

ALLEGATIONS AGAINST AN APPLICATION [PROTEST] POLICY

1. Policy

1.1 This policy establishes a process to file an allegation(s) contesting the granting or issuing of an original, renewal, reinstatement, or change of location against a license or permit, (herein referred to as protest). This process balances efficiency, timeliness, and consistency, and due regard to the legal rights and interests of the *Texas Alcoholic Beverage Commission* (Commission), the applicant, the industry, other government units, and the public.

1.2 See Commission 16 TAC §33.13 (Rule), which addresses pre-qualification requirements as to when the application process commences, when an application is considered filed, and posting of notice requirements and Management Halt Policy LIC 1.0.

1.3 The Commission sets deadlines with the expectation to timely process protests. Any deviation of a deadline may be extended only on an as needed basis, in writing, from the appropriate supervisor.

1.4 Pursuant to Code §11.67 a *protestant* does **not** have a right to appeal a Commission's final order granting a permit or license following a protest. A protestant does have a right to timely file a request with the county judge or the Commission's decision-maker to reconsider their decision.

2. Definitions

2.1 Initial Inquiry: A limited examination into an allegation to determine whether there is sufficient factual support to warrant further investigation.

2.2 Full Investigation: An expanded examination and report of all facts relevant to the allegation and any other matters that may bear on the question of whether an application for a license or permit should be granted or protested.

2.3 Protest: A protest is a written allegation on an application filed during the application process by the agency, a member of the public, a governmental entity or a governmental official contesting the granting or issuing of an original, renewal, reinstatement, or change of location of a license or permit.

2.4 Protest Time for Original, Reinstatement, or Change of Location Application: A written allegation on an application is timely if filed during the application process but prior to the issuance of the license or permit.

2.5 Protest Time for Renewal Application: A period of sixty (60) days prior to the expiration or the issuance of the license or permit.

2.6 Designated Receiving Office: The Director of the Licensing Division located at the Commission's Headquarters is the receiving office for protests filed by the county tax assessors, the Texas Comptroller of Public Accounts, or other state agencies. Designated field offices are the receiving office for all other protests filed.

2.7 Sufficient Grounds: Sufficient evidence from which a reasonable person can conclude that legal grounds as set forth in the Code exist to deny or issue a license or permit.

3. Overview – Filing and Receiving A Protest

3.1 A protest may be filed by any person or entity at a designated field office once the application process begins pursuant to Commission Rule 16 TAC §33.13, but prior to the issuance of the license or permit:

1. If a protest is filed before an application has been received, the District Licensing Supervisor will inform the protestant(s) of this fact, place the appropriate management halt(s), and monitor the protest and location for ninety (90) days from date the protest was filed. If no application is received within the ninety (90) days, protestant(s) will be informed of the status, and the protest will be returned.
2. If a protest is filed after the issuance or renewal of a license or permit, the Licensing Division, or designee, may place a management halt on the location and processes the allegation as a complaint under LE 1.01.00.
 - a. A protestant must file their protest in writing by either completing the Commission Protest Form or by submitting a written document that outlines the legal grounds for the protest;
 - b. Commission staff may assist a protestant in completing the Commission Protest Form. Commission staff receiving an oral statement of protest will direct the protestant to the appropriate form, protest information and to the appropriate designated field office;
 - c. Protests involving unpaid taxes or fees from a city secretary, a county tax assessor, the Texas Comptroller of Public Accounts, and other state agencies are filed with the Director of the Licensing Division at the Commission's Headquarters:
 1. If filed at the time of renewal of the license or permit, the Director of the Licensing Division refuses to issue the license or permit by an order, or refers the protest to the Legal Services Division for prosecution or for issuance.
 2. If not filed at the time of renewal, the Director of the Licensing Division, or designee, places a management halt on the location and assigns the protest to the appropriate field staff for investigation as a complaint under LE 1.01.00.
 - d. Protests that do not involve unpaid taxes or fees are filed with the designated field office at the location or proposed location of the license or permit;
 - e. Change of a business entity, a merger, conversion, consolidation, or change of an officer, manager, director, stockholder, member or trustee or beneficiary is not subject to a protest;
 - f. Change of the location of a premise, or an application for a reinstatement may be protested.

