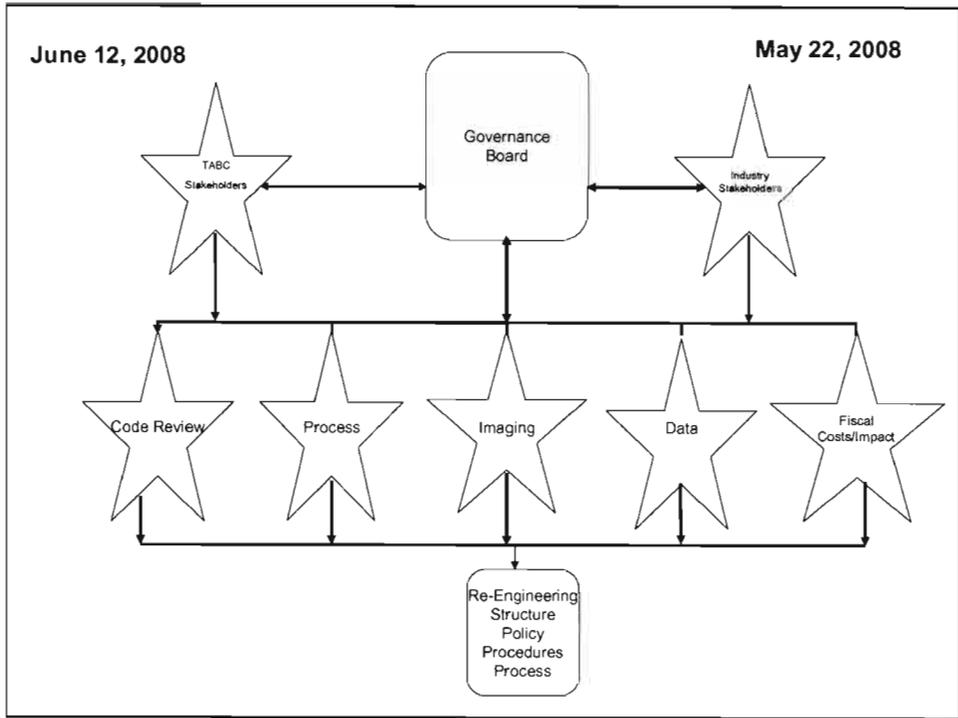
- October '08 – agent's licenses & permits
- January '09 – liquor permits, excluding those with beer license at same location
- September '09 – all beer licenses & liquor permits

Two-Year Renewals Continued

Plan includes:

- Notification – licensees/permittees
industry/associations
county/city officials
- System changes/enhancements
- Application/form changes
- Training – internal/external

Licensing Re-engineering Project



What's In a Name?

Project Evolution

Attachment 3

Region 5 Update

SAN ANTONIO ENFORCEMENT AND COMPLIANCE REGION 5 FY2008 OVERVIEW

Ricardo Jauregui and Karen Smithwick

Do We Have Successful Working Partnerships in Our Region?



- **Openness, trust, and honesty between partners**
- **Agreed shared goals and values**
- **Regular communication between partners**
- **Strive for success**

McAllen Office Liquor Seizure



San Antonio Office Fiesta 2008



McAllen Office Source Investigation

- Customs and Border Protection
- San Juan Police Department
- Mission Police Department K-9 Unit



Corpus Christi Office Theft Investigation



- Delivery of Uninvoiced Alcoholic Beverages
- Theft \$50 to \$500.00

“The New TABC”

The “New” Compliance Division

“How the little things add up”

First: Who are we?



San Antonio District Office



Corpus Christi District Office



Uvalde Outpost



McAllen District Office



Laredo Outpost

What are we doing to impact Public Safety?

- **Educational Seminars / Presentations**
- **Full-Open Inspections – emphasis on:**
 1. on-premise Happy Hour violations
 2. Marketing practice signage violations
 3. Seller training participation / posted policies
 4. FAS signs and Human Trafficking signs
- **Licensing Interviews**
- **Licensing Reviews – Enf. LSI partnership**
- **Subterfuge Investigations – via cash law and full-opens**
- **Other Inspections – New Location, conduct surety, etc.**

Educational Presentations :

City of San Antonio – Food
Service Done Right: A/B
retailer permits



Health Fair



Excel Academy
Uvalde



Inspections:



1,188

Full Open Inspections

6 - Marketing Practices Investigations



434

New Location Insp.



