Alcohol Nuisance Abatement Ordinance

by

Emilie J. Morse

Senior Project

City and Regional Planning Department

California Polytechnic State University

San Luis Obispo

2016
ALCOHOL NUISANCE ABATEMENT ORDINANCE

APPROVAL PAGE

TITLE: Alcohol Nuisance Abatement Ordinance

AUTHOR: Emilie J. Morse

DATE SUBMITTED: March 16th, 2016

William J. Siembieda, Ph.D, AICP ________________________________ ____________
Senior Project Advisor Signature Date

Hemalata C. Dandekar, Ph.D ________________________________ ____________
Department Head Signature Date
Title: Alcohol Nuisance Abatement Ordinance

Author: Emilie J. Morse

Date Submitted: March 16, 2016

Grade: ________

William J. Siembieda, Ph.D, AICP
Senior Project Advisor

Hemalata C. Dandekar, Ph.D
Department Head

Signature
Signature

Date
Date
ALCOHOL NUISANCE ABATEMENT ORDINANCE

Table of Contents

Chapter 1: Introduction

1.1. State Standards

Chapter 2: Relevant Studies

2.1. California Department of Public Health Study

2.2. The University of California, Riverside Study

Chapter 3: Legality

3.1. Legal Cases


3.1.2. City of Bakersfield v. Miller (1966)

3.1.3. Livingston Rock & Gravel Co. v. County of Los Angeles (1954)

3.1.4. The Yaffe Decision (1990)

Chapter 4: Case Studies

4.1. City of Long Beach

4.2. City of El Cajon

4.2.1. Alcohol Sales and Deemed Approved Alcohol Sales Regulations Ordinance

Chapter 5: City of San Diego Alcohol Nuisance Abatement

5.1. Best Practices

5.2. Implementation
ALCOHOL NUISANCE ABATEMENT ORDINANCE

5.3. Draft Ordinance

Chapter 6: Summary Statement

References
1. Introduction

An overconcentration of alcohol-related businesses can have a negative effect on the health, safety, and welfare of a community. Additionally, these businesses are often not spatially distributed equally throughout a city. The data in Chapter 2.1. reveals that African American and Hispanic populations generally live in neighborhoods congested with alcohol-related businesses. This adds a social justice issue to the existing health issues when considering these businesses as a planning concern. How then do planners regulate, understand, and implement alcohol-related business policies that make the community safer? This project examines the legal basis for alcohol-related business control ordinances and the tools needed to address future and present needs. Presented is a model ordinance for alcohol-related business control in the City of San Diego.

A high concentration of alcohol-related businesses in a neighborhood can cause several health and safety issues. An overabundance or excess availability of alcohol and alcohol-related businesses can create a local nuisance. This is due to the overconsumption of alcohol when the substance is highly available. The association between the increase of alcohol availability and the consumption of alcohol has led the World Health Organization to conclude, “That reducing the physical availability of alcohol through limitations on the number and placement of outlets will result in reductions in alcohol-related problems” (Ashe, Jernigan, Kline, and Galaz, 2003). Alcohol-related problems include but are not limited to: drunk driving, increases in liver cirrhosis, and violence. Controlling the availability of alcohol can lead to a safer healthier community.

Any situation that interferes with public health, safety, and welfare is considered public nuisance. Once a nuisance is deemed a city has the ability to mitigate against it. The legal case
Spur Industries v. Del E. Webb Development Co. established that nuisances can be mitigated against (Bloomberg Law, 1972). Del Webb created a residential development in Sun City, Arizona. As the development grew, the existing cattle feedlot run by Spur Industries became a health concern for the residents due to the manure stench and mosquitoes coming from the lot. Del Webb sued to get Spur Industries to move its feedlot. The Arizona Supreme Court ruled that the movement of the feedlot was necessary to protect the health of the residents. However, Del Webb was financially responsible for the movement due to the issues being cause by the development’s growth towards the existing feedlot. This case established that mitigation measures can be taken to protect public health, safety, and welfare.

A nuisance abatement ordinance or a “deemed approved” ordinance is the way many cities have chosen to abate the nuisance that alcohol-related businesses create. “Deemed approved” means approved by the city, found to be in compliance with the standards set in the ordinance. It is not within a municipality’s police power to regulate the amount and quantity of alcoholic beverage sales. However, it is within their police power to put aesthetic regulations on a business. Through a nuisance abatement ordinance, a city can use a variety of mitigation methods to ensure that alcohol-related issues are controlled.

