



**SAN MATEO COUNTY  
BOARD OF SUPERVISORS  
LEGISLATIVE COMMITTEE MEETING**

**Rose Jacobs Gibson, President  
Adrienne Tissier, Supervisor**

**Mary McMillan, Deputy County Manager  
John Beiers, Chief Deputy County Counsel  
400 County Center, Redwood City, CA 94063  
650-363-4123**

TO: Legislative Committee

FROM: Ross Nakasone, Legislative Coordinator

SUBJECT: Special Legislative Committee Meeting—Agenda for May 15, 2008

DATE: May 13, 2008

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**Meeting Date and Time:** May 15, 2008, 10:00 am

**Place:** CMO Conference Room, Office of the Board of Supervisors  
First Floor, 400 County Center, Redwood City, California

1. Call to order
2. Welcome and Introductions (Supervisors Adrienne Tissier and Rose Jacobs Gibson)
3. The cost of alcohol and alcohol abuse, an historical perspective on alcohol tax increases in California and discussion of potential alcohol tax or fee increase as a long term revenue source for AOD prevention and treatment (Michele Simon, Director of Research and Policy, Marin Institute)
4. Assembly Select Committee on Alcohol and Drug Abuse and related legislation (Sunshine Borelli, Office of Assembly Member Jim Beall)
5. Youth, alcopops and tax reclassification (Amanda Cue, Youth Leadership Institute)
6. Retrospective review of funding for alcohol and other drug funding in San Mateo County (Steve Kaplan, San Mateo County Behavioral Health and Recovery Services)
7. Discussion of alternative strategies and Next Steps (all)
8. Oral Communications and Public Comment
9. Adjournment

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*If you wish to speak to the Committee, please fill out a speaker's slip. If you have anything that you wish distributed to the Committee and included in the official record, please hand it to the Legislative Coordinator who will distribute the information to the Supervisors and staff.*



## **Best Practices in Municipal Regulation to Reduce Alcohol-Related Harms from Licensed Alcohol Outlets**

**A Publication of Prevention Services of Ventura County Behavioral Health**

The intent of this report is to provide useful information to municipal governments, private institutions and community coalitions who are formulating responses to the problems created by retail availability of alcohol.

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Suggested citation:

*Best Practices in Municipal Regulation to Reduce Alcohol-Related Harms From Licensed Alcohol Outlets, With Model Ordinance and Bibliography*, Center for the Study of Law and Enforcement Policy, Pacific Institute for Research and Evaluation (Ventura, CA: Ventura County Behavioral Health Department Publication, 2008).

# Best Practices in Municipal Regulation to Reduce Alcohol-Related Harms from Licensed Alcohol Outlets

WITH MODEL ORDINANCE AND BIBLIOGRAPHY

JANUARY 2008



Ventura County  
Behavioral Health

ALCOHOL & DRUG PROGRAMS  
PREVENTION SERVICES



Pacific Institute  
FOR RESEARCH AND EVALUATION



Center for the Study of Law  
and Enforcement Policy

A Center of the Pacific Institute for Research and Evaluation



**VENTURA COUNTY LIMITS**

A Community Partnership for Responsible Alcohol Policies & Practices



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# Acknowledgements

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The Ventura County Behavioral Health Department thanks CSLEP and their collaborators for preparing this important policy briefing, and we express our deep gratitude to the researchers and practitioners in the alcohol policy field for their hard work and dedication in synthesizing this document. We specifically acknowledge the contributions of:

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# Introduction

## Why is regulating retail alcohol outlets important?

Alcohol is a legal product and alcohol retailers represent an important business sector of California's economy. Unlike most other retail products, alcohol is associated with a wide variety of community and societal problems, including violence, sexual assault, motor vehicle crashes, other forms of injury, and family disruption. The problems are particularly acute among young people. Even relatively minor problems often associated with alcohol sales, such as loitering, graffiti, and noise, can constitute public nuisances that adversely affect neighboring businesses and residents and contribute to neighborhood blight.<sup>i</sup> Because of these risks to public health and safety, California communities are taking proactive steps to promote responsible alcohol retail practices and reduce the risks associated with alcohol sales.

**Research has shown that five key variables affect the nature and extent of alcohol problems associated with alcohol retail outlets:**

**Number of alcohol outlets:** High numbers of outlets are associated with increased alcohol problems (sometimes referred to as “outlet proliferation”).

**Types of alcohol outlets:** Outlets such as bars and nightclubs, which have alcohol as their primary business, also create increased risks of problems.

**Concentration of outlets:** In many communities, the total number of outlets is not excessive, but the outlets are clustered in certain neighborhoods. Over concentration is associated with increased incidence of alcohol problems, including violent assault.

**Locations of outlets:** Retail outlets next to sensitive land uses such as schools, playgrounds or other locations where youth congregate can contribute to underage drinking problems and may detract from quality-of-life for residents nearby.

**Retail practices:** Sales and service practices are particularly important variables. Sales to minors and intoxicated persons as well as public nuisance activities can all be reduced through responsible business practices, which in turn can be promoted through effective zoning provisions and enforcement policies.

Taking comprehensive and proactive steps to plan the number and location of alcohol outlets and to regulate how they are operated, while working collaboratively with alcohol retailers, can reduce alcohol problems, enhance the community's business environment, and contribute to overall community health and safety.<sup>ii</sup>

## What is the legal framework for regulating retail alcohol outlets in California?

The basic framework for addressing the five alcohol availability variables described above is provided by the California State Alcoholic Beverage Control (ABC) Act and local regulation. The interaction of the variables involves complex legal concepts and strategies that can make them difficult to use and understand, not only for residents but also for policy makers.

**The California Alcoholic Beverage Control (“ABC”) Act and the doctrine of state preemption:** From a community’s perspective, the California ABC Act is a given. It establishes the basic alcohol availability structure for all local jurisdictions in the state, specifying the types of alcohol outlets and licenses, restricting their location and number to some degree, and providing minimum standards for operation. The California Department of Alcoholic Beverage Control (“the state ABC Department”) licenses the outlets and is the primary agency responsible for enforcing the Act’s provisions.

Perhaps the most complex legal issue faced by communities in adapting the basic framework of the ABC Act to local conditions is the constitutional doctrine of “state preemption.” The California Constitution provides that the state has “the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages.” (Cal. Const., Article XX, § 22.) Although not unique to California, the doctrine of preemption puts California at one extreme among the states in terms of allowing local communities to establish and enforce their own alcohol availability structure. <sup>iii</sup>

Fortunately, the term “exclusive” describing the powers of the state through its ABC Department is not applied literally. Both the California legislature and the courts recognize that with respect to the regulation of alcohol outlets, important interests of cities overlap with those of the state. Local zoning, land use, and police powers are traditional, well-established local powers that must be protected.<sup>iv</sup> The exercise of these powers, however, is constrained by the state constitution and the state ABC Act. Local communities cannot contradict state legal provisions, and the extent to which local powers can be used is often debated and uncertain, requiring court review and interpretation. It is therefore critical to coordinate local actions with state law and the state ABC Department’s practices.

**New and existing retail outlets:** A key distinction in applying the state preemption doctrine involves the status of the specific licensed premise as a “new” or “pre-existing” outlet at the time a city enacts a new ordinance or regulation. A retailer whose business is already in place receives far greater protection under state law than outlets that are proposed following the local action.<sup>v</sup> Thus, a city that wants to restrict alcohol outlets near schools cannot impose the new restriction on an existing outlet, but can prohibit a new outlet from locating in the restricted zone or selling a restricted product. Although cities have some authority over pre-existing outlets, their power is limited. This best practices guide describes in detail the legal tools available to communities for exercising regulatory authority over both new and pre-existing outlets.

## **What tools do communities have to ensure a healthy retail alcohol environment?**

Although constrained by state law, communities nevertheless have substantial authority to regulate alcohol retail practices. Regulatory powers include:

### ***Conditional Use Permit Ordinances (CUPs)***

CUPs are the primary local regulatory tool for regulating new alcohol outlets, relying on a locality's authority to regulate land uses through its zoning powers. State law provides that a city can require that an applicant to the state ABC Department obtain a CUP before it can be licensed by the state.<sup>vi</sup> The CUP application involves a review process, including public hearings, that provides the applicant, public officials, and neighbors the opportunity to present evidence regarding whether the application should be granted and, if so, under what conditions.<sup>vii</sup> The CUP ordinance provides basic guidelines for making these determinations and can include mandatory or discretionary rules and conditions. It allows a city to consider special uses that may be essential or desirable to a particular community or neighborhood. CUP ordinances include procedures for enforcing their provisions, usually through administrative procedures already in place under a city's general zoning code.

### ***“Deemed Approved” Ordinances***

Deemed Approved ordinances constitute the basic tool for regulating “pre-existing” outlets – those retail establishments that were in existence prior to a city's CUP ordinance. They are also grounded in the authority of local government to regulate land uses through its zoning powers. Because of the state preemption doctrine, the retail practices that can be addressed by Deemed Approved ordinances are strictly constrained. For example, the ordinances cannot restrict the types of alcohol sold or the hours of operation. Instead, Deemed Approved ordinances focus on retailer activities and practices called “performance standards” not directly associated with the actual sale of alcohol that constitute public nuisance activities, such as loitering, graffiti, illegal behavior (such as violating state laws prohibiting sales to minors) and the like. If an outlet violates the ordinance's general performance standards, the outlet is subject to a review process, during which the outlet, the city, and the public have an opportunity at a public hearing to determine whether a violation has occurred and, if so, whether the outlet will have to conform to specified conditions of approval to avoid revocation of its deemed approved status.<sup>viii</sup>

### ***Non-Zoning Local Authority to Regulate Alcohol Outlets***

Communities have other tools for regulating alcohol outlets that can be used in conjunction with or in addition to CUP and Deemed Approved ordinances. For example, they can address public nuisance activities associated with alcohol retail outlets through nuisance abatement ordinances. These typically apply to all commercial establishments, not just to retail alcohol outlets, to ensure there is no conflict with the state preemption doctrine.<sup>ix</sup>

Relying on police powers, communities also can require Responsible Beverage Sales and Service (RBSS) training for alcohol retail owners, managers and staff in a separate ordinance regardless of whether it is a new or pre-existing business.

***Finding of “Public Convenience or Necessity”***

California law allows local jurisdictions to participate to a limited degree in the ABC Department’s licensing procedures for certain outlets. The law provides definitions for geographic areas that have high rates of crime and an over-concentration of retail alcohol outlets. When a new outlet is proposed in these zones, the applicant must first obtain from the city where the license is to be located a formal finding that the new business will serve “public convenience and necessity”.<sup>x</sup>

PREVENTION

# Model Ordinance Summary

## A. Introduction

The Model Ordinance is designed as a toolbox for communities integrating several of today's best practices in municipal regulation to reduce alcohol-related harms from licensed outlets.<sup>xi</sup> It assumes, and has as a core recommendation, that the ordinance will include both CUP and Deemed Approved provisions so that it covers all alcohol retail outlets in the community—both new and pre-existing outlets, as described above.

The Model Ordinance includes provisions and commentaries: the provisions provide the framework and options to be considered; the commentaries provide the rationale and legal basis for the provision. The best choices for one community may not be relevant to another. The Model Ordinance in many instances does not make recommendations for or against specific provisions. This variability reflects one of the strengths of this approach to the regulation of alcohol retail sales: CUP and Deemed Approved provisions are flexible legal instruments that can be adapted to local conditions. This strength, particularly combined with the complex state law under which these provisions operate, creates a complex matrix that can sometimes be confusing and overwhelming to non-lawyers. This Model Ordinance Summary is designed to provide a road map to facilitate understanding and effective dialogue among key constituencies involved in its adaptation and adoption. Provisions that deserve special attention by constituencies involved in the process are highlighted as “Topics for Special Review.”

## B. General Provisions (Applicable to both CUP and Deemed Approved Provisions)

### 1. Title and Findings (Introductory Sections)

The CUP ordinance begins with its title, general purpose and findings, which apply to both the CUP and Deemed Approved portions of the ordinance. The findings establish the need for the ordinance, listing the specific problems that are to be alleviated. These should be adapted to local circumstances, including any local data regarding alcohol problems and their link to retail alcohol sales. The purpose and findings are important to establish the city's rationale and authority to take action.

### 2. Definitions (Section 100.01)

The ordinance endeavors to provide legal definitions for all of the key terms in the document. As with the findings section, the definitions apply to both the CUP and Deemed Approved portions of the Model Ordinance.

## **TOPIC FOR SPECIAL REVIEW: FULL-SERVICE RESTAURANT**

An option not included in the model provisions involves the inclusion or exclusion of “full-service restaurants.” The Model Ordinance provides a definition of full-service restaurants, but is neutral regarding whether restaurants should be treated differently from other types of retail alcohol outlets. Alternatives include: treating restaurants similarly to other types of outlets; exempting them from the ordinance entirely; or developing separate standards applicable to restaurants. Many cities, for example, exempt restaurants from their ordinances, provided that they meet strict criteria in terms of food sales, hours of operation, kitchen facilities, among other factors, to ensure that a restaurant does not transform into a more problematic mode of business. (See Contra Costa County Ordinance, Appendix 3.) These criteria are included in the model definition. If restaurants are exempted, the definitional criteria should be carefully reviewed.

review

### **3. General Administration and Enforcement Sections (Sections 100.02, 100.03, 100.04)**

Local officials responsible for administration and enforcement are named and their authority to enter and inspect retail alcohol premises specified. The ordinance allows for enforcement of its provisions through actions brought by private parties.

## **C. Conditional Use Permit Provisions**

### **1. Purposes and Applicability (Sections 200.01, 200.03)**

The Purposes section augments the findings in the introductory section, focusing on the rationale for requiring CUPs for new alcohol outlets. The provisions apply to all new alcohol retail outlets, that is, outlets established subsequent to the passage of the ordinance.

## **2. Restrictions Regarding the Location and Density of Retail Alcohol Outlets (Sections 200.02, 200.04)**

### **TOPIC FOR SPECIAL REVIEW: OUTLET LOCATION**

#### **Restrictions regarding the location and density of retail alcohol outlets (Sections 200.02, 200.04)**

The ordinance has three key provisions related to retail outlet location:

- **Commercial zone restriction.** Alcohol outlets should only be allowed within existing commercial zones of a local community. These zones should be defined elsewhere in a city's zoning ordinance.
- **Model "spacing" requirements.** Outlets should be located within specified distances from sensitive uses such as playgrounds, schools, hospitals, high crime districts, etc.
- **Distance requirements between outlets.** No more than a specified number of alcohol retail outlets should be allowed within a 1,000 foot radius of each other.

These are general recommendations that should be reviewed and amended as needed to address local conditions. Further alternatives include: adding additional sensitive land uses, further restricting locations to subsets of commercial zones, increasing distance requirements, and paying close attention to the unique problems of particular types of alcohol outlets. They also may focus on particular types of alcohol outlets. For example, restaurants or grocery stores with relatively limited alcohol sales may be treated differently from bars, nightclubs, or liquor stores.

## **3. Operational Standards, Training Requirements, and Conditions of Approval (Sections 200.05, 200.09)**

The Model CUP provisions have three distinct sections addressing the retail practices of new alcohol outlets: operational standards, training requirements, and conditions of approval.

**Operational standards** are mandatory requirements that apply to all outlets and are typically general in nature, e.g., prohibitions against public nuisance activities and activities that violate state or local laws. One standard refers to an annual fee imposed on all retail outlets to defray the costs of the "Outreach and Education Program and Monitoring and Enforcement Activities," referencing the deemed approved ordinance. See below for further discussion of this fee provision.

**Responsible beverage sales and service training** provisions can be either mandatory (standard) or discretionary.

## TOPIC FOR SPECIAL REVIEW: RESPONSIBLE BEVERAGE SALES AND SERVICE TRAINING

The Model Ordinance provides that licensees are required to provide **Responsible Beverage Sales and Service (RBSS)** training to all owners, supervisors, and staff who serve or sell alcohol. Communities may wish to phase this requirement in over a period of time and may want to augment it with more specific requirements regarding the content of the training, certification of training programs, refresher courses, administration and enforcement. Alternatively, this requirement can be included in the CUP ordinance by reference to a separate RBS training ordinance. For further information, please review *Best Practices in Responsible Beverage Sales and Service Training, with Model Ordinance, Commentary, and Resources*, Center for the Study of Law and Enforcement Policy, Pacific Institute for Research and Evaluation (Ventura, CA: Ventura County Behavioral Health Department, 2008).

review

**Conditions of Approval** are found in a separate section of the Act and are closely tied to Operational Standards. In general, they are more specific than Operational Standards and can be either standard or discretionary. If standard, they apply to all new outlets automatically; if discretionary, the permitting agency considers their applicability on a case-by-case basis and tailored to the specific application and the surrounding neighborhood.

