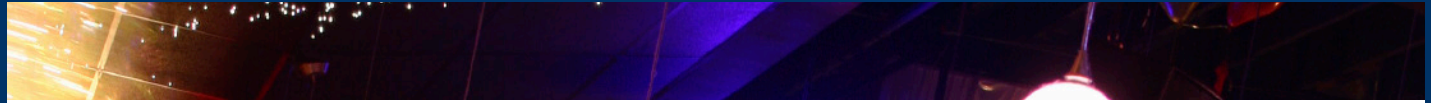




COMMUNITY PREVENTION INITIATIVE (CPI)

# POLICY BRIEF



## Restaurants that “Morph” into Bars and Nightclubs in California Communities: What’s the Problem and What Can Be Done About It?



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## Restaurants that “Morph” into Bars and Nightclubs in California Communities: What’s the Problem and What Can Be Done About It?

### SETTING THE SCENE: AN INSIDE LOOK AT MORPHING IN SAN LUIS OBISPO, CA.



*At about 10:00 pm, downtown San Luis Obispo (SLO) changes dramatically from its daytime uses—shopping, tourism, dining, city government, professional offices—to a nighttime bar scene of large drunken crowds surging between a dozen or so establishments in a six-block area. A lively music scene and drink specials encourage the crowd—mostly between the ages of 18 and 25, many of them Cal Poly students—to stay longer and drink more. Some have “pre-loaded” or had drinks before coming downtown. ID checking is difficult with noisy and impatient crowds, and many patrons continue to be served despite their apparent drunkenness. At 2:00 am closing time, patrons from these establishments transition to the street, many of them inebriated and some falling-down drunk. (Figs. 1-6)<sup>i</sup>*

The scene described here is a pressing issue in cities across California. According to research by CLEW Associates, the problems stem primarily from restaurants that shift or “morph” their main operations from food consumption during the day to alcohol sales at night. According to the Chief of Police for SLO, for many years this scene went on night after night, intensifying on weekends. After years of allocating police resources aimed at problematic intoxicated patrons, city leadership embarked on a planning process directed toward working with restaurant owners and managers to reduce these problems through land-use planning and zoning laws in combination with law enforcement. SLO now offers a model for other cities seeking to mitigate these problems using local tools readily available to all California municipalities.<sup>1</sup>

While the need for public attention to problems with morphing may not be immediately apparent, tracking of police logs and close monitoring of these events illuminate the negative impacts on public safety and drains on community/municipal resources. In SLO, a study of annual police calls-for-service revealed that of nearly 1,000 police incidents occurring at the city’s 85 on-sale outlets, three-fifths of the incidents (nearly 600) occurred at just 10 Downtown establishments. According to the Chief of Police, four police officers were assigned to manage these late-night crowds. The officers contended with under-age drinkers, fights, unwanted sexual advances among patrons, violence, property damage, disturbances to neighbors, and DUIs. The cost for extra police support was borne by the city, not by establishments where the problems originated.

When morphing is concentrated and unregulated, the consequences run deep. Individual drinkers and their families, bystanders and neighbors all feel the impact. Treatment for medical emergencies and harm falls on health providers and on public health services. Costs of property damage fall on neighboring property owners and insurance companies. The legal and economic aftermath falls on the judicial system and on employers.

This Policy Brief looks at the issue of restaurant morphing in depth. What is morphing and how does it lead to problems? Where does morphing occur? How did morphing begin and how does it spread? Who is responsible for preventing and reducing problems related to morphing? What actions are being taken by the California Department of Alcoholic Beverage Control (ABC) and local communities to prevent and reduce (mitigate) these problems? What more can be done? A case example explores one city’s efforts to develop an effective preventive approach.

<sup>1</sup> Comments and images presented by Chief Deborah Linden, San Luis Obispo Police Dept, at the Alcohol Policy XV Conference held in Washington, DC on December 7, 2010: Session C-28 *How California restaurants morph into bars and what the state ABC and cities are doing about it.*



## What is morphing and how does it contribute to problem behaviors and unlawful practices?

In California, far more drinking occurs at establishments licensed by the Alcoholic Beverage Control (ABC) as “restaurants” than at those licensed as “bars.” Significant problems occur at some restaurants that serve meals during the day, then morph into bar/nightclub operations at night. Most restaurants make this shift, which is permitted by ABC regulations, without creating visible problems. However, a small number of outlets licensed as “restaurants” generate high levels of police events. Research shows that about ten percent of restaurants in a given community

create about 50 to 60 percent of total police events out of all restaurants in that community, mostly between 10:00 pm and 2:00 am (ABC mandatory closing hours for alcohol sales).<sup>2</sup>

According to analysis of police events and on-site observations,<sup>3</sup> problematic morphing of bars and restaurants occurs especially when patrons engage in high levels of drinking and drunkenness in the context of large crowds and overcrowded premises. Excessive drinking and drunkenness lead to noise, fights and confrontational behavior, unwanted sexual advances, and other behavior. High levels of drinking in highly crowded conditions are especially difficult to control and are likely to disturb neighbors and damage nearby property. Venues that include dancing, live DJs and on-stage entertainment may be especially susceptible. Taken together these conditions pose major challenges for even the most capable management and most diligent oversight agencies.

## Where does morphing occur?

A recent survey of Alcoholic Beverage Control (ABC) district offices<sup>4</sup> revealed problems associated with morphing to be pervasive throughout the state. District office respondents confirmed studies of local police events showing that a small number of outlets create a disproportionate number of police events in each local jurisdiction.<sup>5</sup> Respondents reported that morphing has been a troublesome part of restaurant operations for many years in all regions of the state, in large and small cities, in suburbs, and in rural areas. Some respondents reported that morphing has remained relatively steady over the past several years while others said it has been increasing.

Studies using local police data provide a more prescriptive view, defining problematic morphing as more likely to occur in high-density locations. Most often these locations are downtown entertainment districts or suburban shopping malls, where multiple restaurant-bar establishments are clustered in a relatively confined area. Some of these areas catch on as late-night destinations that attract patrons from other cities. Marketing of special promotions and social networking through electronic media attract large crowds. Restaurants offering entertainment venues near large college campuses and in “hospitality” zones attract young people from out of town along with nearby college students and local youth.<sup>6</sup>

2 F. D. Wittman, “Lessons from Three Orange County Cities: Municipal Responses to Rapid Growth of Problems at On-Sale Retail Alcohol Outlets,” California Prevention Collaborative Annual Meeting, Napa, California, March 8-10, 2009. Prepared under Orange County Health Care Agency Contract MA-042-10010415 to CLEW Associates, Berkeley, California

3 K. Graham and H. Morel, *Raising the Bar: Preventing aggression in and around bars, pubs, and clubs*. Willan Publishing, Portland, Oregon, 2008.

4 F.D. Wittman and F. Latcham, *Survey Report and Findings: ABC District Office Experiences with Restaurants that Morph into Bars and Nightclubs*. Prepared for the Center for Applied Research Solutions, Sacramento, under contract to the California Dept of Alcohol and Drug Programs. Prepared by CLEW Associates, Berkeley, California. July 6, 2011.

5 F.D. Wittman and J. Harding, *ASIPS/GIS Community Tour reports prepared for the Orange County Health Care Agency ADEPT (Alcohol Drug Education Prevention and Training) by CLEW Associates, Berkeley, California, for three cities:*

City of Fullerton (CY 2007-2010); City of Newport Beach (CY 2008-2010); City of Garden Grove (CY 2007-2010).

6 Comments by Police Chief, San Luis Obispo PD, during presentation to San Luis Obispo City Council October 20, 2009; and at meeting on May 23, 2011, hosted by Capt. Dan Hughes, Fullerton PD, to review City of Fullerton ASIPS/GIS Community Tour data.