528 - Other Inspections



Licensing Interviews and Reviews:



531 - Interviews



1,125 - Apps Received / reviewed



1,070 - Apps cleared

Enforcement / Compliance Partnerships



A Few Examples

Auditors Accounts Examiners review apps and flag to LSI. LSI reviews all PHS's with "hits" for code compliance.

LSI has provided auditor assistance/training on subterfuge and protest investigations (McAllen).

McAllen Spring Break – Compliance asst. with retail inspections; pro-active to foster compliance.

San Antonio Fiesta – Compliance / Enforcement worked together to issue temps to those that did SAVE training.



San Antonio, Corpus Christi, McAllen Compliance.....21 dedicated TABC employees working hard to make our communities safer by “*making the little things add up*”.



Attachment 4

Proposed New Rules/Amendments

PROPOSED AMENDMENTS TO §33.23 (6-24-08) (Version 3)

§33.23. Alcoholic Beverage License and Permit Surcharges.

(a) An annual surcharge of all original or renewal permit or license fees set by the Texas Alcoholic Beverage Code shall be levied against license and permit holders as follows:

Liquor Permits	
Agent's Permit	\$40.00
Airline Beverage Permit	\$139.00
Beverage Cartage Permit	\$64.00
Bonded Warehouse Permit	\$58.00
Bonded Warehouse Permit (Dry Area)	\$58.00
Brewer's Permit	\$245.00
Brewpub License	\$181.00
Carrier's Permit	\$107.00
Caterer's Permit	\$118.00
Daily Temporary Mixed Beverage Permit (Per Day)	\$171.00
Daily Temporary Private Club Registration Permit	\$192.00
<u>Direct Shipper's Permit</u>	<u>\$160.00</u>
Distiller's & Rectifier's Permit	\$149.00
Food and Beverage Certificate	\$245.00
Forwarding Center Authority	\$118.00
Industrial Permit	\$111.00
Local Cartage Permit	\$86.00
Local Distributor's Permit	\$192.00
Local Industrial Alcohol Manufacturer's Permit	\$139.00
Manufacturer's Agent's Permit	\$40.00
<u>Manufacturer's Agent's Warehousing Permit</u>	<u>\$277.00</u>
Market Research Packager's Permit	\$54.00
Minibar Permit	\$149.00
Mixed Beverage Permit	\$256.00
Mixed Beverage Late Hours Permit	\$139.00
Mixed Beverage Restaurant Permit with	\$256.00

Food and Beverage Certificate	
Non Resident Brewer's Permit	\$160.00
Non Resident Seller's Permit	\$160.00
<u>Out of state wine only package store</u>	<u>\$235.00</u>
Package Store Permit	\$213.00
Package Store Tasting Permit	\$75.00
<u>Promotional Permit</u>	<u>\$160.00</u>
Wine Only Package Store Permit	\$235.00
Passenger Train Beverage Permit	\$256.00
Private Carrier's Permit	\$107.00
Private Club Registration Permit	\$383.00
Private Club Beer and Wine Permit	\$383.00
Private Club Late Hours Permit	\$149.00
Private Storage Permit	\$86.00
Temporary Charitable Auction Permit	\$171.00
Public Storage Permit	\$86.00
Wholesaler's Permit	\$298.00
General Class B Wholesaler's Permit	\$277.00
Local Class B Wholesaler's Permit	\$277.00
Wine and Beer Retailer's Permit Railway Car	\$235.00
Wine and Beer Retailer's Permit Excursion Boat	\$235.00
Wine Bottler's Permit	\$256.00
Winery Permit	\$298.00
Winery Storage Permit	\$86.00
Beer Licenses	
Agent's Beer License	\$40.00
Branch Distributor's License	\$298.00
General Distributor's License	\$298.00
Importer's License	\$118.00
Importer's Carrier's License	\$86.00
Local Distributor's License	\$298.00
Manufacturer's License	\$277.00

Manufacturer's Warehouse License	\$235.00
Non Resident Manufacturer's License	\$245.00
Beer Retailer's Off Premise License	\$235.00
Beer Retailer's On Premise License	\$235.00
Retail Dealer's On Premise Late Hours License	\$139.00
Storage License	\$86.00
Temporary License	\$171.00
Temporary License Special 3 Day Wine and Beer	\$171.00
Temporary License Special 4 Day Wine and Beer	\$171.00
Wine and Beer Retailer's Permit	\$235.00
Wine and Beer Retailer's Off Premise Permit	\$235.00

(1) The surcharge shall apply to each brewpub licensed under Texas Alcoholic Beverage Code, Chapter 74, even though one or more are licensed under the same general management or ownership.