### Potential Conditions of Approval included as Best Practices in the Model Ordinance:

- Soundwalls
- Prohibited Alcohol Products (e.g. mini-bottles, beer over certain alcohol content, etc.)
- Graffiti Removal
- Chilled Alcoholic Beverages
- Exterior Lighting
- Hours of Operation
- Trash Receptacles
- Paper or Plastic Cups
- Pay Telephones
- Size of Alcohol Signage
- Complaint Response—Community Relations Program
- Loitering
- Prohibited Activities (e.g. pool tables, video games)
- Drug Paraphernalia
- Security Cameras
- Prohibited Vegetation (that can be used as a hiding place)
- Limitations on signs and advertising on windows of doors in off-sale outlets



## TOPIC FOR SPECIAL REVIEW: CONDITIONS OF APPROVAL

**Conditions of approval** are a critical component of the CUP ordinance and should be tailored to local conditions and citizen concerns. The list provided in the Model Ordinance can be treated as suggestive – some may not be relevant to a given community while others may need to be added. Inclusivity is recommended; if it is uncertain whether a given condition is relevant, it can be treated as discretionary and used only if warranted for particular retail outlets. With experience, a community may decide that a discretionary condition should be treated as standard, which streamlines the CUP application process. The Model Ordinance does not differentiate between standard and discretionary conditions in light of the variability of treatment across communities.

### **4. CUP Ordinance Administration (Sections 200.06, 200.07, 200.08, 200.10, 200.11, 200.12)**

The Model Ordinance specifies required information in the CUP application and provides a framework for review of an application, CUP suspension and revocation, and appeals by applicants. These provisions need to be adapted to conform to a city's existing structure for handling CUP applications. The provisions include recommendations regarding specific findings that should be made by the relevant decision-making body. See relevant sections and commentaries for legal requirements that should be adhered to in administering the ordinance.

## **D. Deemed Approved Provisions**

### **1. Purposes and Applicability (Sections 300.01, 300.02, 300.03)**

The purposes section parallels the similar provision in the CUP portion of the ordinance, focusing on the rationale for regulating pre-existing businesses. All alcohol retail establishments in existence as of the effective date of the passage of the ordinance are given automatic deemed approved status. A critical issue involves when a pre-existing outlet is brought under the purview of the CUP provisions. This involves strict legal guidelines that are described in detail in the ordinance itself. In general, if a business changes its "mode and character" (e.g., changes from a restaurant to a nightclub), closes for 90 days or more, or ceases to operate under an ABC Act license, it is treated as if it is a new alcohol retail outlet under the Ordinance, therefore requiring the operator to obtain a CUP (and thus leading to potentially stricter regulation).

## **2. Deemed Approved Performance Standards (Section 300.04)**

This section provides the standards applicable to all deemed approved alcohol retail businesses. As discussed above, the standards focus on prevention and abatement of public nuisance activities such as disturbance of the peace, illegal drug activity, public drinking in public, harassment of passersby, gambling, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, etc. They require licensees to abide by federal, state and local laws and include general provisions regarding the protection of public health and safety, and compatibility with surrounding properties.

## **3. Training Requirements (Section 300.05)**

The training requirements found in the CUP provisions are duplicated here.

All persons who own, or are employed in the operation of, deemed approved activities under Article III of this Chapter, and who are personally engaged in the sale or service of alcoholic beverages or who supervise or otherwise control the sale or service of such beverages may be required to undergo a certified training program in responsible methods and skills for selling and serving alcoholic beverages as part of a decision and order issued in a proceeding to revoke or modify the deemed approved status.

To meet the requirements of this section a certified program must meet the standards of the certifying/licensing body designated by the State of California and the relevant city.

## **4. Outreach and Education Program and Monitoring and Enforcement Activities (Section 300.08)**

### **TOPIC FOR SPECIAL REVIEW: OUTREACH, EDUCATION, MONITORING, AND ENFORCEMENT**

The **outreach and education program and monitoring and enforcement activities** directed at Deemed Approved licensees are essential components to an effective ordinance. The outreach and educational program is designed as a proactive approach to encouraging compliance with the Ordinance (both the CUP and Deemed Approved provisions), enhancing community-retailer communication, and, in general, promoting responsible business practices. The section also establishes a Monitoring and Enforcement Activities (MEA) unit in the city government responsible for monitoring alcohol retail businesses and enforcing the provisions of the ordinance. A police officer assigned full time to this unit is envisioned. The specific makeup of these activities should be tailored to local needs and resources. A fee provision for defraying costs is described below.

review

## **5. Annual Administration Program Fee (Section 300.08)**

### **TOPIC FOR SPECIAL REVIEW: OFFSETTING COSTS**

**New costs can be offset by fees.** The Model Ordinance envisions the costs of the outreach, education, monitoring and enforcement activities described above to be offset by a fee imposed on both new and pre-existing outlets. The fee amount is not included in the Model Ordinance and instead recommends that it be set by the City Council or Board of Supervisors. The fee is recommended to ensure effective implementation of the ordinance. Funding a police officer assigned to conduct these functions is critical and probably best accomplished with a special fee. The fee can be structured in a variety of ways – e.g., at a set rate, based on the type of outlet, based on an analysis of risk factors, or based on level of alcohol sales. The City of Ventura uses a risk factor scale that is recommended. (See Appendix 4.) The fee should be dedicated to the outreach, education, monitoring and enforcement activities and revenues should not exceed actual costs.

review

## **6. Administration and Enforcement (Sections 300.07, 300.09)**

A substantial portion of the Model Ordinance addresses the administration of the Deemed Approved provisions, and the duties of the MEA Unit. Specific topics include: notification to licensees of deemed approved status; inspection, notice of violations, re-inspection, and citation procedures; hearing officer appointment and procedures for hearings; penalties; public hearing procedures; and appeals. The model provisions address legal due process requirements and are drawn from existing deemed approved ordinances.

# Model Conditional Use Permit— Deemed Approved Alcoholic Beverage Sales Regulations Ordinance

The City Council of the City of \_\_\_\_\_ hereby ordains as follows:

## TITLE

(A) This Ordinance shall be known as the Conditional Use Permit — Deemed Approved Alcoholic Beverage Sales Regulations Ordinance.

(B) This ordinance requires land use permits for newly established alcoholic beverage sales activities, confers deemed approved status for existing alcoholic beverage sales activities, and provides standards and an administrative hearing process to review violations of those standards in order to protect the general health, safety, and welfare of the residents of the City of \_\_\_\_\_ and to prevent nuisance activities where alcoholic beverage sales occur.

## FINDINGS

The City Council of the City of \_\_\_\_\_ finds the following:

(A) Research shows that areas with greater densities of on-site and off-site alcohol outlets also generally have higher rates of motor vehicle

crashes, alcohol-related hospital admissions, pedestrian injury collisions, self-reported injury, and drinking and driving among both young people and adults. In fact, research from California found that a 1% increase in outlet densities was associated with a 0.54% increase in alcohol-related crashes. Under these conditions, a city with 50,000 residents and 100 outlets would experience an additional 2.7 such crashes for each additional outlet opened<sup>1</sup>;

(B) Studies indicate the rate of alcohol-related crashes can be reduced by responsible beverage service training programs, but the level of risk still is high when outlet density exceeds the acceptable levels of saturation. This is of special concern to communities in Ventura County. According to data from the California Office of Traffic Safety (OTS), the cities of Ventura, Oxnard, and Thousand Oaks ranked 13, 14, and 17 respectively out of 47 cities for drivers under the age of 21 who were arrested for DUI<sup>2</sup>;

(C) Drunk driving arrests often take place at night, as bars are closing and highways become crowded with patrons who have been drinking<sup>3</sup>. This is confirmed by the Place of Last Drink (POLD) survey data, collected from 2005 through 2006, that show about 42.9% of all participants in the Ventura County Drinking Driver Program (DDP) had taken their last drink at a bar, club, or restaurant. The same POLD data also showed that more than half of persons whose POLD was a bar, club, or

<sup>1</sup> Treno, A.J.; F.W. Johnson, L. Remer, P.J. Gruenewald, "The impact of outlet densities on alcohol-related crashes: A spatial panel approach," *Accident Analysis and Prevention* (2007) 39: 894-901.

<sup>2</sup> Institute for Public Strategies, "Place of Last Drink Survey Annual Report, March 2003." Ventura, CA: Ventura County Behavioral Health Department, 2003. Data for California cities are available on the Office of Traffic Safety website: <http://www.ots.ca.gov/cgi-bin/rankings.pl>.

<sup>3</sup> Calhoun, S. and V. Coleman, "Alcohol availability and alcohol related problems in Santa Clara County." San Jose, California: County of Santa Clara Health Department, Bureau of Alcohol Services, 1989.

<sup>4</sup> Ventura County Behavioral Health Department, "Quarterly POLD Update: Ventura County Place of Last Drink (POLD) Survey Fall 2006." Ventura, California (2006).

restaurant drove less than three miles from their drinking location before being arrested, and that the [city(ies) of Ventura, Thousand Oaks, Oxnard, and Simi Valley was(were)] the locations of the POLDs identified by the greatest number of DDP participants<sup>4</sup>;

(D) Nuisance and criminal activities such as drug dealing, public drunkenness, loitering, and other behaviors that negatively impact neighborhoods occur with disproportionate frequency at and around the premises of on-site and off-site sale alcohol uses;

(E) Neighborhood character can change over time and the careful regulation of nuisance activity by on-site and off-site alcohol uses will help to ensure that such uses do not contribute to the deterioration of neighborhoods;

(F) The relationship between alcohol outlet density and violent crime has been well documented; communities with 100 or more alcohol outlets and a population of 50,000 or more can expect an annual increase of 2.5 violent crimes each year for every alcohol outlet added in the area<sup>5</sup>. Criminologists studying the distribution of violent crimes have found on-site alcohol outlets such as bars and restaurants were among the “hottest” of the “hot spots” for such incidents<sup>6</sup>. In one large U.S. city, researchers found city blocks with bars had higher rates of assault, robbery and rape than other blocks, even after the analysis accounted for the effects of unemployment and poverty<sup>7</sup>;

(G) New findings suggest domestic violence and sexual assault in a neighborhood may rise as the number of liquor licenses in the area increases. Even after accounting for socioeconomic factors that could influence domestic violence, a study in Maryland showed that a doubling of the density of liquor stores was associated with a nine percent increase in the rate of reported domestic violence. While alcohol is certainly not the only factor in

domestic violence and sexual assault, researchers concluded that reducing the incidence of domestic violence in certain areas may be as simple as spreading out the stores that are allowed to sell alcohol<sup>8</sup>. Several studies of college students also found a correlation between alcohol use and sexual assault. Specifically, the studies showed an increased likelihood of victimization among drinking and intoxicated women<sup>9</sup>. In a study of 52 women bar drinkers, 85 percent of the women reported some form of nonsexual physical aggression. Thirty-three percent reported an attempted or completed rape occurred after drinking in a bar<sup>10</sup>. The risk of sexual victimization increased for women who went to bars frequently;

Thirty-three percent (of the women) reported an attempted or completed rape occurred after drinking in a bar.

(H) [Local data on nuisance activities by alcoholic beverage sales activity establishments in the city]; and

(I) The City of \_\_\_\_\_ recognizes its responsibility to enforce the law and the need for a partnership with alcoholic beverage sales activity establishments, the City, including the Police Department and the City Attorney, and the community to address illegal activities in proximity to an alcoholic beverage sales activity.

<sup>5</sup> Scribner, R.A., D.P. MacKinnon and J.H. Dwyer. “The risk of assaultive violence and alcohol availability in Los Angeles County,” *American Journal of Public Health* (1995) (85)3: 335-340.

<sup>6</sup> Sherman, L.W., P.R. Gartin and M.E. Buerger, “Hot spots of predatory crime: Routine activities and the criminology of place,” *Criminology* (1989) 27(1): 27-55.

<sup>7</sup> Roncek, D.W. and P.A. Maier, “Bars, blocks, and crimes revisited: linking the theory of routine activities to the empiricism of “hot spots,” *Criminology* (1991) (29)4: 725-53.

<sup>8</sup> Silver Gate Group, “Fewer liquor stores, less violence,” *Prevention File* (2003) 18(1): 2.

<sup>9</sup> Abbey, A., P. McAuslan and L.T. Ross, “Sexual assault perpetration by college men: The role of alcohol, misperception of sexual intent, and sexual beliefs and experiences,” *Journal of Social and Clinical Psychology* (1998) 17(2): 167-95.

<sup>10</sup> Parks, K. and B.A. Miller, “Bar victimization of women,” *Psychology of Women Quarterly* (1997) 21(4): 509-25.

## ARTICLE I. General

### *Section 100.01. Definitions*

The meaning and construction of these words and phrases, as set forth below, shall apply throughout, except where the context clearly indicates a different meaning or construction.

As used in this Chapter:

(A) "Alcoholic beverage" means alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits, wine, or beer, that contains one-half of one percent or more of alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances, the sale of which requires a ABC license.

(B) "Alcoholic beverage sales activity" means the retail sale of alcoholic beverages for onsite or offsite consumption.

(C) "Alcoholic beverage sales activity establishment" means an establishment where an alcoholic beverage sales activity occurs. Alcoholic beverage sales activity establishments include but are not limited to the following recognized types of establishments: liquor stores; beer and wine stores; convenience markets; markets; neighborhood specialty food markets; retail sales establishments; wine shops; service stations; taverns; clubs; cocktail lounges, ballrooms, cabarets, dance bars, piano bars; billiard or game parlors, bowling alleys; nightclubs, dance halls; cafes, bars, restaurants with bars; full-service restaurants; and fast food establishments.

(D) "California Department of Alcoholic Beverage Control" or "ABC" refers to the department of the State of California empowered to act pursuant to Article 20, section 22, of the California Constitution and authorized to administer the provisions of the Alcoholic Beverage Control Act.

(E) "Condition of approval" means a requirement that must be carried out by the activity by: (1) a new alcoholic beverage sales activity to exercise a land use permit; or (2) a legal nonconforming alcoholic beverage sales activity to comply with deemed approved performance standards and to retain its deemed approved status.

(F) "Crime reporting districts" means geographical areas within the boundaries of the City of \_\_\_\_\_ that are identified by the City of

\_\_\_\_\_ Police Department in the compilation and maintenance of statistical information on reported crimes and arrests.

(G) "Deemed approved activity" means any legal nonconforming alcoholic beverage sales activity, as defined in subsection (N). Such activity shall be considered a deemed approved activity as long as it complies with the deemed approved performance standards set forth in section 300.04.

(H) "Deemed approved status" means the status that a deemed approved activity retains as long as it complies with the deemed approved performance standards set forth in section 300.04.

(I) "Financial interest" means any direct or indirect interest in the management, operation, ownership, profits or revenue (gross or net) of an alcoholic beverage sales activity establishment. A "financial interest" means a monetary investment in an alcoholic beverage sales activity establishment or the premises and business enterprises directly related to it.

(J) "Full-service restaurant" means a place that: (1) is primarily, regularly and in a bona fide manner used and kept open for the serving of at least dinner to guests for compensation; and (2) has kitchen facilities containing conveniences for cooking an assortment of foods that may be required for those meals; and (3) obtains a minimum of sixty-seven percent of its gross receipts from the sale of meals and other food and drink non-alcoholic products; and (4) submits evidence of total meal and other non-alcoholic product sales to county officials upon request for purposes of determining its status under this ordinance. A place that sells or serves only sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or only snack foods, or both, is not a full-service restaurant.

(K) "Hearing officer" means administrative hearing officer, as provided for in section 300.09(a).

(L) "Interested person" means any member, stockholder, officer, director, partner, principal, associate, individual, trustee, or combination thereof holding any financial interest in a permit, or who has the power to exercise influence over the operation of an alcoholic beverage sales activity establishment or a permittee.

(M) "Illegal Activity" means an activity, which has been finally determined to be in noncompliance with



the deemed approved performance standards in section 300.04 of this Chapter. Such an activity shall lose its deemed approved status and shall no longer be considered a deemed approved activity.

(N) “Legal nonconforming alcoholic beverage sales activity” or “legal nonconforming activity” means an alcoholic beverage sales activity for which a valid state of California Alcoholic Beverage Control license has been issued and used in the exercise of the rights and privileges conferred by the license as of the effective date of this Chapter and that, because of the Chapter’s requirement of a conditional use permit to establish a new alcoholic beverage sales activity, is a legal nonconforming use as of the effective date of this Chapter. A legal nonconforming activity shall be considered a deemed approved activity as long as it complies with the deemed approved performance standards as set forth in section 300.04, and shall no longer be considered a legal nonconforming activity.

(O) “License” means a license authorized to be issued to a person by the ABC to sell alcoholic beverages pursuant to Division 9 of the Business and Professions Code.

(P) “Licensee” means any person holding a license issued by the ABC to sell alcoholic beverages. For purposes of this Chapter the licensee is the business owner.