The City of San Diego begun to encountered alcohol-related issues. The number of alcohol-related arrests has risen by 72% since 2012, while the population has remained stable (City of San Diego, 2015). These arrests are a nuisance to community members and are consuming limited City resources. Sub-regions of San Diego, such as the Mid-City area, been experiencing an increasing concentration of liquor store establishments. Mid-City has had particular issues with increased density due to the lack of store compliance with Alcohol Beverage Control Standards. In a survey completed by the Latino Youth Council, 28 of the 30
stores surveyed were out of compliance (Brown, 2014). The way to mitigate these issues is to create an alcohol nuisance abatement ordinance. This ordinance can control liquor availability and frequency of locations in order to mitigate existing and future alcohol-related issues and crimes. The purpose of this paper is to analyze liquor nuisance abatement efforts in other cities and propose a draft ordinance for the City of San Diego.

1.1. State Standards

The State of California recognizes the often derogatory impact of a high concentration of alcohol-related businesses to its citizens. As a result, the California Legislative Council implemented alcohol outlet density standards in order to protect communities from the negative impacts of outlet density. According to the California Legislative Council, the following standards are required for businesses in California:

- On-Sale General 2,000 Residents = 1 license
- Limits for Off-Sale Beer and Wine 2,500 Residents = 1 license
- Off-Sale General 1,250 Residents = 1 License

These standards provide cities with a way to regulate alcohol sales businesses to prevent an overabundance within a census tract. For example, a census tract with a population of 15,000 people can have a maximum of eight on-sale general liquor licenses, six off-sale beer and wine licenses, and twelve off-sale general liquor licenses. Having a state mandate, keeps some communities from becoming overpopulated with alcohol outlets and allows others to address their overpopulation issues.

2. Relevant Studies
An increased density of alcohol outlets has been connected to several nuisance issues. These issues include, but are not limited, to crimes such as drunk driving, loitering, and public drunkenness; which can jeopardize the health, safety, and welfare of the public. This further supports the need to mitigate these issues. The following studies explore the impacts of increased alcohol outlet density and other alcohol related issues on various communities.

2.1. California Department of Public Health Study

The California Department of Public Health conducted a study to determine the impact of alcohol outlets in communities around California as part of their Healthy Communities Data and Indicators Project (California Department of Public Health, 2014). The study found that a “high density (of alcohol outlets) and proximity to alcohol outlets in neighborhoods is associated with higher rates of binge drinking and associated harms, like drinking and driving, motor vehicle-related pedestrian injuries, child abuse and neglect, youth drinking, intimate partner violence, and violent crime” (California Department of Public Health, 2014). Interestingly, the study revealed that low-income neighborhoods are especially affected by the impacts of alcohol outlet density. As shown in Figure 1 below, Latino and African American populations are impacted by alcohol outlet density at a much higher percentage rate than White populations. This finding suggests that there is a racial disparity in the populations that feel the effects of increased alcohol outlet density.
ALCOHOL NUISANCE ABATEMENT ORDINANCE

2.2. The University of California, Riverside Study

The University of California, Riverside conducted two separate studies regarding the connection between liquor store densities and youth homicides and the impact of the availability of single beverage alcohol containers. Through their liquor store density study, the university found a direct correlation between youth homicides and density of alcohol outlets. The availability of alcohol contributed to youth violence in the community. In the case of the single beverage sale study, the university found an increase in violent crime due to single serve container alcohol availability in the community. Businesses with more than 10% of their displays being single beverage alcohol had a higher rate of crime than other communities. UC Riverside used data from several cities in 36 states in determining the results of their study (Miller, 2011).

3. Legality
Implementing an alcohol nuisance abatement ordinance, also referred to as “deemed approved” ordinance, is the method many cities in California have chosen to address the nuisance issues that stores with alcohol sales create. The purpose of implementing a nuisance abatement ordinance is to control and monitor the nuisance. Once the ordinance is implemented any store with a “repeated nuisance” or a store that has three or more police calls in a calendar year as a result of business operations, is in jeopardy of having their liquor license. The license can be protested by the City and revoked by California’s Department of Alcohol Beverage Control. Cities use the ability to revoke liquor licenses as the incentive for compliance.

The implementation of nuisance abatement ordinances has been successful in cities such as Oakland and Long Beach. Success for this type of ordinance is largely found in public opinion, the lowering of crime statistics, and aesthetic improvements. In 2013, the City of El Cajon implemented a nuisance abatement ordinance that requires conditional use permits for all new alcohol-related businesses. The ordinance allows the City implement aesthetic standards on existing businesses, such as having no obstructions blocking the windows. While implementing conditional use permits for all new businesses, which allows the City to implement the same aesthetic standards but additionally regulate beverage quantity and type.