3.2 Commission staff will **not** conduct any measurements when investigating a protest **except** when necessary for a conduct surety bond, or upon request from the Deputy General Counsel or a sitting judge.

4. Overview of Protest Process

4.1 The Protestant completes the Commission's Protest Form or provides a written document stating reason(s) for a protest and cooperates as needed during the investigation and fact-finding phase of the protest process, and participates in the litigation process if the protest proceeds to a hearing.

4.2 The Designated Receiving Office ensures that the protest form and/or a written document from each protestant is complete and states the reason(s) for the protest, notifies the applicant that a protest has been received, explains to the protestant the manner in which the protest will be processed by the Commission, and places management halt(s) as required by policy.

4.3 The Regional Director reviews a protest and assigns it to an investigator to conduct an initial inquiry, and if justified, a full investigation.

4.4 Throughout the course of the investigation, the Regional Director, the District Supervisors or their designees, and the assigned investigator may consult with the Legal Services Division and other Commission staff as appropriate and necessary.

4.5 Initial Inquiry Investigation

- a. The assigned investigator will conduct an initial inquiry to determine if a sufficient objective basis for the protest exists to warrant a full investigation.
- b. The initial inquiry is to be completed within five (5) business days from the receipt of the assignment and should include, but is not limited to the following:
 1. collecting all relevant documents concerning the applicant, the applicant's business, or the implicated location that are in the possession of the Commission or other government entities;
 2. interviewing the protestant and others sufficient to determine the factual basis of the protest, if any; and
 3. determining the applicability of Code §11.43 (Discretion To Grant or Refuse a Permit), or Code §11.52 (Restrictions on Location in Certain Municipalities), and if so, confer with the Deputy General Counsel.
- c. If additional time is needed for the initial inquiry, a request for an extension of time must be submitted and approved in writing by the Regional Director, or designee.
- d. The assigned investigator's activities regarding the initial inquiry, any collected documents, statements of protestant and other witnesses are reported and tracked in the Agency Reporting and Tracking System (ARTS).
- e. The assigned investigator reports the outcome of the initial inquiry to the Regional Director or designee.

4.6 Full Investigation

- a. If it is concluded after an initial inquiry that there is sufficient factual support for the protest to justify a full investigation, the Regional Director or designee will direct the assigned investigator to conduct a full investigation to be completed within thirty (30) business days of the assignment of the full investigation. The Regional Director or their designee may grant an extension of time. Investigations will be reported and tracked in ARTS.
- b. The assigned investigator will conduct a thorough investigation of all aspects of the protest and of any other potential grounds for a protest revealed by the investigation. The assigned investigator will provide an accurate, fair, and complete report on all aspects of the full investigation.
- c. The Regional Director is responsible for ensuring that all necessary consultation with Legal Services or other Commission staff is made during the full investigation.
- d. The Regional Director will ensure that all data entry is made accurately to efficiently report the status of the protest investigation to all interested Commission staff.

- e. The Regional Director will review the completed full investigation report and refer the report to the Deputy General Counsel for legal review.

5. Overview – Legal Review

5.1 The Deputy General Counsel will provide legal consultations with the protestant, the applicant, other Commission staff, and/or city and/or county officials and personnel as well as the public, as necessary and advisable.

5.2 After review of the full investigation report, the Deputy General Counsel determines if there are sufficient grounds against a license or permit to remain neutral. The determination of the Commission to remain neutral in a protest includes but is not limited to:

- a. whether the investigation reveals mandatory or discretionary statutory grounds for a denial or refusal;
- b. whether the investigation reveals a continuing disregard for compliance with the Code and Commission Rules by the applicant, or those associated with the management of the applicant's alcoholic beverage business;
- c. whether there are reasonable grounds to conclude that granting the application will present a distinct and ongoing threat to public health, safety, and welfare; or
- d. due consideration of the recommendations of the local and state governmental officials.

