**THE CITY OF LOS ANGELES’ AUTHORITY**

**TO REGULATE ALCOHOL RETAILERS:**

**Response to the Los Angeles City Office of Zoning Administration and Planning Department**

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1. **ISSUE**

**To what extent does the City of Los Angeles have the authority to impose and enforce conditions on alcohol retailers that may restrict their alcohol sales and distribution practices?**

1. **SUMMARY OF ARGUMENT**

The City of Los Angeles’ (“City’s”) position that it does not have any authority to regulate retailers’ alcohol sales and distribution practices (to impose “alcohol-specific” conditions) is based on a faulty legal analysis that relies on outdated court cases. More current case law and legal analyses as well as accepted practices in other California cities and counties demonstrate that the City of Los Angeles does have the authority to impose and enforce an array of alcohol-specific conditions.

1. **BASIS FOR THE CITY’S POSITION**

The City’s position for nearly twenty years is that it is preempted by state law from imposing alcohol-specific conditions on alcohol retailers (such as restrictions on what types of alcohol products can be sold). In a May 16, 1996, memorandum (“Prohibited Conditions Memo”) then-Chief Zoning Administrator Robert Janovici instructed zoning administrators to avoid imposing any conditions on alcohol retailers that expressly regulate the sale of alcoholic beverages.[[1]](#footnote-2) The directive was prompted by a 1990 Superior Court writ invalidating alcohol-specific conditions imposed on a Pacoima food market (“*Pacoima* decision”).[[2]](#footnote-3) The conditions included restrictions on hours and days of sale, sale of single cans and bottles, size of products, refrigeration of products, amount of retail floor space devoted to alcoholic beverages, and age of clerks. The city had imposed the conditions to mitigate nuisance activities at and surrounding the market.

The position stated in the 1996 Prohibited Conditions Memo has been recently reaffirmed in two instances, with the first being in a January 7, 2014, Letter of Clarification issued by the Los Angeles Office of Zoning Administration.[[3]](#footnote-4) At issue was a voluntary operating condition agreed to by a new Sprouts Farmers Market restricting it from selling malt liquor, fortified wine, and single bottles of beer. The market sought clarification from the city, arguing that the product restrictions should not include sales of craft beer in bottles in excess of 20 ounces since craft beer should not be considered malt liquor.[[4]](#footnote-5) The Zoning Administrator opted to strike the condition entirely, as directed by the Prohibited Conditions Memo, stating that it “has no direct authority to regulate or enforce conditions assigned to alcohol sales or distribution.” The Letter of Clarification made no distinction between the *Pacoima* case, involving nuisance abatement conditions imposed on a pre-existing market, and Sprouts Farmers Market, involving the issuance of a Conditional Use Permit (“CUP”) for a new business.

The City reaffirmed its position again in a letter dated January 9, 2014, from the Planning Department to the Venice Neighborhood Council.[[5]](#footnote-6) The Neighborhood Council had requested clarification from the Planning Department regarding what conditions can and cannot be legally included when approving a CUP for alcohol retailers. Citing directly both the 1996 Prohibited Conditions Memo and *Pacoima* decision, the Planning Department responded that it is preempted by state law from imposing the conditions listed in the two documents.

1. **REBUTTAL SUMMARY**

The Los Angeles Office of Zoning Administration and Planning Department are incorrect in their conclusion that it does not have any authority to impose alcohol-specific conditions on alcohol retail outlets because their analysis:

1. Overstates the breadth of the state’s alcohol licensing authority, particularly as to new businesses subject to the City’s CUP process, while ignoring more recent case law and legal analyses that supersede and clarify the 1990 *Pacoima* decision;
2. Ignores the practices and progress made in other local California jurisdictions; and,
3. Fails to recognize the need for a comprehensive policy that can fully articulate and exercise local authority, instead relying on an ad hoc strategy that undermines that authority.
4. **SUMMARY OF RECOMMENDATIONS**

To overcome concerns of express alcohol regulation the City needs to update its legal analysis to provide a clear statement of local authority, conduct a review of policies and practices adopted by other California cities and counties, and assess the alcohol-related problems faced by neighborhoods in the City. Based on these analyses and reviews, the City should formalize a comprehensive program to reduce problems associated with alcohol retail sales. The program should:

1. Articulate how nuisance activities are directly related to alcohol sales thus establishing a clear nexus between local police and zoning powers and the alcohol-specific specific sales conditions;
2. Include an alcohol-specific CUP ordinance that includes standards for determining the number, location, type, and sales practices of new alcohol outlets designed to minimize public health, safety and nuisance problems associated with alcohol sales;
3. Include a Deemed Approve Ordinance (DAO) that establishes public nuisance abatement standards for pre-existing alcohol retail outlets;
4. Establish the administrative mechanism by which action can be taken against alcohol retailers for violations of the CUP and DAOs;
5. Impose a fee paid by alcohol retailers to defray the costs associated with implementing and enforcing the program;
6. Assign a dedicated law enforcement officer, trained in alcohol law enforcement techniques, to administer the policy and enforce its provisions; and
7. Establish steps for working with the ABC Department to ensure good collaboration when administering and enforcing the policy.
8. **LEGAL ANALYSIS**
9. **The City overstates the breadth of the state’s alcohol licensing authority, particularly as to new businesses subject to the City’s Conditional Use Permit (CUP) process, while ignoring more recent case law and legal analyses that supersede the 1990 *Pacoima* decision.**
10. **Introduction**

The City’s position that it is preempted by state law from imposing alcohol-specific standards on new and existing alcohol retailers appears to be based on the 1990 *Pacoima* decision by the Superior Court. The decision struck down alcohol-specific conditions imposed by the Zoning Administrator on an existing alcohol retailer as a condition of remaining open. The *Pacoima* decision has been superseded by more recent court decisions and legal analyses, which clearly give California local jurisdictions much broader authority to impose operating conditions (including those specific to alcohol) on both new and existing alcohol retailers.

Although California state law expressly reserves the authority to license and regulate alcohol sales, this authority is not absolute.[[6]](#footnote-7) The foundation for local governments’ ability to regulate alcohol outlets rests on their police and zoning powers to address land use and public safety problems. This includes the prevention and abatement of public nuisances associated with alcohol availability and the authority to address the impact of alcohol retail outlets on public health, safety, and welfare. State courts have affirmed that the state’s licensing authority and local government’s land use authority operate concurrently based on the fundamental conceptual difference between the two regulatory activities. As stated in a seminal 1961 case upholding a local government’s restrictions on the location of cocktail lounges:

“The essence of zoning lies in metropolitan and regional planning; it is the use and treatment of public and private land and its appurtenances in the interest of the community as a whole. The factors and reasons that determine the imposition of metropolitan zoning are entirely different from those which control the regulation of the consumption of liquor.”[[7]](#footnote-8)

Local governments therefore have authority to regulate alcohol outlets and alcohol sales practices so long as the restrictions are grounded in its land use authority and police powers. The extent of and basis for this authority varies based on whether the retail alcohol outlet is a new or pre-existing business, as discussed below.

1. **Regulation of new alcohol retail outlets.**

The state legislature has explicitly prohibited the issuance of new alcohol retail licenses that would violate a valid local zoning ordinance. The relevant statute states: “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.”[[8]](#footnote-9)

In the early 1980s, many California cities and counties, including Los Angeles, became concerned about the public health and safety issues associated with the overconcentration of alcohol outlets, particularly in urban settings.[[9]](#footnote-10) In response to the state’s minimal limitations on the number of alcohol licenses that could be issued, local jurisdictions began exercising their land use powers through the enactment of CUP ordinances specific to alcohol outlets.[[10]](#footnote-11) Today most local jurisdictions have CUP ordinances that limit the geographic location, type, and number of alcohol retail outlets. Many of the CUPs also include restrictions on alcohol-specific selling and serving practices, including those imposed on both the Pacoima Market and Sprouts Farmers Market (see section 4 for specific examples). The ordinances routinely include findings that establish the connection between the regulations, the mitigation of public health, safety and nuisance problems, and the jurisdiction’s land use and police powers.