3.1. Legal Cases

Over the years, cities have created regulations to combat nuisance issues. The legality of these regulations has often been challenged in the courts. This section presents four legal cases related to nuisance regulation. The main point argued in many of these cases is that stores should have the right to conduct their business without interference. Especially if the store has been operating for many years and previously was protected by grandfathered rights. The “deemed approved” nature of these ordinances allows the city or county to get around any grandfathered
ALCOHOL NUISANCE ABATEMENT ORDINANCE

rights a store has. The following cases give a comprehensive overview ordinance implementation obstacles faced all over California.


The City of Oakland applied an alcohol nuisance abatement ordinance to all non-conforming liquor stores in their jurisdiction (Justia, 1996). All liquor stores without a conditional use permit were automatically deemed non-conforming and had to adhere to the ordinance. This case determined a city’s right to apply a nuisance abatement ordinance.

The first issue brought up is grandfathered rights. If a business has been in an area long enough to have the use grandfathered in, regardless of later implemented zoning regulations, it should be an acceptable use due to its grandfathered rights. This was determined to be an irrelevant issue to this case; due to the ability of City’s police power to deal with nuisances in the City. In order to protect the health, safety, and welfare of the community, any use deemed as a nuisance can be dealt with regardless of the zoning or grandfathered rights.

The next issue brought up in this case is the City’s ability to require an alcohol beverage sale business to abide by the aesthetic standards of a nuisance abatement ordinance and face consequences if they fail to comply. According to decisions made in this court case, “If an alcoholic beverage sales establishment fails to comply with the requirements of the ordinance after numerous administrative attempts to obtain compliance, the ordinance authorizes the city to seek a court order to abate a nuisance or to ask the Department of Alcohol Beverage Control to revoke the license” (Justia, 1996).

The final issue brought up, in this case, was the attempt of the City of Oakland to implement a regulatory tax on alcohol-related businesses. It was determined by the court that
ALCOHOL NUISANCE ABATEMENT ORDINANCE

City has no legal right to require alcohol-related businesses to pay an additional tax due to the nature of their business.

3.1.2. City of Bakersfield v. Miller (1966)

The nature of this case is the determination of a city’s right to declare a public nuisance. The defendant argued that the City of Bakersfield was overreaching in its ability to declare a building in the community a public nuisance (Justia, 1966). The courts determined that the City is within its right to declare a building a public nuisance due to the fact it does not comply with uniform code and ordered the nuisance to be abated. This case helped determine that a city has the right to declare a public nuisance and require the abatement of such a nuisance.

3.1.3. Livingston Rock & Gravel Co. v. County of Los Angeles (1954)

The County of Los Angeles rezoned an area to light manufacturing. An existing cement mixing plant called Livingston Rock and Gravel Co. was ordered to vacate the area due to the use being recognized as a nuisance (Justia, 1954). This case was brought to court and found in favor of the cement mixing company.

The court determined that the placement of the cement mixing company was not detrimental to the health, safety, and welfare of the county. The light industrial area had no effect on any residential parts of the community. In order for a use to be declared a nuisance, there must be a direct negative effect on the health, safety, or welfare of citizens.

This case helped define what qualifies as a nuisance. It determined that evidence is needed when identifying a nuisance. A direct negative effect on the community must be found when establishing a nuisance. In this case, the County was unable to determine a direct connection between the nuisance and the health, safety, and welfare of the community. The
cement mixing company was allowed to remain in the area rezoned to light manufacturing as a grandfathered use.

3.1.4. The Yaffe Decision (1990)

The City Council of Los Angeles attempted to impose restrictions on liquor sales at John's Liquor, Leon's Liquor, and Pacoima Food Market in a 1985 Ordinance (Barker, 1990). Judge David Yaffe, a Los Angeles Superior Court Judge, overturned the City’s restrictions, stating that City Council was surpassing their authority by trying to impose restrictions that only the State Alcohol Beverage Control could impose. There exists a separation of powers that the City failed to adhere to. Cities are unable to legally regulate the quantity and type of liquor sold at licensed liquor store establishments. This creates an obstacle to the reduction of the nuisance that the sale of alcohol creates. In order to create a safer environment without the ability to control the sale of alcohol, other measures must be taken.

4. Case Studies

While still a new practice, regulating alcohol-related businesses through the use of an alcohol nuisance abatement ordinance has become common in California. Case studies are used to understand what other communities are doing and learn from their efforts. The following case study analyzes the City of Long Beach and the City of El Cajon to provide a better understanding of how alcohol nuisance abatement ordinances have worked in practice.

4.1. City of Long Beach

The City of Long Beach adopted their Alcohol Nuisance Abatement Ordinance in August of 2013 (City of Long Beach, 2012). The City had been dealing with issues in North Long Beach; the area has a high concentration of liquor stores per capita 3.1 per 10,000 residents
versus 1.3 per 10,000 in the rest of the City (Kelly, 2013). This undue concentration had been essentially unregulated by the City due to the fact that up until the implementation of the ordinance these stores had the protection of grandfathered rights. This ordinance requires all stores whom previously been protected by grandfathered rights to achieve a “deemed approved” status. In order for a store to achieve this status, it must comply with various aesthetic standards set in the ordinance to the satisfaction of Planning Bureau staff.