(2) An organization which meets the requirements for exemption from a private club registration permit under the Texas Alcoholic Beverage Code §32.11, is also exempt from the surcharge.

(b) The surcharges shall be due and payable at the same time and in the same place and manner as the original or renewal permit, certificate, or license fee to which the surcharges apply.

(c) Failure or refusal to timely pay the license, certificate or permit surcharge shall be considered the same as failure to timely pay the original or renewal certificate, permit or license fee and the same penalties will apply.

~~(d) The amount of surcharge due shall be determined by the issue date of the permit or license and the surcharge in effect under this rule on the issue date of that license or permit.~~

~~[(e) This section shall take effect October 1, 2005.]~~

PROPOSED NEW §33.25 (6-16-08) (Version 2)

§33.25. Alcoholic Beverage License and Permit Fees and Surcharges.

(a) This rule implements the provisions of §§5.50, 11.09 and 61.03 of the Texas Alcoholic Beverage Code (Code). Section 5.50 authorizes the Texas Alcoholic Beverage Commission (commission) by rule to assess surcharges on all applicants for original or renewal certificate, permit, or license issued by the commission. Sections 11.09 and 61.03 of the Code authorize the commission to issue a license or permit for a two-year term and double the amount of the fees established for each license or permit by the Code or a rule of the commission, and surcharges established in section 33.23 of this chapter.

(b) Implementation Plan. To maintain a reasonable annual distribution of renewal application review work and permit fees, the commission will implement the two-year licensing schedule based on the type of permit or license type for which an application is submitted.

(c) An original or renewal application for a permit or license listed in the following chart, with an issue date before October 1, 2008, will expire one year from the date the license or permit is issued. An original or renewal application for a permit or license listed in the following chart, with an issue date on or after October 1, 2008, will expire two years from the date the license or permit is issued.

Permit/License Type [agency code]	Texas Alcoholic Beverage Code Chapter
Agent's Permit [A]	Ch. 35
Manufacturer's Agent's Permit [T]	Ch. 36
Agent's Beer License [BK]	Ch. 73

(d) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before January 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after January 1, 2009, will expire two years from the date the license or permit is issued.

Permit/License Type [agency code]	Texas Alcoholic Beverage Code Chapter
Airline Beverage Permit [AB]	Ch. 34
Bonded Warehouse Permit [J]	Ch. 46
Bonded Warehouse Permit (Dry Area) [JD]	Ch. 46
Brewpub License [BP]	Ch. 74
Carrier's Permit [C]	Ch. 41
Caterer's Permit [CB]	Ch. 31
Direct Shipper's Permit [DS]	Ch. 54

Distiller's & Rectifier's Permit [D]	Ch. 14
Forwarding Center Authority [FC]	Rule §35.6
Industrial Permit [I]	Ch. 38
Local Industrial Alcohol Manufacturer's Permit [LI]	Ch. 47
Market Research Packager's Permit [MR]	Ch. 49
Minibar Permit [MI]	Ch. 51
Mixed Beverage Permit [MB]	Ch. 28
Mixed Beverage Restaurant Permit [RM] with FB	Ch. 28
Mixed Beverage Late Hours [LB]	Ch. 29
Non-Resident Brewer's Permit [U]	Ch. 13
Non-Resident Seller's Permit [S]	Ch. 37
Out of State Wine Only Package Store Permit [QO]	Ch. 24
Package Store Permit [P]	Ch. 22
Package Store Tasting Permit [PS]	Ch. 52
Passenger Train Beverage Permit [PT]	Ch. 48
Private Carrier's Permit [O]	Ch. 42
Private Club Exemption Certificate Permit [NE]	Ch. 32
Private Club Registration Permit [N]	Ch. 32
Private Club Beer and Wine Permit [NB]	Ch. 32
Private Club Late Hours Permit [NL]	Ch.33
Promotional Permit [PR]	Ch. 54
Wine Bottler's Permit [Z]	Ch. 18
Wine Only Package Store Permit [Q]	Ch. 24
Winery Permit [G]	Ch. 16
Winery Storage Permit [GS]	Ch. 45

(e) An original or renewal application for a primary permit or license listed in the following chart, with an issue date before September 1, 2009, will expire one year from the date the license or permit is issued. An original or renewal application for a primary permit or license listed in the following chart, with an issue date on or after September 1, 2009, will expire two years from the date the license or permit is issued.

