



## ★CHECKLIST★

### Fundraising

- How much do you really need to raise?
  - Determine your financial needs.
    - All your capital expenses – buildings, equipment, hardware, etc.
    - Monthly operating expenses – utilities, brewing supplies, employees, etc.
    - Any unusual, large expenses (trademark filings, for example)
  - Determine your current financial assets.
    - Savings
    - Credit
    - Monthly income (work, investments, etc.)
- Determine what kind of risk you and your business are comfortable with.
  - Loans – are you able to take on debt? Many banks are requiring personal guarantees or personal collateral, so be aware of what the institutions may want.
  - Bootstrapping – can you afford to divert income to your new business? Do your friends and family have money they can help you out with?
  - Equity Investment – are you willing to give up a piece of your business to someone else in return for money?
  - Crowdfunding
    - Rewards-Based – are you willing to put your time and energy into marketing your brand?
    - Equity-Based – are you prepared to keep up with securities regulations and monitor the investors to be sure they are accredited?
- Talk with a professional about your fundraising.
  - Speak with a lawyer about how your liabilities and obligations may change based on what kind of investment you take in.
  - Speak with a CPA about the tax ramifications – depending on what kind of investment you take in it can drastically affect your taxes.
- Necessary documents.
  - Business budget
  - Loan agreements – you should do this even for friends and family members, not just banks.
  - Letter of Intent – sets out the basic terms of an equity offer.
  - Private Placement Memorandum – sets out the specifics of an investment.
  - Share/Membership Interest Purchase Agreements – again, even for friends and family members.
- Securities Laws Filings:
  - State required filings
  - SEC - Form D – Due within 15 days of the first sale of security.



**\*CHECKLIST\***

## **Chapter 4 – Location**

- City: \_\_\_\_\_
- What is the zoning? \_\_\_\_\_
  - Will you need a change of use permit?
  - Will you need a conditional use permit?
    - How much time will this add to the process?
    - How much money will this add to your project?
- What does the local government think of your project?
  - City/County Economic Growth department consultation
  - Police Department consultation
- What is around the location you are considering?
  - Where is the nearest residential location?
  - Where is the nearest church?
  - Where is the nearest school?
- Is the location ready to handle a brewery and/or tasting room?
  - What needs to be changed?
    - Are the premises ADA compliant?
    - Are there any recorded easements?
    - Is the electrical up to date?
    - Soil testing?
    - Concrete analysis?
    - Conducive to rigging?
    - Sprinkler system?
    - Storage space?
    - Parking?
    - Is it accessible for deliveries and pickups?
    - Space for packaging line?
    - Space for barrel-aging?
  - How much will those changes cost?
    - Will the landlord pay for any tenant improvements
    - How much will the permits cost and how long will they take?
    - How long will the construction take? Will that delay my opening?
- Sustainability measures?
  - Water
  - Solar
  - Wastewater
  - Recycling



## ★CHECKLIST★

### Chapter 5 – Licensing and Regulations

- TTB application – Brewer’s Notice
  - Information needed for application
    - Detailed information on the premises including:
      - Legal description of the land (on the deed)
      - Description of the building itself including size, composition , use and measurements to doors and windows
    - Detailed information on your manufacturing plan
    - Detailed information on the entity/applicant
    - Detailed personal information on each owner, officer, director, member, and/or 10% or more shareholder
      - Any past legal violations
      - 10 years of employment history and residences
      - Bank reference as well as 4 character/business references
  - Documents need to upload with application
    - Company Documents
      - Articles of Incorporation/Organization
      - By Laws/Operating Agreement
      - Meeting Minutes
      - Any amendments to the above
    - Executed lease or deed to property
    - Diagram of planned operation
    - Bank statements, loan documents, etc. documenting source of funds
    - Executed Power of Attorney form (optional)
    - Executed Bond form
- FDA Registration
- ABC application – Type \_\_\_\_\_
  - Similar information as required by TTB
  - Additional information required
    - Personal information on spouses of owners, officers, directors, members and 10% or more shareholders
    - Diagram of surrounding area of your planned location
    - Zoning affidavit – call your local planning department to confirm what is necessary to complete this.
    - List of all residences within 100 feet and churches, schools, etc within 600 feet – a title company can run this report for you to provide to ABC
  - Many of the ABC forms will need to be notarized
  - Call your local ABC office to determine the proper protocol for submission
  - When you post your notice poster, make sure you post correctly and sign the affidavit of posting
  - Sign off on police conditions or negotiate changes
  - Your final ABC license will not be issued until
    - You have your TTB Brewer’s Notice
    - All construction is complete
    - All equipment is in place
- CalRecycles registration