The City began their nuisance abatement efforts in the Ninth Council District (refer to Figure 2 for context). This district was chosen due to the fact that 76% of the Type 21 liquor stores were grandfathered in (Kelly, 2013). The 26 grandfathered stores in the ninth district were deemed non-conforming and planning staff worked with each business to bring them into compliance. As of January 2014, eleven stores (42%) met the new requirements, twelve stores (46%) are nearly compliant, and three stores (12%) have yet to meet the requirements (Inside District 9, 2014).
The City of Long Beach has seen success and continues to see success in the implementation of their Alcohol Nuisance Abatement Ordinance. The most recent implementation of the ordinance in the Second Council District (refer to Figure 2 for context) yielded the results seen below in Figures 3 and 4. Long Beach not only abated the nuisances that liquor stores created, it additionally beautified the City in the process.
ALCOHOL NUISANCE ABATEMENT ORDINANCE

Figure 3: Jones Liquor in Long Beach before Alcohol Nuisance Abatement Ordinance implementation (Source: Google Maps).

Figure 4: Jones Liquor in Long Beach after Alcohol Nuisance Abatement Ordinance implementation (Source: Author).
4.2. City of El Cajon

The City of El Cajon is in a constant battle with the nuisance issues that liquor stores cause in their community. These issues include sales of alcohol to minors, public drunkenness, and more. In 2011, 8.3% of police arrests were alcohol-related (not including DUIs), and that number jumped to 13.2% in 2012 (Mork, 2013). Additionally, several stores in the community have been caught selling to minors. In 2013, planning staff decided to take action and created an ordinance to control the alcohol outlet issues.

El Cajon is the 21st city in California to implement a “deemed approved” alcohol nuisance abatement ordinance, allowing for the direct regulation of each alcohol-related business regardless of grandfathered rights. The City decided to take a different approach that no other city had taken before them. They regulated alcohol sales by type and quantity which in the past has not been a successful regulatory strategy, see the City of Oakland v. California Beverage Retailer Coalition legal case discussed in Chapter 3.1.1.

The reason why the City of El Cajon has been successful using this method of alcohol regulation when others have not, is that the ordinance only limits the sales in businesses that obtain a conditional use permit. Even the City Attorney, Morgan Foley, admitted that “California’s constitution gives power to regulate alcohol and would not allow us to ban sales” (Mork, 2013). But in the case of a conditional use permit, restrictions on businesses are completely discretionary. Restrictions must be justified, but the benefits of banning certain types of alcohol sales are easily justified when considering the effect that accessibility of alcohol has on crime, as discussed in the California Department of Public Health Study in Chapter 2.1.

Since the passing and implementation of the ordinance, El Cajon has seen a major drop in arrests. According to the Police Chief of El Cajon, “In 2012, in El Cajon, there were 526 public
ALCOHOL NUISANCE ABATEMENT ORDINANCE

drunkenness arrests, 148 drinking in public arrests and 29 minor with alcohol arrests. The alcohol control ordinance was passed in 2013. Then in 2014, El Cajon saw all those numbers drop to 344 public drunkenness arrests, 109 drinking in public arrests and two minor with alcohol arrests” (Nguyen, 2015).

In 2014 four “mom & pop” liquor stores sued the City in the Federal District Court for the Southern District of California on the grounds that the City’s ordinance showed favoritism to larger stores. This is due to the fact that, “The ordinance does not add restrictions to alcoholic beverage establishments consisting of a general retail store, a grocery store, or a retail pharmacy, which has at least 10,000 square feet of gross floor space, and a maximum of 10 percent of the gross floor area devoted to the sales and display of alcoholic beverages” (Pearlman, 2015). The Federal District Court dismissed the lawsuit saying that it was unmerited and that the ordinance does not discriminate against “mom & pop” stores in city. This case is a victory for the City of El Cajon and affirmed the legality of their ordinance.

Even with the ordinance implemented, El Cajon still struggles with alcohol-related crime. In April of 2015, “Of the 67 liquor stores targeted in a recent underage decoy operation by El Cajon Police, 18 liquor stores sold to minors” (Lee, 2015). There is still room for improvement, but the City has made major progress in controlling crime. If the City were to require all alcohol outlets to get a conditional use permit and phase out the “deemed approved” model, they would have the authority to limit alcohol sales city-wide. However, creating a conditional use permit for every business city-wide would be extremely difficult to implement.