This local authority is now widely accepted, and there are no successful legal challenges of a thorough local, alcohol-specific CUP ordinance, at least at the appellate level. As expressly required by the Legislature, and recognized by the courts, the state’s authority to license a new alcohol outlet only comes into play if the proposed outlet meets the local government’s land use requirements Alcohol-specific conditions, such as restrictions on the types of alcohol to be sold in the new business, are permissible so long as the restriction is based on the local government’s land use authority. The *Pacoima* decision is not relevant to this issue, since it addresses conditions imposed on a pre-existing retail outlet. The Zoning Administrator’s decision to rescind conditions placed on the Sprouts Farmers Market, a new business, is a misreading of *Pacoima* and an unnecessary limitation on the City’s authority to regulate new alcohol outlets.

1. **Local Regulation of pre-existing (grandfathered) alcohol retail outlets**

Although an important first step, CUPs have proven to be an imperfect tool. As noted above, alcohol retail outlets in existence prior to the enactment of a city or county CUP ordinance are exempt (or “grandfathered” or treated as “non-conforming uses”). Local governments cannot require them to obtain a CUP and be subject to CUP conditions so long as they are continuously open for business without substantial change in mode or character of operation. The large majority of a locality’s alcohol outlets fit this category.

In 1993, prompted by the inability to regulate existing alcohol retail outlets, the City of Oakland enacted the first “deemed approved” ordinance (DAO).[[11]](#footnote-12) It exercises authority over grandfathered outlets by requiring they receive “deemed approved” permits and established “public nuisance standards” by which pre-existing retailers must abide in order to maintain their permit. The ordinance gives the city the authority to close the business if violations occur. The standards are monitored by the city through an enforcement and education program financed with a fee paid by all the city’s alcohol retailers. The public nuisance standards address land use and public safety issues associated with alcohol sales, such as loitering, increased police calls, noise, graffiti, and drug sales.

Alcohol retailers in Oakland challenged the ordinance on several grounds, including that the ordinance was preempted by the state’s exclusive licensing authority and interfered with their grandfathered rights to sell alcohol. All of the claims would ultimately be rejected in a decision by the California Court of Appeal, and the decision was left standing by the California Supreme Court when it denied further review.[[12]](#footnote-13)

The Court of Appeal concluded that the ordinance did not interfere with a business’s grandfathered rights because the city retained its authority to abate nuisances and enforce its criminal laws, stating that “[n]o business—not even an alcoholic beverage sales establishment regulated by state law—has a vested right to conduct its business in a manner that attracts public nuisances and encourages criminal activities near its premises.”[[13]](#footnote-14) The court reasoned that the city:

“…already has *this* authority [to abate nuisance]—independent of [the deemed approved] ordinance—which it may use in appropriate cases in the proper exercise of its police power. The ordinance does not create any new authority empowering the city to halt operation of an alcoholic beverage sales establishment premises. It merely creates an administrative mechanism that may result in a third party taking action against the alcoholic beverage seller—abatement by a court or license revocation by the Department of Alcoholic Beverage Control.”[[14]](#footnote-15)

In other words, Oakland was exercising its zoning authority and police powers, which exist separate from and in concert with the state’s licensing authority.

Left ambiguous by the Oakland decision was the permissible reach of DAOs – to what extent can they restrict the mode of operation in relationship to alcohol sales and service? What is not ambiguous is the court’s opinion that the purpose of an ordinance, not its impact, determines whether it is distinct from the direct regulation of alcoholic beverage licensees.[[15]](#footnote-16)

A separate line of cases has introduced the distinction between “direct” and “indirect” regulations on alcohol sales, with the former being within the exclusive domain of the ABC Department and the latter permissible by local regulation. In 2011, the Court of Appeal, Second District, Division 3 grappled with this distinction in *People v. Schlimbach*,[[16]](#footnote-17) a case involving an action by the Los Angeles City Attorney under the state’s Unlawful Liquor Sale Abatement Law.[[17]](#footnote-18) The City had imposed the following conditions on Schlimbach (the owner of a pre-existing restaurant and bar):

* Prohibit the employment of individuals who have been convicted of alcohol-related violations;
* Require all employees to attend STAR training within six months of employment;
* Prohibit the unlawful sale or service of any alcoholic beverage to an obviously intoxicated person;
* Require a uniformed security guard when there is live entertainment;
* Require the kitchen to be operational and food service available at all hours that the business is open; and
* Maintain and post signs in English and Spanish that state, “PERSONS UNDER THE AGE OF 21 AND INTOXICATED PERSONS WILL NOT BE SERVED ALCOHOLIC BEVERAGES.