Permit/License Type [agency code]	Texas Alcoholic Beverage Code Chapter
Agent's Manufacturing Warehousing Permit [AW]	Ch. 55

Beverage Cartage Permit [PE]	Ch. 44
Brewer's Permit [B]	Ch. 12
Local Cartage Permit [E]	Ch. 43
Local Cartage Transfer Permit [ET]	Ch. 43
Local Distributor's Permit [LP]	Ch.23
Private Storage Permit [L]	Ch. 45
Public Storage Permit [K]	Ch. 45
Storage License [SL]	Ch. 75
Wholesaler's Permit [W]	Ch. 19
General Class B Wholesaler's Permit [X]	Ch. 20
Local Class B Wholesaler's Permit [LX]	Ch. 21
Branch Distributor's License [BC]	Ch. 66
General Distributor's License [BB]	Ch. 64
Importer's License [BI]	Ch. 67
Importer's Carrier's License [BJ]	Ch. 68
Local Distributor's License [BD]	Ch. 65
Manufacturer's License [BA]	Ch. 62
Manufacturer's Warehouse License [MW]	Ch. 62
Non Resident Manufacturer's License [BS]	Ch. 63
Beer Retailer's Off Premise License [BF]	Ch. 71
Beer Retailer's On Premise License [BE] Counties under 1.4 million population	Ch. 69
Beer Retailer's On Premise License [BE] Counties over 1.4 million population - Original	Ch. 69
Beer Retailer's On Premise License [BE] Counties over 1.4 million population - Renewal	Ch. 69
Retail Dealer's On Premise Late Hours License [BL]	Ch. 70
Wine and Beer Retailer's On Premise License [BG] Counties under 1.4 million population	Ch. 25
Wine and Beer Retailer's On Premise License [BG] Counties over 1.4 million population	Ch. 25
Wine and Beer Retailer's Off Premise License [BQ]	Ch. 26
Wine and Beer Retailer's Permit Railway Car [Y]	Ch. 25
Wine and Beer Retailer's Permit Excursion Boat [V]	Ch. 25
Food and Beverage Certificate [FB]	Ch. 25

(f) The following permits and licenses are time limited and the fees and surcharges are assessed each time a permit or license is issued.

Permit/License Type [agency code]	Texas Alcoholic Beverage Code Chapter
Daily Temporary Mixed Beverage Permit (Per Day) [TB]	Ch. 30
Daily Temporary Private Club Registration Permit [TN]	Ch. 33
Temporary Charitable Auction Permit [CA]	Ch. 53
Temporary License	Ch. 72

(g) A secondary permit or license which requires the holder to first obtain another permit, including a late hours permit, expires on the same date as the primary permit expires. A temporary permit or license expires on the date indicated on the license or permit or the same date as the primary permit, whichever occurs earlier. The fees for a secondary or temporary permit or license may not be prorated or refunded.

PROPOSED NEW RULE (6-16-08)

§33.26. Manufacturer's Agent's Warehousing Permit Fee. The annual fee for a manufacturer's agent's warehousing permit under Chapter 55 of the Alcoholic Beverage Code shall be \$750.

PROPOSED REPEAL OF CURRENT RULE
PENALTIES

§37.60. Standard Penalty Chart.

(a) Agents, compliance officers or other specifically designated commission personnel may offer settlements to persons charged with violating the provisions of the Alcoholic Beverage Code or rules of the commission. Settlement of those cases, unless otherwise provided for elsewhere in this rule, shall be in compliance with the following standard penalty chart.