4.2.1. Alcohol Sales and Deemed Approved Alcohol Sales Regulations Ordinance

The City of El Cajon’s “Alcohol Sales and Deemed Approved Alcohol Sales Regulations Ordinance” addresses several problems the City has encountered due to an overconcentration of
liquor stores. The ordinance was created by City staff to protect the community from the negative impacts of alcohol sales. This ordinance helps turn alcohol sale establishments into businesses that are “complementary” to the surrounding businesses and civic services. A complementary business does not negatively affect the health, safety, and welfare of surrounding establishments. Mitigation is necessary to control the issues that come with alcohol sales establishments, such as loitering and graffiti. Mitigation is used to ensure these businesses are not public nuisances.

The City uses the ordinance to monitor the operators of alcohol sale establishments and to ensure compliance with all regulations. If a business fails to comply, the planning commission has the ability to conduct public hearings and make determinations regarding the business. The commission can even protest the license and have California Alcohol Beverage Control revoke the alcohol sale privileges of the business.

This ordinance uses two different methods to control the nuisance that alcohol-related businesses create. These methods include the “deemed approved” model, that many cities have used in such an ordinance and the traditional planning method of a conditional use permit to put specific operating regulations on a business. The ordinance establishes the City’s right of inspection and entry of any liquor sales establishment. Distance requirements for any new alcohol-related business in the City provide a buffer between community-oriented businesses and services and alcohol sales, “No new off-sale alcoholic beverage establishment shall be located within 600 feet of residentially zoned property, public or private schools, healthcare facilities, religious facilities, and parks or playgrounds. No new on-sale alcoholic beverage establishment shall be located within 1,000 feet of an existing on-sale alcoholic beverage establishment and/or within 600 feet of residentially zoned property, public or private schools, healthcare facilities,
religious facilities, parks or playgrounds, and off-sale alcoholic beverage establishments” (City of El Cajon, 2013). Off-sale businesses sell alcohol to be consumed off-site and on-sale businesses allow alcohol to be consumed on-site.

According to the ordinance, all existing off-sale businesses are “deemed approved” effective November 1, 2013, as long as compliance with the deemed approved standards is found. The deemed approved regulations are as follows. The establishment shall not affect the health, safety, and welfare of persons residing in and around the business. Repeated nuisance activities are prohibited. The business must comply with all state, federal, and local laws. The façade of the establishment should not disturb with the surrounding establishments (no excess signage or lighting). Performance standards of the business must be posted. All staff must complete the "Responsible Beverage Sales" training.

There are several operational standards the City implemented for new, modified, or redeveloped off-sale beverage businesses all of which are required to obtain a conditional use permit. Any establishment consisting of more than 10,000 square feet with a maximum of 10% of the gross floor area dedicated to alcohol sales are exempt from this requirement. The business must not jeopardize the health safety and welfare of the community. There must not be repeated nuisance activities due to business operation. Compliance with all state local and federal laws is required. The upkeep of the business must be “complementary” to the surrounding neighborhoods. The most innovative operational standards that the ordinance requires are the alcohol sale limitations. The requirements are as follows:

- Wine is not to be sold in containers less than 750 milliliters
- No wine with alcoholic content greater than 15%
- No distilled spirits in containers of less than 375 milliliters
ALCOHOL NUISANCE ABATEMENT ORDINANCE

- No 50 milliliters “airline bottles” or 375 milliliters “hip flask” containers
- No beer, ale or malt liquor in a container with a volume greater than 32 ounces
- No alcoholic beverage sales from a drive-up or walk-up window
- No display, sale or distribution of alcohol in an ice tub, barrel or similar container
- No display of alcoholic beverages within 5 feet of the store entrance

The ordinance requires several aesthetic nuisance abatement measures in order to control issues like littering and loitering. Signage cannot display alcohol products or tobacco. The business must add lighting and trash receptacles on both the interior and exterior of the building.

The removal of payphones helps control loitering. The prohibition of the sale of single cups helps control alcohol consumption on the premises. The vegetation must not obstruct windows and only 15% of windows can be blocked by signs in order to give police a visual into the business. All federal state and local operating conditions must be posted on the site.

Additionally, Responsible Beverage Service (RBS) Training is required in order to ensure the staff has knowledge of the regulations that come with the sale of alcohol.

All new off-sale and on-sale businesses require conditional use permits. The benefit of using a conditional use permit is that it allows for the regulation of liquor sales. The revocation of the liquor license is a possibility without compliance with the ordinance. The City has the ability to protest the issuance of a liquor license issued by California Department of Alcohol Beverage Control (ABC). This protest causes the removal of the license after a 180 day processing period. An annual alcohol sales regulatory fee is implemented in this ordinance in order to pay for all training and enforcement required by the ordinance. The City has both the ability to enforce and the funding to support the enforcement of the ordinance.