Suburban communities that look to restaurants as key downtown development projects often experience an unexpected and rapid rise in the density of bar-restaurants and nightclubs, rather than or in addition to traditional restaurants, in the development area. This increase is accompanied by a spike in late-night police events. Cities that offer “destination” entertainment and tourism districts, such as San Luis Obispo, Newport Beach, San Francisco, and Santa Barbara, attract large numbers of people that require a constant higher level of police supervision to protect public safety, manage large crowds and maintain public order.<sup>7</sup>

### How has morphing grown to become a problem?

How has the shift from restaurant service during the day to night-time bar/nightclub activity become troublesome in so many California communities? Three sets of circumstances have evolved over the past fifty years that help explain the rise of problematic morphing.

(1) The restaurant industry has evolved from traditional dining, emphasizing meal service that includes alcohol only as an incidental part of the meal, to focus on a “hospitality” experience that blends dining, drinking and entertainment in an expanding environment of high-density community development and social networking.

(2) The California State ABC is struggling to keep pace with restaurant industry growth and oversight for the industry’s evolution toward more drinking and entertainment. State licensing codes are out of date, staffing levels for monitoring and enforcement have decreased, and training resources have declined. These circumstances are putting pressure on local jurisdictions to participate more actively in oversight functions.

(3) Despite the industry shift and decline of State resources, most local jurisdictions have not stepped up their oversight at the community level. Most cities and counties continue to rely on reactive law enforcement to address problems rather than make preventive of their land-use and zoning powers designed to support ongoing oversight of retail alcohol outlets (and all other land uses). However, a handful of municipalities are making promising, innovative use of local planning and zoning powers to address problems with morphing.

## I. EVOLUTION OF THE RESTAURANT/HOSPITALITY INDUSTRY INCREASES FOCUS ON ALCOHOL SALES



The restaurant industry has evolved from locally-owned businesses to include regional and national chain operations. With this change, restaurants have expanded their functions to include socializing, sports, and entertainment. Restaurants are a popular venue for promotions by the alcoholic beverage / hospitality industry. They are also principal components of city development and redevelopment plans. Alcohol sales represent a profitable source of revenue in an increasingly competitive environment both for the restaurateurs and the cities that authorize them.

*From mom-and-pop restaurant to hospitality enterprise.* In the mid-1950s the restaurant industry began expanding from an enterprise comprised solely of locally-owned establishments serving a local clientele to include national and regional chains of restaurants serving a mass market under central corporate direction. Several chains have chosen to emphasize drinking and include entertainment and special events/community activities. For example, the Red Robin grew from a single tavern near the University of Washington in the 1940s to a multi-city chain brand in 1980 offering “gourmet burgers and spirits.” The chain grew to 150 restaurants nationwide by the year 2000. In addition to food, the chain offers an elaborate menu of alcoholic beverages. Other free-standing national chains such as Chili’s, Applebee’s, Red Lobster, and Dave & Buster’s promote mixed drinks and offer a traditional bar built as part of the restaurant. These chains contrast with Denny’s (a small percentage of the chain’s outlets serve alcohol), Sizzler (which serves only beer and wine), and fast-food restaurants such as McDonalds, which do not serve alcohol.

<sup>7</sup> For example, the dedication of four police officers in San Luis Obispo to patrol of about a dozen late-night on-sales establishments in a high-concentration area exemplifies elevated police staffing levels required for entertainment zones in “destination” cities.

Beverages sales of all types, especially spirits-based mixed drinks, offer proven revenue growth and high profit margins as reported by top restaurant chains. With fewer people eating out in this latest recession, many restaurant chains looked to increased alcohol sales by bolstering nighttime activities, extending hours and marketing an “eatertainment” experience. Top restaurant chains have reported that late-night alcoholic beverages result in the largest increase in overall sales. For example, Applebee’s chains reported the highest margin of alcohol sales, 14%, in its history for 2010 (DineEquity Inc.). An Applebee’s franchise representative reported that

“Our late night initiative has been really effective. It is centered on driving traffic from 9 p.m. to close. All [of our] Applebee’s are staying open to midnight or later now. We’ve revamped some of our happy-hour offerings, and we’ve introduced a higher level of activity, with louder music and lower lights. Really refocusing on being a bar” (Ruggles, 2011).<sup>8,9</sup>

Proliferation of bar-restaurants and entertainment venues is part of a larger pattern of urban and suburban development to accommodate higher population densities, pedestrian living, and urban excitement throughout the US over the last two decades. Large cities rebuild downtown and core neighborhood areas while suburban communities develop multi-use town centers and transit villages that include retail, residential, and entertainment activities along with day-time office uses. The hospitality industry and alcoholic beverage industry seek to include bars and restaurants as a major component of this development activity, working with local restaurant owners and real estate developers to advocate their joint interests. The Responsible Hospitality Institute (RHI), for example, funded in part by the alcoholic beverage industry, has a variety of programs and training sessions to support inclusion of recreational drinking and entertainment by “responsible” establishments in community development plans that create “vibrant” night-time economies in special entertainment districts and hospitality zones.<sup>10</sup>

### How the State of California distinguishes between “bars” and “restaurants.”

*California Alcoholic Beverage Control Department (ABC) licensing categories for “restaurants” and “bars.”* Despite having two separate categories, the ABC licensing system allows “restaurants” – places devoted mainly to serving meals – also to function as “bars” – places devoted mainly to drinking. California ABC regulations include five main license categories that distinguish bars from restaurants based on meal service and the type of alcohol served. (See statewide frequencies in Table 1). *Restaurants* (where meals are served) are shown as Type 41 (Beer & Wine Restaurant License) or Type 47 (beer, wine and spirits, called a General Restaurant License). Note there are about twice as many Type 41 Beer & Wine licenses (22,500) as Type 47 General licenses (13,000). *Bars* (where meals are not served) are shown as Type 48 licenses. (The ABC technical term for a “bar” is “public premises.”) There are about five times as many General license restaurants (Type 47) as General license bars (Type 48). Type 40 (Beer Bars) and Type 42 (Beer & Wine Bars) are shown here to present the full ABC inventory of on-sale retail alcohol outlets; however Type 40 and 42 licenses are few and do not contribute to problems with morphing.

Table 1. Description of ABC On-Sale License Types

Type	On-Sale License Description	No. of licenses in CA (2010)
40	On-Sale Beer (no meals)	1,064
41	On-Sale Beer & Wine Restaurant (bona-fide meals)*	22,450
42	On-Sale Beer & Wine Public Premises (Bars) (no meals)	1,348
47	On-Sale General Restaurant (bona-fide meals)	13,006
48	On-Sale General Public Premises (Bars) (no meals)	2,842
**“Bona-fide meals” are regular meals (breakfast-lunch-dinner) prepared in a kitchen on premises		

8 Ruggles, Ron (2011), “A new happy hour,” Nation’s Restaurant News. March 21. Retrieved from <http://www.nrn.com/article/new-happy-hour>.

9 For background discussion of the history of morphing and its control, see F.D. Wittman, “Restaurants that ‘morph’: Problems and prospects for prevention and mitigation.” Berkeley CA: CLEW Associates, July 15, 2011 (unpublished).

10 See Responsibility Hospitality Website at [www.rhiweb.org](http://www.rhiweb.org)

**Police events related to ABC License Types**

*Type 47s stand out.* People usually think bars, rather than restaurants, are the primary source of drunkenness and other alcohol-related problem behaviors at on-sale outlets. When measured by police events, however, Type 47 licenses stand out as the ABC license type that receives the greatest number of police calls for AOD offenses, as well as total police events. In part, this occurs because there are more Type 47s than Type 48 bars in a given community. However, a detailed examination of community-level police data reveal troublesome outlets – measured by the frequency of calls for service and types of offenses – follow similar patterns for both Type 47 and Type 48. These patterns show up in types of calls-for-service, frequency of calls per outlet, and range of calls per outlet, illustrated below. These similarities indicate that troublesome Type 47 and Type 48 outlets are similar kinds of establishments, typically characterized as a loud or rowdy bar, associated with very high levels of alcohol consumption and unruly behavior by patrons.



