

Information for Citizen to Protest Against ABC Licenses

Forward Protest to ABC Licensing:

Fax: (510) 622-4990

and/or

Mail: Alcoholic Beverage Control
Attn: District Administrator
1515 Clay ST Suite 2208
Oakland, CA 94612

*Email Protests are NOT accepted by ABC, Late protests will not be considered by ABC

*Protests must be received before 30 days of public notice posting, or written notice to property owners within 500' radius of property; whichever date is later. (turn protests in early to avoid any problems)

*The Oakland Police Department may also protest the license and request conditions. This is separate from the citizen protests.

Contents of Protest

All instructions and forms are available to download from the ABC website and are available in each district office.

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(s) and the exact address of the proposed business.
3. The name, address, and signature of the Protestant. Protests may only be submitted by individuals, and may contain only one signature.
4. A protest made by any person other than an ABC employee or a public officer must be verified. Verification may be on information and belief. (Bus. & Prof. Code § 24014.) A declaration signed by the protestant 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."
5. If the protest is made by a public officer acting in his or her official capacity, the declaration under penalty of perjury is not required, but the protest should be on official letterhead and show the public official's 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. (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. (Dept's. 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 and 23958.4.) 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. (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:

- 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 and 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 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 alienate the concerns of the protestant. ABC will then evaluate if the proposed condition is appropriate to impose on the license.

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. You or your authorized representative 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 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

- 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 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 discovery rules and 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.

Complaint Against Licensee

- Read Complaint Form Information before completing this form.
- Fill in as many of the blanks as you possibly can.
- After completing the form, print and mail to the nearest ABC District Office or
 Department of Alcoholic Beverage Control
 Attention: Complaint Desk
 3927 Lennane Drive, Suite 100
 Sacramento, CA. 95834

INFORMATION ABOUT YOU

It is not required that you give "Information About You." You may remain anonymous.
 If you do give personal information, it will not be released outside of the department and will remain confidential.

Name: _____
 Address: _____
 City: _____ State: _____ Zip Code: _____
 Phone: (Day): _____ (Evening): _____

INFORMATION ABOUT ABC LICENSED BUSINESS

Name of Business: _____
 Business Address: _____
 City: _____ State: _____ Zip Code: _____
 Phone: _____
 Name of Owner if known: _____

Nature of Complaint: (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Disorderly House | <input type="checkbox"/> Sales After 2:00 A.M. | <input type="checkbox"/> False Owner |
| <input type="checkbox"/> Sales to Minors | <input type="checkbox"/> Drink Solicitation | <input type="checkbox"/> Excessive Noise |
| <input type="checkbox"/> Sales to Obviously Intoxicated Patron | <input type="checkbox"/> Other _____ | |
| <input type="checkbox"/> Illegal Drug Activities | <input type="checkbox"/> Gambling | |
| <input type="checkbox"/> Prostitution | <input type="checkbox"/> Lewd Conduct | |

Date of incident: _____ Time of incident: _____

Have you contacted the business owner regarding your complaint? Yes No

Have you filed this with another law enforcement agency? Yes No

If you answer yes, name of law enforcement agency: _____

Other Details:

Applicant Name: _____

License / File No.: _____

DATE MUST BE RECEIVED BY: _____

**STATE OF CALIFORNIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

PROTESTANT'S / COMPLAINANT'S DECLARATION

I, _____, declare
PRINT YOUR NAME
under penalty of perjury.

That I am the Protestant / Complainant herein; that I have read my previously-submitted protest/complaint and know the contents thereof; that the same is true of my knowledge except to those matters which are therein stated on information and belief and as to those matters I believe them to be true.

EXECUTED on _____, at
(MONTH-DAY-YEAR)

_____, California
(CITY)

Signature: _____

Full Address: _____

Phone No. (non-public & optional): _____

Notice to Protestant / Complainant:

- This verification constitutes a personal oath and must, therefore, be signed by each individual verifying the protest.
- A copy of your valid protest (including your name and address) will be provided to the applicant as a public record and pursuant to applicant's discovery rights.