5. City of San Diego Alcohol Nuisance Abatement
ALCOHOL NUISANCE ABATEMENT ORDINANCE

Alcohol-related businesses have begun to create a nuisance in the City of San Diego. This chapter addresses the current state of San Diego and where the City is vulnerable to the effects of this nuisance. The best practices of alcohol nuisance abatement ordinances are gathered and analyzed, as well as the implementation practices that similar cities have taken. All this information is then gathered and incorporated into an alcohol nuisance abatement ordinance for the City of San Diego.

The City of San Diego is the second largest City in California with a population estimated to be 1,370,000 (City of San Diego, 2011). In recent years, alcohol-related arrests have increased (refer to Figure 5) while the City’s population has remained stable. This trend shows that alcohol-related nuisances are becoming more common in San Diego. In order to get in front of a growing issue, regulations need to be implemented to help control the sale of liquor city-wide.

<table>
<thead>
<tr>
<th>Year</th>
<th>SDPD Alcohol Arrests</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>11,927</td>
</tr>
<tr>
<td>2013</td>
<td>12,538</td>
</tr>
<tr>
<td>2012</td>
<td>6,922</td>
</tr>
<tr>
<td>2011</td>
<td>9,298</td>
</tr>
<tr>
<td>2010</td>
<td>9,298</td>
</tr>
<tr>
<td>2009</td>
<td>9,563</td>
</tr>
<tr>
<td>2008</td>
<td>9,800</td>
</tr>
</tbody>
</table>

*Figure 5: City of San Diego Alcohol Arrests by Year (City of San Diego, 2015).*

According to the California Department of Alcoholic Beverage Control, there are currently 447 Liquor Stores in San Diego operating with a Type 21 Liquor License, which comes out to about 3,100 licenses per person. The City of San Diego has such a large jurisdiction that it becomes difficult to manage local issues. In 2014, San Diego City Councilwoman Marti Emerald urged the City to pay attention to the overconcentration of liquor stores in San Diego’s “Mid-
ALCOHOL NUISANCE ABATEMENT ORDINANCE

City” area. Her efforts were prompted by the Latino Youth Council survey of 30 stores in the Mid-City area that are licensed to sell alcohol. Their survey revealed that 28 of the 30 stores were out of compliance with the California Department of Alcoholic Beverage Control Standards (Brown, 2014). Implementing an alcohol nuisance abatement ordinance will address local issues and prevent any future issues from arising city-wide.

According to the California Department of Alcoholic Beverage Control, an undue concentration of alcohol sales establishments applies when there is a high amount of crime or an overpopulation of outlets. To be considered high crime, there needs to be 20% more crimes in that area than in that crime reporting district when compared to the entire law enforcement jurisdiction. In order for there to be an overpopulation of outlets there needs to be a higher average of outlets in a census tract than the county average of outlets. This is where areas like Mid-City are affected. Although the State Standards are met city-wide (refer to Figure 6), there is an undue concentration of alcohol sales outlets in several parts of the City of San Diego. For example, census tract 11 has a population of 3,098 residents. The county average of outlets to people is 1 outlet per 1,555 residents. Due to this average, a population of 3,098 should have 2 authorized alcohol off-sale outlets. The actual number of outlets is 4 (Institute for Public Strategies, 2012). Census tract 11 has an undue concentration of off-sale alcohol outlets. This undue concentration is not uncommon in the City of San Diego.

<table>
<thead>
<tr>
<th></th>
<th>Off-Sale General License (1,250 Residents per 1 License)</th>
<th>Off-Sale Beer &amp; Wine License (2,500 Residents per 1 License)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Existing</td>
<td>447</td>
<td>350</td>
</tr>
<tr>
<td>Maximum Allowed</td>
<td>1,096</td>
<td>548</td>
</tr>
</tbody>
</table>

*Figure 6: Existing vs Allowed alcohol retail sale establishments in the City of San Diego (Source: California Legislative Council State Standards)*