(Q) “Manager” means anyone who represents the interest of the permittee in the operation of an alcoholic beverage sales activity establishment whose duties include but may not be limited to: the making or changing of policy; hiring or firing of employees; or generally exercising independent judgment in the operation of the alcoholic beverage sales activity establishment. A manager need not have a financial interest in the alcoholic beverage sales activity establishment. A manager must be an employee of the permittee, or if not an employee, then a person having a financial interest as a partner, a shareholder, or trustee of the alcoholic beverage sales activity establishment (but not otherwise).

(R) “Off-site alcoholic beverage sales activity establishment” means an alcohol beverage sales activity for consumption of an alcoholic beverage off the premises where sold.

(S) “On-site alcoholic beverage sales activity establishment” means an alcohol beverage sales

activity for consumption of an alcoholic beverage on the premises where sold.

(T) “Operational standards” means regulations prescribed in section 200.05 of this Chapter.

(U) “Performance standards” means regulations prescribed in section 300.04 of this Chapter.

(V) “Permit” means a conditional use permit issued pursuant to Article II of this Chapter.

(W) “Permittee” means the individual or entity that owns an alcoholic beverage sales activity establishment and to whom a conditional use permit to operate an alcoholic beverage sales activity establishment has been issued by the City of \_\_\_\_\_.

(X) “Premises” means the actual space within a building devoted to alcoholic beverage sales.

(Y) “Training requirements” means the regulations prescribed in section 200.05(B) or section 300.05 of this Chapter.

(Z) “Transfer of a financial interest” means the assignment, bequest, conveyance, demise, devise, gift, grant, lease, loan, sublease or transfer of a financial interest in an alcoholic beverage sales activity establishment.

(AA) “Transfer of a permit” means the assignment, bequest, conveyance, demise, devise, gift, grant, lease, loan, sublease or transfer of an alcoholic beverage sales activity establishment permit.

### ***Section 100.02. Inspection and Right of Entry***

The sale of alcoholic beverages is a closely regulated industry. The officials responsible for enforcement of the City of \_\_\_\_\_ Municipal Code, or their duly authorized representatives, may enter on any site or into any structure for the purpose of investigation, provided they do so in a reasonable manner, whenever they have cause to suspect a violation of any provision of these regulations, or whenever necessary to the investigation of violations to the operational standards, deemed approved performance standards or conditions of approval prescribed in these regulations. If an owner, occupant or agent refuses permission to enter, inspect or investigate, the officials or their representatives, may seek an inspection warrant under the provisions of California Code of Civil Procedure section 1822.50 et. seq.

### **Section 100.03. Official Action**

All officials, departments, and employees of the City vested with the authority to issue permits, certificates, or licenses shall adhere to, and require conformance with, these regulations.

### **Section 100.04. Private Right of Action**

(A) Any person or entity acting for the interests of itself, its members or the general public (hereinafter “the private enforcer”) may bring a civil action to enforce this Chapter. Upon proof of a violation, a court shall award to the private enforcer the following:

1. Damages in the amount of either:
  - (a) upon proof, actual damages; or
  - (b) with insufficient or no proof of damages, \$\_\_\_\_\_ for each violation of this Chapter. Unless otherwise specified in this Chapter, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this Chapter, no private enforcer suing on behalf of the general public shall recover damages based upon a violation of this Chapter if a previous claim brought on behalf of the general public for damages and based upon the same violation has been adjudicated, whether or not the private enforcer was a party to that adjudication.
2. Restitution of the gains obtained in violation of this Chapter.
3. Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for the public health.

(B) The private enforcer may also bring a civil action to enforce this Chapter by way of a conditional judgment or an injunction. Upon proof of a violation, a court shall issue a conditional judgment or an injunction.

### **Section 100.05. Transfer or Revocation of ABC Licenses**

If a license is to be transferred to a new owner, the City of \_\_\_\_\_ is authorized under Business and Professions Code Section 23800(e) to request that the state of California Department of Alcoholic Beverage Control within thirty days after the filing of a transfer application (or a longer period if allowed by law) impose conditions to mitigate problems at or in the immediate vicinity of the premises on any licenses being transferred to new owners.

If a license is to be transferred to new premises, the alcoholic beverage sales activity must apply for a land use permit in accordance with the requirements of Article II of this Chapter.

If a license is revoked by the state of California Department of Alcoholic Beverage Control, after the revocation becomes a final order the alcoholic beverage sales activity must cease operation and may not resume unless it applies for and obtains a land use permit in accordance with this Chapter.

### **Section 100.06. Severability**

If any section, subsection, sentence, clause phrase, or word of this ordinance is for any reason held to be invalid, the validity of the remaining portions of this ordinance shall not be affected.

## **ARTICLE II. Conditional Use Permits for New Alcoholic Beverage Sales Activities**

### **Section 200.01. Purposes**

The general purposes of these regulations are to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare by requiring consideration and approval of a land use permit before a new alcoholic beverage sales activity will be permitted in any land use zoning district of the City and by requiring all new alcoholic beverage sales activities to comply with the operational standards in Section 200.05 of this Article and to achieve the following objectives:

- (A) Protect adjacent neighborhoods from the harmful effects attributable to the sale of



alcoholic beverages and to minimize the adverse impacts of nonconforming and incompatible uses.

(B) Provide opportunities for businesses selling alcoholic beverages to operate in a mutually beneficial relationship with each other and with other commercial and civic services.

(C) Provide mechanisms to address problems often associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior and escalated noise levels.

(D) Ensure that businesses selling alcoholic beverages are not the source of undue public nuisances in the community.

(E) Ensure that sites where alcoholic beverages are sold are properly maintained so that negative impacts generated by these activities are not harmful to the surrounding environment in any way.

Ensure that businesses selling alcoholic beverages are not the source of undue public nuisances in the community.

This Article alone does not allow or permit alcoholic beverage sales activities, but only applies to these activities where otherwise allowed or permitted within an involved applicable land use zoning district. This Article does not authorize alcoholic beverage sales activities in any land use district where they are not otherwise allowed or permitted by the applicable involved zoning district's regulations.

The provisions of this ordinance are intended to compliment the State of California alcohol-related laws. The city does not intend to replace or usurp any powers vested in the California Department of Alcoholic Beverage Control.

### ***Section 200.02. Zones for Alcoholic Beverage Sales Activity Establishments***

Alcoholic beverage sales activity establishments are conditional uses only in the commercial zones where appropriately designated as identified by the Zoning Ordinance and General Plan. No such establishment shall be permitted in any area outside of one of these commercial zones.

### ***Section 200.03. Requirement***

Notwithstanding any other provisions of this code, no new on-site or off-site alcoholic beverage sales activity may be established unless a conditional use permit is first obtained in accordance with the requirements of this Article.

### ***Section 200.04. Restrictions***

(A) A new alcoholic beverage sales activity is not permitted in any of the following locations:

1. Within 500 feet of an existing alcoholic beverage sales activity.
2. Within 500 feet of any of the following: a public or private accredited school; a public park, playground or recreational area; a nonprofit youth facility, a place of worship; a hospital; an alcohol or other drug abuse recovery or treatment facility; or a county social service office.
3. Within a crime reporting district, or within 500 feet of a crime reporting district, where the general crime rate exceeds the city-wide general crime rate by more than 20 percent.
4. A location where the new alcoholic beverage sales activity would lead to the grouping of more than four (4) alcoholic beverage sales activities within a one thousand (1,000) foot radius from the new alcoholic beverage sales activity.

**Section 200.05. Operational Standards and Training Requirements**

(A) **Operational Standards.** All new alcoholic beverage sales activities shall be designed, constructed, and operated to conform to all of the following operational standards:

1. That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
2. That it does not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area;
3. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;
4. That it complies with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code §§ 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual City business taxes and alcohol sales administrative program fees;
5. That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood;
6. That all alcohol beverage sales activities pay an annual fee in order to defray the expense to the City for the Outreach and Education Program and Monitoring and Enforcement Activities, described in Section 300.08(C).

A copy of these operational standards, any applicable ABC or City operating conditions, and any training requirements set forth in Section 200.05(B) shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.

(B) **Responsible Beverage Sales and Service Training Requirements.**

1. All persons who own, or are employed in the operation of, a new alcoholic beverage establishment that is issued a use permit in the manner provided for by Article II of this Chapter, and who are personally engaged in the sale or service of alcoholic beverages or who supervise or otherwise control the sale or service of such beverages shall successfully complete a certified training program in responsible methods and skills for selling and serving alcoholic beverages within 180 days of the issuance of the use permit, or within 180 days of the issuance of a certificate of occupancy authorizing the occupation and operation of the establishment, whichever last occurs.
2. To meet the requirements of this section a certified program must meet the standards of the certifying/licensing bodies designated by the State of California and the City of \_\_\_\_\_.

**Section 200.06. Administration**

The [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall administer conditional use permits under this Article.

**Section 200.07. Permit Application**

(A) Any person, association, partnership, corporation, or other entity desiring to obtain an alcoholic beverage sales activity establishment conditional use permit shall file an application with the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] on a form provided by the Director. The application shall

be accompanied by a nonrefundable application processing fee in the amount established by City Council resolution.

(B) Contents of Application. The application for a conditional use permit shall contain the following information:

1. The name, address, and telephone number of the applicant. If the applicant is a corporation, the applicant shall set forth the name of the corporation exactly as shown in its articles of incorporation. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible management officer.
2. The name, address, and telephone number of each lender or share holder with a five percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid.
3. The name, address, and telephone number of the person who shall manage and operate the establishment for which the permit is requested.
4. The name, address, and telephone number of all existing schools, parks, playgrounds or recreational areas, nonprofit youth facilities, places of worship, hospitals, alcohol or other drug abuse recovery or treatment facilities, or county social service offices within 500 feet of the proposed alcoholic beverage sales activity establishment.
5. The name, address, and telephone number of all alcoholic beverage activities within 500 feet of the proposed alcoholic beverage sales activity establishment and within a 1000 foot radius from the proposed alcoholic beverage sales activity establishment.
6. The name, address, and telephone number of a person authorized to accept service of legal notices.
7. The proposed business name of the alcoholic beverage sales activity establishment and description of all operating aspects of the proposed business.
8. The type of ABC license the applicant is seeking for the alcoholic beverage sales activity establishment.

9. Street address of the proposed alcoholic beverage sales activity establishment and the assessor parcel number for the property.

10. A plot plan for the property depicting the location of the building housing the alcoholic beverage sales activity establishment on the property and all existing and proposed parking, exterior lighting, signage, and landscaping, trash enclosures, waiting or queuing areas.

11. Any other information reasonably necessary to accomplish the purposes of Section 200.08.

(C) Referral to Other City Departments and Agencies. The [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] may refer the application to other City departments to determine whether the premises where the alcoholic beverage sales activity establishment will be located, complies with the City's building, health, zoning and fire ordinances or other applicable ordinances or laws. City departments may conduct an inspection of the premises to determine compliance with the ordinances and other laws they administer. City departments may prepare reports summarizing their inspections and recommending whether to approve or deny the application based on their inspections.

(D) Action on Application. Notice and public hearing requirements shall be as set forth in Section \_\_\_\_\_ of the City of \_\_\_\_\_ Zoning Ordinance pertaining to conditional use permit.

### ***Section 200.08. Action on Permit Application***

The [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall approve issuance of the permit to allow a new alcoholic beverage sales activity upon making the following findings [[in addition to][in lieu of] the findings required by the city's general conditional use permit ordinance]:

1. The proposed alcoholic beverage sales activity establishment is located in a zoning district in which the establishment is a permitted use;
2. A finding of "public convenience and necessity" (Business and Professions Code Section 23958.4(b)(2)), if the activity will be located in an area that has been determined by the state of California Department of Alcoholic Beverage Control to have an undue concentration of licenses as defined in

Business and Professions Code Section 23958.4(a);

3. A finding that the alcoholic beverage sales activity will not aggravate existing problems in the neighborhood created by the sale of alcohol such as loitering, public drunkenness, alcoholic beverage sales to minors, noise and littering;
4. The proposed establishment will not detrimentally affect nearby neighborhoods considering the distance of the alcohol establishment to residential buildings, schools, parks, playgrounds or recreational areas, nonprofit youth facilities, places of worship, hospitals, alcohol or other drug abuse recovery or treatment facilities, county social service offices, or other alcoholic beverages sales activity establishments;
5. The proposed establishment will otherwise be compatible with existing and potential uses within the general area; and
6. The proposed establishment is not located in what

The proposed establishment is not located in what has been deemed to be a high-crime area.

has been determined to be a high-crime area, or where a disproportionate number of police service calls occur.

### **Section 200.09. Conditions of Approval**

Reasonable conditions of approval may be imposed, including but not limited to the following conditions.

1. *Soundwalls.* If the alcoholic beverage sales activity establishment abuts residential uses and is allowed in the involved zoning district, a soundwall may be required between the activity and the abutting residential uses. The soundwall must be no higher than six feet and must not obstruct the view of the building and parking areas from the street.

Vegetation may be required to be planted along the soundwall and be of a type that will cover the soundwall surface within two years.

2. *Graffiti Removal.* The removal of all graffiti from the walls, fences, pavement or buildings within twenty-four hours of discovery of its appearance on the property may be required.

3. *Exterior Lighting.* Exterior lighting containing high pressure sodium or equivalent type, with an illumination intensity of between one and four foot-candles, may be required. The lighting may be required to be lit during all hours of darkness. Any required lighting must be directed and shielded so as not to glare onto adjoining residential properties and must have a housing to protect against breakage. Any required lighting must illuminate the adjacent public sidewalks and all parking lots under the business establishment's control in a manner that allows law enforcement personnel to identify persons standing in those areas. Any broken or burned out lights may be required to be replaced within seventy-two hours.

4. *Trash Receptacles.* Permanent, non-flammable trash receptacles, sixty gallons or less in size, may be required to be located at convenient locations, appropriately screened from view, outside the establishment and in the establishment's parking area (if any). The operators of the business may be required to remove on a daily basis, or more frequently if needed to maintain a litter-free environment, all trash from these receptacles and from the sidewalk adjacent to the establishment. The operators of the business also may be required to remove, at least three times per week, all trash originating from its establishment deposited on public property within four hundred feet of any boundary of its premises. All trash receptacles of any size may be required to be appropriately screened from view.

5. *Pay Telephones.* Pay telephones on the site of the establishment may either be: (a) prohibited; or (b) required to be of the type that only allow outgoing calls and be located in a visible and well-lighted location.

6. *Program.* A "complaint response-community relations" program established and maintained by the deemed approved activity may be required. The program may include the following:

(a) Posting at the entry of the establishment and providing to any requesting individual the telephone number for the area commander of the local law enforcement substation;

(b) Coordinating with the local law enforcement agency to monitor community complaints about the establishment's activities;

(c) Having a representative of the establishment meet with neighbors or neighborhood association on a regular basis and at their request, attempt to resolve any neighborhood complaints regarding the establishment.

7. *Activities.* If appropriate, the following activities may be prohibited on the premises: pool or billiard tables, football or pinball games, arcade style video or electronic games, or coin operated amusements devices.

8. *Prohibited Products.* To discourage nuisance activities, an off-site alcoholic beverage sales activity establishment may be prohibited from selling one or more of the following products:

(a) Wine or distilled spirits in containers of less than seven hundred fifty milliliters;

(b) Malt beverage products with alcohol content greater than five and one-half percent by volume;

(c) Wine with an alcoholic content greater than fourteen percent by volume unless in corked bottles and aged at least two years;

(d) Single containers of beer or malt liquor;

(e) Containers of beer or malt liquor not in their original factory packages of six-packs or greater;

(f) Containers of beer or malt liquor larger than thirty-nine ounces;

(g) Distilled spirits in bottles or containers smaller than three hundred seventy-five milliliters;

(h) Cooler products, either wine- or malt-beverage-based, in less than four-pack quantities.

9. *Chilled Alcoholic Beverages.* An off-site alcoholic beverage sales activity establishment may be prohibited from maintaining refrigerated or otherwise chilled alcoholic beverages on the premises.

10. *Hours of Operation.* The sale of alcoholic beverages may be restricted to certain hours of each day of the week unless limited further by the state of California Department of Alcoholic Beverage Control.

11. *Cups.* In off-site alcoholic beverage sales activity establishments, the sale or distribution to the customer of paper or plastic cups in quantities less than their usual and customary packaging may be prohibited.

12. *Signs.* The following signs may be required to be prominently posted in a readily visible manner in English, Spanish, and the predominant language of the patrons:

(a) "California State Law prohibits the sale of alcoholic beverages to persons under twenty-one years of age";

(b) "No Loitering or Public Drinking"; and

(c) "It is illegal to possess an open container of alcohol in the vicinity of this establishment".

13. *Presentation of Documents.* A copy of the conditions of approval and the ABC license may be required to be kept on the premises and presented to any law enforcement officer or authorized county official upon request.

14. *Mitigating Alcohol-Related Problems.* The establishment may be required to operate in a manner appropriate with mitigating alcohol-related problems that negatively impact those individuals living or working in the neighborhood, including but not limited to: sales to minors, the congregation of individuals, violence on or near the premises, drunkenness, public urination, solicitation, drug-dealing, loud noise, and litter.