Schlimbach appealed a lower court opinion claiming that the provisions were preempted by state law and within the exclusive jurisdiction of the ABC Department.

In weighing its decision that the provisions were not preempted, the Appeals court evaluated the relevant line of cases, stating in part (and quoting the Oakland DAO case):

“[A] city ordinance addressing nuisance problems associated with alcoholic beverage sale establishments does not improperly regulate preexisting ... licensees.” (*City of Oakland v. Superior Court* (1996) 45 Cal.App. 4th 740, 747, 53 Cal.Rptr. 2d 120.) While the ABC's exclusive right to regulate the sale and purchase of alcohol ***may***prevent a city from enacting “ ‘such regulatory measures as “restrictions as to the class of persons to whom liquors may be sold, and as to the hours of the day and the days of the week during which places of sale may be open,” ’ ” it does not preempt an ordinance that “does not directly affect the licensee's ability to sell alcoholic beverages to a willing purchaser.” [[18]](#footnote-19)

The court reasoned that because the provisions did not restrict Schlimbach’s right to sell alcohol to a willing purchaser and were intended to prevent future problematic sales and abate nuisance arising from them, there was no improper interference with the jurisdiction of the ABC Department. Even the provision prohibiting sales to obviously intoxicated persons (which clearly affects a licensee’s ability to sell to a willing customer and is prohibited by state law) was determined to be within the City’s jurisdiction.

Central to this finding, as well as those cases cited for forming the legal basis of the decision, is the principle that a local regulation is not immediately preempted because it may have an impact on alcohol sales. Rather, a regulation needs to be evaluated with regard to its purpose and connection to the local jurisdiction’s land use and police powers to determine whether it improperly interferes with ABC Department authority.

The distinction between the “direct” and “indirect” regulation of alcohol is in fact artificial and evolving over time. Clearly DAOs can affect the ability of a retailer to sell to a willing customer; they include provisions that allow a local jurisdiction to close the business entirely if the prohibited public nuisance activities are violated. The *Schlimbach* court appeared to recognize this ambiguity when it stated that restrictions on hours and days of sale “may” be preempted, a matter the court explicitly stated it was not addressing in its opinion.[[19]](#footnote-20) The crucial issue, as illustrated in *Schlimbach* by its acceptance of the sales to obviously intoxicated persons condition, is that the local jurisdiction must establish the nexus between the condition and the abatement of public nuisances.

As discussed in Section 4, many California cities and counties have extended the reach of their DAOs to include provisions that might previously been considered “direct” regulation of alcohol sales (e.g., types of beverages permitted to be sold) based on the local jurisdictions’ determination that the restrictions are necessary and permissible to abate and prevent public nuisance activities. In many instances, these conditions are placed on retail outlets after a violation of the DAO has been determined, are issued to abate the nuisance, and serve as an alternative to outright revocation of the DAO permit.

The Chief Zoning Administrator issued the Prohibited Conditions Memo (May 16, 1996), which relied on the *Pacoima* case, prior to either the *City of Oakland v. Superior Court* or *Schlimbach* cases. The *Pacoima* case is clearly dated and does not reflect the evolving legal jurisprudence on this issue. For example, the *Pacoima* court rejected the city’s conditions related to the age of clerks, refrigeration of products, and amount of retail floor space devoted to alcoholic beverages. The reasoning found in the cases following *Pacoima* suggests these would be treated as “indirect” regulations today, since they do not directly interfere with the retailer’s ability to sell to a willing customer. The other conditions, related to hours and days of sale, sales of single cans and bottles, and size of products, were issued as public nuisance abatement measures. Although California courts have not recently ruled on the permissibility of such local restrictions on grandfathered alcohol outlets, many cities and counties are now imposing similar conditions. The evolving jurisprudence suggests that they are permissible and do not encroach on the ABC Department’s licensing authority so long as they are clearly connected to legitimate local land use and public safety concerns.