Table 2 shows police events for a mid-sized California city (population 133,000) to illustrate these relationships.<sup>11</sup> The total rate of police calls per outlet is virtually the same for Type 47s and Type 48s. The rates per outlet for AOD-related events and for arrests are comparable, although somewhat higher for Type 48s. Also similar is the pattern of police events (relative number of alcohol law violations, drug offenses, assaults, disturbances, and other alcohol-related offenses). Note there are fewer calls for service to far more numerous Type 41 Beer & Wine restaurants (77 Type 41s compared to 49 Type 47s). Type 41s generate about one-fourth the rate of AOD calls per outlet, and less than one-sixth as many arrests, compared to Type 47s.

**Table 2. Police Events at On-Sale Alcohol Outlets in a Mid-Sized, Middle-Class Calif City  
Calls for Service by ABC License Type, CY 2010**

ABC Type	Nbr of Outlets in City	Total Calls for Service	Total Calls per Outlet	AOD Calls per Outlet	Arrests per Outlet
41	77	659	8.6	1.1	0.8
47	49	1,819	37.1	4.4	6.1
48	8	301	37.6	6.8	7.6

*High levels of police activity at licensed outlets.* Types 47s in this example city lead the alcohol outlets among the “Top Ten” outlets that generate ten or more AOD events annually (violations of alcohol/drug laws such as public drunkenness). The table below shows that four Type 47s, two Type 48s, and one Type 41 generate 10+ police calls for AOD-specific offenses during the year.

**Table 3. On-Sale Outlets with 10+ AOD-Specific Events, Ordered by AOD Events and Total Events, with Arrests, by Address (Calendar Year 2010)**

ABC Type	Establishment Type (Address not shown)	Total Events	AOD Events	Total Arrests
47	Café/Dancing*	152	39	32
41	Pizza Place*	115	28	6
47	Bar & Grill*	120	21	24
48	Bar*	100	16	22
47	Bar & Grill*	69	14	15

<sup>11</sup> City of Fullerton ASIPS/GIS Community Tour Report (CY 2010), prepared by CLEW Associates, Berkeley, California, under support from Orange County Health Care Services Agency ADEPT, August 25, 2010.

Table 3. On-Sale Outlets with 10+ AOD-Specific Events, Ordered by AOD Events and Total Events, with Arrests, by Address (Calendar Year 2010)

48	Bar	57	14	13
47	Cantina*	95	11	15
	Totals	708	143	127

\* This address also showed 10+ AOD Events in reports for CY 2008 and CY 2009

## 2. CALIFORNIA ABC IS CHALLENGED TO MAINTAIN UP-TO-DATE LICENSING FOR ON-SALE LICENSES

The current ABC system for licensing on-sales retail outlets, created as part of agency reform in 1956, has not kept pace with changes in the on-sale hospitality industry. The California State ABC processes on-sale licenses through nineteen District Offices located throughout the state. A recent survey of District Office experiences with morphing<sup>12</sup> identified four challenges faced by the ABC in managing problematic morphing in the burgeoning bar-restaurant industry: (1) Out-of-date ABC definitions for restaurants and bars; (2) Declining resources for licensee oversight, education and compliance; (3) Narrowly-focused and time-consuming policies for disciplinary action and license appeals; and (4) Dependence on local jurisdictions to participate in effective oversight of on-sale outlets.

### Out-of-date ABC license definitions for restaurants and bars

The ABC Act definitions currently in force for restaurants and bars have not been updated since they were enacted in 1957. The Act defines restaurants and bars as two distinct types of on-sale establishments:

- Restaurants, or “bona-fide eating places,” are defined by Business & Professions Code Section 23038;
- Bars, or “public premises,” are defined by B&P 23039 (see Appendix).

Bona-fide eating places are required to offer meals at customary times of day (e.g., breakfast, lunch, or dinner) that have been prepared in a kitchen on the premises. Persons under 21 are allowed on the premises. Public premises regulations do not permit meals to be served (though snack foods are allowed) and do not permit persons under 21 on the premises. Neither ordinance makes any reference to live music, dancing, or entertainment. The California ABC Act contains no definitions or regulations regarding nightclubs, dance-halls, or cabarets with live entertainment. The ABC permits these activities at restaurants and bars, at the discretion of the licensee and subject to local zoning ordinances. Definition of these activities is the purview of local land-use planning and zoning ordinances as described below.



The distinction between these two definitions has become distorted and unclear as bar-like functions have entered restaurant settings. California court decisions have determined that bar-like functions may occur *within* a licensed restaurant (for example, a separate bar-counter and lounge area), allowing a part of the larger “restaurant” facility to function like a bar.

### Declining resources for ABC licensee oversight, education and compliance

The current ABC Restaurant and Bar definitions were written in 1957 as part of a newly-minted agency reform with up-to-date legislation, a new charter, and a staffing level designed to provide a high level of on-site inspection

12 Op. Cit., F.D. Wittman and F. Latham, Survey Report and Findings: ABC District Office Experiences with Restaurants that Morph into Bars and Nightclubs.



and oversight for on-sale outlets. Over the last forty years, ABC staffing levels have steadily declined and other services for training, compliance and oversight have been challenged to keep pace with the steady growth of retail outlets. The decline in resources relative to industry activity imposes challenges along the entire continuum of ABC oversight from license application review, to education and monitoring for compliance, to enforcement of alcohol laws.

*ABC staff resources have declined.* The ratio of alcohol outlets per ABC investigator has increased almost five-fold, going from one investigator per 220 outlets in 1965 to about one investigator per 1,000 outlets today, according to ABC figures. Said another way, currently the ABC has about the same number of staff it had in the 1950s to oversee about four times as many retail alcohol outlets today. These reductions have led the ABC to place increasing reliance on self-supervision by the licensee, and to encourage greater involvement by local jurisdictions and local community groups in retail outlet licensing and enforcement.



*Education and monitoring resources are voluntary, and meager.*

In response to community concerns, the ABC Central Office has developed well-regarded educational and monitoring resources to support self-supervision by licensees. ABC offers LEAD (Licensee Education on Alcohol and Drugs), a training program for both on-sale and off-sale operators. Help with bar-checks, surveillance, and Grants to Assist Police (GAP grants) also provide support for local jurisdictions. These services focus on techniques to prevent sales to minors and to inebriated persons, and on management practices to prevent disorderly operations.

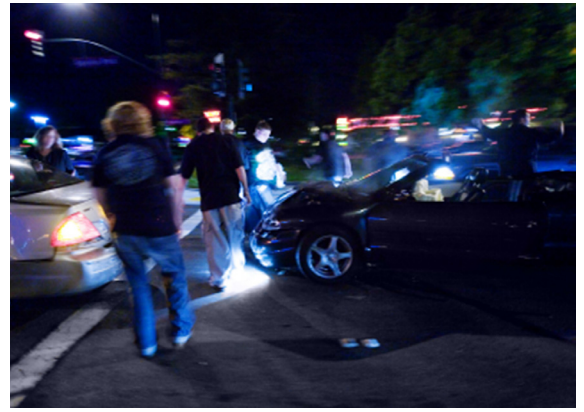
These resources, offered at no charge on a voluntary basis, are popular with licensees, but the recent recession has led to cutbacks in the number of trainings offered. As a result, many licensees who want and need these services are not being reached. Among the licensees most in need of these services, and least likely to request them, are operators who create high levels of police problems and community disturbances.

- Responsible Beverage Service training. The ABC offers the Department's free LEAD training a few times each year in each District. ABC scheduled a total of 242 LEAD training sessions in 2012 to reach approximately 50,000 on-sale outlets. (RBS training is both highly valuable and poorly underutilized in other ways noted in the Conclusion.)
- Grants to assist local law enforcement agencies. The state provides competitive Grant Assistance Program (GAP) contracts to local law enforcement agencies to assist retail operators with compliance and enforcement of alcohol laws. The availability of these highly popular grants (52 in 2012) is well below the demand from the State's nearly 500 cities and 58 counties.
- Bar-checks and covert surveillance. Unannounced site-visits by the police and ABC investigators to licensed establishments help remind operators of the duty to follow alcohol laws closely. ABC provides training for local jurisdictions and limited on-site support for more serious cases.