5.1. Best Practices
<table>
<thead>
<tr>
<th>Best Practice</th>
<th>Description</th>
<th>Effectiveness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conditional use permit</td>
<td>Conditional use permits allow for discretionary regulation. The addition of limits on alcohol quantity and type are achievable when implementing a conditional use permit.</td>
<td>High</td>
</tr>
<tr>
<td>Removal of payphones</td>
<td>Payphones encourage loitering in front of or near the store. The removal gives the police department the ability to control loitering.</td>
<td>Medium</td>
</tr>
<tr>
<td>Removal of signage</td>
<td>The removal of signage allows for a clear police visual into the business and an open more welcoming storefront. The City of Long Beach requires signage to not include price and the City of El Cajon prohibits signage from displaying any alcohol or tobacco products.</td>
<td>Medium</td>
</tr>
<tr>
<td>Aesthetic improvements to property</td>
<td>Aesthetic improvements allow for issues like vandalism to be addressed. Any graffiti or other forms of vandalism become obsolete with the replacement of windows and painting or power-washing of buildings. Additionally these improvements contribute to the overall beautification of the community.</td>
<td>High</td>
</tr>
<tr>
<td>Security cameras and/or security guard</td>
<td>Security guards mitigate against issues such as theft and loitering. Security cameras create a record of any crimes that may occur. Both methods create a safer alcohol sale establishment.</td>
<td>High</td>
</tr>
<tr>
<td>Exterior lighting</td>
<td>Exterior lighting allows for visible storefronts deterring crime and giving police a visual regardless of the time of day.</td>
<td>High</td>
</tr>
<tr>
<td>24 hour complaint line posted in store</td>
<td>Having the state and city standards posted in the store along with a 24 hour complaint line allows for the community to keep accountability of the stores compliance.</td>
<td>Medium</td>
</tr>
<tr>
<td>Regulation of liquor quantity and type</td>
<td>Regulation of liquor quantity and type is only possible under the use of a conditional use permit but this method can be extremely effective in decreasing alcohol availability</td>
<td>High</td>
</tr>
<tr>
<td>Removal of obstructions blocking view</td>
<td>Removal of obstructions from windows allow for a clear police visual into the business. Additionally, it creates a welcoming open storefront instead of a covered enclosed business frontage.</td>
<td>High</td>
</tr>
<tr>
<td>General code enforcement</td>
<td>Having a code enforcement officer walkthrough the property ensures that any safety issues that involve things like wiring or structural support of the building are addressed.</td>
<td>Low</td>
</tr>
<tr>
<td>Responsible Beverage Service (RBS) Training</td>
<td>Responsible Beverage Service Training allows alcohol establishment employees and owners to learn the appropriate responses to situations they will encounter in the business of alcohol sales.</td>
<td>High</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Trash receptacles</td>
<td>Trash receptacles allow for beautification of the property through reduction of litter in front of and inside the store.</td>
<td>Low</td>
</tr>
<tr>
<td>Spatial store placement regulations</td>
<td>The regulation of spatial placement of liquor stores is used to ensure that an overconcentration of stores does not occur. Often regulated through a ratio of stores to residents.</td>
<td>Medium</td>
</tr>
<tr>
<td>Regulatory tax</td>
<td>A regulatory tax is illegal; thus, it is ineffective. Cities are allowed, however, to recover costs for employee time spent enforcing an ordinance.</td>
<td>Low</td>
</tr>
</tbody>
</table>

### 5.2 Implementation

Many cities including Long Beach and El Cajon require aesthetic improvements to businesses as part of their alcohol nuisance abatement efforts. This method is widely used and proven successful due to decreases in crime after implementation. Cooperation of the businesses is key in implementing such standards. In order to apply aesthetic standards to business, the business owner must make the changes, which is why cities use their ability to protest a liquor license as motivation to comply.

The City of Long Beach found the most implementation success for their Alcohol Nuisance Abatement Ordinance when using a joint implementation effort. The City utilized Police, Code Enforcement, Neighborhood Services, and Planning resources to assist businesses in their efforts to comply with the ordinance. The Planning Department organized the efforts and help implement the ordinance. Neighborhood Services provided owners with a funding source for exterior improvements. Code Enforcement ensured that the businesses were up to building code. The Police Department explained to owners why such an ordinance is necessary.
ALCOHOL NUISANCE ABATEMENT ORDINANCE

The City of El Cajon’s Alcohol Sales and Deemed Approved Alcohol Sales Regulations Ordinance sets ambitious standards for implementation. Namely, the ordinance requires all new alcohol-related businesses to obtain conditional use permits. This allows the City to implement specific standards such as regulation of liquor quantity and type. Implementing a conditional use permit has a high cost due to the staff time needed to write and implement such a permit. However, once a conditional use permit is implemented it is an effective method in enforcing City standards. Failure to comply with a conditional use permit can result in the closing of a business.

5.3. Draft Ordinance

An ordinance of the City Council of the City of San Diego amending the San Diego Municipal Code by adding Chapter 10.10 relating to alcohol nuisance abatement.

WHEREAS, nuisance activities including public drunkenness, loitering, robbery, and other such activities have increased due to the sale of alcoholic beverages in liquor stores throughout the City of San Diego; and

WHEREAS, the City is within its police power to implement an ordinance to abate the nuisance caused by these liquor stores.

