

Information Regarding Alcoholic Beverage License Applications and Protests

Public Notice of Application

A person or business (applicant) planning to open a new ABC-licensed business, change the ownership, or move an existing business to a new site must apply for the proper license at an ABC district office. As part of the process, notice must be given to the public and to local officials. This notice occurs in several ways:

- **Public Notice** — The applicant must post a white or yellow public notice (Form ABC-207 or -207-B) in a prominent place at the proposed premises for 30 days. (Bus. & Prof. Code § 23985.)
- **Written Notice by Mail** — ABC mails a copy of the application to the sheriff, chief of police, district attorney, and city council (or the board of supervisors if in an unincorporated area). In some cases, the applicant must also mail written notice to residents and owners of real property within a 500 foot radius of the proposed business. (Bus. & Prof. Code §§ 23985.5 & 23987.)

Filing Your Protest

Any person may protest an ABC license Application using this form. The deadline to file a protest is 30 days from whichever date is later:

- The date the Public Notice is first posted at the proposed business; *or*
- The date the applicant mails written notice to residents or owners of real property within a 500' radius.

You may mail, hand deliver, or fax your signed and dated protest. (Code of Civ. Proc. § 1013.) You may also e-mail a scanned signed protest, for example, in .pdf or .jpg format.

If sent by US Mail, the date of the postmark is deemed the filing date. If delivered by courier service (UPS, Fed Ex, etc.), or e-mail, your protest must be received by ABC by the 30th day. If the 30th day is a holiday or weekend, then your protest must be received on the next business day.

Any protest received after the 30 day deadline cannot be considered. (Bus. & Prof. Code § 24013.)

We encourage you to contact the local ABC district office to find out the exact deadline for filing your protest or to speak with the assigned staff member about your concerns. District office information is found on our website at: www.abc.ca.gov. Please provide the exact address of the proposed business and the applicant's name.

If you feel that there was insufficient notice posted, you must notify the Department within 10 days of becoming aware of the posting. An extension to file a protest may be granted by the Department, but the burden to show why the extension should be granted is on the person requesting the extension. An affidavit or other document submitted under penalty of perjury related to the facts should be submitted.

Please print legibly. Incomplete and/or illegible information will cause the protest to be rejected. The protest must be **signed**. Failure to do so will result in the protest being rejected.

Protests may be made only by individuals. If multiple people wish to file protests they must each complete their own form. Anonymous protests will be rejected. Protests must be location-specific.

A copy of valid protests will be provided to the applicant as part of the licensing process.

All protests submitted to the ABC are public records and are open to inspection pursuant to the California Public Records Act. (Gov. Code § 6254 *et seq.*)

Professional legal advice is not required to file a protest.

Public Officials

If the protest is made by a public officer acting in his or her official capacity, the attached form with the declaration under penalty of perjury is not required, but the protest should be on official letterhead and show the public official's capacity. Requests for time extensions are pursuant to Business & Professions Code section 23987. Contents of a protest submitted as a public official's official protest must meet all other requirements of this regulation.

Grounds for Protest

The California Constitution provides that the sale, purchase, and consumption of alcoholic beverages in licensed premises are legal. Therefore, ABC cannot deny a license solely because a protestant has personal beliefs against the use of alcoholic beverages - denial must relate to public welfare and morals. (Cal. Const. art. XX, Sec. 22) Some of the grounds of protest, which could relate to public welfare and morals, are as follows:

1. The premises is located within the immediate vicinity of a school, church, hospital, or children's playground and the normal operation of the licensed premises would interfere with their functions. (Bus. & Prof. Code § 23789.)
Be specific as to how the sale of alcoholic beverages will adversely affect the facility. Mere proximity to such a facility is not sufficient legal grounds to deny the license.
2. The premises is located in a residential area and the normal operation of the licensed premises would interfere with the quiet enjoyment of their property by the residents of the area. (Dept.'s. Rule 61.4, found in tit. 4, Cal. Code Regs.) Be specific as to how the sale of alcoholic beverages will adversely affect the residents.
3. The premises or parking lot is located within 100 feet of a residence and the applicant has failed to establish that the operation of the licensed premises would not interfere with the quiet enjoyment of the property by the residents. (Rule 61.4.) This only applies to premises that have not been operated with the same type license within 90 days of the application.
4. Licensing the premises would create a public nuisance as defined in Penal Code Section 370. State specific facts leading to this conclusion.
5. Issuance of the license would result in or add to an undue concentration of licenses. (Bus. & Prof. Code 23958 & 23958.4.) List any problems that existing licensed businesses in the area may be causing. Note that this is not a valid ground of protest if the application is for a premises-to-premises transfer within the same census tract; if a current license is being exchanged for a different license type with fewer privileges; if the license applied for will be in the same location as a

current license; if the license will not add to the existing number of licenses within the census tract, or if the license will be a retail license type exempted in 23958.4, subdivision (c)(5)(B).