**Narrowly-focused and time-consuming policies limit disciplinary action and license appeals**

*ABC procedures for case-level retail license enforcement and appeal are complex and demanding.* ABC license enforcement follows a highly demanding complaint-driven process initiated by a "protestant" from the community. Enforcement starts with collection of evidence by sworn officers (ABC or local law enforcement) to support formal proceedings. Once sufficient evidence has been collected, the ABC files a charge ("accusation") against the licensee. The accusation is heard by an Administrative Law Judge (ALJ) who rules narrowly on the specific violation in relation to the specific outlet address. These procedures require considerable time and effort by the ABC and by the protestant. Appeals through the ABC Director and the courts can add years and considerable expense to the process.

Methods are available to pinpoint high-risk outlets and address certain high-risk practices among outlets at the community level. The California ABC has developed several well-respected enforcement methods to address chronic community-level problems such as sales to minors (Decoy Buys) and multi-agency inspection of high-problem premises (Impact Program). These measures complement police DUI checkpoints for violation of drinking-driving laws and “place of last drink” studies that identify high-risk bars and restaurants. These expensive labor-intensive methods are not applied on a frequent or routine basis, except when cities in metro areas combine to use DUI checkpoints during certain holiday weekends.



*Impact of ABC shortfalls on operators of bars and restaurants.* A bar-restaurant operator who participates on a county DUI task force laments the lack of RBS training and enforcement of ABC laws against over-serving. This operator has written a private memoir<sup>13</sup> that describes his experiences opening a bar-restaurant that offered dancing and entertainment to a young Southern California clientele at a location near beaches and resorts. He started his new business with great enthusiasm, learning on the job how to create a sound business plan and how to cooperate with neighbors and local officials. He also reports that during this period he received no guidance of any kind from the ABC or city agencies (nor did he think to ask) regarding responsible alcohol service, effective patron management and house security policies. He acquired his alcohol management skills the hard way following struggles with his partners that brought multiple citations, tumultuous operations, and forced closure of one establishment. His experiences made him highly critical both of the ABC’s lack of training for individual operators and of city inaction that let several fellow-operators create a hyper-competitive, over-serving bar-restaurant environment that affected the entire community. This combination of official inaction and aggressive marketing created challenges for profitable quiet operation and increased police/community problems but none of his competitors experienced any negative consequences from the ABC or local authorities for over-serving and poor patron management:

*“I’ve been in the alcohol selling business for over twenty-one years and have not heard of a single violation for serving an intoxicated customer. I called several owners and managers who have worked in the hospitality business in Orange County for many years...Not one person could remember a single incident...”*

*“I then contacted the local ABC office and talked with a very helpful investigator ...(who)... informed me that in the prior year, 2011, a total of zero violations had been issued for serving an intoxicated customer ... in Orange County. Zero. There are over 3,400 active on-sales licensees (in the county). (p.104)”*

The memoir calls for the State to pursue a balanced policy of prevention training and diligent enforcement at far greater levels than the author encountered. The author is adamant that the industry cannot reform itself without this oversight. Further, the author holds cities responsible for planning and land-use oversight to avoid over-concentration and to establish an appropriate business climate with written community operating standards for alcohol outlets. The author refers to an important division of labor shared between local planning and zoning authorities and the ABC for the oversight of retail alcohol outlets explained below.

### **ABC reliance on local jurisdictions.**

The ABC shares authority with local jurisdictions (cities and counties) in the process of granting an ABC license and enforcing ABC laws per the California ABC Act (Business and Professions Code, Division 9). The ABC Act gives local jurisdictions opportunities to play vital roles in both licensing and enforcement to prevent problems

<sup>13</sup> Gregg Hanour, *A Business Approach to Reduced Drunk Driving*, CreateSpace Independent Publishing Platform (December 14, 2012). ISBN-10: 1481005717; ISBN-13: 978-1480115715. Available on amazon.com

related to morphing. In general, the ABC has no formal programs or bulletins to inform local jurisdictions on best practices, precedents, and problematic aspects of the exercise of local powers vis-à-vis the ABC. The local jurisdiction must decide for itself how vigorously its local public agencies will participate in these functions, particularly with respect to morphing, a matter on which the ABC is officially blind. Three specific sections of the ABC Act described below allow local jurisdictions to shape ABC actions regarding issuance and enforcement of retail alcohol outlet licenses.

*Local planning and zoning (P&B 23790 and 23791).* These two sections of the ABC recognize that local jurisdictions’ (cities and counties) powers to control alcohol outlets through land-use planning and zoning are determinative for retail alcohol outlet licensing and cannot be superseded by the ABC. (see Section 3 below for further discussion).

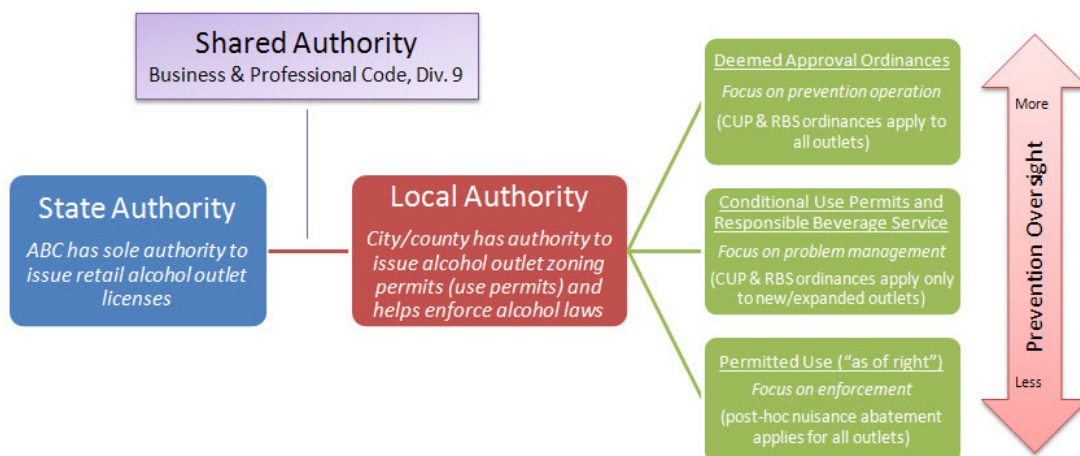
*Public convenience or necessity (B&P 23958.4).* This ABC “Undue Concentration” law allows a city or county to block a license for a bar, but not for a restaurant, by making a finding of “no public convenience or necessity” (PC or N) for retail alcohol outlets located in high-crime areas or in areas with a high density of alcohol outlets measured by population (census). The law allows the local jurisdiction (city or county) to stop the flow of more bars (Type 40, 42, 48 licenses) into an impacted area by making this finding on a case by case basis. However, the law includes a loophole for restaurants (Type 41 and 47 licenses) that allows the applicant, rather than the city or county, to determine whether “public convenience or necessity would be served by issuance of the license” for a “retail on-sale bona fide eating place” in the impacted area. The Act includes this language: “(b) Notwithstanding Section 23958, the department may issue a license as follows: (1) With respect to a... retail on-sale bona fide eating place license...if the applicant shows that public convenience or necessity would be served by the issuance.”

That is, the ABC Act allows the applicant for a Type 41 or Type 47 license to make his or her own PC or N determination, rather than the city or county. California alcohol policy advocates view this loophole as being in conflict with prevention goals.<sup>14</sup>

*Shared jurisdiction for enforcement of ABC laws (P&B 24202, 25619).* Although the ABC has exclusive authority for issuing and revoking licenses, enforcement of ABC laws is a shared responsibility between ABC and local law enforcement. Because the ABC education and monitoring system is voluntary and enforcement is complaint-driven, the ABC depends heavily on local jurisdictions to monitor licenses and help with enforcement investigations.

<sup>14</sup> The Redevelopment Committee, California Council on Alcohol Policy, explored this issue in 2009-2010.