HEALTH, SAFETY AND WELFARE VIOLATIONS

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Minor Related Offenses			
Employing a minor to sell, serve, prepare or otherwise handle alcoholic beverages in violation of §106.09 or §61.71(a)(12), Alcoholic Beverage Code.	5-7	10-12	30-Cancel
Permit a minor to possess or consume an alcoholic beverage in violation of §106.13, Alcoholic Beverage Code.	7-15	10-90 Per §106.13	60-Cancel
Sale of an alcoholic beverage to a minor in violation of §106.03, Alcoholic Beverage Code.	7-20	10-90 Per §106.13	60-Cancel
Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code) in violation of §§22.12 and 28.11, Alcoholic Beverage Code.	10-15	15-20	30-Cancel
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury or involving a deadly weapon (as defined in the Texas Penal Code) in violation of §§22.12, 28.11, 69.13 and 71.09, Alcoholic Beverage Code.	45-Cancel	60-Cancel	Cancel
Failure to report a breach of the peace in violation of Alcoholic Beverage Code §§11.61(b)(21), 61.71(a)(31).	Warning-5	7-10	25-Cancel
Possession of narcotics by a licensee or permittee in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.	21-Cancel	45-Cancel	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Possession of narcotics by an employee or agent of a licensee or permittee in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.	10-21	21-45	45-Cancel
The sale or delivery or permitting the sale or delivery of narcotics by a licensee or permittee in violation of §104.01, Alcoholic Beverage Code and Title 16, §35.41(27), Texas Administrative Code.	Cancel		
The sale or delivery or permitting the sale or delivery of narcotics by an employee or agent of a licensee or permittee in violation of §104.01, Alcoholic Beverage Code or Title 16, §35.41(27), Texas Administrative Code.	30-Cancel	60-Cancel	Cancel
The sale, delivery or possession of any equipment used or designed for the administering of a narcotic by the license or permit holder in violation of §104.01, Alcoholic Beverage Code.	15-20	25-30	30-Cancel
The sale, delivery or possession of any equipment used or designed for the administering of a narcotic by the employee of any license or permit holder in violation of §104.01, Alcoholic Beverage Code.	10-15	20-25	30-Cancel
The sale or service of an alcoholic beverage to an intoxicated person in violation of §§11.61(b)(14), 61.71(a)(6) or 101.63, Alcoholic Beverage Code.	10-15	15-30	30-Cancel
The license or permit holder or any employee being intoxicated on a licensed premise in violation of §11.61(b)(13) or §104.01, Alcoholic Beverage Code.	10-15	15-30	30-Cancel
Permitting public lewdness, sexual contact or obscene acts on a licensed premises in violation of §61.71(a)(11) or §104.01, Alcoholic Beverage Code and commission rule, §35.41(1) or the exposure of a person or permitting a person to expose his person in violation of §104.01(2), Alcoholic Beverage Code.	10	15-20	30-Cancel
Creating excessive noise or having unsanitary conditions at a licensed premises in violation of §101.62 or §11.61(b)(9), Alcoholic Beverage Code.	Warning-3	5-7	15-Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises in violation of §61.71(a)(18) or §105.06, Alcoholic Beverage Code.	5	7-10	25-Cancel
Rudely displaying or permitting a person to rudely display a weapon in a retail establishment in violation of §104.01(3), Alcoholic Beverage Code.	7	20-30	60-Cancel
The place and manner of operation of an establishment is such that it constitutes a violation of §§11.46 (a)(8), 11.61(b)(7), 61.42(a)(3) or 61.71(a)(17), Alcoholic Beverage Code by committing the below listed violations. Requires detail on offenses. Examples (not limited to the following offenses): Possession of any gambling paraphernalia or device; Gambling on a licensed premises; Keeping a gambling place; Bribery; Prostitution; Promotion of prostitution; Employment harmful to a minor; Obscenity; Misuse of food stamps.	15-Cancel		
Violation of city codes (relating to health, safety and welfare).	Warning-10	15-25	30-Cancel