INSTRUCTIONS AND GENERAL INFORMATION**General Information**

- Type or print clearly in black or blue ink
- Acronyms or form numbers used in these instructions:

B&P Business & Professions Code
 CCR California Code of Regulations
 231 License Action Request

Form ABC-218 is used by on-sale and club licensees who also hold a caterer's permit (Type 58 license) to request permission to cater alcoholic beverages (Complete Sections 1, 2, and 4). Form ABC-218 must be approved at least three days before the catered event. (Section 23399 B&P and Rule 60.5(1) CCR)

Only one signature for the licensee is needed.

Instructions

Licensee Name (Item 1) — List the name of the licensee. For a limited partnership, limited liability company, or a corporation, show the name of the entity.

Event Location (Item 6) — The site of a *catered event* may be an unlicensed building or grounds, a licensed building, or a separate room within the licensed building(s). If the site is licensed, the license must be surrendered to ABC (use Form ABC-231). A Type 50, 51 or 52 licensee may only cater upon the licensed club premises, and the events shall not be open to the general public (an exception may be made if unlimited attendance is in the public interest).

Total Number of Days (Item 10) — A catering authorization is required for each event catered. When the same event is two or more consecutive days, a single Form ABC-218 is needed. For non consecutive dates a separate Form ABC-218 is required for each date.

Number of Events (Item 15) — For Type 41, 42, 47, 48 and 57 licensees, there is a limit of 24 catered events per year at any given site. (Rule 60.5(4) CCR) There is no annual limit for Type 50, 51 and 52 licensees.

Local Law Enforcement Agency Approval Signature (Section 5) – Law enforcement approval may be required when any of the following apply:

- A large number of people are attending
- The event is open to the public
- In certain other circumstances at the Departments discretion.

MISCELLANEOUS INFORMATION

At all approved events, you may exercise only those privileges authorized by your license. You must comply with all provisions of the ABC Act. Violations may be grounds for suspension or revocation of your license or permit, or both, as though the violation occurred on the licensed premises. (Section 23399(d) B&P)

Sites for catered events are at ABC's discretion. Proximity to schools, churches, State and Federal institutions, and other facilities may be a factor in ABC's decision. Zoning may also be a factor. (Rule 60.5(2)(3) CCR)

Persons under 21 years of age may be allowed on the premises of a catered event. However, they may not possess, purchase, or consume alcoholic beverages.

Wholesalers may deliver alcoholic beverages to the site of a catered event. You may not store distilled spirits at the event site. The distilled spirits must be returned to the licensed premises after the event.

PROTEST AGAINST ALCOHOLIC BEVERAGE LICENSE APPLICATION

- Refer to Form ABC-510, Information Regarding ABC License Application and Protests (Rev. April 2010), before completing and submitting your protest. The ABC-510 is located at www.abc.ca.gov and in each district office.
- **Please print legibly or type.** Incomplete and/or illegible information will cause the protest to be rejected.
- You will be notified by letter whether or not your your protest is accepted.
- If the Department recommends licensure, you will be afforded the opportunity to request a hearing on your protest.
- If a hearing is scheduled as to whether or not a license should be granted, you or your authorized representative will need to attend the hearing to testify and/or present evidence to support your protest, or your protest will be deemed abandoned.
- All protests submitted to the ABC are public records and are open to inspection pursuant to the California Public Records Act (CPRA). (Gov. Code sec. 6254 *et seq.*)
- A copy of all valid and verified protests (ABC-510-A) and Protestant's/Complainant's Declaration (ABC-128) will be provided to the applicant as part of the licensing process.

I hereby protest the issuance of a license under the Alcoholic Beverage Control Act to:

(Name(s) of Applicant(s))

For premises at:

(Exact address of proposed premises)

on the grounds that:

Check here if additional sheets attached

I, _____, declare under penalty of perjury:
PRINT (Name of Protestant)

- (1) That I am the Protestant herein;
- (2) That I have read the above protest and know the contents thereof; and
- (3) 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 to be true.

PROTESTANT'S SIGNATURE	TELEPHONE NUMBER (Optional & non-public)
SIGNED AT (City and State)	DATE SIGNED

PROTESTANT'S ADDRESS (Full address - Street name & number, Unit or Apt. No., City, State, & Zip Code)