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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.

- b. The applicable local jurisdiction (city or county) and not the TABC makes the determination if a site violates the proximity rules for schools, churches and hospitals.
- ii. 60 Day Notice Sign. If the business is an on-premises business, and the premises has not been a licensed premises in the last two years, then TABC will require a sign be posted at the proposed premises visible to the public stating the proposed permittee name, the address of the site and the proposed permit. *See TEX. ALCO. BEV. CODE §11.391*. There is an exception to this requirement if the proposed premises shares a “roofline” with another establishment that currently has a TABC permit. Essentially this means that they are in the same building.
- iii. Publication. There is a requirement for mixed beverage permittee applicants and certain other applications to publish for two days in a periodical of regular circulation in the county where the site is located. *See TEX. ALCO. BEV. CODE §11.39*.
- iv. City Approval. If the premises is located in a city, the city is required to approve the application. They are checking zoning, and proximity to schools, churches and hospitals. Beware of Dallas! Dallas uses the approval as an opportunity to check other development and code matters. City approval can be as quick as a day but can take longer (two weeks or more in some of the larger cities).
- v. County Approval. All applications require approval of the county where the premises is located. Counties will check the wet/dry status and confirm the address. County approvals are typically obtained very quickly and most can be done in one or two days.
- vi. Texas Comptroller Certification. The Texas Comptroller’s office also needs to approve the application. Their review is limited to verifying there is a matching sales tax account for the premises and that the applicant does not have any delinquent taxes owing to the state.
- vii. Submission of Application to TABC. After the city, county and Comptroller’s office approvals have been obtained, the publishing has occurred and the 60 Day Sign has been up at least 60 days (this is a new requirement) then the TABC will accept the application through their new online application system called AIMS. AIMS was launched in August of 2021 and became effective September 1, 2021.
- viii. Applicant information. TABC will require information on the permittee entity and will “qualify” up to 51% of its ownership and all of the permittees’ officers, directors, partners and managers. “Qualify” means the completion of a Personal History Sheet disclosing background data about the person and the person’s

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