5.3 The Deputy General Counsel refers all protests on a license to the appropriate County officer and notifies the County officer whether the Commission will remain neutral and the reasons thereof. The Deputy General Counsel also notifies the protestant(s), the applicant, the District Supervisors, and the assigned investigator of this decision.

5.4 The Deputy General Counsel determines if there is sufficient evidence to initiate an administrative case on a permit before the (State Office of Administrative Hearings) SOAH. If there is insufficient evidence to warrant a hearing, the Deputy General Counsel dismisses the protest. The Deputy General Counsel notifies the protestant(s), the applicant, the District Supervisors, and the assigned investigator of this decision and the reason thereof.

5.5 The Deputy General Counsel communicates in writing the decision of the Commission to join a protest involving a permit, and the reasons thereof to the protestant(s), the applicant, the District Supervisors, and the assigned investigator.

5.6 The Deputy General Counsel has the final decision authority on whether the Commission remains neutral on a protest and whether to dismiss a protest involving a permit.

6. Roles and Responsibilities

6.1 Protestant: Completes the Commission's Protest Form or provides a written document to the Commission stating reason(s) for a protest, is available to provide additional information as needed, cooperates in the investigation and fact-finding phase of the protest process, and participates in the litigation process if the protest proceeds to a hearing.

6.2 Applicant: Provides information as needed to help resolve the protest, cooperates in the investigation and fact-finding phase of the protest process, and participates in the litigation process if the protest proceeds to hearing.

6.3 Director of Licensing Division – Commission Headquarters

- a. Oversees the designated receiving offices;

- b. Oversees the filing and processing of protests by the County Tax Assessor, the Texas Comptroller of Public Accounts, city secretaries, and other state agencies;
- c. May appoint a designee to perform his/her roles and responsibilities and provides designee's name to District Supervisors and the appropriate Legal Services Office (Austin or Houston);
- d. Oversees the performance of all necessary data entry as required, including placement of a management halt(s) on the issuance of a license or permit on the implicated location, associated application, and/or person(s);
- e. When appropriate, executes an order refusing an original or renewal application, or an order rejecting the application back to the county judge;
- f. Consults with the Deputy General Counsel as needed; and
- g. Reviews and approves proposed policy changes.

6.4 Designated Receiving Office

- a. Ensures that the protest form and/or a written document filed with the Commission by each protestant is complete and states the reason(s) for the protest;
- b. Notifies the applicant that a protest has been received within five (5) business days from receipt of the protest;
- c. Explains to the protestant the manner in which the protest will be processed by the Commission within five (5) business days from receipt of the protest;
- d. Performs the appropriate data entry;
- e. Refers the protest to the Regional Director; and
- f. Consults with the Legal Services Division as needed.

6.5 District Licensing Supervisor

- a. Oversees the receiving and filing of a protest and ensures that the designated receiving office roles and responsibilities are executed in accordance with this policy, including 6.4 above;
- b. Request placement of a management halt(s) within 24 hours of receipt of the protest;
- c. May appoint a designee to perform his/her roles and responsibilities and provides designee's name to the Regional Director, District Supervisors, and the Deputy General Counsel;
- d. Refers a protest to the Regional Director for an initial inquiry within two (2) business days;
- e. Ensures all data entry is made to allow efficient processing and accurate status reporting;
- f. Meets with the Regional Director or designee and District Supervisors on status and progress of pending protests at least bi-monthly;
- g. Recommends policy, process and procedure changes to the Director of Licensing; and
- h. Consults with the Deputy General Counsel as needed.

6.6 Regional Director

- a. Acts as the liaison between the Deputy General Counsel and the assigned investigator until the full investigation report is completed;