15. *Visibility of Signage.* The total surface of signage pertaining to or referencing alcoholic sales or beverages that is visible from the public right of way may be required to not exceed six hundred thirty square inches.

16. *Window Coverage.* To ensure the safety of the business owner, patrons and law enforcement officers, no more than 15% of the square footage of windows and 10% of clear doors of off-site premises shall be obstructed by signs or advertising. All signs and advertising shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises. This includes the area in which



the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. This latter requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises.

17. *Drug Paraphernalia.* An off-site alcoholic beverage sales activity establishment may be prohibited from selling drug paraphernalia products as defined in Health and Safety Code Sections 11014.5 and 11364.5. "Drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the California Uniform Controlled Substances Act (commencing with California Health and Safety Code Section 11000).

18. *Loitering.* The establishment's operators or employees may be required to discourage loiterers and to ask persons loitering longer than fifteen minutes to leave the area and contact local law enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested to leave fail to do so.

19. *Security Cameras.* At least two twenty-four hour time-lapse security cameras may be required to be installed and properly maintained on the exterior of the building at locations recommended by the sheriff's department. All criminal and suspicious activities recorded on this surveillance equipment must be reported to local law enforcement. To the extent allowed by law, the establishment's operators may be required to provide any tapes or other recording media from the security cameras to the sheriff.

20. *Prohibited Vegetation.* No exterior vegetation may be planted or maintained that could be used as a hiding place for persons on the premises. Exterior vegetation may be planted and maintained in a manner that minimizes its use as a hiding place.

***Section 200.10. Appeals from a Determination on an Application for Permit***

Any applicant or other person aggrieved by a decision of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] on an application for a land use permit required by this Article may appeal the decision to the [Board of Appeals/Planning Commission/City Council] within the time and in the manner required by section \_\_\_\_\_ of the City of \_\_\_\_\_ Zoning Ordinance.

***Section 200.11. Grounds for Condition Use Permit Suspension or Revocation***

An alcoholic beverage sales activity establishment conditional use permit may be suspended by the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] for up to one year or revoked for failure to comply with operational standards or training requirements in section 200.05 or conditions imposed through the conditional use permit.

Notice of intention to suspend or revoke shall be in writing and shall state the grounds therefore. Notice shall be mailed by U.S. First-Class Mail and Certified Mail Return Receipt Requested as set forth in section 300.09(H) of Article III. Any suspension or revocation shall be done as specified in section \_\_\_\_\_ of the City of \_\_\_\_\_ Zoning Ordinance.



***Section 200.12. Appeal from Suspension or Revocation of Conditional Use Permit***

Any applicant or other person aggrieved by a decision of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] from a suspension or revocation of a conditional use permit may appeal the decision to the [Board of Appeals/Planning Commission/City Council] within the time and in the manner required by section \_\_\_\_\_ of the City of \_\_\_\_\_ Zoning Ordinance.

**ARTICLE III. Standards and Procedures for Existing Alcoholic Beverage Sales Activities*****Section 300.01. Purposes***

The purposes of these regulations are to protect and promote the public health, safety, comfort, convenience, prosperity and general welfare by requiring that alcoholic beverage sales activities that are legal nonconforming activities to comply with the deemed approved performance standards in this Chapter and to achieve the following objectives:

- (A) Protect surrounding neighborhoods from the harmful effects attributable to the sale of alcoholic beverages and to minimize the adverse impacts of nonconforming and incompatible uses.
- (B) Encourage businesses selling alcoholic beverages to operate in a manner that is mutually beneficial to other such businesses and other commercial and civic activities.
- (C) Provide a mechanism to address problems associated with the public consumption of alcoholic beverages, such as litter, loitering, graffiti, unruly behavior and increased noise.
- (D) Ensure that businesses selling alcoholic beverages are not the source of public nuisances in the community.
- (E) Ensure that sites where alcoholic beverages are sold are properly maintained so that negative impacts generated by these activities are not harmful to the surrounding environment in any way.

(F) Monitor deemed approved uses to ensure that they do not substantially change their mode or character of operation.

The purposes of these regulations are to protect and promote the public health, safety, comfort, convenience, prosperity and general welfare.

The provisions of this ordinance are intended to compliment the alcohol-related laws of the State of California. The city does not intend to replace or usurp any powers vested in the California Department of Alcoholic Beverage Control.

***Section 300.02. Applicability***

- (A) The deemed approved alcoholic beverage sales regulations shall apply to all alcoholic beverage sales activities for on-site or off-site consumption existing and operating within the City of \_\_\_\_\_ on the effective date of this Chapter. The nonconforming use provisions of the city's zoning regulations apply to this Article, except as otherwise provided in this Chapter.
- (B) In their interpretation and application, the provisions of this title shall be the minimum requirements for the promotion of the public health, safety, morals, convenience and general welfare and shall be construed broadly to promote the purposes for which they are adopted.

1. Public provisions. This Chapter is not intended to interfere with, abrogate, or annul any other Chapter, rule or regulation, statute or other provision of law except as specifically provided herein. Where any provision of this Chapter imposes restrictions different from those imposed by any other Chapter, rule or

regulation of the City, or other provision of law, the provision that is more restrictive or imposes higher standards shall control.

2. Private provisions. Private easements, covenants, conditions and restrictions of record are not enforced by the City except as may be specifically provided by agreement with the City of \_\_\_\_\_.

**Section 300.03. Automatic Deemed Approved Status**

(A) All alcoholic beverage sales activities that are legal nonconforming activities as of the effective date of this Chapter shall automatically become deemed approved activities as of the effective date of this Chapter and shall no longer be considered legal nonconforming activities.

(B) Each deemed approved activity shall retain its deemed approved status as long as it complies with the performance standards of this Chapter.

(C) The occurrence of any of the following shall terminate the deemed approved status of the business activity and shall require a new conditional use permit in the manner provided by Article II of this Chapter to continue operation:

1. An existing alcoholic beverage sales activity changes its activity so that the ABC requires a different type of license;
2. There is a substantial modification to the mode or character of operation.
3. As used herein, the phrase “substantial change of mode or character of operation” includes but is not be limited to the following:

(a) The off-site alcoholic beverage sales activity establishment increases the floor or land area or shelf space devoted to the display or sales of any alcoholic beverage;

(b) The on-site alcoholic beverage sales activity establishment increases the floor or land area or shelf space devoted to the display, sales, or service of any alcoholic beverage;

(c) The off-site or on-site alcoholic beverage sales activity establishment expands a

customer service area primarily devoted to the sale or service of any alcoholic beverages and/or increases the number of customer seats primarily devoted to the sale or service of any alcoholic beverages;

(d) The off-site or on-site alcoholic beverage sales activity establishment extends the hours of operation;

(e) The alcoholic beverage sales activity establishment proposes to reinstate alcohol sales after the ABC license has been either revoked or suspended for a period greater than 30 days by the ABC; or

(f) The alcoholic beverage sales activity voluntarily discontinues active operation for more than 90 consecutive days or ceases to be licensed by the ABC.

4. A substantial change in the mode of character of operation shall not include:

(a) Re-establishment, restoration, or repair of an existing alcoholic beverage activity on the same premises after the premises have been rendered totally or partially inaccessible by a riot, insurrection, toxic accident, or act of God, provided that the re-establishment, restoration, or repair does not increase the sales or service of any alcoholic beverage, extend the hours of operation of any establishment, or add to the capacity, floor or land area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.

(b) Temporary closure for not more than 90 days in cases of vacation or illness or for purposes of repair, renovation, or remodeling if that repair, renovation, or remodeling does not change the nature of the premises and does not increase the sales or service of any alcoholic beverage, extend the hours of operation of any establishment, or add to the capacity, floor or land area, or shelf space devoted to alcoholic beverages of any establishment that sells or serves any alcoholic beverages.

(D) Discontinuance. Once it is determined by the city that there has been a discontinuance of active operation for 90 consecutive days or a cessation of



ABC licensing, it may be resumed only upon the granting of a conditional use permit as provided in Article II. The property owner shall be notified by the City of \_\_\_\_\_ of the termination of the deemed approved status and shall be informed of the property owner's right to appeal the City's decision to the Administrative Hearing Officer as provided in Section 300.09(A). Notification of the public hearing shall be in accordance with Section 300.09(H).

#### ***Section 300.04. Deemed Approved Performance Standards***

(A) The provisions of this section shall be known as the deemed approved performance standards. The purpose of these standards is to control dangerous or objectionable environmental effects of alcoholic beverage sales activities. These standards shall apply to all deemed approved alcoholic beverage sales activities that hold deemed approved status pursuant to section 300.03.

(B) An alcoholic beverage sales activity shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

1. That it does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
2. That it does not jeopardize or endanger the public health or safety of persons residing or working in the surrounding area;
3. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests;

4. That it complies with all provisions of local, state or federal laws, regulations or orders, including but not limited to those of the ABC, California Business and Professions Code §§ 24200, 24200.6, and 25612.5, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders. This includes compliance with annual City business taxes and alcohol sales administrative program fees;

5. That its upkeep and operating characteristics are compatible with, and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood;

6. That all alcohol beverage sales activities pay an annual fee in order to defray the expense to the City for the Outreach and Education Program and Monitoring and Enforcement Activities, described in Section 300.08(C).

A copy of these performance standards, any applicable ABC or City operating conditions, and any training requirements set forth in Section 300.05(B) shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment.

#### ***Section 300.05. Training Requirements***

(A) All persons who own, or are employed in the operation of, deemed approved activities under Article III of this Chapter, and who are personally engaged in the sale or service of alcoholic beverages or who supervise or otherwise control the sale or service of such beverages may be required to undergo a certified training program in responsible methods and skills for selling and serving alcoholic beverages as part of a decision and order issued in a proceeding to revoke or modify the deemed approved status.

(B) To meet the requirements of this section a certified program must meet the standards of the certifying/licensing bodies designated by the State of California and the City of \_\_\_\_\_.

**Section 300.06. Notification to Owners of Deemed Approved Activities and Owners of Property**

The City or its designated enforcement authority shall notify the owner of each deemed approved activity, and also, if not the same, any property owner at the address shown on the City's property tax assessment records, of the activity's deemed approved status. The notice shall be sent by U.S. First Class Mail and Certified Mail Return Receipt Requested and shall include a copy of the performance standards in Section 300.04 of this Chapter with the requirement that they be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review. This notice shall also provide that the activity is required to comply with all performance standards; that a review fee is required, the amount of such fee shall be as established or amended by the city council; and that the activity is required to comply with all other aspects of the deemed approved regulations. Should the notice be returned, then the notice shall be sent via regular U.S. Mail. Failure of any person to receive notice given pursuant to this section shall not affect the deemed approved status of the activity.

**Section 300.07. Enforcement**

The City shall designate the appropriate personnel to enforce the provisions of these regulations and conduct the Outreach and Education Program and Monitoring and Enforcement Activities.

**Section 300.08. Outreach and Education Program and Monitoring and Enforcement Activities**

(A) *Outreach and Education Program.* Within six months of the enactment of this legislation, the Director of the Department of Public Health, or his or her designee, in cooperation with the Chief of the Police Department or his or her designee, shall develop and implement an outreach and education program to educate deemed approved activities about the steps each activity may take to operate as a good neighbor in the community, to avoid nuisance behaviors, and to abide by the requirements of this Chapter. This education and outreach program shall be based upon a public

health/environmental approach to the prevention of alcohol-related nuisances and may include providing written materials on responsible retailer-related local and state laws to all deemed approved activities. The outreach and education program shall be directed to all deemed approved activities, relevant business associations, and residential and commercial property owners and tenants within one block of a deemed approved activity. The outreach and education program shall include:

This education and outreach program shall be based upon a public health / environmental approach to the prevention of alcohol-related nuisances.

(1) The development and distribution of informational packets on the requirements and benefits of this Article and of other educational materials, including, but not limited to, culturally and linguistically appropriate informational posters, brochures, and other materials for display at deemed approved activities.

(2) Commencing within six months of the enactment of this legislation, biennially the Department of Public Health shall provide educational sessions for operators of deemed approved activity at multiple locations throughout the City. Owners and operators of deemed approved activities who do not attend at least one educational session every two years shall receive an educational site visit from the Department of Public Health. This visit should be coordinated with and, when possible, conducted with Police Department personnel.

(3) Coordination of community stakeholder meetings, which should include representatives from City departments, the owners or operators of the deemed approved activities, business associations, the Small Business Commission,

the Youth Commission, and neighborhood associations and community organizations.

The Police Department, in cooperation with the Department of Public Health, may promulgate additional education, outreach, and administrative requirements for Deemed Approved Alcoholic Beverage Sales Regulations as are necessary to ensure successful implementation of the Deemed Approved Alcoholic Beverage Sales Regulations.

(B) *Monitoring and Enforcement Activities.* Within six months of the enactment of this legislation, the City shall create a Monitoring and Enforcement Activities (“MEA”) that shall be responsible for monitoring businesses that sell alcoholic beverages and for enforcement of this Article. The MEA shall be comprised of a City Attorney, a City Planner, a Neighborhood Services Liaison from the City Manager’s Office, a Code Inspection Officer and a Police Officer. Each member’s responsibilities shall correspond to his or her authority and expertise. The MEA shall work cooperatively with other departments of the City to ensure that all alcoholic beverage sales activities are in compliance with this Article.

(C) *Annual Administrative Program Fee.* The owner of each deemed approved activity shall pay an annual administrative program fee, referred to in Sections 200.05(A)(6) and 300.04(B)(6), to cover the cost of administering the Outreach and Education Program and Monitoring and Enforcement Activities. The amount of the fee shall be established by the City Council and shall be included in the City’s Master Fee Schedule. The fee may be adjusted as necessary to ensure that the revenues collected do not exceed the costs incurred by the City for alcohol regulation. The fee shall be non-refundable.

### **Section 300.09. Deemed Approved Status Procedure**

(A) *Administrative Hearing Officer.* The City shall appoint one or more neutral Alcoholic Beverage Sales Administrative Hearing Officers (“Hearing Officer”). The neutral Hearing Officer shall conduct administrative hearings, make findings and determine whether violations of this Article, including the deemed approved performance

standards, conditions of approval, objectional impacts, undue negative impacts or public nuisance activity, have occurred, are occurring, or are likely to occur in the future. A neutral Hearing Officer shall be an impartial individual, without a vested interest in either the deemed approved activity or a complainant against the deemed approved activity, and may not be a current City employee or City official, whether elected or appointed. Notwithstanding the foregoing, a contracted Hearing Officer shall not be considered a City employee for the purposes of this Article. The retention and compensation of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of penalties or costs awarded by the officer. The assigned Hearing Officer shall exercise all powers relating to the conduct of the administrative hearing unless or until the decision of the Hearing Officer is appealed to the [Board of Zoning Adjustment/ Zoning Administrator/Planning Commission].

(B) *Inspection, Notice of Violations, and Re-Inspection and Citation Process.* Upon the city’s receipt of a complaint from the public, police department, city official, or any other interested person that a deemed approved use is in violation of the performance standards set forth in section 300.04 of this Article, the following procedure shall be followed:

An MEA [Code Inspection Officer/Police Officer (“Officer”)] shall assess the nature of the complaint and its validity by conducting an on-site observation and inspection of the premises to assess the activity’s compliance with performance standards. The MEA officer shall provide the business owner and any manager on the premises during the on-site inspection with a copy of any complaint made in writing or with information about the details of any oral complaint.

If violations are observed during the observation and inspection, the MEA officer shall record the violations and send via both U.S. First Class mail and Certified Mail Return Receipt Requested a Notice to Abate to the owner of the deemed approved activity and the property owner, if not the same person or entity. Such Notice to Abate shall notify the owner and property owner of the violations recorded by the MEA and that continued non-compliance may result in the penalties set forth in section 300.09(E) of this Article, and shall set forth of a reasonable period of not less than 30 calendar days within which to abate any violations.

At the end of the abatement period prescribed in the Notice to Abate, the MEA shall conduct a reinspection visit. If the violations have not been abated within the prescribed abatement period and the MEA officer determines that it is reasonably unlikely that further MEA efforts to compel compliance with performance standards by the owner of the deemed approved activity is likely, the MEA shall determine that the deemed approved activity is in persistent violation of the performance standards and shall refer the matter and all material evidence to the Hearing Officer for adjudication pursuant to section 300.09(C) of this Article. A copy of the MEA officer's determination of continued non-compliance shall be sent via both U.S. First Class Mail and Certified Mail Return Receipt Requested to the owner of the deemed approved activity and the property owner, if not the same person or entity.

*(C) Procedure for Consideration of Violations of Performance Standards.* Upon referral from the MEA officer that a deemed approved activity is in persistent violation of the performance standards of section 300.04 of this Article, the operating status of the deemed approved activity in question shall be reviewed by the Hearing Officer at a public hearing. Notification of the public hearing shall be in accordance with Section 300.09(H) below.