6. The applicant is not the true or sole owner of the business to be licensed. (Bus. & Prof. Code §§ 23300, 23355, 23950, *et seq.*) You must present testimony or other evidence as to the true ownership.

The following are grounds usually cited by city or county enforcement agencies only. But they can be used by persons who have independent, adequate evidence of same:

7. Issuance of the license to the premises would tend to create a law enforcement problem, or aggravate an existing police problem. (Bus. & Prof. Code §23958.)
8. Licensing the premises would be contrary to the provisions of a valid zoning ordinance of any city or county. (Bus. & Prof. Code § 23790.)
9. The applicant has been convicted of a felony, a crime involving moral turpitude, or one of the offenses listed in the Alcoholic Beverage Control Act section 24200, subdivision (b). (Bus. & Prof. Code § 23952.)
10. The applicant has a police record that disqualifies him or her for a license. (Cal. Const. art. XX., sec. 22.)
11. The applicant has misrepresented a material fact in obtaining a license. (Bus.& Prof. Code § 24299, subd. (c).)

Tips Before Filing a Protest:

For your protest to be more effective, it should be specific and not just a restatement of the above examples. Failure to be specific may cause the protest to be rejected.

Note - Parking or Traffic will not be considered a valid protest issue if the local jurisdiction has issued a Conditional Use Permit (CUP) for the premises OR if the local jurisdiction has confirmed that the use is appropriate to its zoning ordinances.

Some people find it worthwhile to meet with the applicant before filing a protest. This lets the applicant know that and gives the applicant a chance to respond to your concerns.

In some cases, the applicant may be willing to agree to certain conditions. For example, if there could be late-night noise, the applicant may be

willing to stop alcohol sales after a certain time. The parties should contact the ABC staff member assigned to the case if the applicant is willing to agree to conditions that alleviate the concerns of the protestant. ABC will then evaluate if the proposed condition is appropriate to impose on the license.

After Your Protest is Submitted

You will be notified by letter whether or not your protest is accepted or rejected. Accepted protests may be reassessed during the license investigation and may be subsequently rejected. If that happens, you will be notified. **If your protest is rejected**, you may request a hearing within 10 days following issuance of the license. It is your responsibility to determine when the license was issued; ABC will not notify you. (Bus. & Prof. Code § 24013.)

If you change your address, it is your responsibility to notify the Department. Letters returned by the Post Office without a forwarding address will be considered as an abandonment of the protest.

Failure to respond to communications from the Department to the protestant's address shall be considered abandonment of the protest.

Investigation

After a person or business applies for the ABC license, the Department conducts a thorough investigation, as required by law. The ABC agent or licensing representative looks into the applicant's personal history, the applicant's source of funds, the suitability of the proposed premises, and any issues raised in the protest(s). (Bus. & Prof. Code § 23958.)

Interim Operating Permit. If ABC recommends approval of a protested license application, the applicant may apply for an Interim Operating Permit. This allows the business to sell alcoholic beverages pending the protest hearing and any appeals. (Bus. & Prof. Code § Sec. 24044.5.)

Public Hearing

Purpose. Under the California Alcoholic Beverage Control Act (Bus. & Prof. Code § 23000 *et seq.*), a hearing may be held on a valid protest. This affords the applicant the right to meet the objections with any evidence he or she may have.

However, the submission of your protest does not complete the matter. You will be notified by letter regarding a hearing on your protest if a hearing is scheduled. Each protestant shall be considered a party under Government Code 11505. You or your authorized representative will need to attend the hearing to present testimony and/or evidence to support your protest. If you do not request a hearing or request a hearing but fail to appear, your protest will be considered withdrawn.

Time and Place of Hearing. The hearing will take place in the county seat for the business. However, if the governing body of a city files an official protest, the hearing shall be held within such city.

After the Hearing. After the hearing, the administrative law judge will take the protest under advisement. The judge will issue a proposed decision, which is a ruling, usually within 30 days, for review by the ABC Director. ABC may adopt or reject the proposed decision of the judge.

Once ABC has rendered a decision, any party to the matter may appeal the decision to the ABC Appeals Board, an independent, three-member Board appointed by the Governor.

The ABC Appeals Board decision can then be appealed to the State Courts of Appeal and to the State Supreme Court.

Tips for Public Hearing

- If there are multiple protestants, decide who will speak on behalf of the group at the hearing. An attorney is not needed for this role. In fact, local community members may be most effective in raising community issues.
- To be most effective, all presentations should be short and concise and not repeat other presentations.
- Protestants may submit testimony and other evidence such as graphs, tables, pictures, photographs, video, etc. These items do not need to be professionally done. However, because this hearing is a legal proceeding, any evidence submitted is subject to discovery rules and objection. The judge will keep and be able to study any materials entered into evidence.

For the location of the ABC district office nearest you, consult your phone directory or visit our website at: www.abc.ca.gov.