1. **The City ignores the practices and progress made in other local California jurisdictions.**

The City’s position ignores the successes of other jurisdictions in California with regard to imposing alcohol-specific conditions on retailers. In the wake of *City of Oakland*, many other local governments in California have enacted ordinances imposing conditions on both new and existing retailers,[[20]](#footnote-21) many of which include fees paid by retailers to cover the cost of implementation and enforcement. While these ordinances vary in scope, the purpose remains focused on reducing nuisance activity associated with the sale of alcohol by retailers. Moreover, the most comprehensive of these ordinances go beyond simply imposing standards that address nuisance activity, and impose standards that directly restrict certain alcohol sales practices at new retail outlets, and existing retail outlets to a lesser degree.

Examples of local governments in California that impose alcohol-specific conditions on alcohol retailers include:

* Contra Costa County may impose restrictions on the sale of specific types of alcoholic beverages at an existing off-sale retailer that is seeking approval to continue operations after a violation of its DAO.[[21]](#footnote-22)
* Lancaster gives its planning commission discretion to impose conditions on new retail alcohol outlets that restrict container sizes and hours of operation.[[22]](#footnote-23)
* Hayward authorizes its planning commission and city council to impose conditions on new retail outlets related to minimum and maximum container sizes for beer, malt liquor, wine and distilled spirits.[[23]](#footnote-24) Hayward also restricts happy hour promotions in new bona fide restaurants.[[24]](#footnote-25)
* Huntington Park imposes limits on container sizes for all types of alcoholic beverages and prohibits sales of beer and wine that exceed 14 percent alcohol content by volume. The restrictions are applicable to all alcohol retail establishments.[[25]](#footnote-26)
* Montebello prohibits new off-sale retails from selling single containers of beer or wine coolers.[[26]](#footnote-27)
* Orange restricts employees under 21 years of age from working between 10:00 p.m. and 2:00 a.m. at new retailers with motor fuel that sell beer and wine. Additionally, at these locations all containers of alcoholic beverages that are displayed for sale must be secured against public access between the hours of 2 a.m. and 6 a.m., or more restrictive hours as determined by the conditional use permit process.[[27]](#footnote-28)
* Palmdale’s zoning ordinance includes the following provision applicable to new off-sale alcohol retail outlets: “For specific locations or defined geographic areas, the approval authority may restrict alcoholic beverages by container size and type, and/or by strength of alcohol content, where a nexus is demonstrated between such restriction and the public health and safety.”[[28]](#footnote-29)
* Pinole restricts new retailers from selling beers or wines that have screw tops in bottles less than 375 milliliters, unless sold in manufacturer prepackaged multi-unit quantities. Also, the sale of liquor in a new store shall be limited to no more than 200 linear feet of display, which shall include the use of multi-tiered shelving not to exceed 36 inches in depth.[[29]](#footnote-30)
* San Bernardino gives its planning commission discretion to impose conditions on new retail alcohol outlets that restrict container sizes and hours of operation.[[30]](#footnote-31)
* San Buenaventura (Ventura) imposes on both new and existing off-sale alcoholic beverage establishments a prohibition on the “sale of beer or malt beverage products in bottles or cans greater than 32 ounces in volume.”[[31]](#footnote-32)
* Santa Cruz requires that new “eating and drinking establishments” have a minimum of fifty-one percent of their monthly gross receipts be from the sale of meals, and not include cover or admission charges, or alcoholic beverages sales, during the same period.[[32]](#footnote-33)

* Walnut Creek may evaluate and impose conditions on hours and days of operation before approving a new alcohol retailer.[[33]](#footnote-34)
* Watsonville prohibits any outlet from selling malt liquors and fortified wine in large containers; it also prohibits drive-through alcohol service and prohibits restaurants from having distinct bar areas.[[34]](#footnote-35)

Also commonly found in many of these CUP and DAOs are requirements that owners, supervisors, and employees at both new and existing establishments attend responsible beverage service training to remain in compliance.

The examples of conditions listed above should not be considered an exhaustive list. As is described in the previous section, local governments have significant authority with regard to the conditions they may impose on an alcohol retailer so long as they are based in their local land use authority and the policy clearly articulates how it addresses a problem that falls within the bounds of that authority.