The purpose of the administrative hearing is to receive information as to whether the deemed approved activity is in compliance with the performance standards.

The Hearing Officer shall determine whether the deemed approved activity is in compliance with the performance standards. Based on this determination, the Hearing Officer may continue the deemed approved status for the use in question, may impose administrative penalties for violations of the performance standards, may impose such reasonable conditions as are in the judgment of the Hearing Officer necessary to ensure compliance with the performance standards, and may revoke the deemed approved activity's deemed approved status. If the Hearing Officer determines instead to impose further, new conditions on the deemed approved activity, such conditions shall be based upon the information then before the Hearing Officer.

In reaching a determination as to whether a use has violated the performance standards, or as to the appropriateness of imposing conditions on a use,

revoking a use, assessing administrative penalties, or the amount of administrative penalties to assess, the Hearing Officer may consider:

- (1) The length of time the deemed approved activity has been out of compliance with the performance standards;
- (2) The impact of the violation of the performance standard(s) on the community; and
- (3) Any information regarding the owner of the deemed approved activity's efforts to remedy the violation of the performance standard(s).

"Efforts to Remedy" shall include, but are not limited to:

- (1) Timely calls to the Police Department that are placed by the owner of the deemed approved activity, his or her employees, or agents.
- (2) Requesting that those persons engaging in activities causing violations of the performance standard(s) cease those activities, unless the owner of the deemed approved activity, or his or her employees or agents feels that their personal safety would be threatened in making that request.
- (3) Making improvements to the deemed approved activity's property or operations, including but not limited to the installation of lighting sufficient to illuminate the area within the use's property line, the installation of security cameras, clear unobstructed windows, clean sidewalks, and graffiti abated within three days.

If in the judgment of the Hearing Officer, the operations of the owner of the deemed approved activity constitute a nuisance, the owner is unable to abate the nuisance, and the nuisance is shown to be a significant threat to the public health and safety of the surrounding neighborhood, the Hearing Officer may revoke the activity's deemed approved status. Any continued operation of the business shall require a conditional use permit approved by the [Administrator/Commission/Board].

The decision of the Hearing Officer shall be based upon all information received at the administrative hearing, including, but not limited to, information compiled by City staff,

testimony from the owner of the deemed approved activity, and the testimony of all other interested persons. Any conditions imposed by the Hearing Officer shall be a condition of the deemed approved activity's continued operation. [Any condition imposed by the Hearing Officer shall not be considered a suspension, revocation, or withdrawal of a deemed approved activity's use permit.]

All determinations, decisions, and conditions made or imposed under this Article regarding the use of a deemed approved activity shall run with the land.

(D) *Specific Conditions.* Reasonable conditions may be imposed to ensure compliance with the performance standards including but not limited to the conditions listed in section 200.09, Article II.

(E) *Administrative Penalties.* The Hearing Officer may assess administrative penalties against the owner of the deemed approved activity of not less than \$500.00 and not more than \$1,000.00 for each violation of a performance standard. If the violation is of a continuing nature, the Hearing Officer may impose a penalty for each day the violation remains.

Any violation of any provision of these regulations shall be and is declared to be contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief.

In addition to the punishment provided by law, a violator is liable for such costs, expenses, and disbursements paid or incurred by the City or any of its contractors in correction, abatement, and prosecution of the violation. Reinspection fees to ascertain compliance with previously noticed or cited violations shall be charged against the owner of the deemed approved activity. The inspection official shall give the owner or other responsible party of such affected premises a written notice showing the itemized cost of such chargeable service and requesting payment thereof. Should the bill not be paid in the required time, the charges shall be placed as a lien against the property.

If payment of any administrative penalty imposed by the Hearing Officer is not received by the City Administrator within the period of time set forth in the decision, and the decision has not been appealed under the time periods set forth in subsection G, the City Administrator shall request that the Tax Collector pursue collection of the penalty and

fee against the owner of the deemed approved activity, up to and including imposition of a special assessment lien in accordance with the requirements of the City's municipal code. In the event that the unpaid administrative penalty is owed by an owner of a deemed approved activity who is not also the property owner of the building in which the use is located, the City Administrator may request that the City Attorney pursue collection of the penalties.

(F) *Method and Form of Decision of the Hearing Officer.* The Hearing Officer shall, within a reasonable time not to exceed thirty 30 days from the date the hearing is closed, submit to the City Administrator a written decision containing a brief summary of the information considered and the Hearing Officer's findings and conclusions, including any conditions that are to be placed on the deemed approved activity and any administrative penalties to be imposed. The Hearing Officer's written decision shall also inform the parties of their right to appeal the written decision and describe the appeal process. The Hearing Officer's written decision shall be a public record. The City Administrator shall serve a copy of the decision on each party by either personal service or by U.S. First Class mail and Certified Mail Return Receipt Requested. Service of the decision shall be deemed complete at the time it is personally served or deposited in the mail with the correct amount of postage affixed. Failure to receive a copy of the decision served pursuant to this section shall not affect the validity of the decision. The City Administrator shall also provide a copy of the written decision to the Director of the Planning Department, the Chief of the Police Department, the Director of the Department of Public Health, the Director of the Department of Building Inspection, and the City Council.

The decision of the Hearing Officer shall become final ten days after the service of the decision is deemed complete unless appealed to the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] or, in the case of a decision to revoke the deemed approved status of the alcoholic beverage sales activity, to the City Council, in accordance with subsection J.

In the event there is a negotiated settlement for conditions of approval between the City, the owner of the deemed approved activity and the property owner if not the same person or entity as the owner of the deemed approved activity, the settlement shall constitute the decision of the Hearing Officer



for the purpose of a first hearing in the matter. Any subsequent violations of the conditions of approval, performance standards or any other part of this Article may result in a public hearing to revoke the deemed approved status.

(G) *Procedure for Consideration of Violations of Conditions of Approval.* In the event of a violation of any of these regulations, or upon evidence that there has been a failure to comply with any prescribed conditions of approval, the Hearing Officer may hold a public hearing. Notification of the public hearing shall be in accordance with subsection H below.

In the event of a failure to comply with any prescribed condition imposed by the Hearing Officer or with any performance standard, at the request of the City Attorney, another administrative hearing may be set. Notification of this hearing shall be in accordance with subsection H.

The purpose of this administrative hearing is to receive information and determine whether violations to any condition attached to the deemed approved activity have occurred. The hearing shall be conducted as provided in Section C. The Hearing Officer may add to or amend the existing conditions based upon the information presented; may impose additional administrative penalties, or may revoke the deemed approved activity's deemed approved status and/or impose administrative penalties. Any continued operation of a deemed approved activity shall require a conditional use permit approved by the [Board of Zoning Adjustment/ Zoning Administrator/Planning Commission]. The provisions of Subsection F concerning the Hearing Officer's written decision shall be followed. The decisions of the Hearing Officer shall become final ten calendar days after the date of decision unless appealed to the [Commission/ Board].

(H) *Notification of Public Hearings.* The City Administrator shall notify the owner of the deemed approved activity and the property owner, if not the same person or entity as the owner of the deemed approved activity, of the time and place of the public hearing. Such notice shall be sent via U.S. First Class mail and Certified Mail Return Receipt Requested, and shall include notification that the activity's compliance with performance standards will be considered before the Hearing Officer. Notice by mail is deemed given on the date the notice is placed into the U.S. Mail system.

The hearing shall be noticed to the general public by posting notices within 300 feet of the subject property; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the City of \_\_\_\_\_ and all residents residing within 300 feet of the subject property. All such notices shall be given or posted not less than twenty-one (21) days prior to the date set for the hearing. Fees for notification shall be in accordance with Section \_\_\_\_\_ of the City of \_\_\_\_\_ Zoning Ordinance and paid for by the activity in question.

A 20 inches by 30 inches notice, provided by the City, shall also be posted on the premises of the subject activity, placed in the window of the activity (if a window facing the street is not present, then posted on the exterior of the building).

All notices shall advertise the time, date, purpose and location of the public hearing.

(I) *Appeal to [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] de Novo.* Within ten calendar days after the determination of the Hearing Officer an appeal may be taken to the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] by the owner of the deemed approved activity or any other interested party. In the event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. The appeal shall be made on a form prescribed by the City. The appeal shall state specifically why it is claimed there was an error or abuse of discretion by the Hearing Officer or why the decision is not supported by the evidence in the record. The appeal shall be accompanied by sufficient information as may be required to facilitate review. Upon receipt of the appeal and the required appeal fee, the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall set the date for its consideration, and shall, not less than twenty-one (21) days before the hearing, give written notice to: the owner of the deemed approved activity; the property owner, if not the same person or entity as the owner of the deemed approved activity, the appellant; the adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as appropriate, of the time, date and place of the hearing on the appeal.

In considering the appeal, the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall determine, de novo, whether the alcoholic beverage sales activity conforms to the applicable performance standards and/or conditions of approval, and may continue or revoke the deemed approved status; or require such changes in the existing use or impose such reasonable conditions of approval as are, in its judgment, necessary to ensure conformity with the performance standards.

The [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall decide the appeal within thirty (30) days after its first hearing of the appeal. If the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the [[Board of Zoning Adjustment/Zoning Administrator/Planning Commission] thereafter until decided. If the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] does not decide the appeal within the prescribed time period, the decision of the Hearing Officer shall be final.

The decision of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] on the appeal to the conditions of approval imposed by the Hearing Officer shall be final.

(J) *Appeal on the Revocation of a Deemed Approved Status to [Board of Appeals/City Council] de Novo.* Within ten calendar days after the date of a decision by the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] to revoke the deemed approved status, an appeal may be taken to the [Board of Appeals/City Council] by any interested party. In the event that the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. The appeal shall be made on a form prescribed by the City and shall be filed with the City Clerk. The appeal shall state specifically why it is claimed there was an error or abuse of discretion by the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] or why its decision is not supported by the evidence in the record. Upon receipt of the appeal and the required appeal fee, the Council shall set the date for its consideration. The City Clerk shall notify the Secretary of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] of the receipt of the appeal and of

the date set for its consideration. The Secretary of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall, not less than twenty-one (21) days before the hearing, give written notice to: the owner of the deemed approved activity; the property owner, if not the same person or entity as the owner of the deemed approved activity, the appellant; the adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as appropriate, of the time, date and place of the hearing on the appeal.

In considering the appeal, the [Board of Appeals/City Council] shall determine whether the deemed approved activity conforms to the performance standards, and may approve or disapprove the revocation of the deemed approved status, or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to the performance standards.

The decision of the [Board of Appeals/City Council] shall be made by resolution and shall be final. The [Board of Appeals/City Council] shall vote on the appeal within thirty (30) days after its first hearing of the appeal. If the [Board of Appeals/City Council] is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the [Board of Appeals/City Council] thereafter until decided.

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## End Notes

- i For a review of the research regarding alcohol retail outlets and community problems see: Stewart, K., "How Alcohol Outlets Affect Neighborhood Violence". Berkeley, CA: Prevention Research Center, Pacific Institute for Research and Evaluation (no date). Accessed online at: <http://resources.prev.org/documents/AlcoholViolenceGruenewald.pdf> (cited October 3, 2007).
- ii For further discussion, see Wittman, F.D., "Manual for Community Planning to Prevent Problems of Alcohol Availability". Berkeley, CA: Institute for the Study of Social Change, April 1988; Sparks, M. *Tools for Regulating Local Alcohol Availability, Literature Review. Community Prevention Institute Prevention Training Workshop Series. Produced for the California Department of Alcohol and Drug Programs* (2002). Request at [cpiinfo@cars-rp.org](mailto:cpiinfo@cars-rp.org)
- iii For further discussion of the state preemption doctrine, see: Gorovitz, E., Mosher, J. and Pertschuk, M., "Preemption or prevention?: Lessons from efforts to control firearms, alcohol and tobacco" *J. Pub. Health Policy* 19(1):37-50 (1998); Mosher, J., "The Perils of Preemption". Briefing paper. Chicago, IL: American Medical Association, 2001.
- iv Local governments have the authority to enact local planning and land use regulations to protect the public health, safety, and welfare of their residents through their police power. The "police power" provides the right to adopt and enforce zoning regulations, as long as they do not conflict with state laws. (See Cal. Const. art. XI, § 7; *Sullivan v. City of Los Angeles* (1953) 116 Cal. App. 2d 807, 810, 254 P.2d 590 (1953) (building regulations); *Schroeder v. Municipal Court* (1977) 73 Cal. App. 3d 841, 848, 141 Cal. Rptr. 85 (zoning regulations).
- v See *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal.App.4th 376, 397, 28 Cal.Rptr.2d 530 ("grandfathered" businesses are nonconforming uses that are not required to seek permits under local zoning ordinances enacted after they were in business.")
- vi California Business and Professions Code section 23790 provides: "No retail license shall be issued for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city unless the premises had been used in the exercise of such rights and privileges at a time prior to the effective date of the zoning ordinance." California Government Code section 65901 authorizes cities to issue conditional use permits when authorized to do so by local ordinance.
- vii Government Code section 65030 recognizes the importance of public participation in public hearings and expresses a clear legislative intent that local agencies ensure public participation at every level of the conditional use permit process.
- viii The California Supreme Court permits the abatement of even a grandfathered business if it constitutes a nuisance. In one case, the California Supreme Court reasoned that zoning laws do not customarily interfere with existing conditions, but regulate future use of land. If a business constitutes a nuisance, however, it can still be abated in a proper exercise of the police power. (*Jones v. City of Los Angeles* (1930) 211 Cal. 304, 311, 295 P. 14.) In another case, the court reaffirmed the rule that the right to continue a previously existing lawful business may be revoked if the business is found to be a nuisance, on the ground that the abatement of such an existing business would be a lawful exercise of the police power. (*Livingston Rock etc. Co. v. County of L.A.* (1954) 43 Cal.2d 121, 128, 272 P.2d 4.)
- ix Cities are constitutionally authorized to make and enforce within their limits all local, police and sanitary ordinances and other such regulations not in conflict with the general laws. (Cal. Const., Art. XI, § 7.) California Government Code section 38771 provides, "By ordinance the city legislative body may declare what constitutes a nuisance." The California Supreme Court has observed: "[E]ven without this section cities would have the power to abate public nuisances (Code Civ.Proc., § 731)...it seems evident that Government Code section 38771 does more than permit cities to adopt as municipal ordinances provisions which have already been enacted as state statutes; such an interpretation would make the section superfluous." (*City of Bakersfield v. Miller* (1966) 64 Cal.2d 93, 100, 48 Cal.Rptr. 889, 410 P.2d 393.)  
The state preemption doctrine does not prevent the application of local nuisance abatement regulations to a business licensed to sell alcohol prior to the enactment of the ordinance. (*Suzuki v. City of Los Angeles* (1996) 44 Cal.App.4th 263, 51 Cal.Rptr.2d 880 (nuisance abatement ordinance at issue applied to any business, whether or not it sold alcoholic beverages, as long as the business operated and maintained constituted a nuisance).
- x California Business and Professions Code Sections 23958 et seq.
- xi See e.g., U.S. Dep't of Health & Human Servs. Substance Abuse and Mental Health Services Administration Center for Substance Abuse Prevention (SAMHSA/CSAP). Grover, P.L., ed. "Prevention Enhancement Protocols System (PEPS): Preventing Problems Related to Alcohol Availability: Environmental Approaches, Practitioner's Guide". Washington, D.C.: U.S. Dep't of Health & Human Servs., Publication No. (SMA) 99-3298. Accessed online at <http://www.ncbi.nlm.nih.gov/books/bv.fcgi?highlight=related,problems,preventing,environmental,availability,alcohol&rid=hstat5.on-site.15922> (cited 31 May 2007).





**VENTURA COUNTY LIMITS**

**A Community Partnership for Responsible Alcohol Policies & Practices**

Ventura County Behavioral Health Department  
Alcohol & Drug Programs—Prevention Services  
1911 Williams Drive, Suite 200, Oxnard, California 93036

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# Fact Sheet

## AB 1887 (Beall)

### Mental Health and Substance Abuse Parity

#### PROBLEM

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The federal Mental Health Parity Act (Public Law No. 104-204) went into effect on January 1, 1998 and prohibits health plans from setting annual or lifetime dollar limits on an enrollee's mental health benefits that are lower than any such limits on other medical care.

The federal requirement does not apply to employers with fewer than 50 employees. A recent New York Times article reports that *some health plans have responded to the prohibition on monetary limits by instituting limits on patient visits, treatment sessions, and hospital lengths of stay.*

The Suicide Prevention Advocacy Network (SPAN) argued in support of similar legislation in 1999 noting that many of the suicides of SPAN family members could have been prevented had mental health coverage been accessible and available. SPAN notes many of their loved ones had health coverage which did not include mental illness, or limited mental health benefits so the coverage ran out long before the spiral toward suicide began.

Additionally, an alarming number of mentally ill persons end up incarcerated because they lack access to appropriate care. Inadequate access to mental health services forces law enforcement officers to serve as the mental health providers of last resort, and this misuse of the corrections system costs state taxpayers roughly \$1.8 billion per year.