MAJOR REGULATORY VIOLATIONS

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Refusing to allow an inspection of a licensed premises or interfering with an inspection of a licensed premises in violation of §§32.17(a)(2), 61.71(a)(14), 61.74(a)(7) or 101.04, Alcoholic Beverage Code.	10 Employee	10-15	45-Cancel
	20 Permittee	25-30	45-Cancel
Operating an establishment as an illegal open saloon in violation of §32.17(a)(1) or §32.01(2), Alcoholic Beverage Code.	5	7-10	25-Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Sell, serve or deliver alcoholic beverages during prohibited hours in violation of §105.01, et seq, Alcoholic Beverage Code.	5	7-10	25-Cancel
Selling wine over 17% alcohol content during prohibited hours in violation of §24.07, Alcoholic Beverage Code.	3	5-10	10-25
Sale of alcoholic beverages while serving a suspension in violation of §§11.68, 61.71(a)(22) or 61.84, Alcoholic Beverage Code.	Original suspension plus 5-10	Original suspension plus 25-Cancel	Cancel
Subterfuge - Permitting another person to use a license or permit other than the one it is issued to in violation of §11.05 and §109.53, Alcoholic Beverage Code.	Cancel		
Possession of distilled spirits without local distributor stamps on the container in violation of §28.15 or §32.20, Alcoholic Beverage Code.	Warning-10	10-15	Cancel
Possession of an empty distilled spirits container with the local distributor stamp not mutilated in violation of agency rule §41.72.	Warning-5	15-20	30-Cancel
Possession of any uninvoiced alcoholic beverages in violation of §28.06 and §32.08, Alcoholic Beverage Code and agency rule §41.50.	10 Employee 15 Permittee	15-20	30-Cancel
Knowingly possess uninvoiced alcoholic beverages in violation of §28.06, Alcoholic Beverage Code and agency rule §41.50 or refilling distilled spirits bottles in violation of §28.08, Alcoholic Beverage Code.	Cancel	Cancel	Cancel
Sale of any unauthorized alcoholic beverage in violation of §11.01, Alcoholic Beverage Code.	10	15-45	60-Cancel
Possession of any unauthorized alcoholic beverage by a licensee or permittee or his employee in violation of §§69.12 or 61.71(a)(9), Alcoholic Beverage Code.	3 Employee 5 Permittee/ Licensee	7-10 Employee 10-15 Permittee/ Licensee	15-25 Employee 25-30 Permittee/ Licensee
Consumption of or permitting consumption of an alcoholic beverage on the premises of any off-premise license or permit in violation of §§22.10, 22.11, 26.01 or 71.01, Alcoholic Beverage Code.	3 Employee 5 Permittee/ Licensee	7-10 Employee 10-15 Permittee/ Licensee	15-30 Employee 20-30 Permittee/ Licensee

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Permitting an open container on the premises of any off-premise license or permit in violation of §§71.01 or 24.09, Alcoholic Beverage Code.	3	7-10	15-30
Purchase of an alcoholic beverage from an unauthorized source in violation of §§61.71(a)(19), 61.71(a)(20), 69.09 or 71.05, Alcoholic Beverage Code.	3	7-10	15-30
Sale of an alcoholic beverage by a retailer for the purpose of resale in violation of §71.05, Alcoholic Beverage Code.	5	10-15	15-30
Purchasing alcoholic beverages while on the "delinquent list" in violation of §102.32(d), Alcoholic Beverage Code.	5	10-15	15-30
Selling an alcoholic beverage away from a licensed premises.	7	10-15	15-45
Storage of alcoholic beverages off a licensed premises in violation of §69.10, Alcoholic Beverage Code.	5	10-15	20-30
Making false or misleading statements in original or renewal applications or making false or misleading statements in documents submitted with or attached to applications for licenses or permits in violation of §§11.46(4), 61.71(a)(4) or 61.74(a)(11), Alcoholic Beverage Code.	Cancel		
Sale or delivery of alcoholic beverages to a non-licensed business in violation of manufacturing and wholesaler sections of the Alcoholic Beverage Code.	3	10-15	25-30
Sale to a permittee who is on the delinquent list, failure to timely collect credit payments, or failure to report credit law violations; Failure to notify the commission of a delinquent account in violation of §102.32, Alcoholic Beverage Code; Failure to report cash law violations or failure to sell beer for cash in violation of §102.31, Alcoholic Beverage Code.	Warning-5	10-15	25-30
Improper record keeping in violation of agency rules §§41.50, 41.51, 41.52 and §§32.03, 32.06, Alcoholic Beverage Code, including invoices, membership records, pool and replacement accounts.	Warning-3	3-5	5-7
Knowingly filed false report or record.	Cancel		
Knowingly failed to keep record or file return in manner required.	5-10	20-30	35-Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Retail cash/credit laws violation of cash or credit laws by retail licensee or permittee in violation of §§61.73, 102.31 or 102.32.	Warning-3	3	5-10
Failed to present program curriculum as approved. §50.4(g).	Warning-3	5-7	15-Cancel
Program taught in ineffective manner. §50.4.	Warning-3	5-7	15-Cancel
Failed to use certified trainer. §50.6(a).	10-15	21-Cancel	Cancel
Had more than 50 trainees in a session. §50.4(e).	Warning-3	5-10	21-30
Failure to schedule sessions or cancel sessions in a timely manner. §50.4(a).	Warning-3	5-7	10-20
Failure to properly test. §50.4(j)-(n).	Warning-3	5-10	Cancel
Certifying a trainee who had not successfully completed a full session and/or passed the final test. §50.5(b)(2).	15-30	30-Cancel	
Licensee/Permittee programs certifying non-employees. §50.4(d).	Warning-3	5-7	10-20
Failed to distribute certificates to trainees. §50.4(r).	Warning-3	5-10	21-30
Trainer taught in a language that was not authorized. §50.6(a).	Warning -3	5-10	21-30
Violation of requirements for school/program approval. §50.3(a)-(h).	Cancel		
Violated a provision of Section 50.5(b) (Program). §50.5(b).	Cancel		
Violated a provision of Section 50.7 (Trainer). §50.7.	Cancel		
Make false or misleading statements, reports, or representations to the Commission. §50.5(b)(2).	7-14	21-30	Cancel
Failure to timely file or properly prepare the report of seller training. §50.5(b)(4).	3-5	7-10	Cancel
Failure to properly prepare and issue certificates. §50.4(r).	Warning-3	5-10	Cancel

