

July 2024 Response to Comments

Z-2024-0430-09 License Application Protests Procedures

Adding Definitions for Clarity

Written Comment: 1

Comments Summary:

Commenter requests the addition of four definitions for clarity in interpretation and implementation of the proposed regulatory package, including “Law enforcement agency,” “Resident,” “Owner of Real Property,” and “Protest Period.”

CA Dept of Alcoholic Beverage Control Response:

The Department of Alcoholic Beverage Control (ABC) has modified the proposed regulatory package accordingly.

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Adjust the process for persons who are notified by mail pursuant to Business and Professions Code section 23985.5.

Written Comment: 1

Comments Summary:

Commenter suggests that using the terms “individual” and “organization” in the proposed regulation section 146.1(e)(2) would imply those people other than residents or owners of real property within a 500ft radius would need mailing notice.

CA Dept of Alcoholic Beverage Control Response:

ABC agrees that the language previously proposed could have possibly led to some confusion. Business and Professions Code 24013 states that “[p]rotests may be filed at any office of [ABC] within 30 days from the first date of posting notice of intention to engage in the sale of alcoholic beverages at the premises, within 30 days of the mailing of the notification pursuant to Section 23985.5, or within 30 days of the mailing of notices of [ABC] to public officials as required by Section 23987, whichever is later.” The protest period for an individual or organization, even if not a resident or real property owner within a five-hundred-foot radius has the same deadline dependent on all notices being complete. ABC has sought to make the proposed language clearer and easier to understand through an as requested by commenter.

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Allow ABC to contact potential protestants during the protest period to allow a potential protestant to cure defects in their submitted protest.

Written Comment: 1

Comments Summary:

Commenter suggests that the proposed regulations be amended to allow ABC staff to contact a potential protestant prior to the expiration of a protest period to allow them to cure a defect or error in a submitted protest discovered by ABC in an initial review.

CA Dept of Alcoholic Beverage Control Response:

ABC's original intent for the proposed regulatory language was to allow ABC staff receiving protests within the protest period the ability to notify potential protestants of defects and allow them to cure prior to the expiration of the protest period, but that if it was not supplemented by the protestant within the protest period, the protest would be rejected as untimely. Due to the statutory limit on time, a submission close to the end of the protest period, and a varying workload of ABC staff, ABC cannot guarantee every defective protest will be reviewed prior to the end of the protest period with time to allow for a potential protestant the time to cure a defect or error. Thus, ABC cannot mandate this interaction occur, but ABC always intended to allow ABC staff to comply with the commenter's suggestion. The proposed regulatory text has been modified to clarify this intent and ensure uniform implementation of the proposed processes.

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Clarify when ABC must provide protest information to applicants.

Written Comment: 1

Comments Summary:

Commenter suggests that a specified period for the required disclosure in the proposed regulations section 146.1(g) would provide clarity, as well as define what is required to be given and what must be requested by the applicant.

CA Dept of Alcoholic Beverage Control Response:

ABC has made appropriate changes to the proposed regulations to increase clarity and ensure uniform implementation of the protest procedures.

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ABC should not always grant an untimely request for hearing when good cause is shown.

Written Comment: 1

Comments Summary:

Commenter points out that Business and Professions Code section 24015(c) grants ABC the discretionary authority to grant an untimely hearing request upon a showing of good cause. Commenter requests that the regulation mimic the statute to allow for ABC discretion in granting or denying an untimely hearing request even if good cause is shown.

CA Dept of Alcoholic Beverage Control Response:

Business and Professions Code section 24015(c) grants ABC the discretion to determine if an untimely request should be granted a hearing upon a showing of good cause. The proposed regulation must define and specifically outline the process for ABC's use of that discretion and ensure uniform understanding of how ABC will act for applicants, protestants, ABC staff and the public. Commenter's suggestion would not provide that clarity and would induce the same ambiguity present in the statute. If there is truly evidence of good cause brought by a protestant when an untimely hearing request is presented, a hearing should be set by ABC. The only reason ABC would not set a hearing in this case is if the license has already been issued. This change has been made to the proposed regulation.

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ABC should only allow law enforcement agencies an extension of time.

Written Comment: 1

Comments Summary:

Commenter calls attention to Business and Professions Code section 24013(a) which only grants law enforcement agencies the ability to request a 20-day extension to file a protest, whereas the proposed regulatory language extends this privilege to all public agencies and governing bodies. Commenter suggests that the proposed regulation must follow the statutory authority for accepting a request for an extension and not expand that acceptance to other agencies.

CA Dept of Alcoholic Beverage Control Response:

ABC has made the changes to the proposed regulations suggested by commenter.