- b. Within two (2) business days upon receipt of a protest from the District Licensing Supervisor reviews all protests and assigns an investigator;
- c. May appoint a designee to perform his/her roles and provides designee's name to the District Supervisors and Deputy General Counsel;
- d. Consults with the assigned investigator and determines what resources (Compliance, Enforcement, Licensing, or all) are needed to conduct an initial inquiry or full investigation;
- e. Attend bi-monthly meetings with the District Supervisors, and the assigned investigator;
- f. Within two (2) business days of receipt of a report of an initial inquiry, determines if a full investigation needs to be conducted on the protest or may dismiss a protest but only if the protest is on a permit, the only protestant is the Commission, and insufficient evidence exists to warrant further investigation. The Regional Director must:
 - 1. Not dismiss a protest on a license required to be heard by a county judge.
 - 2. Notify the District in writing, and the reasons thereof.
- g. Within five (5) business days of receipt of a completed full investigation report, reviews and approves the report and refers the completed investigation report to the Deputy General Counsel for legal review and advises the District Supervisors and the assigned investigator of the referral;
- h. Within (2) business days of receipt from the assigned investigator, the Regional Director reviews the initial inquiry report and/or the full investigation report. The Regional Director may recommend if a protest is amenable to mediation between all stakeholders and defines stakeholders, issues, possible solutions, tasks and timelines with an ultimate goal of settlement by all parties;
- i. Monitors investigation process to ensure quality control and that all necessary information is included in the investigation report(s) and is submitted to the Deputy General Counsel for review;
- j. Ensures all data entry is made to allow efficient processing and accurate status reporting; and
- k. Approves all extension of deadlines stated throughout the policy in consultation with the Deputy General Counsel and informs the District Supervisors, the assigned investigator and Deputy General Counsel of the extension(s). Any extension of a deadline must be requested in writing with justification and provide a new deadline.

6.7 Assigned Investigator

- a. The Regional Director or designee, assigns an investigator to make an initial inquiry or a full investigation within two (2) business days of receipt of a protest or notice that a full investigation is required;
- b. Consults with the Regional Director and determines what resources (Enforcement, Compliance, Licensing, or all) are to be assigned to conduct an initial inquiry or a full investigation;
- c. Conducts initial inquiry in accordance with the procedures documented in the *Protest Reporting and Tracking Procedures ARTS Manual* within five (5) business days of the initial inquiry assignment and submits the report to the Regional Director.
- d. Conducts a full investigation of the protest (if required), and submits a report within thirty (30) business days from the date of the full investigation assignment to the Regional Director;
- e. A full investigation report shall (if applicable) contain, but is not limited to, the following matters:

1. A copy of the protest form or other articulation of the protest grounds;
 2. A complete list of the names and contact information of all protestants;
 3. A copy of the completed application;
 4. A copy of the Initial Inquiry Report and conclusion(s);
 5. A statement of any other grounds of protest revealed during the investigations;
 6. Statements or copies of all laws and regulations implicated by the protest;
 7. A narrative description of all investigative activities undertaken;
 8. Copies of all relevant documents from the Commission, protestant, applicant, other persons, or governmental entities;
 9. Photographs, charts, and diagrams, if applicable and necessary exhibits;
 10. A complete analysis of the criminal and/or gang activity of the location and its immediate area;
 11. All history (positive or negative) of the applicant (including previous permits), the business location or against the applicant;
 12. Any delinquent cash, credit or tax history of the applicant;
 13. A complete list of all the names and contact information, including statements, of all witnesses (written or oral) and relevant reports;
 14. Any and all relevant information referenced in the ARTS Protest Manual or from other accessible databases such as LEAPs etc.;
 15. Name, contact information, and knowledge of all actual or potential witnesses and their statements;
 16. All relevant information as required by the Regional Director or the Deputy General Counsel.
- f. Ensures all data entry is made to allow efficient processing and accurate status reporting;
- g. Consults with the Regional Director as needed.

6.10 Deputy General Counsel

- a. Reviews all allegations filed against any application referred to Legal Services;
- b. Communicates with the protestant and applicant during the legal review process as needed;
- c. Works directly with the Regional Director or designee, throughout the investigative and litigation process;