The ABC Department has not only accepted this expanding use of local land use authority, in many instances it has actively cooperated with local law enforcement to insure effective enforcement of both local and state restrictions.[[35]](#footnote-36) Notable is the ABC Department’s statement in response to an inquiry by the *Schlimbach* court, that the conditions imposed by the City do not interfere with its regulatory jurisdiction.

1. **The City needs a comprehensive policy that fully articulates and exercises its local authority, instead of relying on an ad hoc strategy that undermines that authority.**

The City clearly recognizes its zoning and police powers, as is illustrated by the authority granted to the Zoning Administrator to approve new alcohol retailers and take nuisance actions against all retailers through its general CUP ordinance. Additionally, the City has an ordinance addressing nuisance abatement procedure for activity commonly occurring near alcohol outlets.[[36]](#footnote-37) The City, however, has taken an ad hoc approach to addressing land use problems associated alcohol retailers – as illustrated by Pacoima Food Market and Sprouts Farmers Market cases. While the actions in both instances came after a formalized process, it was not specific to alcohol retailers and the conditions imposed were not linked specifically to problems associated with alcohol retail sales.

The City’s approach contrasts with the more comprehensive and carefully crafted policies and programs taken by other local jurisdiction, which establish a nexus between alcohol sales activities and nuisance problems and include alcohol-specific CUP and DAOs. The ordinances set standards for determining whether new retail outlets should be permitted and if so with what operational requirements, and standards for pre-existing retail outlets that reduce the risk of public nuisance activities.

For the City to overcome concerns about imposing conditions on alcohol retailers, especially those that specifically address alcohol sales, it needs to establish a comprehensive policy that clearly articulates that its proposed actions are tied to its state-granted land use and police powers. The policy can include the following components:

1. An alcohol-specific CUP ordinance that includes standards for determining the number, location, type, and sales practices of new alcohol outlets designed to minimize public health, safety and nuisance problems associated with alcohol sales;
2. A Deemed Approve Ordinance that establishes public nuisance abatement standards for pre-existing alcohol retail outlets;
3. Establish the administrative mechanism by which action can be taken against retailers for violations;
4. A fee paid by alcohol retailers to defray the costs associated with implementing and enforcing the program;
5. Dedicated law enforcement personnel trained in alcohol law enforcement techniques assigned to administer the policy and enforce its provisions; and,
6. Procedures for working with the ABC Department to ensure effective collaboration.

Guidance for drafting a clear and cohesive policy can be found in the Policy Briefing published by Ventura County Limits in January 2014 titled *Best Practices in Municipal Regulation to Reduce Alcohol-Related Harms from Licensed Alcohol Outlets*.[[37]](#footnote-38)