**★CHECKLIST★**

Chapter 6 – Compliance

- Tied House Restrictions
  - Ownership
    - Do any of the founders own interest in a retail license?
    - Are any of the founders an employee of anyone who has a retail license?
  - Advertising
    - Social Media
      - Are there any laudatory comments regarding a retailer?
      - Have you posted any pictures of the retailer?
      - Have you included any price information?
      - Events
        - Will someone from the brewery be attending?
        - Are you using the retailer’s name as you would an address?
      - Includes re-posting of other people’s posts (tweets, etc.)
      - Could be seen to include all brewery employees, even as far as on their own “personal” pages
  - Listing of Accounts
    - Website
      - Does the consumer need to click somewhere to see a list of accounts selling your beer?
      - Are there at least 2 accounts listed?
  - Donations
    - Do you have a copy of the charity’s 501(c)(3) paperwork?
    - Do you have a copy of the charity’s temporary ABC license?
- Regulatory
  - Price-posting
    - Have you submitted your posted prices to ABC?
      - Wholesale price
      - Retailer price
  - Have you filed your distribution agreements with ABC?
  - Have you filed for formula approval if needed from TTB?
  - Have you filed for label approval?
    - ABC required if leaving brewery premises in any form
    - TTB required if leaving the state



## ★CHECKLIST★

### Chapter 7 – Labeling

- Formula approval from TTB
  - Have you registered for Formulas Online?
  - Have you added any non-exempted ingredients to the beer? If yes,
    - File the application for formula approval
- Label Approval
  - ABC
    - Is the beer leaving the premises? If yes,
    - How is the beer packaged?
      - Growlers – growler tag approval needed
      - Draft only – keg collar approval needed
      - Bottles/cans – full label approval
    - Is the beer higher than 5.7% ABV? If yes, include on the label
    - Other label requirements
      - Name and location of manufacturer (city and state) and bottler if different
      - Name of beer in container
      - Net contents of container (ok as long as it is on the container)
  - TTB – Is the beer leaving California? If yes,
    - Have you registered for COLAs Online?
    - Have you filed for label approval? Need
      - Brand name of the beer (as filed with TTB)
      - Class or type of beer (such as ale or stout)
      - Brewery name and address (exactly as filed with TTB)
      - Alcohol content in ABV
      - Net contents (again, on container is fine)
      - When applicable
        - Name and address of any importer
        - Name and address of bottler or packer
        - Statement indicating presence of extra ingredients
    - Is the government warning on the container in the required format?
    - Are you correctly using the term “organic” or “gluten-free”?
    - Is there anything on your label that the TTB could see as “misleading to consumers?”
  - CalRecycles – do you have a CRV statement?



