1. **Purpose**

1.1 This policy establishes guidance concerning Texas Alcoholic Beverage Commission ("TABC") rules and standards for official protests against applications for permits and licenses.¹

1.2 In the Alcoholic Beverage Code ("Code"), the Texas Legislature provides the means for local officials and members of the public to challenge an Application for a License or Permit filed with the TABC, and tasks the TABC with ensuring "consistent, predictable, and timely enforcement of the Code." § 5.31(b)(4). The TABC has established this Application Protest Policy in order to ensure full compliance with those obligations.

2. **Divisions and Customers Affected**

2.1 This policy affects the TABC’s Licensing; Enforcement; Auditing; Marketing Practices, and Legal Divisions.

2.2 This policy also affects local officials and public citizens who may file a Protest, as listed in Section 4, below.

2.3 In addition, this policy affects the permitted entities that are subject to protests, as described below.

3. **Definitions**

“**ABV**” means ‘alcohol by volume,’ expressed as a percentage of total volume.

“**Applicant**” means a person or entity that files an application with the TABC to operate in one of the three tiers of the alcoholic beverage industry.

“**License**” means an authorization issued by the TABC allowing the applicant to sell, serve, deliver, or buy beer² under TABC laws, rules, and regulations.

“**Permit**” means an authorization issued by the TABC allowing the applicant to sell, serve, deliver, or buy ale,³ wine, and liquor under TABC laws, rules, and regulations.

“**Premises**” has the meaning given to it in Section 11.49 of the Code.

“**Protest**” means a written allegation delivered to the TABC Licensing Division within the applicable time periods in the Code (see Sections 2.2 and 2.3, below), to object to the granting of a License or Permit under consideration by the TABC.

4. **Protest Policy**

¹ The TABC’s procedures for receiving, examining, and resolving Protests are included in TABC Procedure LIC-LIC-2.0-P.

² “Beer” means malt beverages having less than 5% ABV.

³ “Ale” means malt beverages having more than 5% ABV.
4.1 Timely Filing of a Protest

A. The TABC shall consider all Protests that are filed timely, in accordance with the Code.

B. A Protest against an original, reinstatement, or change of location application is timely if filed between the application’s:

(1) date of filing; and
(2) date of issuance by the TABC.

C. A Protest against the renewal of an application is timely if filed between 30 (thirty) and 60 (sixty) days prior to the expiration date of the License or Permit.

4.2 Rejection of a Protest; Jurisdictional Policy

A. The Code provides jurisdiction for Protests, and the TABC has no authority to create jurisdiction where the Legislature has not expressly done so.

B. Accordingly, it is the TABC’s policy to send to a hearing only those Protests that have clear statutory support.

C. The TABC will reject any protest that is submitted without statutory grounds.

D. The State Office of Administrative Hearings has jurisdiction to hold hearings for protested Permits.

E. The county judge of the county where the Applicant’s Premises is located has jurisdiction to hold hearings for protested Licenses.

4.3 Permission to File a Protest by Public Officials and Citizens

A. Certain public officials (listed in Section 4.3-B, below) may protest any original Permit Application or any renewal of such Permits. However, those officials may only challenge an original or renewal application for certain Licenses, as follows:

(1) a retail dealer’s on-premise License (“BE”),\textsuperscript{4} and
(2) a wine and beer retailer’s Permit (“BG/V/Y”), which is treated as a License for cancellation purposes.

B. The following public officials within the area of the Applicant’s Premises may file a Protest against a Permit Application:

\textsuperscript{4} Parenthetical acronyms indicate TABC Permit types.
1. the Mayor;
2. a City Council member;
3. an area Commissioner;
4. the County Judge;
5. the Chief of Police;
6. the City Marshal;
7. a City Attorney;
8. the Sheriff; and
9. a County or District Attorney.

C. Citizens have a limited right to protest certain retail Applications.

1. Citizens may protest certain on-premise, original applications if the citizens reside within 300 (three hundred) feet of the proposed Premises. The Applicant must then give all citizens residing within that area a notice of the Protest, including a copy of the TABC’s Protest policy. This Subsection applies to original Permits for:
   a. a private club (“N”);
   b. a mixed beverage Permit (“MB”) that: (i) is not for a sexually-oriented business (“SOB”); and (ii) does not have a subordinate Food and Beverage certificate (“FB”);
   c. a brewpub (“BP”);
   d. a retail dealer (“BE”); and
   e. a wine and beer retailer (“BG”).

2. Any application that has a subordinate application for Food and Beverage Certificate cannot be protested except for an Application for a sexually-oriented business (“SOB”).

3. Citizens do not have a right to protest any other categories of original Permits or Licenses in the retail tier, intermediate tier, or manufacturing tier of the alcoholic beverage industry.

4. Citizens do not have a right to protest any renewal Application unless it is a SOB. Any such protests received will be rejected.

5. Only citizen protests against SOBs are entitled to a hearing under the Code. For other citizen protests described above, the TABC has discretion whether or not to grant a hearing.
6. Pursuant to Code §11.67, a protestant does not have a right to appeal a TABC final order granting a permit or license following a hearing. A protestant does have a right to timely file, with the county judge or the TABC’s decision-maker, a request to reconsider their respective decision.

D. Nothing in this policy prohibits a person from submitting information about an application to the TABC via the TABC complaint process.

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