**Shared Authority for Regulation of California Retail Alcohol Outlets:  
Powers of the State Alcoholic Beverage Control Department and Local Jurisdictions (Cities and Counties)**



### 3. LOCAL JURISDICTIONS CAN DO MORE TO CONTROL AND REGULATE

How have California cities and counties responded as the ABC has shifted its regulatory model to include greater reliance on industry self-monitoring and local control? The following section reviews current responses to morphing problems, describes local powers available to cities to take effective action, and identifies actions cities can take to prevent and reduce morphing. Initiatives being undertaken by the City of San Luis Obispo, whose downtown bar-restaurant establishments provide the opening scene for this Policy Brief, illustrate these actions.

#### *How problems with morphing take cities by surprise.*

Most communities welcome new and expanded restaurants with open arms. Most local officials and other local stakeholders relish the prospect of positive contributions from restaurants, with seemingly little regard for the potential threats to public safety, health problems, and community disruption that are associated with unchecked growth and development. With respect to restaurants, cities tend to defer to the marketplace to determine outlet location, size of establishment, type of use, densities (number of outlets in a given area or per population), and operating requirements. Use permits are issued essentially as requested (“as of right”) without special operating conditions or restrictions. This makes it relatively easy for an existing restaurant to expand to bar- and entertainment-oriented activities up to 2:00 am with few restrictions from the city or the ABC.



In the context of rapid local development or redevelopment, the number of restaurants operating under these circumstances can grow quickly in high-density, downtown and redevelopment areas. Growth occurs both for the number of outlets and for increased drinking and entertainment activities. In as few as three or four years, the number of restaurant seats in a downtown area can nearly double.<sup>15</sup> In such a rapidly growing area some restaurants begin promoting drink specials coupled with alcohol-related special events to stay competitive. Local officials (and sometimes the operators themselves) are often taken by surprise at rapid increases in public drunkenness, overcrowding, disturbances, violence and injuries, youth drinking and DUIs. They are also surprised at the extent to which these behaviors can overflow into the surrounding community.

A preventive approach is readily available to all local jurisdictions through local planning and zoning ordinances. As noted in the preceding section, the ABC relies on local jurisdictions to regulate land-use aspects and general business operations of retail alcohol outlets as part of the State licensing and enforcement procedures (B&P 23790). Yet, most local agencies and community groups do not realize the extent to which their local planning and zoning powers can deal effectively with morphing. Currently just a handful of cities and counties make full use of their powers to work with restaurants in ways that manage problems as soon as they appear or avoid them altogether.<sup>16</sup>

*ABC allowance for local zoning to regulate on-sale alcohol outlets.* The ABC Act recognizes that the State cannot regulate on-sale and off-sale outlets without participation by the local jurisdiction. The State lacks capacity to regulate and manage the actual distribution and operation of retail alcohol outlets at the community (city or county) level. The Act accordingly relies on the local jurisdiction to address these issues through zoning and land-use ordinances: The ABC will not issue a retail alcohol license “contrary to a valid zoning ordinance of any city or county” (B&P S. 23790). This means the ABC District Office will not complete processing of a

<sup>15</sup> Op. Cit., F. Wittman, Lessons from Three Orange County Cities. See discussion for City of Fullerton.

<sup>16</sup> F.D. Wittman and M.E. Hilton, “Uses of planning and zoning ordinances to regulate alcohol outlets in California cities, in H. Holder (ed.), Control Issues in Alcohol Abuse Prevention: Strategies for States and Communities, Greenwich CT: JAI Press, 1987, 337-366.

license application until the city or county certifies that the candidate outlet meets local planning and zoning requirements. The ABC thus sets the stage for the local jurisdiction to set limits on locations, numbers, and types of outlets that will receive use-permits, as well as to establish safe operating conditions for outlets.

The ABC provides this opportunity to each local jurisdiction but does not require it. The jurisdictions are left to decide for themselves how diligently to apply local planning and zoning ordinances to retail alcohol outlets on a scale that ranges from laissez-faire to local control. At the laissez-faire (liberal) end of the scale, local jurisdictions allow on-sale outlets to operate as regular businesses “as of right.” At the more tightly regulated end of the scale, cities and counties impose “local control” – local oversight on a case-by-case basis that allows denial of a permit or conditional approval for each outlet through a local conditional use permit (CUP) written into the local planning and zoning code.<sup>17</sup>

### **Local Control: City and county zoning for bars and restaurants.**

“Local control” is a term for city or county adoption of CUP requirements written into the land-use plan and zoning ordinance specifically to prevent public safety and health problems, and to protect community well-being related to retail alcohol outlets. Local control allows cities and counties to monitor retail alcohol outlet operations closely and to take action on them quickly before they get out of hand. Cities that adopt “as of right” ordinances forego this level of oversight, and thus tend not to see the problems coming until they erupt into major community concerns.

*Restaurants, bar-restaurants bars, and nightclubs as a local land-use issue.* Although state law does not clearly distinguish between “traditional restaurants,” “bars,” and “nightclubs,” local land-use and zoning ordinances are well suited to make such distinctions according to types of land-use and operational activities. Local jurisdictions can assign appropriate land-use zones (geographic areas) for each land-use category of ABC-licensed “restaurant” to assure operations do not disturb neighbors or create undue police problems. Each local jurisdiction can fine-tune its CUP to set operational requirements for service of alcoholic beverages and management of the premises to prevent high-risk alcohol-related behaviors. Cities that apply local control to all bars and restaurants – that is, to all local ABC License Types 40, 41, 42, 47, and 48 – can encourage an active restaurant / night-life community while avoiding conflicts with other land-uses, public safety problems, and unpleasant surprises and expenses.

*Features of Local Control for on-sale alcohol outlets (all types of restaurant, bar, nightclub).* A local alcohol outlet control ordinance includes at least the first three of the following six components. A few cities have designed all six components to work together in an effective oversight system.<sup>18</sup>

- Definition of on-sale land-use types. On-sale outlets are defined in clear land-use and behavioral terms (“restaurants,” “bars,” “nightclubs,”) and are assigned to zones in the city land-use plan on the basis of compatibility with nearby uses and the community as a whole.
- Conditional use permits (CUPs) for each new / expanded alcohol outlet. CUPs set operational and design standards to protect health and safety through operating conditions such as RBS training, security management, alcohol promotion activities, physical design for surveillance and crime prevention, hours of operation, security, and business plan review.<sup>19</sup>
- Sensitivity to proximity and adjacency issues. Local zoning and land-use planning establishes zoning restrictions, spacing requirements and late-night hours restrictions to buffer the impact of bars and restaurants on nearby housing and other business.
- Deemed-approved ordinances (DAOs) for existing outlets. DAOs bring problematic existing outlets “grandfathered” under previously-granted use-permits into conformity with new CUP requirements.

17 F.D. Wittman and P. Shane, Manual for Community Planning to Prevent Problems of Alcohol Availability, prepared for California Dept of Alcohol and Drug Programs. Berkeley CA: Prevention Research Center, September, 1988.

18 F. D. Wittman, F. Latcham, Public Oversight for San Luis Obispo Retail Alcohol Outlets: Issues for Planning and Zoning. CLEW Associates. Berkeley, California, October 14, 2009.

19 “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).

- Density limits. Cities set limits on the density of alcohol outlets by geo-area and by proximity to outlets of similar types. These limits can help avoid conflicts between competing land-uses for non-alcohol businesses and housing; they can also reduce stresses on community services and groups due to crowding, and can reduce crime and community disturbances.
- Fee recovery component. The local ordinance includes a fee schedule charged to the alcohol outlets to cover public agency costs required to administer the ordinance.

*Conditional use permits (CUPs) for on-sale alcohol outlets.* Each city develops its CUP ordinance based on local needs and preferences, and on local customs and past experiences with alcohol. The CUP accommodates different kinds of outlets and different types of uses as shown in the generalized outline form in Table 5 (*See below*). The CUP can be fine-tuned based on needs for the specific kind of outlet. For example, the city can tailor security standards and responsible beverage service (RBS) training requirements according to establishment risk level (for example requiring more on-site security and higher-level RBS training for managers and servers at higher-risk establishments).