## ★CHECKLIST★

### Chapter 8 – Intellectual Property

- Trademarks
  - Have you chosen a brewery name, logo or slogan (mark)?
    - If no, remember it's best to avoid geographic and descriptive marks, as well as surnames
    - If yes, check to be sure that no one else has a trademark on it already
      - USPTO public database
        - Class 32 – beer
        - Class 33 – wine/spirits
        - Class 43 – restaurant and bar services
    - Verify that no one else has used the mark on alcohol for sale
      - TTB COLA registry
      - Review websites
      - Google (the first few pages)
    - If you find something you think could be an issue, contact the owner in question and see if they will allow your use
      - If they will allow your trademark, obtain a consent agreement
    - If your chosen mark is clear, you should file as soon as possible
    - Filing
      - Have you physically used it on goods for sale AND shipped the product across state lines?
        - If yes, file for an “in use” trademark
        - If no, file for an “intent to use” trademark
      - Keep track of all deadlines
  - Protection – if you find a mark that is potentially infringing your mark
    - Verify that you really used the mark before they did
      - If they were the first user, you may want to ask for a co-existence agreement
    - If you have the prior right, call first
      - Assume it was a mistake or oversight (unintentional)
      - Offer as much as you can to make it an easy fix
        - Allow them to sell through current product
        - Offer to help pay for labels already printed
      - If the phone call is not effective, you may need to consult an attorney
        - Nice cease and desist
        - Stronger cease and desist
        - Mediation
        - Arbitration/Litigation
- Copyright
  - Obtain assignment of all rights for all artwork or copy created for your brand
  - File for copyright with the US Copyright Office.
- Trade Secrets
  - Obtain non-disclosure agreements from employees involved in brewing process.
  - Obtain sign-off that all recipes created will be property of brewery



## ★CHECKLIST★

### Chapter 9 – Employment Basics

- How are you hiring the employee?
- Will you ask questions about:
  - Scheduling?
  - Need for physical accommodations?
  - Have these questions been vetted by a professional to avoid discrimination charges because of protected class status?
- What type of worker are you hiring?
  - Is the individual an employee or an independent contractor?
    - If an employee, are they:
      - an intern?
      - a volunteer?
    - Are they nonexempt (salaried) or exempt (hourly)?
    - Executive, administrative, or professional?
    - Are they going to be paid?
      - Minimum wage?
      - Commission or bonus plan?
      - Are they inside or outside sales?
      - Equity?
    - Service employees: will tips or gratuities be involved?
    - Will you need to reimburse the employee for expenses?
    - Will you offer other benefits?
      - Health plans?
      - Retirement plans?
- Hiring paperwork
  - Form I-9
  - Form W-4
  - Labor Code §2810.5 Notice
  - DE 2320
  - DE 2511
  - DE 2515
  - Sexual Harassment and Discrimination handouts
  - Notice of Workers' Compensation
  - Commission agreement (if applicable)
  - Meal and break waivers (if applicable)
- Will you have an employee handbook?
  - Have you trained your management and hiring staff on the handbook?
  - Have you checked with your service providers for posters and pamphlets?
- On the job considerations?
- Is your staff properly trained and certified?
  - Harassment training
  - Your personalized IIPP
  - Alcohol Service training (LEAD)
  - Food Safety Manager training
  - Food Handler training
  - Fork Lift Operational training or certification



## ★CHECKLIST★

### Chapter 10 – Contracting Primer

- Read the Contract!
  - Basis
  - Term
  - Timing
  - Notice
  - Venue, jurisdiction and choice of law
  - Arbitration vs mediation
  - Attorney’s fees
- Types of contracts you will deal with
  - Business contracts (see Chapter 2)
  - Leases
    - Puncturing the roof
    - Nuisance clause
    - Fixtures
    - Parking
    - Common Area Expenses
    - ADA clauses
    - Relocation
    - Morality clause
    - Right of first refusal for contiguous space
    - Personal guaranty
    - Contingency clause for licensing approval
  - Distribution Agreements
    - Know the state’s laws you are working with
    - Termination clause
      - Good cause required? How is it defined?
      - Notice?
      - Time to cure?
      - Penalty for terminating without having good cause?
        - “Fair Market Value” of distribution rights – how is this defined?
    - Exclusivity clause
    - Set reasonable sales objectives
  - Suppliers
    - Hops contracts