- d. Requests additional information regarding the investigation from the Regional Director or designee with an appropriate deadline for completion;
- e. Ensures all data entry is made to allow efficient processing and accurate status reporting;
- f. Determines within (10) business days of receipt of the completed initial inquiry investigation report:
 - 1. whether to dismiss a protest if legally warranted on an allegation against a permit;
 - 2. whether a full investigation is warranted;
 - 4. whether a hearing is warranted;
 - 5. whether the Commission joins in the protest case on a license or permit;
 - 6. notifies the Regional Director and District Supervisors or their designee(s), protestant(s), applicant, and public officials of the above-referenced determinations;
 - 6. assigns a staff attorney when a protest requires a hearing;
- g. Determines within (10) business days of receipt of the completed full investigation report:
 - 1. whether to dismiss a protest if legally warranted on an allegation against a permit;
 - 2. whether a hearing is warranted;
 - 3. whether the Commission joins the protest case on a license or permit;
 - 4. notifies the Regional Director and District Supervisors or their designees, protestant(s), applicant, and public officials of the above-referenced determinations;
 - 5. assigns a staff attorney when a protest requires a hearing;
- h. Drafts Orders refusing or rejecting an original or renewal application of a license or permit for the Director of Licensing Division as needed;
- i. Provides legal counsel to all divisions throughout the protest process;
- j. Acts as the protest policy manager and receives recommendations for changes to policy; and processes policy recommendations in accordance to the "How to Change a Policy" guidelines.

6.11 Assigned Attorney

- a. The assigned attorney:
 - 1. Prepares the Request for Hearing Form to the county judge/ designee or Request to Docket Form to the SOAH within fifteen (15) business days from the date the Notice of Protest was issued;

2. Once the protest case is filed with the SOAH or referred to the county judge, the assigned attorney communicates to the Administrative Law Judge (ALJ), county judge or designee, protestant(s), and applicant in writing stating the role the Commission will play in the ensuing litigation.
 3. After consultation with the Deputy General Counsel, the assigned attorney may later change the Commission's role (to join or not to join as a party) in the protest due to changed circumstances. The assigned attorney will communicate the Commission's change of status to the judge/designee, applicant and protestant(s) and others Commission staff as appropriate;
 4. Prosecutes all protest hearings in which the Commission is a party protestant, and attends all protest hearings conducted before SOAH regardless of the Commission's party status;
 5. May attend protest hearings conducted by the county judge/designee in a neutral capacity. If the assigned attorney does not attend a protest hearing conducted by the county judge/designee, he or she communicates to the county judge or designee the name of the Commission's representative who will attend the protest hearing and notifies the Regional Director or designee;
 6. When acting as a neutral party, is available to communicate to all parties the status of the protest case and act as a mediator, facilitator, or subject matter expert; and
 7. Updates the Licensing Director, Regional Director, and District Supervisors as needed at each stage of the protest until the case is resolved.
- b. Ensures that all data entry is made to allow efficient processing and accurate status reporting.

7. Form and Procedure Guide

[Commission Protest Form](#)

**ARTS Protest Manual
Management Halt Policy LIC 1.0**

Complaint Investigation Policy LE 1.01.00

16 TAC 33.31

8. Revision History

03/29/2011: This policy includes the following changes:

- added language to further clarify the legal grounds for a protest and refer to Commission Rule 33.13 as amended;
- added language notifying that the protestant(s) do not have a right of appeal but a right of reconsideration;
- moved a section for better continuity of responsibilities;
- made changes for new position titles;
- further defined the roles of the Deputy General Counsel and the Regional Director/District Captain;
- clarified the role of an assigned attorney;
- modified when attendance at protests is required;
- added a new requirement for completing a full investigation;
- formalized the policy statement and purpose;

- transferred designated receiving office duties from the District Compliance Supervisor to the District Licensing Supervisor;
- implemented a procedure for when protests are filed prior to receipt of an application;
- allowed for the Regional Director/District Captain after initial inquiry to dismiss a protest filed by the Commission when insufficient evidence exists to warrant further investigation;
- added Regional Director reviews of pending protests by the District Supervisor; and
- added deadlines to complete activities.

05/31/2013: This policy includes the following changes:

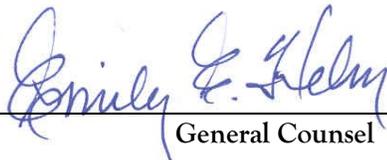
- Transferred from a Legal policy to a Licensing policy.
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Approved by:



Administrator

Approval Date:
7/1/2012


General Counsel

Director of Licensing