#### THIS BILL

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This bill is intended to end the discrimination against patients with mental disorders and substance abuse issues and require treatment and coverage of those illnesses that is equitable to coverage provided for other medical illnesses. The author notes many health plans do not provide coverage for mental disorders. Those plans that do offer coverage impose much stricter limits on mental health care than on other medical care. The author asserts a typical plan might

cap lifetime mental health treatment at \$50,000, as opposed to \$1,000,000 for other services.

Individuals struggling with mental illness quickly deplete limited coverage and personal savings and become dependent upon taxpayer-supported benefits. Annual employer costs for mental illness are an estimated \$23 billion in lost work days and the cost to the United States is more than \$150 billion in treatment, social services and lost productivity.

The California Health Benefits Review Program (CHBRP) in their analysis of AB 1887 stated: "Greater management of care results in fewer hospital admissions and lengths of inpatient stay will be shorter. In addition, the probability of receiving outpatient care, and average number of outpatient visits, is likely to increase. Finally, cost sharing for users will fall."

The analysis also indicated the vast majority of premiums would increase by only \$3.72 to \$6.36 annually.

CalPERS is not mandated to provide coverage. Nevertheless, CalPERS supports the bill and may take actions internally to provide this benefit to its own members. Taxpayers bear no costs for implementing this bill.

#### SUMMARY

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The author states, "this bill corrects a serious discrimination problem that bankrupts families and causes enormous taxpayer expense." Nearly all plans discriminate against patients with biological brain disorders such as schizophrenia, depression and manic depression, as well as posttraumatic disorders suffered by victims of crime, abuse or disaster.

The bill is budget neutral to the State of California. However, the bill's financial benefits are realized by many of the programs administered and funded by state and local governments.

#### STATUS/VOTES

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Current location; Assembly Appropriations Committee

## **SUPPORT**

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- California Psychological Association
- Protection and Advocacy Inc.
- California State Association of Counties
- Board of Supervisors of Santa Clara County
- Mental Health Association in California
- California Council of Community Mental Health Agencies
- St. Clare School
- California Society of Addiction Medicine
- Asian Americans for Community Involvement-AACI
- Crestwood Behavioral Health, Inc.
- California State Association of Counties
- Los Angeles County Office of Education

## **OPPOSITION**

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- America's Health Insurance Plans (AHIP)
- California Association of Health Plans
- Association of California Life and Health Insurance Companies-ACLHIC

**Staff Contact:** Kathleen Finnigan (916) 319-2687



# Fact Sheet

## AB 2124 (Beall)

### Direct Billing for Screening and Brief Intervention Services

#### PROBLEM

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Prenatal exposure to alcohol, tobacco and other drugs can severely damage the development, structure and functioning of the fetal brain. About 1 in 12 pregnant women nationwide reported consuming alcohol and about 1 in 30 pregnant women said they had engaged in binge drinking according to the US Center for Disease Control. More than any other drug, alcohol is most commonly used by pregnant women. As a result, fetal alcohol syndrome is one of the leading known preventable causes of birth defects and developmental disabilities.

Effective prevention, intervention and screening can reduce this needless suffering while significantly reducing long term healthcare costs. However, despite the evidence of their benefits, screenings and brief interventions have not yet been widely used in primary care settings, emergency rooms, state licensed facilities and clinics.

A new federal rule change allows California to receive federal revenue to perform Screening and Brief Intervention (SBI) services, making them more affordable. The availability of these Medicaid funds is the result of a new awareness of the high number of people who need intervention or treatment, according to the White House Office of National Drug Control Policy. The savings from SBI are estimated to be \$2.50 per \$1 spent and \$4 per \$1 in healthcare costs.

The adoption of the new HCPCS codes can save Medicaid about \$520 billion annually while states would save almost \$500 million in Medicaid fees by screening and briefly treating emergency room patients for alcohol and drug use, according to the research professor who helped CMS devise the codes.

In order for providers to receive Medicaid reimbursement for SBI services, the state must activate two new billing codes and appropriate funds for these services. According to the Department of Health Care Services (DHCS), these codes have not been activated in California mainly due to the state's budgetary shortfalls. The Department believes activating these codes would result in upfront cost

related to increased reimbursements to providers who furnish these new SBI services.

It should be noted most counties already provide services in the emergency room for these adversely affected children and mothers. Services not covered by Medical are passed off onto the counties general fund for payment.

AB 2124 sets up a voluntary-participation program for counties that allows counties to provide the State's 50% share of cost.

#### THIS BILL

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Effective January 2007, the Centers for Medicare and Medicaid Services (CMS) approved two new level II Healthcare Common Procedure Coding System (HCPCS) codes that allow providers to bill and get reimbursement for alcohol and drug abuse Screening and Brief Intervention (SBI) services.

Assembly Bill (AB) 2124 would develop a pilot program to implement the two new codes. The bill sets up a voluntary-participation program for the counties allowing counties to provide the State's required 50% share of cost. AB 2124 would enable counties already providing these services to draw down federal revenue. For every local dollar invested, counties will receive a dollar match from the federal government.

This bill creates the Medi-Cal Alcohol and Drug Screening and Brief Intervention Services Matching Fund in the State Treasury, which would be administered by the State Department of Alcohol and Drug Programs, in collaboration with the State Department of Health Care Services, for the purpose of providing matching local funds received by the fund through intergovernmental transfers to a county agency to provide alcohol and drug screening and brief intervention services to Medi-Cal beneficiaries.

#### SUMMARY

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A typical Screening and Brief Intervention evaluates patients for potential substance abuse by asking a series of questions about their potential substance use. The questions are non-intrusive, take less than a few

minutes to perform and they can easily be integrated into the initial prenatal visit and used for follow-up screening through the pregnancy.

If the patient screens positive, indicating they are *at risk* for alcohol or other substance abuse, the provider will recommend a *brief* intervention that usually involves one or more short counseling sessions. Individuals who are considered high risk for abuse or addiction are given a brief intervention counseling session and are also schedule for a brief treatment appointment.

SBI can be routinely woven into primary and emergency medical care thanks to the adoption of a recent federal rule affecting coding on insurance claim forms. This rule adds two new codes to the level II Health Care Service Procedures Coding System (HCSPCS) used by Medicaid, Medicare and other third-party payors -- one code for drug and alcohol screening, and another code for brief intervention and counseling.

Due to the absence of state action, some counties have chosen to begin their own prenatal screening and brief interventions programs. Twenty counties have implemented the "4P's Plus program." An evaluation of those counties found a sharp decline in rates of substance abuse use during pregnancy and low birth weights. San Bernardino County recorded an 18 percent reduction in low birth weights over three years among women whose physicians provided screening and brief interventions compared with women whose physicians did not provide those services.

It is the hope of the author that AB 2124 will increase the use of this effective tool, make the services more affordable, and lead more counties to provide these critical screenings and brief interventions to help expectant mothers give birth to healthy babies.

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### STATUS/VOTES

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Current location; Assembly Appropriations Committee

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### SUPPORT

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California Maternal, Child and Adolescent Health  
Directors  
California Nurses Association  
AFSCME

Protection and Advocacy  
Santa Clara County

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### OPPOSITION

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None on File

**Staff Contact:** Sunshine Borelli (408) 282-8920

# Fact Sheet

## AB 2129 (Beall)

### Alcohol and Substance Abuse Screening and Brief Intervention Program Protecting Babies

#### PROBLEM

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Prenatal exposure to alcohol, tobacco, and other drugs can severely damage the development, structure, and functioning of the fetal brain. About 1 in 12 pregnant women nationwide reported consuming alcohol and about 1 in 30 pregnant women said they had engaged in binge drinking according to the US Center for Disease Control. More than any other drug, alcohol is most commonly used by pregnant women. As a result, fetal alcohol syndrome is one of the leading known preventable causes of birth defects and developmental disabilities.

In 2005, nearly half of the births nationwide were unplanned. Therefore, many women may unknowingly expose their unborn babies to alcohol's harmful side effects before they realize they are pregnant. Researchers found that there is no known safe time or amount of alcohol for women to drink while pregnant.

#### THIS BILL

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Assembly Bill (AB) 2129 would require the State Department of Public Health, no later than January 1, 2010, to develop, coordinate, and oversee the implementation of a pilot program for the universal screening, assessment, referral, and treatment of pregnant women and women of childbearing age who are suffering from alcohol and drug abuse.

The bill sets up a voluntary-participation program for counties and requires the California State Department of Public Health to provide assistance and institute a best practices-based model for the screening and treatment of drug and alcohol

#### SUMMARY

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Effective prevention and intervention programs and screenings can reduce the needless human suffering

caused by drugs and alcohol. In addition, these programs will reduce the costs of medical/dental care, the foster care system, education, and prisons that are traceable to the affects of prenatal substance exposure on the child later in life.

Numerous studies have demonstrated the cost efficacy of an approach that combines universal screening, brief intervention, and treatment.

There are currently a number of successful methodologies in use to identify and help pregnant women who are suffering from alcohol and drug abuse. Many methodologies are non-intrusive, take less than one minute to perform and they can easily be integrated into the initial prenatal visit and used for follow-up screening through the pregnancy.

With no State program, some counties have implemented their own prenatal screening and brief interventions programs at their own expense.

An evaluation of California counties using a program called "4P's Plus" intervention resulted in a sharp decline in rates of substance abuse use during pregnancy and low birth rates.

San Bernardino County significantly reduced low birth weight births by 18% over three years among women whose physicians were providing screening and brief interventions compared to women whose physicians were not providing these services.

Despite the evidence of their usefulness, screenings and brief interventions for alcohol-related problems have not yet been widely implemented in primary care settings, emergency rooms, state licensed facilities and clinics. AB 2129 would allow more counties to provide these critical screenings and brief interventions to help expectant mothers give birth to healthy babies.

## **STATUS/VOTES**

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Current location; Assembly Appropriations  
Committee

## **SUPPORT**

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Lambda Letters Project  
Valley Mountain Regional Center  
California Maternal, Child and Adolescent Health  
Directors  
California Nurses Association  
The American College of Obstetricians and  
Gynecologists, District IX/ CA

## **OPPOSITION**

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**Staff Contact:** Sunshine Borelli (408) 282-8920

# Fact Sheet

## AB 2337 (Beall)

### Child Abuse mandated reporting for Alcohol and Drug Abuse counselors

#### PROBLEM

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Substance abuse is found to be evident in over two-thirds of child abuse and domestic violence cases. Yet the front line treatment professionals -- alcoholism and drug abuse counselors -- are not required to report suspected child abuse. All other professional categories working with families in crisis are required to report because no child should be left in a violent environment. AB 2337 promotes safety and security for children in peril and minimizes liability exposure for counselors wanting to safeguard children.

#### THIS BILL

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Assembly Bill (AB) 2337 adds alcohol and drug counselors to the list of individuals who are mandated child abuse reporters.

The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.

This bill would require alcohol and drug abuse counselors to abide by the same reporting laws applied to other mental health professionals.

#### SUMMARY

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The changes made by AB 2337 do not create any new programs or costly bureaucracies. It simply places addiction counselors in the same safety net as Boy Scout leaders, teachers, daycare providers, fire fighters and all medical and mental health providers. AB 2337 safeguards children at risk of abuse, reduces counselors' liability exposure, promotes recovery and has no state costs.

As is the case for all currently mandated child abuse reporters, alcoholism and drug abuse counselors will be insulated from liability claims because their actions are compelled by state law.

Immediate intervention for families in violent environments speeds the help they may need with issues of substance abuse. A teamwork approach that involves addiction treatment and social services has been shown to be the most effective way to encourage long term recovery.

#### STATUS/VOTES

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Current location; Assembly Appropriations Committee

#### SPONSORS

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California Association of Alcoholism & Drug Abuse Counselors (CAADAC)

California Association of Alcohol and Drug Educators (CAADE)

#### SUPPORT

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California Police Chiefs Association

California Peace Officers' Association

Crime Victims United of California

California Association of Alcoholism & Drug Abuse Counselors (CAADAC)

California Association of Alcohol and Drug Educators (CAADE)

American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME)

#### OPPOSITION

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None

# Fact Sheet

## AB 2344 (Beall)

### Tobacco Products Licensing Full Cost Recovery

#### PROBLEM

In 2003, the Legislature established the Cigarette and Tobacco Products Licensing Act (CTPLA) to provide funds for investigators required to curb evasion of the tobacco tax by retailers and other outlets. However, the fund has continually fallen short of capturing the necessary revenue to support itself. The shortfall resulted in the state tapping into the Cigarette and Tobacco Product Fund to make up the deficit, essentially diverting money from the State's General Fund, as well as other funds designed to prevent tobacco-related illnesses.

Today, key health providers who serve thousands of medically fragile Californians are being targeted for cuts because of the budget shortfall. By not adjusting for the proper funding requirements to fully pay for the requirements of the CTPLA the state is indirectly subsidizing Big Tobacco, an industry whose profits rely on the erosion of our citizens' health.

#### THIS BILL

Cigarette and tobacco retailers currently pay a one-time licensing fee of \$100. There is no yearly renewal of those licenses as is the practice with all other state licenses. This bill establishes an annual renewal of the retailers' license fee in the amount of \$185. The revenue generated from the yearly renewal fee will go to fully fund the licensing program per the CTPLA and thereby increase funding for tobacco-related illnesses.

#### SUMMARY

Tobacco license fees only generate enough revenue to cover approximately a quarter of the related administrative costs. According to the BOE, the current cigarette and tobacco licensing fee structure raises a little more than \$2 million annually. However, the administrative costs to issue annual license exceeds \$9 million annually. The Cigarette and Tobacco Product Funds are used to cover the remaining shortfall. Those monies typically go into the State's General Fund, Breast Cancer Fund, Prop 99 Fund, and Prop 10 Fund. If passed, this bill will generate enough fee revenue to offset the current shortfall and reallocate \$7 million back to Prop 99, Prop 10, the Breast Cancer research fund and the State's General fund. (proportionately).

This bill will make the CTPLA 100% a fully funded program as originally envisioned and enacted.

TYPE OF LICENSE	Fiscal Year 2006-07
Number of Retail Locations 1/	38,000
Licensing Fees (Dollars) 2/	\$2,182,976
Board of Equalization Administrative Costs in Budget (Dollars) 2/	\$9,211,566
Shortfall (Licensing Fees - BOE Administrative costs)	-\$7,028,590
 Estimate of Annual Fee Per Location	 \$185

1/ According to the Board of Equalization Excise Taxes Division, there were 37,995 retail locations

as of 6/30/07. Based on this figure, we will assume 38,000 as an estimate of ongoing numbers of locations.

2/ Source: Board of Equalization Financial Management Division.

*Note: It is unclear how many new retailers will be issuing a license for the first time.*

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**STATUS/VOTES**

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Current location; Assembly Appropriations Committee

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**SUPPORT**

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Breathe California - Sponsor

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**OPPOSITION**

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California Distributors Association  
California Grocers Association



## **ACA\_\_ Beer Surtax**

SECTION 1. The people find and declare as follows:

(a) Alcohol use drains California of approximately \$38 billion annually in increased health care costs, higher crime rates, lost productivity, and injuries from alcohol-related accidents and abuse.

(b) Alcohol-related accidents are the leading cause of death among teenagers and the cause of many permanently disabling injuries.

(c) There is a strong correlation between alcohol and other drug use.

(d) Meeting the need and demand for alcohol and other drug treatment and recovery programs is an increasingly expensive burden to all California taxpayers.

(e) The use of alcohol and other drugs is a major cause of hospital emergency room and trauma care treatment, and therefore greatly contributes to the need for emergency medical air-transportation services.

(f) The use of alcohol and other drugs is closely associated with mental illness and contributes enormously to the cost of treating the mentally ill.

(g) The use of alcohol and other drugs contributes significantly to vandalism, litter, and unruly and criminal behavior in California's parks and recreation facilities.

(h) The use of alcohol and other drugs is a major factor in the majority of child and spousal abuse cases, and is frequently associated with abuse of elderly, mentally ill, and mentally retarded residents of long-term care facilities.

(i) Alcohol use during pregnancy causes approximately thousands of children to be born in California each year with alcohol-related birth defects; and other drug use during pregnancy, especially cocaine, affects thousands of babies born each year.

(j) Drinking and driving, and driving under the influence of other drugs, is the major cause of traffic accidents and fatalities in California each year.

(k) Alcohol and other drug-related crimes are an increasing burden to law enforcement and the criminal justice system in California.

(l) While the staggering cost of alcohol abuse is borne by all Californians, 95 percent of the alcohol is consumed by only 10 percent of the population.

Many studies have linked alcohol taxes to reduced incidence of alcohol dependence illness, injury and mortality.

Increasingly, researchers are questioning the scientific basis for taxing liquor at higher levels than beer. For example, one study concluded: “From a public health perspective, it is difficult to understand why [tax] policies would be applied less stringently for one beverage type than another.”

