

TITLE 4. ARTICLE 23. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL PROPOSED REGULATIONS

Text proposed for adoption.

§146 Definitions for use in Protests Against the Issuance of Alcoholic Beverage Licenses

- (a) Definitions for use in Title 4 California Code of Regulations Article 23 and Division 9 of the Business and Professions Code Chapter 6.
- (1) “Applicant” shall mean any person or entity who submits to the California Department of Alcoholic Beverage Control an application for a license.
 - (2) “Department” shall mean the California Department of Alcoholic Beverage Control.
 - (3) “File” shall mean to submit a document to the California Department of Alcoholic Beverage Control either by mail, in person, or email to the district office handling the application as identified on notices required by law.
 - (4) “Governing body” shall mean a tribal government, the board of supervisors of a county, or the city council of a city.
 - (5) “Organization” shall mean any business, non-profit, or other entity that is not an individual, governing body, or a public agency.
 - (6) “Protest” shall mean an opposition to a license application or issuance of a license.
 - (7) “Protestant” shall mean an individual, organization, public agency, or governing body that files a protest.
 - (8) “Public agency” shall mean the sheriff, chief of police, district attorney, or city or county planning director.
 - (9) “Public official” shall mean an authorized representative of a governing body or public agency.

Authority cited: Sections 25750 and 24013 of the Business and Professions Code; and Section 22, Article XX, California Constitution.

Reference: Sections 23001, 23985.5, 23987, 24013, 24013.1, 24013.2, 24014, and 24015 of the Business and Professions Code.

§146.1 Protests Filed by an Individual or Organization

- (a) A protest by an individual or organization shall be limited to one signatory. A signatory for an organization shall be an individual authorized to act on behalf of the organization.
- (b) A protest made by an individual or organization shall state the grounds for the protest, which shall relate to the qualifications of the applicant, the qualification of the premises, or compliance with the provisions of the Alcoholic Beverage Control Act.
- (c) A protest made by an individual or organization shall be verified with a statement that the information in the protest is true and of the individual's own knowledge, except as to matters which are therein stated on their information or belief, and as to matters stated upon information and belief, that they believe those matters to be true.
- (d) A protest made by an individual or organization must include contact information consisting of, at a minimum, a mailing address and an email address.
- (e) A protest made by an individual or organization shall be filed with the Department within thirty (30) days from either of the following, whichever is later:
 - (1) The posting of notice at the proposed licensed premises as required by law, or
 - (2) The date the applicant mails the required notice to the individual or organization pursuant to Business and Professions Code section 23985.5. The burden of when the mailing was done or if no mailing was required pursuant to this section shall be upon the applicant.
 - i. The 30-day timely filing period after mailing of notice is separately calculated for each individual or organization. If an applicant fails to notify a specific individual or organization at the same time as other required individuals or organizations, the 30-day period will not begin for that individual or organization until the required notice is sent by the applicant.
- (f) The Department shall accept a protest made by an individual or organization that complies with subdivisions (b) through (e) of this section. The Department may inform a potential protestant of a defect or error in a filed protest that will cause it to be rejected but is under no obligation to do so. The failure of a protestant to correctly verify their protest is not considered good cause to allow for a subsequent untimely refile of the same protest.

- (g) The Department shall notify the applicant of all protests accepted under this section during its investigation of the application. The Department shall provide all accepted protests, including any provided contact information for the protestant, to the applicant upon request.
- (h) At any time before the hearing under subdivision (h) of this section, the Department may reject, in whole or in part, any protest made by an individual or organization if the Department determines the protest is false, vexatious, frivolous, invalid or unreasonable, or without reasonable or probable cause pursuant to Business and Professions code section 24013(b)(1). In making this determination, the Department will consider the following factors:
- (1) Issues raised are outside the jurisdiction of the Department to review during a licensing investigation;
 - (2) Lack of specificity of the issues raised in the protest to the applicant or the proposed licensed premises;
 - (3) The protest fails to identify reasonable or probable cause to support issues raised in the protest;
 - (4) A relationship of the individual or organization to the applicant prior to the submission of the application;
 - (5) The protest was untimely filed, or
 - (6) The protest failed to be verified by the individual or organization.
- (i) The Department shall notify a protestant whose protest has been rejected within five (5) business days of the determination of the rejection. The required notice shall include the reasons the Department rejected the protest in whole or in part.
- (j) If the Department has rejected a protest made by an individual or organization under subdivision (h) of this section and issues a license to the applicant, an individual or organization whose protest was rejected may file an accusation within ten (10) days after the issuance of the license. Any accusation under this subdivision shall allege the grounds of protest as cause for the revocation of the issued license.

