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ALCOHOL PERMITTING AND IMPACTS ON LEASING

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This presentation will focus on considerations for landlords and tenants in connection with the issuance of and compliance with permits issued by the Texas Alcoholic Beverage Commission (“TABC”) and the impact of a tenant’s non-compliance with applicable TABC laws. This presentation will only focus on permittees that are retailers. There are also manufacturer permittees and wholesaler/distributor permittees. Manufacturers and wholesalers/distributors generally have fewer issues than retailers and, as such, are outside the scope of this presentation.

1. OVERVIEW OF TABC PERMITTING PROCESS

- a. Overall Timing. Historically it takes approximately 90 days to have a TABC permit issued.
- b. Pre-Submission Activities. The following occur before the submission of the application to the TABC.
 - i. Proposed Premises Examination. The proposed permittee will need to evaluate the following:
 1. The “wet/dry” status of the site to determine what permits are allowable by local option elections. Some areas are approved for “Restaurant” Mixed Beverage Permits. These locations must qualify for a Food & Beverage Certificate issued by the TABC. Historically, (i) these locations needed to have a full kitchen and serve at least eight entrees and sides and (ii) cannot have alcohol sales exceeding sixty percent of total gross sales. Effective January 1, 2022, locations will qualify as long as they are a “restaurant.” *See TEX. ALCO. BEV. CODE §28.18(a-1)*. Being a restaurant requires that the establishment operates its own food service facility with commercial cooking equipment on its premises and prepares and offers multiple entrees. *See TEX. ALCO. BEV. CODE §1.04 (29)*.
 2. Examine the site’s zoning to ensure that the site is properly zoned and if any Special Use Permit or Conditional Use Permit is required.
 3. Review site for proximity to schools, churches, and hospitals. Generally, licensed premises are not allowable within 300 feet of a K-12 school, a church or a hospital. *See TEX. ALCO. BEV. CODE §109.33*. For schools this is measured property line to property line in whatever is the shortest distance. For churches and hospitals it is measured front door to front door and along street fronts crossing streets at intersections. Think of this as the path you would take “legally” walking from one front door to the other.
 - a. Consider site platting and lot creation when the parcel is in close proximity to a school, church or hospital to create lots that are outside of the 300 foot restriction.

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