Specifically, higher beer taxes reduce youth consumption of alcohol, particularly effecting heavy drinkers.

A 10 percent increase in beer price would reduce traffic fatalities by 5 to 10 per cent, with even larger reductions (7 to 17 per cent) for youth.

Higher beer tax taxes results in reductions in violent crime, delinquent behavior, and child abuse.

Due in large part to cheap prices, and despite misperceptions of beer as the drink of “moderation”, beer drinking actually causes the most societal harm.

According to research conducted by the U.S. Centers for Disease Control and Prevention, beer is the most commonly beverage consumed by binge drinkers. (Binge drinking is defined as consuming 5 or more drinks on one occasion.) Specifically, the study found:

- 74 percent binge drinkers consumed beer exclusively or predominantly
- Beer accounted for two-thirds (67 percent) of all binge drinks consumed
- Beer accounted for most of the alcohol consumed by those at highest risk of causing or incurring alcohol-related harm (e.g. underage)

The study authors recommended increasing alcohol excise taxes as an “effective policy intervention to reduce binge drinking” since “alcohol taxes have been shown to decrease binge drinking and alcohol-impaired driving.”

California beer tax rates are currently below the national average. (CA is 20 cents per gallon, while the national average is 25 cents per gallon.)

CA lags far behind other states with the highest beer taxes, including:

Alaska (\$1.07 per gallon)

Hawaii (93 cents per gallon)

South Carolina (77 cents per gallon)

North Carolina (53 cents per gallon)

CA lags far behind other countries in overall tax rates, including for beer.

For example, the beer tax in the United Kingdom is 7 times higher than the tax in CA (including federal). In fact, there is more tax on a *pint* of beer (71 cents) in the UK than there is on a *gallon* (58 cents) in California.

(m) An increase in the excise tax levied on beer collected at the manufacturing, wholesale and distribution level equivalent to thirty (\$0.30) per drink, is a fair and appropriate way to reduce alcohol's staggering burden on all California taxpayers.

SECTION 4. Section 13 is added to Article XIII B of the Constitution, to read:

Section 13. "Appropriations subject to limitation" of each entity of government code shall not include appropriations of revenue from the Alcohol Surtax Fund created by the Alcohol Tax Act of 2008. No adjustment in the appropriation limit of any entity of government shall be required pursuant to Section 3 as a result of revenue being deposited in or appropriated from the Alcohol Surtax Fund created by the Alcohol Tax Act of 2008.

??? SECTION 5. Chapter 5.5 (commencing with Section 32220) is added to Part 14 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 5.5. SURTAX ON BEER,

Article 1. Definitions

Section 32220. For purposes of this chapter:

(a) "Fund" means the Alcohol Surtax Fund created by Section 32221.

(b) "Other drugs" means all addictive or controlled substances other than alcoholic beverages, as defined by Section 23004 of the Business and Professions Code, and cigarettes and tobacco products, as defined in Section

30121 of the Revenue and Taxation Code, as both sections read on January 1, 1990.

## Article 2. Alcohol Surtax Fund

Section 32221. The Alcohol Surtax Fund is hereby created in the State Treasury. The fund shall consist of all revenues raised pursuant to the taxes imposed by this chapter, and all interest and penalties imposed thereon pursuant to this part. Earnings derived from investment of moneys in the fund shall accrue in the fund. Notwithstanding Section 13340 of the Government Code, moneys in the fund shall be continuously appropriated without regard to fiscal year, for the purposes of this chapter.

Section 32222. The fund consists of seven separate accounts, as follows:

(a) The Emergency and Trauma Care Account – 20%

1. Emergency medical and trauma care treatment and all related services.
2. Emergency, medical and trauma care services, up to the time the patient is stabilized, provided by physicians in general acute care hospitals that provide basic or comprehensive emergency services.

(b) The Prevention and Early Intervention Account – 20%

1. Prevention of alcohol and other drug problems.
2. Treatment and recovery services for alcohol and other drug problems
3. A coordinated statewide and local training, public policy and public awareness program to prevent alcohol and other drug problems, and to inform the public particularly children and teenagers, of the potential health risks of alcohol and other drug use.
4. Capital expenditures (including accessibility improvements for the disabled) for housing, treatment, and recovery facilities, domestic violence shelters, and homeless and low-income facilities for persons recovering from alcohol and other drug related problems.
5. Prevention, treatment, and care regarding the health needs of infants, children, and women due to perinatal alcohol and other drug use.
6. Prevention, treatment, and care regarding child abuse and child abuse victims.
7. Shelter, support services, and prevention programs whose primary purpose is to serve battered women and their children.
8. Training, education, public policy, research, and related support services for persons with disabilities.

(c) The Law Enforcement and Crime Prevention Account – 15%

1. Enforcement of laws prohibiting driving under the influence of an alcoholic beverage or any other drug, or the combined influence of an alcoholic beverage and any other drug, and related criminal justice and penal system costs and services.
2. Enforcement of alcohol- and other drug-related laws, and related criminal justice and penal system costs and services.
3. Recreation and park programs and projects that address alcohol and other drug impacts on public parks and facilities, including impacts on public safety, litter, vandalism, youth- at-risk, and other prevention and diversion activities.
4. Operations and administration of a statewide emergency medical air-transportation network.
5. Enforcement, education, and training relative to laws prohibiting driving under the influence of an alcoholic beverage or any other drug, or the combined influence of an alcoholic beverage and any other drug.

(d) The Treatment and Mental Health Services Account – 15%

1. All funds shall be expended for locally implemented community mental health programs.

(e) The Victims Assistance Account – 10%

1. Provide assistance and support to individual victims of criminal activities and their families
2. Provide support for victims who must attend a trial at a location away from home
3. Provide crisis counseling; crisis intervention, victim support groups, court advocacy; hospital response; assistance with employment / employer; and support in the reporting and prosecution of offenders.
4. Provide safe shelter; court advocacy; assistance with employment / employer; child support; food; transitional housing; and support in the reporting and prosecution of offenders.

(f) The School Counselors and Education Account – 10%

1. Alternative School Programs,
2. Fetal Alcohol Syndrome and Special Education

(g) The Marketing Research and Counter-Advertising Account – 10%

1. Create marketing research projects that will provide accurate social norms data, first-hand accounts of the negative impacts of alcohol use, and other findings that will advance health and safety policy change and advocacy agendas.

2. Create and execute campaigns that expose the negative practices of the alcohol industry, and expose the truth about alcohol's health and safety impacts and adverse economic consequences. The campaigns will include:
3. Counter-Advertising on TV, radio, and social networking sites.
4. Highly interactive websites offering critical data on alcohol use and avenues for youth and adults to take action against the negative practices of the alcohol industry
5. Printed materials that give additional tools to youth and adults
6. Statewide convenings of individuals and community focused groups who are interested in organizing against outdoor alcohol advertising, sponsorship and other forms of marketing masquerading as philanthropy

Article 3. Imposition of the Surtax on Beer  
Section 32220.

*(a) For the period beginning on and after January 1, 2009, at 2:01 a.m. an excise surtax is hereby imposed upon all beer sold in this state by a manufacturer, wholesaler, sales made upon boats, train, and airplanes, and upon seller of beer with respect to which no tax has been paid within areas over which the United States government exercises jurisdiction, at the following rates:*

*(1) On all beer, two dollars and eighty-eight cents (\$2.88) per gallon and at a proportionate rate for any other quantity.*

The taxes imposed by this article shall be imposed in addition to any other tax imposed upon beer, by this part, and shall be in addition to any other tax imposed upon beer, by the voters at the \_\_\_\_\_, election.

Disposition of the Alcohol Surtax Fund

Section 32230. (a) With the exception of payments of refunds made pursuant to Chapter 8 (commencing with Section 32401), and, as determined by the Department of Finance, reimbursement of the State Board of Equalization for expenses incurred in the administration, enforcement, and collection of the taxes imposed by Article 3 (commencing with Section 32225), pursuant to its powers vested by this part, and reimbursement of the Controller for expenses incurred in the administration of the fund, all moneys in the fund shall be allocated as provided in subdivision (b).

(b) Moneys in the fund shall be allocated according to the following formula:

(1) Twenty percent shall be deposited in the Emergency and Trauma Care Account, which is to be further allocated for the purposes specified in subdivision (a) of Section 32222 as follows: ?

(2) Twenty percent shall be deposited in the Prevention and Early Intervention Account, which is to be further allocated for the purposes specified in subdivision (b) of Section 32222 as follows: ?

(3) Fifteen percent shall be deposited in the Law Enforcement Account, which is to be further allocated for the purposes specified in subdivision (e) of Section 32222 as follows: ?

(4) Fifteen percent shall be deposited in the Treatment and Mental Health Services Account, which is to be further allocated for the purposes specified in subdivision (e) of Section 32222 as follows: ?

(5) Ten percent shall be deposited in the Victims Assistance Account, which is to be further allocated for the purposes specified in subdivision (d) of Section 32222 as follows: ?

(6) Ten percent shall be deposited in the School Counselors and Education Account, which is to be further allocated for the purposes specified in subdivision (e) of Section 32222 as follows: ?

(7) Ten percent shall be deposited in the Marketing Research and Counter-Advertising Account which is to be allocated for purposes specified in subdivision (c) of Section 32222 as follows: ?

(c) Any amount allocated from any account specified in subdivision (b) which is not expended within one year shall revert to the account from which it was appropriated.

(d) The percentages stated in subdivision (b) are stated as a percentage of the moneys deposited in the fund and not as a percentage of the moneys deposited in each account.

Code.



## Article 5. General Provisions

Section 32240, Expenditures pursuant to this chapter shall be used only for the purposes specified in this chapter; *these funds shall not be used to supplant existing state or county funds utilized to provide these services. The state shall continue to provide financial support for these programs with not less than the same entitlement, amounts of allocations from the General Fund and formula distributions of dedicated funds as provided in the last fiscal year which ended prior to the effective date of the Act. The state shall not make any change to the structure of financing these services, which increases a county's share of costs or financial risk for these services unless the state includes adequate funding to fully compensate for such increased costs or financial risk. These funds shall only be used to pay for the programs authorized in Section \_\_\_\_\_. These funds may not be used to pay for any other program. These funds may not be loaned to the state General Fund or any other fund of the state, or a county general fund or any other county fund for any purpose other than those authorized by Section \_\_\_\_\_*

# Flavored Alcoholic Beverages:

## The Wolf in Sheep's Clothing

### Introduction

If you have never tried an "alcopop" or you are unsure just what an alcopop is, chances are you're no spring chicken. Alcopops or flavored alcoholic beverages (FABs) have been around for more than 20 years, but they have always been marketed to a young audience as a way to introduce alcoholic beverages to new drinkers. But who exactly is this young audience? And should regulations on FABs be strengthened?

Prior to the 1980s, the alcohol market consisted of three types of alcohol beverages: beer, wine, and distilled spirits. The introduction of wine coolers in 1980 represented the entry of a new fourth category: the flavored alcoholic beverage. Since that time, FABs (also frequently referred to as "alcopops," "malternatives," and "flavored malt beverages") have evolved to include other sweetly flavored alcoholic beverages with a base of malt, wine, or distilled spirits. An amalgam of alcohol, fruit juices, and flavorings, FABs typically have an alcohol content of approximately five percent, similar or slightly more than the alcohol content for most beer. However, the added ingredients mask the flavor of alcohol and effectively serve as a bridge from non-alcoholic refreshers (e.g., soda, fruit juice, etc.) to alcoholic beverages.

The widespread consumption of FABs among underage youth, particularly girls, has raised concerns in the public health community.

- Approximately one-third of teenage girls ages 12 to 18 and one-fifth of teenage boys have tried FABs.<sup>1</sup>

# Policy Brief

volume 2, issue 1 • April 2006

International Institute for  
Alcohol Awareness



- Underage girls consume FABs more than any other type of alcoholic beverage, while women 21 and older rank FABs as their least consumed alcoholic beverage.<sup>2</sup>
- 34 percent of teenagers incorrectly believe that alcopops have less alcohol than beer or similar drinks.<sup>3</sup>
- About one-third of high school seniors report regular consumption of FABs.<sup>4</sup>

These figures on underage consumption of FABs are noteworthy since beer has 33 times the volume sales of FABs, suggesting that a large percentage of the FAB market is underage youth.

### The Alcohol Industry's Position

FAB producers have maintained that their products are for adults and that their marketing does not target underage drinkers. They cite as evidence a 2003 report by the U.S. Federal Trade Commission (FTC) that concluded, based on documents provided by the beverage producers, that “adults

ages 21 to 29 appear to be the intended target for [FAB] marketing.” The report also concluded that there was no evidence that underage drinkers are a significant portion of the FAB market while at the same time acknowledging that FAB advertising reaches a “substantial youth audience,” and some themes in the advertising and the sweet taste of the beverages “may also be attractive to minors.” In examining the issue, the FTC did not consider epidemiological data or marketing evidence other than that supplied by the industry.

### A Public Health Perspective

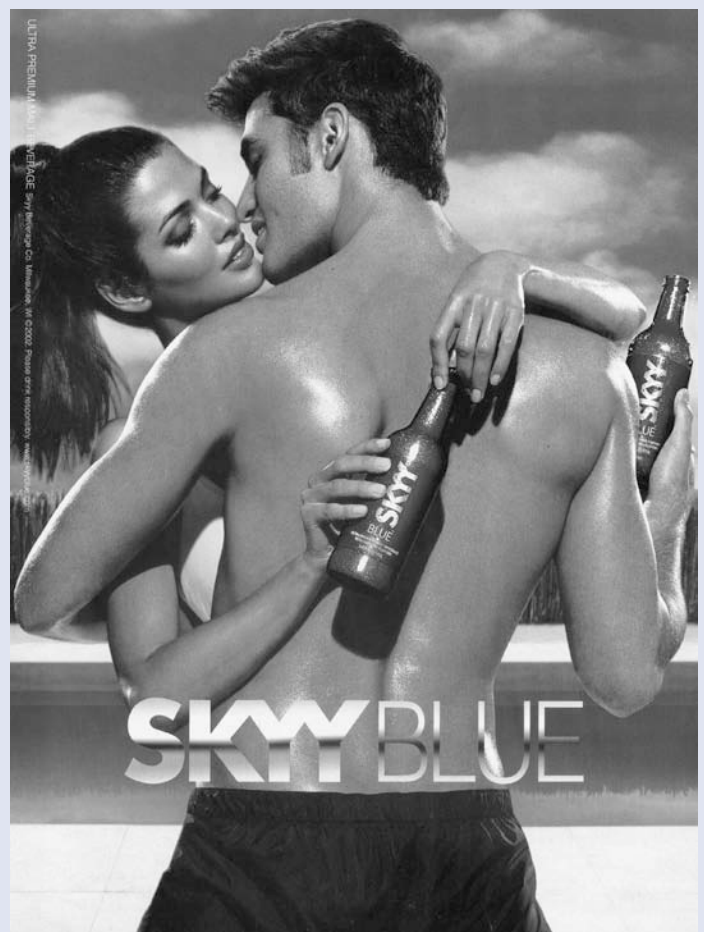
As has been noted in previous *IIAA Policy Briefs*, marketing strategies can be analyzed using the four “P’s” of marketing: product, promotion, place, and price. Marketers coordinate these four key elements to develop a “total marketing” program to reach target audiences and consumers.

**Product** – Alcohol industry representatives admit that FABs are designed to reach “new” or “entry-level” drinkers, a population they define as over the legal drinking age.<sup>5</sup>

The age of alcohol initiation, however, has dropped steadily since 1965 when the age of first use averaged 17.6 years. In 2000, the average age of first use was only 14 years old. So “new” or “entry-level” drinkers are, in fact, almost all under the age of 21.

**Promotion** – The surges in FAB sales have coincided with large increases in spending on promotion, with an estimated \$600 million spent on FAB promotions in 2002, more than half of which occurred through non-traditional methods.<sup>6</sup> Traditional media outlets include television, radio, and print, and media exposure through these outlets can be measured. Non-traditional forms of promotion include the Internet, product placement, and sponsorship. A recent study found that underage youth are substantially more exposed to FAB television and magazine advertising per capita than adults.<sup>7</sup> Internet marketing occurs on industry websites that tens of thousands of youth visit each year.<sup>8</sup>

Internet marketing typically includes interactive games and downloadable screen-savers and wallpapers, the content of





which has been determined as potentially attractive to youth.<sup>9</sup> Two recent surveys comparing youth and adult exposure to FAB promotion found that teenage girls are more likely than adult women to have seen or heard FAB advertisements, and teenagers, in general, are more than three times more likely than adults to have seen, read, or heard about FABs.<sup>10</sup>

**Placement** – Product availability is of critical importance to ensure FAB purchase and consumption. When FABs are classified as beer rather than as wine or distilled spirit – the case in all but one state – product availability to youth is greater. Beer is sold in far more retail outlets than distilled spirits, including convenience stores, grocery stores, and gas stations. These are locations that young people are more likely to frequent.