**Table 5. Conditional Use Permits for On-Sale Alcohol Outlets**

Permitted Uses for On-Sale Retail Alcohol Outlets Example City, California	Traditional Restaurants	Bars and Bar- Restaurants	Nightclubs
<i>Architectural Features</i>			
Bar seating for 10% or more of customers	No	Yes	Yes
Entertainment devices – Large-screen TV, jukeboxes	No	Yes	Yes
Games of skill, amusement devices, contests	No	No	Yes
Elevated stage, dance floor, sound board	No	No	Yes
<i>Operating Features</i>			
Responsible beverage training (RBS)	Low	Medium	High
Late-night operation after kitchen closes (no minors)	No	Yes	Yes
Promotions and advertising for special events	No	No	Yes
Alcohol advertising that encourages heavy drinking	No	No	No
Over-pours and self-serve practices	No	No	No
<i>Zones where outlet is allowed</i>			
Residential-commercial	Yes	No	No
Commercial-mixed use office & retail	Yes	Yes	No
Commercial-downtown & entertainment	Yes	Yes	Yes

*Implementation of CUPs for problems related to morphing.* An estimated 60 percent of California cities have adopted CUPs for bars and restaurants.<sup>20</sup> Although limited formal research has been conducted to demonstrate the effectiveness of CUPs to reduce problems such as violence related to morphing,<sup>21</sup> evidence is accumulating to show that greater alcohol outlet density adversely affects public health and safety.<sup>22</sup> California cities are adopting alcohol CUP and DAO ordinances specifically to address problems with morphing after the problems attract widespread public attention.<sup>23</sup> Cities report considerable success using CUP ordinances to link police departments and planning/zoning offices in an ongoing (routine) oversight process that includes the following components, described further in the case example below:

- (1) Reliable documentation and monitoring of police events at all on-sale outlets to show clearly which outlets (or geographic districts or areas) generate high levels of police calls;

20 Op. cit., F.D. Wittman and M.E. Hilton, “Uses of planning and zoning ordinances to regulate alcohol outlets in California cities.”

21 R. Parker, “Alcohol and Violence: Connections, Evidence, and Possibilities for Prevention,” (Parker), in *Journal of Psychoactive Drugs* (Eds. Rawson, Finnerty & Urada SARC Supp’t No. 2, May 2004).

22 “Alcohol Outlet Density and Public Health,” Alcohol Justice, see [www.alcoholjustice.org/resources/fact-sheets/html](http://www.alcoholjustice.org/resources/fact-sheets/html)

23 Op. cit., F.D. Wittman, Lessons from Three Orange County Cities. See discussion for cities of Fullerton and Newport Beach.

- (2) Routine training and surveillance to help the operator maintain outlet performance to comply with CUP requirements;
- (3) Prompt enforcement to address problems as soon as they appear, rather than letting problems increase in visibility and difficulty before taking action;
- (4) Sustained support and direction from local elected officials (e.g., city councils, planning commissions, zoning boards) for diligent use of public resources and continuing commitment to find the appropriate place for bars and restaurants in the long-range community plan.

*Partnership with ABC for alcohol outlet oversight.* Opponents of local control sometimes say “oversight of alcohol outlets is an ABCs responsibility, not a local obligation.” The opposite is true. The ABC is solely responsible for the retail alcohol license, but the local jurisdiction bears primary responsibility for oversight of the place where the license is located. As noted above, ABC invites and encourages (but does not require) the local jurisdiction to activate effective community oversight within the regulatory shell provided by the ABC. Table 6 illustrates this relationship.

STATE ABC LICENSE REQUIREMENTS	LOCAL ZONING CONDITIONS
ABC licenses an individual operator	Zoning office issues a use-permit for a location
ABC definitions allow “restaurant” and “bar” to be merged at a single location; no “nightclub” definition.	City can distinguish between restaurants, bars, and nightclubs by their primary function, and define geographic parameters for each as distinct land-uses.
Bans sale of alcohol from 2:00 am to 6:00 am	Hours of outlet operation are set locally
LEAD-RBS training focuses on alcohol laws and general features of good practice	Local RBS training can be expanded to include high-risk sales practices of specific concern to community
Proximity issues covered by minimum distances from residences and sensitive uses (discretionary)	Proximity and spacing requirements can fit the local ecology and community concerns (can be mandatory)
Density requirements (crime, population) apply to restaurants only with consent of licensee (S. 23958.4)	Density requirements by geo-area and crime rate apply to all on-sales at discretion of jurisdiction
License fee renewals are minimal for on-sale outlets	Local jurisdiction may set use-permit fees to cover local costs of administration for local control
ABC has no CPTED (Crime Prevention Through Environmental Design) requirements for on-sale facilities	Local jurisdiction may require preventive design features
ABC enforcement proceeds through the Accusation process	CUP enforcement proceeds through local zoning board independently of ABC
ABC enforcement operates primarily on a post-hoc problem-solving basis with limited staff resources	Local oversight can include compliance training, preventive surveillance and problem-solving from a variety of sources.

### **An exemplary use of Local Control to reduce morphing**

The City of San Luis Obispo exemplifies municipal leadership in managing chronic drunkenness and police events related to morphing (described in the opening scene for this Brief). After years of enhanced policing in the Downtown area, and no relief from the problems, the city engaged in a three-year planning process to adopt new land-use and zoning requirements that establish conditional-use standards for preventing drunkenness and related behaviors among all of the city’s retail alcohol establishments. Under joint leadership from the police department and the planning department, the city expanded its original vision beyond the Downtown area, and created a new deemed-approved ordinance applicable to all on-sale and off-sale retail alcohol outlets throughout the city. This case example outlines the features of the ordinance, the process by which the ordinance was established, and the city’s plans for implementation and continuing oversight.

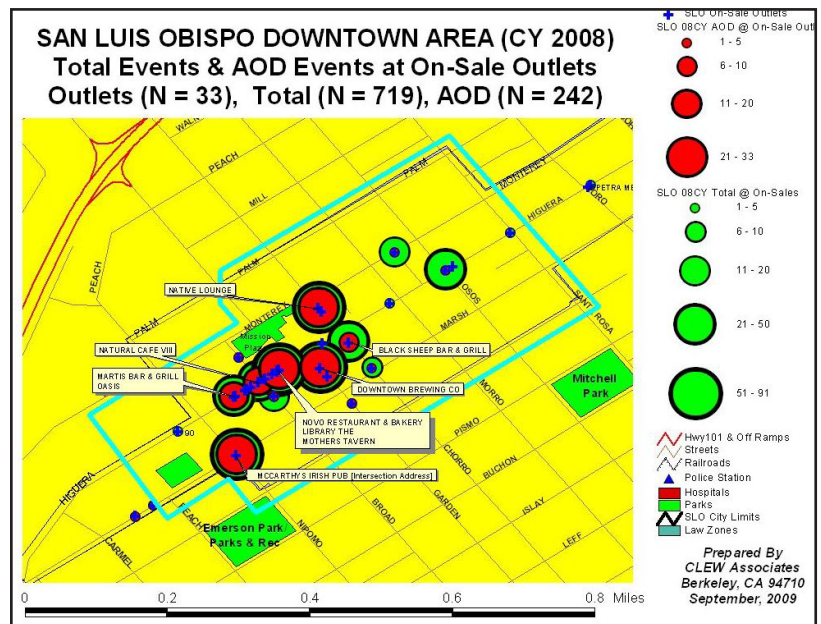
*Features of the ordinance.* Action by the San Luis Obispo City Council in June, 2012, filled three major gaps in public oversight to “enhance alcohol regulation in a manner calculated to give the City more effective local controls to address problem outlets:”<sup>24</sup> These actions include:

- A new land-use category for restaurants defined “Restaurants with Late Night Alcohol Service” as restaurants that serve alcohol after 11:00 pm.
- A new deemed approved ordinance<sup>25</sup> holds all on-sales and off-sales outlets, including new and existing outlets, accountable for safe and responsible operations through operating conditions (CUPs) previously applied only to bars and nightclubs. All existing outlets defined as Late-Night Restaurants are deemed existing non-conforming uses subject to CUP standards.
- Additional CUP requirements apply to new off-sales outlets whose primary activity is the sale of alcohol (not incidental sales in grocery stores and convenience stores).