1. Memorandum from Robert Janovici, Chief Zoning Administrator, Los Angeles City Planning Department, to All Zoning Administrators (May 16, 1996) (on file with author), [↑](#footnote-ref-2)
2. *Pacoima Food Market v. City of Los Angeles, Superior Court of Los Angeles County*, No. C753794 (Peremptory Writ of Mandate of mandate filed May 24, 1990). [↑](#footnote-ref-3)
3. Letter of Clarification from Maya E. Zaitzevsky, Associate Zoning Administrator, City of Los Angeles, to Seth Brown, Sprouts Market, Regency Centers Corporation, and Terri Dickerhoff, CGR Development (January 7, 2014) (on file with author). [↑](#footnote-ref-4)
4. Letter from Terri Dickerhoff, CGR Development to Maya Zaitzevsky, Office of Zoning Administration, Los Angeles Department of City Planning (December 18, 2013) (on file with author). [↑](#footnote-ref-5)
5. Letter from Terry P. Kaufman Macias, Managing Assistant, Land Use Division, City of Los Aneles, to Linda Lucks, President, Venice Neighborhood Council (January 9, 20000) (on file with author). [↑](#footnote-ref-6)
6. California Constitution, Art. 20 §22 states “the State of California … shall have the exclusive right and power to license and regulate the … sale … of alcoholic beverages within the State” to the exclusion of cities and counties. [↑](#footnote-ref-7)
7. *Floresta Inc. v. City Council*, 190 Cal.App.2d 599, 605 (1961). [↑](#footnote-ref-8)
8. Cal. Bus. & Prof. Code § 23790. [↑](#footnote-ref-9)
9. Wittman, F. and Shane, P., *Manual for Community Planning to Prevent Problems of Alcohol Availability*, Sacramento: California State Dept of Alcohol and Drug Programs (September, 1988). [↑](#footnote-ref-10)
10. *Id.* at Appendix B: Case Studies, pp. 119-140. [↑](#footnote-ref-11)
11. Oakland, Cal., Ordinance 11624 (1993). For a description of the Oakland ordinance and its enactment, see Mosher, J. and Works, R., *Confronting Sacramento: State Preemption, Community Control, and Alcohol-Outlet Blight in Two Inner-City Communities*. San Rafael, CA: Marin Institute for the Prevention of Alcohol and Other Drug Problems (1994). The current ordinance is at Oakland, Cal. Planning Code ch. 17.156. [↑](#footnote-ref-12)
12. *City of Oakland v. Superior Court*, 47 Cal. App.4th 740 (1996), review denied. [↑](#footnote-ref-13)
13. *Id.* at 758. [↑](#footnote-ref-14)
14. *Id.* at 757. [↑](#footnote-ref-15)
15. *See id.* at 763 – 766. [↑](#footnote-ref-16)
16. 193 Cal.App.4th 1132 (2011). [↑](#footnote-ref-17)
17. Cal. [Pen. Code § 11200](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000217&DocName=CAPES11200&FindType=L)–[11207](http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=1000217&DocName=CAPES11207&FindType=L). [↑](#footnote-ref-18)
18. Id. at 1146 (emphasis added) (citation omitted). [↑](#footnote-ref-19)
19. Indeed, an earlier case had approved hours of sales restrictions applicable to certain alcohol retailers as a means to abate nuisance activities. *Korean American Legal Advocacy Foundation v. City of Los Angeles*, 23 Cal.App. 376 (1994). [↑](#footnote-ref-20)
20. Mosher, J., Cannon, C. and Treffers, R., *Reducing Community Alcohol Problems Assocaited with Alcohol Sales: The Case of Deemed Approved Ordinances in California*. Ventura County Limits, Alcohol & Drug Programs, Ventura County Health Care Agency, (September 2009). Available at http://venturacountylimits.org/resource\_documents/VC\_CommAlcProb\_1upPress\_FNL.pdf. [↑](#footnote-ref-21)
21. Contra Costa County CA Code § 82.38.814. [↑](#footnote-ref-22)
22. Lancaster, CA Municipal Code § 17.42.080. [↑](#footnote-ref-23)
23. Hayward, CA, Municipal Code § 10-1.2760. [↑](#footnote-ref-24)
24. Hayward, CA Municipal Code § 10-1.2751. [↑](#footnote-ref-25)
25. Huntington Park, CA Municipal Code § 9-4.203(6)(p). [↑](#footnote-ref-26)
26. Montebello, CA Municipal Code § 17.61.080(A)(7). [↑](#footnote-ref-27)
27. Orange, Cal. Municipal Code § 17.30.030. [↑](#footnote-ref-28)
28. Palmdale, CA Municipal Code § 92.07(F)(11). [↑](#footnote-ref-29)
29. Pinole, CA Municipal Code § 17.59.040. [↑](#footnote-ref-30)
30. San Bernardino Development Code § 19.06.030(2)(B), Section VIII(A). [↑](#footnote-ref-31)
31. San Buenaventura, CA, Municipal Code § 24.460.420. [↑](#footnote-ref-32)
32. Santa Cruz, CA, Municipal Code ch. 24.12, pt. 12. [↑](#footnote-ref-33)
33. Walnut Creek, CA Municipal Code. § 10-2.3.1211. [↑](#footnote-ref-34)
34. Watsonville, CA Municipal Code § 14-25. [↑](#footnote-ref-35)
35. See, for example, the City of Ventura’s description of its collaboration with the ABC Department:

    <http://www.cityofventura.net/pd/community/abc>. [↑](#footnote-ref-36)
36. Los Angeles, Cal., Planning and Zoning Code §12.27.1. [↑](#footnote-ref-37)
37. Alcohol & Drug Programs, Ventura County Health Care Agency. Available at <http://venturacountylimits.org/resource_documents/VC_BestPractAlcSales_Jan2014fnl.pdf>. [↑](#footnote-ref-38)