**Price** – Youth are the most price-sensitive demographic group.<sup>11</sup> As with product placement (i.e., availability), classifying FABs as beer can result in lower prices because beer is taxed at a lower rate than distilled spirits or wine. One speculation about the reason behind the decline in wine cooler consumption is that federal increases in the wine tax produced an increase in the cost of wine coolers that the drinkers of wine coolers were unable or unwilling to absorb.<sup>12</sup>

### The Bottom Line on FAB Popularity

No matter whether one accepts the alcohol industry's assertion that FABs were developed for consumption by young adults or the alternative view that FAB's were developed to appeal to a younger population, it is clear that FABs have become increasingly popular since they were first introduced more than 20 years ago. While beer sales continue to outpace sales of distilled spirits by a two and half to one margin, the beer share of the overall alcohol market in the United States dropped three percent between 1999 and 2004 while spirit sales rose three percent.<sup>13</sup> This shift has been attributed, in part, to the appeal of FABs, and it is significant enough to cause concern among beer producers.<sup>14</sup>

### The FAB Content Debate

There has been a great deal of debate in recent years over the composition of flavored malt beverages (FMBs), the latest entries into the FAB market. In the 1990s,

## Enter the States Attorneys General

The legal classification of FABs under state laws has recently come under the scrutiny of the Youth Access to Alcohol Committee of the National Association of Attorneys General (NAAG). Committee co-chair Mark Shurtleff, Attorney General of Utah, questioned the "beer" classification for FABs under many state laws, including Utah's in a speech made May 18, 2005, at a national conference sponsored by Leadership to Keep Children Alcohol Free. Co-chair Steve Rowe, Attorney General of Maine, has taken action to reclassify FABs from beer to low alcohol distilled spirits in that state, resulting in significantly higher taxes. The California Attorney General's office, also a member of the task force, has initiated similar action (see text box). The Committee's investigation is ongoing at the date of this publication.

when FMBs were first introduced, these low-strength alcoholic beverages carried distilled spirit brand names such as Bacardi Silver and Smirnoff Ice and were marketed by distillers although production was contracted to beer producers. Defined as a flavored "malt" beverage, these products were presumed to have a malt base. But according to a study conducted by the U.S. Alcohol and Tobacco Trade and Tax Bureau (TTB), 83 percent of the FMBs tested contained less than 25 percent of the original beer and, for 92 percent of the brands tested, 75 percent or more of the alcohol derived from added distilled alcohol.<sup>15</sup>

The distilled spirits sector of the alcohol industry argued – first before the Bureau of Alcohol, Tobacco, and Firearms (BATF) and later before the Tax and Trade Bureau (TTB) – that in spite of the end result, the product base remains malt and therefore should be classified as a beer product for regulatory and tax purposes.<sup>i</sup> The beer sector of the alcohol industry argued an opposite position: that since almost all of the alcohol in the product derived from distilled spirits, the beverage should be classified as a distilled spirit.<sup>ii</sup>

The debate at the Federal level concluded last year when the TTB issued final ruling on the matter. The Bureau followed a proposal offered by the Flavored Malt Beverages Coalition, an organization of FMB manufacturers, when it adopted the so-called 50/50 standard, which in practice meant that under Federal law up to 49 percent of the alcohol in FMBs could be derived from distilled spirits. Potential public health impacts of the regulatory decision were not addressed, nor did the TTB address the conflict between its ruling and an earlier interpretation by the BATF. Issued in 1996,

that interpretation concluded that FMBs that contained distilled spirits additives should be classified as distilled spirits. The TTB did acknowledge, however, that its ruling was in conflict with state laws.

### Implications for States

The 21st Amendment to the Constitution gives states independent authority to classify alcohol products, and most states have independent definitions of alcohol products that would classify FABs as distilled spirits. Prior to the TTB ruling earlier this year, FAB producers convinced state regulators in every state except Oregon to delay any regulatory action on FABs until the Federal government issued its ruling.<sup>16</sup> Since the issuance of the TTB's ruling in January 2005, states have experienced intensive lobbying by FAB producers to amend state laws to conform to the Federal ruling.

### A Case of Lost Tax Revenues?

Regardless of the Federal ruling on FAB classification, FAB producers have been on notice that their products may have been misclassified as beer under most state laws as early as 1996.<sup>17</sup> Failure to pay the higher state excise taxes associated with distilled spirits products is estimated to be at least \$260.6 million for 2002 alone.<sup>18</sup>

### Getting a Handle on FAB Sector of the Alcohol Industry

Some have argued that the distilled spirits sector of the alcohol industry has engaged in a consumer fraud, deliberately masking the classification of FABs in order to compete effectively with beer in the underage drinking market, a position that the FAB producers vigorously deny. Regardless of the outcome of this debate, the producers' strategy to

<sup>i</sup>The BATF was the original Federal agency with jurisdiction over FABs, and the TTB was its successor bureau.

<sup>ii</sup>It is interesting to note that most legal definitions of beer and distilled spirits are not based on what beverage is used as a base but rather on the type of alcohol in the final product.

boost distilled spirits consumption by marketing FABs as a “bridge” beverage appears to have been successful, with distilled spirits gaining ground on beer in the marketplace. When the TTB challenged this strategy, the distilled spirits sector lobbied the agency intensely to redefine an alcoholic beverage category in order to maintain low taxes on FABs and retain access to critical product sale venues. Even in light of the TTB’s ruling, which redefined the malt beverage category to the benefit of the distilled spirits sector, the companies continue to apply the beer classification, in apparent violation of many or most state laws. What should be done to protect American youth from this “wolf in sheep’s clothing” and to recoup the hundreds of millions of dollars that may be owed to the American taxpayer?

- **Seek voluntary industry action to protect youth.** FAB producers state that they do not intend to market to young people and do not want them to consume alcopops. Since research now shows the popularity of these beverages among youth, the producers should demonstrate concern about this problem by taking steps to ensure that marketing of alcopops steers clear of underage youth in terms of where advertisements are placed and in terms of the images and themes contained in advertising messages.
- **Enforce existing laws.** States should carefully review their legal classifications of beer, wine, and distilled spirits. If FABs are misclassified as beer, then action should be taken to enforce current laws. This will raise taxes and limit availability, thereby reducing FAB’s attractiveness to youth drinkers. Investigations into possible consumer fraud charges and the collection of back taxes can also be initiated.
- **Create a separate regulatory category for FABs.** The alcohol industry views FABs as a separate beverage category. As a long-term solution, national and state governments should consider following the industry’s lead. Many states, including Hawaii, Indiana, and Maine, have already created new legal definitions for FABs.

- **Increase taxes on FABs.** As stated above, youth are particularly sensitive to alcohol price increases. Because consumption of FABs has grown increasingly popular among youth, increasing taxes would be an important and effective mechanism for reducing this illegal and unhealthy consumption. Several European companies have taken this approach, creating a separate legal classification for FABs and imposing a surtax on them in light of their popularity with young people.
- **Limit sales venues for FABs.** Restrictions should be placed on the types of outlets that can stock FABs. These include grocery stores and convenience stores where youth most often purchase alcoholic beverages.

***New taxes and availability restrictions should be implemented in conjunction with creating a new regulatory category for FABs to ensure that the alcohol base of the product is not altered to gain regulatory advantages (as has been done in other countries).***

- **Conduct additional research.** Existing research on FABs is limited, making it difficult to determine the extent of underage consumption, youths’ relative share of the market, and the impact of industry marketing. Data is needed on several topics:
  - Brand preferences among youth,
  - The relationship between brand preferences and advertising practices,
  - The impact of FABs on youth alcohol problems, and
  - Analysis of industry marketing practices.

Careful monitoring of the FAB market should be a high priority for our nation. The Congressionally mandated report on underage drinking produced by the National Research Council and the Institute of Medicine, called for such action.<sup>19</sup> The American public should speak up as well, and our public policymakers should heed the call.

<sup>1</sup> American Medical Association. (n.d.) *Teenage Drinking Survey Results*. Available online at [http://www.alcoholpolicy.com/pdf/girlie\\_drinks\\_survey%20.pdf](http://www.alcoholpolicy.com/pdf/girlie_drinks_survey%20.pdf).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Johnston, L., O’Malley, P., Bachman, J., and Schulenberg, J. (2004). *Monitoring the Future National Survey Results on Drug Use, 1975-2003*. Volume 1: Secondary School Students. Washington, D.C.: National Institute of Health. Publication No. 04-5507.

<sup>5</sup> Sherer, M., (2002). “Mad for malternatives: sales of alternative malt beverages are exploding. Will the trend last? *Beverage Dynamics*. May–June, pp. 6-10; Manu, D. (1996). “Alcopops create sales, and controversy, in US market.” *Impact: Global News and Research for Drinks Executives*. July 15 – August 1. Vol. 26:7-8.

<sup>6</sup> Mosher, J. F. and Johnsson, D. (2005). Flavored alcoholic beverages: An international marketing campaign that targets youth. *Journal of Public Health Policy*. Vol. 26:326-342.

<sup>7</sup> Jernigan, D. (2005). Alcohol advertising and youth: A measured approach. *Journal of Public Health Policy*. Vol. 26:312-325.

<sup>8</sup> Center for Alcohol Marketing and Youth. (2004). *Clicking for Kids: Alcohol Marketing and Youth on the Internet*. Washington, DC. Available online at <http://camy.org/research/internet0304/report-low.pdf>.

<sup>9</sup> Ibid.

<sup>10</sup> American Medical Association, Global Strategy Group. (2002). *Survey Research Data on Alcopops*. Washington, DC: Author. Available online at [http://www.cspinet.org/new/pdf/summary\\_of\\_findings.pdf](http://www.cspinet.org/new/pdf/summary_of_findings.pdf).

<sup>11</sup> Chaloupka, F.J., Grossman, M., and Saffer, H. (2002). The effects of price on alcohol consumption and alcohol-related problems. *Alcohol Research and Health*. Vol. 26(1): 22-34.

<sup>12</sup> (1994). How excise tax increases hurt wine. *Kane’s Beverage Week*. Vol. 2:2-3.

<sup>13</sup> Bradford, J.J. (2005). Beer: State of the industry report. *Beverage Dynamics*. September/October. Available online at <http://www.adamsbevgroup.com/bd/2005/0510%5Fbd/0510ber.asp>.

<sup>14</sup> Ibid.

<sup>15</sup> Alcohol and Tobacco Tax and Trade Bureau. (2003). Flavored malt beverages and related proposals. *Federal Register*. March 24. Vol. 68:14292-303.

<sup>16</sup> Mosher, J. (2004). *Flavored “malt” beverages: an industry fraud designed to target the youth market*. Paper delivered at the 132nd Annual Meeting of the American Public Health Association Conference. November. 10. Washington, DC.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Bonnie, R.J. and O’Connell, M.E. (2003). *Reducing Underage Drinking: A Collective Responsibility*. Washington, DC: The National Academies Press.

## AB 417: How an Intruder in the Night Encountered the California Spotlight

As originally drafted in the spring of 2005, California AB 417 would have modified existing state regulations on “beer tastings” sponsored by industry trade associations. It passed the Assembly in mid-May and got a second reading in the Senate the following month. But on August 22, the bill was “gutted and amended” at the behest of FAB producers and distributors to redefine FABs to conform to the controversial Federal ruling (i.e., the so-called “50-50 standard”). The industry’s legislative push was prompted by a letter from California Attorney General Bill Lockyer to state regulatory agencies stating that FABs are distilled spirits, not beer, under California law. The state legislature passed AB 417 in the waning hours of the last legislative session, despite strong opposition from children’s health and safety groups and editorials opposing the bill in the State’s major newspapers.

AB 417 opponents then organized a statewide campaign to convince Governor Arnold Schwarzenegger to veto the bill, both because of the harm FABs cause young people and because of the lack of opportunity for public scrutiny in the legislature. The governor had condemned “gut and amend” bills in his campaign for governor the year before, promising to veto any such legislation unless it dealt with an emergency. The opponents’ appeal succeeded, and Governor Schwarzenegger vetoed the bill on Oct. 7, 2005. His veto message anticipated that the bill will be reintroduced in the next legislative session and called on all interested parties to use this additional time “for public debate and serious consideration of the policy issues surrounding this beverage.” With the spotlight now shining on AB 417, stay tuned to see how this story concludes.

For more information on AB 417, visit [http://www.marininstitute.org/take\\_action/alcopops.htm](http://www.marininstitute.org/take_action/alcopops.htm).



# America's Partners to Prevent Underage Drinking

## Partners

American Association of Motor Vehicle Administrators  
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Intelli-Check, Inc.  
[www.intellicheck.com](http://www.intellicheck.com)

International Institute for Alcohol Awareness

Leiweke Distribution Companies  
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National Liquor Law Enforcement Association  
[www.nllea.org](http://www.nllea.org)

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[www.pire.org](http://www.pire.org)

Precision Dynamics Corporation  
[www.pdcorp.com](http://www.pdcorp.com)

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For additional information about the International Institute for Alcohol Awareness contact James E. Copple, Director, at either 301-755-2783 or [jcopple@pire.org](mailto:jcopple@pire.org).

[www.IIAAonline.org](http://www.IIAAonline.org)



October 25, 2006

Ms. Kristine Cazadd, Chief Counsel  
Board of Equalization  
450 N Street/ P.O. 94287  
Sacramento, CA 94279-0001



Dear Ms. Kristine Cazadd:

We, as young leaders in Sacramento County, wish to address the issue of "Alcopops" and petition the Board of Equalization under Govt Code § 11340.6 to follow or amend its Regulations to address the proper taxation of "Alcopops." Not only do we represent youth today, but we also represent two important organizations that support this issue. These organizations are Friday Night Live, S.M.A.C.C., and the California Youth Council. Friday Night Live is a youth led organization that builds positive and healthy youth development that engages youth as active leaders and resources in their surrounding communities. S.M.A.C.C. represents Students Making a Community Change; students are able to engage and become leaders in their communities. The California Youth Council is a group of young adult leaders who come together and share the different opinions of youth throughout California. We are able to do so because the members that make up the California Youth Council come from different cultures and communities throughout the state.

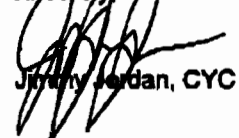
We are writing you today to address an issue we feel should be recognized and acted upon by the Board of Equalization— "Alcopops," which are also known as Flavored Malt Beverages, are alcoholic drinks popular among youth. This is an important issue to us because these beverages significantly affect young people. Not only does the alcohol industry target our age group, but it also contributes to the many tribulations that youth encounter.

Currently, alcopops are taxed as a beer under Revenue and Taxation Code, section 32151. However, these beverages contain distilled spirits, and therefore should be taxed under Regulation 32201. Distilled spirits are defined as an alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof. The Board of Equalization further defined distilled spirits as "An alcoholic beverage product including beer and any amount or kind of distilled spirit does not meet the definition of beer and will instead be taxed as a distilled spirit. 5/27/97. (M98-1, Am. 2000-1)". We feel that since alcopops contain distilled spirits, then they should be taxed as a distilled spirit. By currently taxing Flavored Malt Beverages as a beer, it is credible to say that the beverage is taxed incorrectly and the state of California is losing vital revenue it should be rightfully collecting, which is estimated around \$40 million dollars. In addition, the misclassification promotes marketing alcopops to young people. The proper tax rate would raise the price, thereby reducing appeal to young people.

Accordingly, we urge the Board to grant our petition, and adopt Regulations that implement **Alcoholic Beverage Tax Annotations 7111 2004-1** and **appropriately tax flavored malt beverages as distilled spirits**. Secondly, we suggest that if there is question about the distilled spirit content of Alcopops that the burden of proof should be on the alcohol manufacturers to prove that the ingredients in their products do NOT include distilled spirits; otherwise you should tax them in accordance with your tax annotation. Already, Regulation 2530 requires every distilled spirits taxpayer to furnish to the Board a statement of the gallonage of finished packaged distilled spirits on hand for the reporting period. (See also Regulations 2541 and 2542 setting forth a reporting requirement for common carriers and public warehouses, respectively) Thus, under this Regulation distilled spirits taxpayers should already be reporting to the Board the gallonage of finished packaged Alcopops. If these alcopops contain distilled spirits. However, we do not believe these taxpayers are reporting correctly, and we petition the Board to modify the language of Regulation 2530 (or create a new Regulation) to define distilled spirits to specifically include flavored malt beverages that contain distilled spirits, and place the burden on the taxpayer to provide sufficient evidence to prove a claim that its flavored malt beverage product does not contain distilled spirits.

We have had the opportunity to meet with staff in the offices of John Chiang, Bill Leonard and Claude Parrish. Based on our meetings, we believe that the Board has the authority and responsibility to collect the taxes appropriately on these products. Thank you for taking your time and attention to consider our petition and we look forward to hearing from you soon.

Sincerely,

  
Jeremy Jordan, CYC

  
Elianna Yanger, CYC

  
Cindy Song, SMACC

  
James Dui, SMACC