- (k) Upon timely filing of an accusation under this subdivision, the Department shall set a hearing on the accusation as provided in Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (l) An individual or organization whose protest has been accepted by the Department under subdivision (f) of this section may request a hearing on the issues presented in their protest if the Department recommends issuance of the license notwithstanding the protest.
 - (1) A request for hearing shall be in writing and filed with the Department within fifteen (15) business days of the Department's notification pursuant to Business and Professions Code section 24015.
 - (2) Upon timely request for hearing, the Department shall set a hearing on the protest.
 - (3) The Department shall accept an untimely request for hearing upon a showing of good cause.
 - (4) At a hearing requested under subdivision (l)(1) of this section, the issues to be determined shall be limited to only those raised in the protest and accepted by the Department.

Authority cited: Sections 25750 and 24013 of the Business and Professions Code; and Section 22, Article XX, California Constitution.

Reference: Sections 23958, 23958.1, 23958.2, 23985, 23985.5, 24013, 24013.2, 24014, and 24015 of the Business and Professions Code.

§146.2 Protest Made by a Public Agency or Governing Body

- (a) A protest made by a public agency or governing body shall be filed with the Department within thirty (30) days of the Department's mailing to a public agency or governing body of notice of an application, as required by Business and Professions Code section 23987.
- (b) The Department shall notify the applicant of all protests under this section during its investigation of the application. A public agency or governing body may request up to an additional 20 days for a timely filing of their protests upon written request made to the Department prior to the expiration of the time period set forth in subdivision (a) of this section. The request shall include a statement of proper grounds for the extension. Proper grounds for an extension under this subsection are limited to being in the process of preparing a protest or proposing conditions with respect to the application.

If the Department recommends that a license be issued notwithstanding a protest made by a public agency or governing body, the Department shall inform the public agency or governing body of the determination in writing, shall set a hearing as provided in Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall serve a notice of hearing on the public agency or governing body.

Authority cited: Sections 25750 and 24013 of the Business and Professions Code; and Section 22, Article XX, California Constitution.

Reference: Sections, 23958, 23958.1, 23958.2, 23987, 24013, 24013.2, 24014, and 24015 of the Business and Professions Code.

§146.3 Withdrawal of Protest

- (a) If a hearing has been set pursuant to Title 4 California Code of Regulations section 146.1 (l), any accepted protests made by individuals or organizations who did not request a hearing or who made an untimely request for a hearing shall be deemed withdrawn.
- (b) If no request for a hearing is filed with the Department under Title 4 California Code of Regulations section 146.1(h)(1), any accepted protest made by any individual or organization shall be deemed withdrawn, and the Department may issue the license without further proceedings.
- (c) If an individual or organization who requested a hearing under Title 4 California Code of Regulations section 146.1(h)(1) fails to appear at the hearing set pursuant to Title 4 California Code of Regulations section 146.1(h)(2), the protest shall be deemed withdrawn.
- (d) A public agency or governing body may withdraw its protest at any time prior to the hearing set pursuant to Title 4 California Code of Regulations section 146.2(d). Upon such withdrawal, any hearing set under Title 4 California Code of Regulations section 146.2 (d) shall be vacated.

Authority cited: Sections 25750 and 24013 of the Business and Professions Code; and Section 22, Article XX, California Constitution.

Reference: Sections 23958, 23958.1, 23958.2, 23985.5, 23987, 24013, 24013.2, 24014, and 24015 of the Business and Professions Code.

§146.4 Withdrawal of Application by an Applicant

- (a) An applicant may voluntarily withdraw their application because of a protest. If an applicant makes such a withdrawal, the applicant may not refile an application for a licensed premises at the same location address for a period of one year after the date of withdrawal.
- (b) If an applicant withdraws their application under this section, any accepted protests made by any protestant shall remain active against any subsequent applications for the same location address for a period of one year after the date of withdrawal.

Authority cited: Sections 25750 and 24013 of the Business and Professions Code; and Section 22, Article XX, California Constitution.

Reference: Sections 23958, 23958.1, 23958.2, 23985.5, 23987, 24013, 24013.2, 24014, and 24015 of the Business and Professions Code.