



## **APPLICATION PROTEST POLICY**

Licensing Division  
Policy No. LIC-2.0

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### **1. Purpose**

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- 1.1 This policy establishes guidance concerning Texas Alcoholic Beverage Commission (“TABC”) rules and standards for official protests against applications for permits and licenses.<sup>1</sup>
  - 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.
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### **2. Divisions and Customers Affected**

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- 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.
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### **3. Definitions**

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“**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 beer<sup>2</sup> under TABC laws, rules, and regulations.

“**Permit**” means an authorization issued by the TABC allowing the applicant to sell, serve, deliver, or buy ale,<sup>3</sup> 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.

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### **4. Protest Policy**

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

<sup>2</sup> “Beer” means malt beverages having less than 5% ABV.

<sup>3</sup> “Ale” means malt beverages having more than 5% ABV.



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### **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"),<sup>4</sup> 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:

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<sup>4</sup> Parenthetical acronyms indicate TABC Permit types.



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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.



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- 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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