NOW, THEREFORE, the City Council of San Diego ordains as follows:

The San Diego Municipal Code is amended by adding Chapter 10.10 to read as follows:

Chapter 10.10

Alcohol Nuisance Abatement Ordinance

10.10.010 Title
ALCOHOL NUISANCE ABATEMENT ORDINANCE

The following shall be known as the City of San Diego Alcohol Nuisance Abatement Ordinance.

10.10.020 Definitions

“Performance Standards” are the aesthetic and other applicable improvements that must be met by businesses. These standards can be found in Chapter 10.10.040.

“Deemed Approved” status is an approval status given to all businesses who comply to this ordinance to the satisfaction of the performance standards.

10.10.030 Scope

This ordinance will require all liquor stores in the City of San Diego with a Type 21 Liquor License to comply with a variety of aesthetic standards that will eliminate the nuisance that these stores create. A Type 21 License is defined by the California Department of Alcoholic Beverage Control as an “Off-Sale General” license which “authorizes the sale of beer, wine and distilled spirits for consumption off the premises where sold. Minors are allowed on the premises” (California Department of Alcoholic Beverage Control, 2015). All non-compliant liquor stores must achieve a “deemed approved” status in order to comply with the ordinance. Refusal to comply can result in the City recommendation the California Department of Alcoholic Beverage Control for the revocation of a business’s liquor license or legal action brought against the business by the City to abate the nuisance caused by the business.

10.10.040 Performance Standards

In order for a non-conforming liquor store to gain “deemed approved” status the following performance standards must be met:

A. The use does not jeopardize the health safety and welfare of any civilians.
ALCOHOL NUISANCE ABATEMENT ORDINANCE

B. The use is operated in accordance with all applicable laws, rules, and regulations including those of the City of San Diego and the California Department of Alcoholic Beverage Control.

C. The use does not continue to be a nuisance by resulting in nuisance activates such as loitering, public drunkenness, robbery, assault, public urination, vandalism, or other such behaviors.

D. The use is operated in a quiet and neat manner as to not disturb any neighboring properties. The maintenance and upkeep of the building and any surrounding public space including alleys and sidewalks is required.

E. Exterior lighting must cover all public areas surrounding the business.

F. Security cameras covering all entrances and exits of the business, all parking areas provided by the business, and any public area adjacent to the business.

G. The building address must be a minimum of 4 inches posted in an unobstructed location on the exterior of the establishment.

Figure 7: Example of well-lit businesses (Source: http://www.cobalb.com/business-districts/4th-street-retro/).
ALCOHOL NUISANCE ABATEMENT ORDINANCE

H. There must be an unobstructed view of the interior of the establishment. Any excessive advertisement and shelving must be removed in order to ensure visibility into the establishment. The visual into the establishment is to be to the satisfaction of the Chief of Police.

I. Any exterior pay telephones within a quarter mile of the establishment must be removed. If the payphone is on a nearby property all efforts to remove the payphone must be made including contacting the property owner and providing financial means for removal. The addition of any new pay telephones is prohibited.

J. Graffiti found on the building or fences of the establishment must be removed within 24 hours of notice.
K. All performance standards provided by the City and the California Department of Alcoholic Beverage Control must be posted on the door of the establishment along with a City provided public complaint telephone number.

10.10.050 Administration

The Planning Department is in charge of administering this ordinance, with assistance from San Diego Police Department and Code Enforcement.

10.10.060 Enforcement

Within 90 days of notification, all businesses with a type 21 liquor license must comply with the performance standards set in the “Performance Standards” section of this ordinance. Failure to comply with the standards set will result in the City protest and Alcohol Beverage Control revocation of the business’s liquor license.

10.10.070 Fees

The City reserves the right to collect fees for the implementation of this ordinance and any staff time or City resources that are expended due to the implementation.

6. Summary Statement

Alcohol nuisance abatement ordinances are an effective method for controlling nuisance issues that are created by alcohol-related businesses. The problems alcohol-related businesses have cause have grown to this extent due to lack of regulation. Many stores have been grandfathered into the community making the “deemed approved” model the only method to enforce regulations on these businesses. In the future, the mitigation methods found in these ordinances should be incorporated into the general plan’s safety element. This allows the issues
caused by alcohol outlet density to be in addressed in the founding document of the city. Making addressing alcohol-related issues a priority instead of an afterthought, implemented in the form of an ordinance, due to increasing alcohol-related crime.
References


ALCOHOL NUISANCE ABATEMENT ORDINANCE

City of Long Beach. (2012). Alcohol Nuisance Abatement "Deemed Approved" Ordinance. 

Municode: Long Beach, CA. Retrieved on March 1, 2016 from 


Alcohol Policy Panel of San Diego County. Retrieved on March 1, 2016 from


ALCOHOL NUISANCE ABATEMENT ORDINANCE


ALCOHOL NUISANCE ABATEMENT ORDINANCE


Retrieved on January 22, 2016 from