*Local planning process.* A four-step participatory planning process invited all local stakeholders to articulate problems and possible solutions related to morphing at Downtown restaurants. The process explored ways to prevent problems related to excessive drinking and drunkenness through a combination of improvements to hospitality industry practices and greater local public oversight. The director of the SLO Community Development Department made efforts to keep the process thorough, inclusive, transparent, and civil. The city council kept up the pressure on all parties to act expeditiously.

(1) Documentation (August – October 2009).

The planning process began with comprehensive documentation of all police events at all retail alcohol outlets in the entire city for a full calendar year. Total calls for service and all AOD-related calls were summarized (54 police event categories) for each ABC-licensed alcohol outlet address by time (time of day, day of week, and month), and by ABC License Type. Police events at alcohol outlets were mapped using GIS displays. Tables were also provided to show the proportion of total police resources being devoted to management of retail outlets, in particular to the Downtown on-sales operating late at night. This documentation was presented to the City Council in a public meeting on October 20, 2009, in the form of a City of San Luis Obispo ASIPS/GIS Community Tour report posted on the City Council’s website for public access (ASIPS/GIS = Alcohol/Drug Sensitive Information Planning System in a Geographic Information System format).<sup>26</sup> This report provided all stakeholders – owners/managers of the restaurants, neighbors, customers, health and social service providers, public officials, educators, concerned members of the public – with an accessible, complete, and neutral birds-eye view of community police experiences at all ABC-licensed outlets, presented in the context of total police events throughout the city.



<sup>24</sup> San Luis Obispo Community Development Department, Review of Alcohol Outlet Strategies – Enhanced Zoning regulations to improve public safety (R/TA 101-11), May 15, 2012

<sup>25</sup> Deemed Approved Alcoholic Beverage Sale Regulations, Ordinance No. 1578 (2012 series), amendments to Title 17 (Zoning Regulations), San Luis Obispo Municipal Code. Adopted by City Council on June 10, 2012.

<sup>26</sup> City of San Luis Obispo ASIPS/GIS Community Tour (CY 2008), CLEW Associates, Berkeley CA, October 15, 2009.



(2) Research on oversight methods and an SLO “Hospitality Zone” (January 2010 – January 2011). ASIPS reports are intended to support open community discussion to prevent community-level AOD problems by helping focus attention on management of the settings (locations) where AOD problems occur. To support this discussion, a policy memo accompanying the Community Tour report identified eight issue-areas for consideration regarding local control of retail alcohol outlets.<sup>27</sup> This memo helped frame action by owners/managers, occupants/neighbors, and officials/other interested parties to create local policies to minimize and prevent health and safety problems related to the outlets.<sup>28</sup> The SLO planning and police departments spent the year researching ordinances and oversight efforts by other cities to regulate on-sale alcohol outlets. Downtown bar-restaurant operators met regularly to explore creation of a hospitality zone for Downtown SLO in similar cities. The city obtained an ABC-funded local law enforcement assistance grant to help explore “hospitality zones” and “entertainment zones” in SLO.

**Downtown On-Sale Outlets with 10+ AOD-Specific Events  
Ordered by AOD Events and Total Events, by Address  
Frequencies for Downtown San Luis Obispo, CA 2008**

ABC Type	Establishment Address	Total Events	AOD Events	Arrests Total
48	728 Higuera	72	33	32
75	1119 Garden	83	31	39
47	1023 Chorro	78	30	26
47	725 Higuera	91	24	27
47	600 Marsh	52	23	22
48	723 Higuera	59	17	14
48	1032 Chorro	40	17	18
47	673 Higuera	46	12	16

(3) Nightlife Public Safety Assessment (March – November 2011). The city simultaneously stepped up its current enforcement activity and formally explored the concept of developing a Hospitality Zone. The city used the ABC grant to contract with Responsible Hospitality Institute (RHI) to explore creation of a Hospitality Zone in Downtown SLO. RHI hosted four roundtable discussions (Community, Hospitality, Safety, and Development), conducted a leadership summit, and presented a final report to capture stakeholder sentiment for improved practices and oversight to reduce problems related to excessive drinking, drunkenness, and over-crowding. The bar-restaurant operators formed a “Safe Nightlife Association” (formerly

the Restaurant and Bar Owners Association) to prepare recommendations for improved practice. Meanwhile the city staff reported through the Chief of Police to City Council on November 15, 2011, that “Staff has developed an action plan that includes a new regulatory approach designed to mitigate the impact of nuisance and criminal activity caused by alcohol outlets, especially when voluntary compliance and education has not been effective” (p. B3-1).<sup>29</sup> City Council instructed staff to proceed with developing the regulatory approach into a formal policy recommendation for action by the council.

(4) Draft and approve new regulations (November 2011 – June 2012). During Spring, 2012, the planning department and police department developed language for the Deemed Approved Alcoholic Beverage Sale Ordinance adopted by the City Council in June. The city found that conventional definitions of “restaurant” (by ABC License Type, by percentage of food/alcohol sales, and by size/type of business or land-use) failed to predict which outlets experienced police problems related to morphing. The variable that worked best was time of day: Late-night operations, after 11:00 pm, as determined by a combination of police data and participants in the Nightlife Public Safety Assessment. Simultaneously, the Safe Nightlife Association announced its intention to adopt five programs for its members: SLO Safe Ride, Downtown Clean-Up, ABC LEAD training (RBS training), “One 86-All 86” plan to make sure a patron ejected from one bar is denied service at all bars, and Patron Responsibility (a marketing program focused on personal responsibility and safety for patrons).

*Implementation of the new ordinance.* The new DAO ordinance positions community stakeholders to grapple with long-standing morphing issues among Downtown outlets. None of the five programs offered by bar-restaurant operators impose a covenant among the operators to mitigate troublesome alcohol service and patron management

27 F. D. Wittman and F. Latcham, Public Oversight for San Luis Obispo Retail Alcohol Outlets: Issues for Planning and Zoning. Memo prepared by CLEW Associates. Berkeley, California, October 14, 2009.  
 28 A. Goldberg and F.D. Wittman, Taking Charge: Managing Community Alcohol and Drug Risk Environments. Developed for the California Dept of Alcohol and Drug Programs by the Community Prevention Planning Project, Institute for the Study of Social Change. University of California. Berkeley, 2005.  
 29 San Luis Obispo City Council Agenda Report from Chief of Police: “Update on Alcohol Outlet Public Safety Strategies,” November 15, 2011.

practices that clearly contribute to excessive drinking and drunkenness. Problems that stem from aggressive alcohol promotion and pricing, over-pouring policies, and failure to monitor patron status and condition fall outside of the scope of programs offered by the bar-restaurant operators. The new ordinance creates leverage for the city to mitigate such problematic policies and practices through conditional use permit requirements, including existing outlets through the DAO process. How this leverage is applied depends partly on whether high-risk operator practices continue (ideally, the bar-restaurant operators will help each other moderate their own behavior), and partly on whether community stakeholders vigorously demand action on their concerns for public health and safety. SLO city agencies will serve both as handmaidens to support efforts of these community stakeholders, and as arbiters to monitor outlet performance against CUP standards. City agencies plan to implement the new DAO as follows:<sup>30</sup>

- Continue surveillance of alcohol outlet performance. Routinely scan all retail alcohol outlets (both on-sale and off-sale) to verify compliance and to identify problems promptly, keeping the stage set for appropriate action as needed.
- Provide prompt and appropriate mitigation. Mitigate violations and irregularities as soon as they appear in a fair and proportionate way that builds good will by focusing on compliance and performance for the new DAO ordinance before seeking recourse through hearings, sanctions and punishment.
- Sustain transparency and provide feedback. Maintain stakeholder involvement regarding public safety and health issues, and keep abreast of quality of life issues. The City Council requires the Community Development Department to make an annual progress report to the city council.
- Integrate results of day-to-day oversight into the community's long-range plan. The Community Development Department is slated to create an "alcohol element," which includes retail alcohol outlets, during scheduled revisions to the county General Plan. Issues of appropriate density and best mixes of alcohol outlets with other land-uses will be addressed based partly on experience with implementation of the Deemed Approved Alcoholic Beverage Sale regulations and partly on further research. As experience accumulates with DAO administrative costs, City Council may shift these costs from SLO taxpayers to outlet operators.



