

Instructions for Protesting an Alcoholic Beverage License Application

Disclaimer: This information is provided to assist you in complying with proper procedures. However, it is not intended to be a complete discussion of legal procedures. If you need further assistance, you may contact your local ABC district office or seek independent legal advice.

Public Notice of Application

A person or business planning to open a new ABC-licensed business, change the ownership, or move an existing outlet 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. (Sec. 23985 Bus. & Prof. Code.)
- **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' radius of the proposed business. (Secs. 23987 and 23985.5 Bus. & Prof. Code.)
- **NEWSPAPER PUBLICATION** — Certain applicants must publish a notice in the local newspaper. (Sec. 23986 Bus. & Prof. Code.)

Filing Your Protest

Any person may protest an ABC license application. You must file your protest at any ABC district office *within 30 days*. The 30 days runs 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.

Protests must be filed (actually received) with the Department within the 30 day period. Protests received after 30 days cannot be considered. (Sec. 24013 Bus. & Prof. Code.)

If mailed, the protest must be received by the Department within the 30-day period.

If it is close to the 30th day, you should consider personally delivering or faxing your protest. (Sec. 1013 Code of Civ. Proc.)

Even though **ABC does not accept email protests**, you may fax your protest *during regular business hours* (during the 30-day protest period). **The original protest must be received by ABC within ten (10) days of the fax date.**

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. Please provide the exact address of the proposed business and the applicant's name, if known.

A copy of your valid and verified protest, Form ABC-510-A, ABC-128, including your name and address, will be given to the applicant as a public record and a right of discovery for a protest hearing. This is because the law requires the applicant be furnished with a "statement of issues" to be determined if a public hearing is scheduled (see Public Hearing). The statement of issues lists the grounds that form the basis for your objection.

Professional legal advice is not required to file a protest.

Contents of Protest

Your protest must contain the following:

1. The particular ground(s) for objection *and* the facts that support these objections.

2. The name of the applicant and the exact address of the proposed business.
3. The name, address, and signature of any and all protestant(s).
4. **A protest made by any person other than an ABC employee or a public officer shall be verified. Verification may be on information and belief.** (Bus. & Prof. Code § 24014.) **A declaration signed by the protestant(s), should read as follows:** "I (name of protestant), declare under penalty of perjury that I am the protestant herein; that I have read the above protest and know the contents thereof; that the same is true of my own knowledge except as to those matters which are therein stated on information and belief, and as to those matters I believe them to be true." **This declaration is contained on Form ABC-510-A, which you may use to file your protest.** *This form can be downloaded from our website and is available at each of our district offices.*

- **ABC accepts petitions to protest an application.** *The petition must comply with all of the same laws, rules, and conditions as individual protests.*
- ABC suggests that **the individual who initiates and circulates the petition should be the first signature on the petition**, so that person may act as the spokesperson and liaison between ABC and all other protestants listed below his/her name. **The same applies for a protest submitted on an ABC-510-A with a petition attached.**
- **The petition should include each protestant's printed name, complete address, and signature.** *It is important that the information is legible so that each protestant can be identified.*
- **Each person signing the petition must also submit an individual verification.** (Sec. 24014 Bus. & Prof. Code.) ABC suggests that **the person circulating the petition obtain the verifications at the time of circulation.** *The ABC-510-A is available on our website and at each district office.*
- If the verifications are not included with the petition, ABC will notify the **first signee** in writing the date they are due. **It will be that person's responsibility to obtain and submit the verifications to ABC timely and comply with all of the rules and conditions of an individual protest.** *If the person who*

circulates and/or initiates the petition (the first signature) is unable to obtain the verifications, it is their responsibility to assign the task to another protestant who signed the petition.

- All instructions and forms are available to download from the ABC website and are available at each district office.
- If the protest is made by a public officer acting in his official capacity, the declaration under penalty of perjury is not required, but the protest should be on Department letterhead to show official capacity.

Grounds for Protest

The California Constitution provides that the sale, purchase, and consumption of alcoholic beverages in licensed premises is 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. 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. (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. (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. (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, in that: (state specific facts leading to this conclusion).

5. Issuance of the license would result in or add to an *undue concentration* of licenses. (List any problems that existing licensed businesses in the area may be causing.)
6. The applicant is *not the true or sole owner* of the business to be licensed. (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*.
8. Licensing the premises would be contrary to the provisions of a valid *zoning ordinance*.
9. The *applicant has been convicted* of a felony, a crime involving moral turpitude, or one of the offenses listed in Section 24200, subdivision (b) of the Alcoholic Beverage Control Act.
10. The applicant has a *police record* that disqualifies him or her for a license.
11. The applicant has *misrepresented a material fact* in obtaining a license.

Tips:

- For your protest to be more effective, it should be specific and not just a restatement of the above examples.
- Some people find it worthwhile to meet with the applicant before filing a protest. This lets the applicant know that someone is concerned about the proposed business. It gives the applicant a chance to respond to your concerns.
- By meeting with the applicant, you can find out:
 - (a) Who is the applicant? Is the applicant a local business person in good standing? Has the applicant owned other licensed businesses in a responsible manner?
 - (b) What type of business is planned?

- (c) What type of patrons will the business attract? Is a youthful crowd expected?
- (d) Will there be ample, trained staff?
- (e) Will the applicant have and enforce written house/store policies? For example, what are the applicant's plans for responsible marketing and promotions, safe rides, promotion of non-alcohol and low-alcohol drinks and food, checking identification of youthful patrons, drink limits, and crowd control/security?

- In some cases, the applicant may agree to certain assurances or conditions. For example, if there could be late-night noise, the applicant may agree that no alcohol will be sold after a certain time. If a compromise is reached, the parties should contact the ABC staff member assigned to the case. The staff member will draft the formal language of the license conditions.

Investigation

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

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

Public Hearing

PURPOSE. Under the California Alcoholic Beverage Control Act, 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. You will need to attend the hearing to present testimony and/or evidence to support your protest.

TIME AND PLACE OF HEARING. The hearing will take place typically within 60

days of the submission of the Report of Investigation to ABC Headquarters in Sacramento. It will be held 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 make 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 Court of Appeals and to the State Supreme Court.

Tips:

- If you are protesting with a group, 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 tapes, etc. These items do not need to be professionally done. However, because this hearing is a legal proceeding, any evidence submitted is subject to objection. The judge will be able to study any written 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.