(b) Each suspension of a permit or license shall run for consecutive days. An alcoholic beverage

licensee or permittee penalized by the commission may pay a civil penalty in lieu of a suspension as provided by Alcoholic Beverage Code, § 11.64, but no licensee or permittee may pay a civil penalty in lieu of a fraction of its suspension. In other words, any penalty assessed must be either a suspension or a civil penalty, but not a combination of both.

(c) A repeat violation by a licensee or permittee justifies the penalty for a second or third violation if it is a health, safety and welfare violation and occurs within 36 months of the first violation and if it is a major regulatory violation within 24 months of the first violation.

(d) A penalty for an alleged repeat violation shall not be assessed unless the alleged violation

occurs after the permittee or licensee, as those terms are defined in the Texas Alcoholic Beverage Code, § 1.04(11), has been notified, in writing, of the first alleged violation. Notwithstanding the preceding sentence, if an alleged violation is discovered during an undercover operation, then no notice of any prior alleged violations may be necessary to assess a penalty for a repeat violation. The requirement that written notice be given to a permittee or licensee shall not be interpreted to require that a notice of hearing for the violation be delivered to the permittee or licensee.

(e) The list of violations in the standard penalty chart is not an exclusive list of violations of the

Texas Alcoholic Beverage Code or rules of the commission. The administrator or his designee is authorized to assess penalties for any violation of any of the foregoing statutes or rules for which a penalty is not provided on the chart. Any penalty assessed for a violation not provided for on the standard penalty chart shall be approved by either the chief of enforcement or the director of the regulatory division prior to its assessment.

(f) Any person responsible for assessing a penalty for a violation may deviate from the standard

penalty chart if aggravating or mitigating circumstances are involved. If a recommendation deviating from the standard penalty chart is made, it must be made in writing and be filed with the case report. Final approval shall be made by the administrator or his designee.

(g) The standard penalty chart does not bind a hearing examiner, the administrator, or his designee as to penalties for any violation determined to have occurred by the facts presented in an administrative hearing and the record of that proceeding shall be the determining factor as to the sufficiency of the penalty assessed.



CERTIFICATION

REGULAR COMMISSION MEETING

10:30 a.m. – June 27, 2008

5806 Mesa Drive
Austin, Texas 78731



STATE OF TEXAS

COUNTY OF TRAVIS

This certifies that the attached is a true copy of the proceedings of the Texas Alcoholic Beverage Commission meeting held on June 27, 2008.

Alan Steen
Administrator

Sworn and subscribed before me this the 18th day of July 2008.

Renee G. Johnston
Notary in and for Travis County