## CONCLUSION

How can the restaurant industry, the ABC, and other State agencies better address public safety and health problems related to morphing at the community level? What more can be done to help local jurisdictions mitigate and prevent problems related to morphing?

The burgeoning restaurant / hospitality industry can be expected to seek expansion of its dining, drinking, and entertainment services. The ABC and local jurisdictions will continue their work to regulate this industry to protect

public health and safety, and to establish local land-use planning and zoning requirements that keep local retail alcohol outlets in balance with other competing uses. Challenges to effective ABC oversight of morphing can be expected to continue. State-level redefinitions of the ABC Act, increased staffing, and greater resources for training and enforcement are all unlikely at the present time due to the State's budget problems. Accordingly, at this writing it appears the prevention community's most effective path forward, while continuing to work closely with the ABC, is to pursue greater oversight by local jurisdictions and more self-policing by the industry.

On the positive side, two under-used oversight technologies are readily available to support local efforts to prevent problems with morphing. The first is responsible beverage service (RBS) training and management. The second technology is grounded in local land-use planning and zoning specifically to manage retail alcohol outlets.

<sup>30</sup> Telephone interviews by author with Doug Davidson (August 9, 2012) and Derek Johnson (August 17, 2012), Community Development Department, City of San Luis Obispo.

RBS training moderates the interaction between the establishment that pours the drink and the patron who consumes it. An RBS initiative developed at the city or county level considers the flow of this interaction from community oversight (zoning and law enforcement) to management practices, to server training. An effective municipal or county RBS initiative must go beyond training individual staff and post-hoc consulting with individual establishments since there is little indication that individual-oriented RBS efforts can mitigate alcohol problems at the community level. However, there is research to support the efficacy of community-level RBS initiatives that include strengthened management practices and increased law enforcement. These initiatives can also employ community mobilization, media campaigns and compliance-oriented consultation in addition to RBS training. (These measures taken together support server implementation of RBS training and signal to patrons and neighbors that excessive drinking and drunken behavior will not be tolerated.) In one community study with all these components in place, overall denial of service to intoxicated bar-restaurant patrons nearly doubled.<sup>31</sup>

RBS training programs in most California cities currently focus on training for individual servers and individual establishments. In addition to information about its LEAD program, the ABC website posts contact information for approximately 50 non-LEAD RBS training programs. These programs meet minimum curriculum standards but the ABC does not monitor or evaluate the programs, and therefore the site includes a disclaimer stating the ABC does not endorse these programs. It appears that most California cities requiring RBS training refer outlet operators and servers to ABC rather than develop their own programs. It also appears that few local jurisdictions maintain close oversight to assure operators and services are meeting RBS training requirements.

California communities thus experience a significant gap realizing the potential between current practice that requires RBS training for the individual server or establishment and a fully-developed community level RBS initiative capable of community-level reduction of problems with late-night service at morphing restaurants. What would happen to problematic morphing in California if local communities were to lift their focus on RBS training to development of a city- or county-level initiative based on full use of local zoning and enforcement powers to require preventive management of all on-sale outlets (bars, restaurants, nightclubs), including well-designed and well-managed RBS training? Will cities and counties develop sustainable oversight systems that eliminate hot-spots expeditiously and nip future problems in the bud by identifying them as soon as they appear, rather than wait for them to get visibly worse?

The answer depends on the extent to which California's cities and counties choose to take full advantage of their local planning and zoning ordinances. Similar to RBS training, local planning and zoning ordinances are currently underutilized with respect to retail alcohol outlets. An initiative that combines enhanced RBS programming with greater planning/zoning oversight offers considerable potential for reducing and managing late-night alcohol-related problems attributed to bar-restaurants. The problems stem largely from a nightly routine of over-serving practices and under-management of patron behavior and expectations, typically in high-volume, over-crowded conditions. These precursor circumstances could be managed on a preventive basis through enhanced RBS training and expanded CUP operational requirements, sited in facilities appropriately zoned, sized and designed to avoid creating disturbances, and applied on a sustainable basis to all existing (grandfathered) outlets through a DAO.

There are leadership opportunities for the ABC and other State agencies (Department of Alcohol and Drug Program, Department of Public Health, Office of Traffic Safety) to guide local jurisdictions towards RBS training and management and to promulgate RBS policies and practices to the field. Similarly, local jurisdictions (cities, counties, and their statewide organizations such as the League of California Cities) could make greater use of current planning and zoning powers to realize the benefits of active oversight for all retail alcohol outlets, including all restaurants, through conditional use permits (CUPs) and deemed-approved ordinances (DAOs).

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31 K. Warpenius, M. Holmila & H. Mustonen, "Effects of a community intervention to reduce the serving of alcohol to intoxicated patrons," National Institute for Health and Welfare (THL), Department of Alcohol, Drugs and Addiction, Helsinki, Finland, *Addiction*, 105, 1032–1040 (2010).

Expanded oversight at the city and county level offers all local stakeholders the opportunity to explore both the proper place (through land-use policies) and the appropriate operation of bar-restaurants (through CUPs and DAOs) in the community. Local agencies and concerned community groups, emboldened with the powers provided by local ordinances, planning tools, and use permits, can set effective limits on numbers, outlet types, locations, and operations to prevent restaurants from morphing into problem-outlets. As restaurant operators, the alcoholic beverage industry, and the hospitality industry continue seeking to expand, local agencies and community groups can develop local controls that set boundaries for density, location, and operation that keep alcohol-related problems in check. San Luis Obispo offers an example for other cities to use in designing their own CUP and DAO ordinances for all retail alcohol outlets – including restaurants – through healthy local debate that resolves differences between those who insist on “patron responsibility” (hold the drinker responsible) and those who demand “operator accountability” (hold the operator responsible). Such a public process, mediated by local officials and perhaps assisted by county alcohol/drug programs and the ABC, will allow the community to enjoy its restaurants, bars and nightclubs with a minimum of harm, damage, and public expense.

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## APPENDIX

### State ABC Act Definitions for restaurants and bars.

**ABC Act 23038: “Bona fide public eating place” (Restaurant)** means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. “Meals” means the usual assortment of foods commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement. “Guests” shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.

**ABC Act 23039: “Public Premises” (Bar)** means premises licensed with any type of license other than an on-sale beer license, and maintained and operated for the selling or serving of alcoholic beverages to the public for consumption on the premises, and in which food shall not be sold or served to the public as in a bona fide public eating place, but upon which premises food products may be sold or served incidentally to the sale or service of alcoholic beverages, in accordance with rules prescribed by the department.

### Credits:

Thanks to readers who made helpful comments on earlier drafts – Chris Albrecht, Lauren Tyson, Dick Kite, Deborah Linden, Doug Davidson, and Derek Johnson. The idea for this Policy Brief emerged from discussions in the Redevelopment Committee, California Council on Alcohol Policy, after the author introduced the topic of bar-restaurant morphing to the committee in November 2007. With encouragement from Joan Kiley, president of Cal Council, the committee pursued morphing issues until it disbanded in 2011. Members of the committee were Ed Kikumoto (chair), Rick McGaffigan, Michael Sparks, and the author.

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Figure 1  
Bar-restaurant in Downtown San Luis Obispo

Figure 2  
Bar-restaurant in Downtown San Luis Obispo

Figure 3  
Police and security staff at bar-restaurant in Downtown San Luis Obispo

Figure 4  
Advertising for bar-restaurants in Downtown San Luis Obispo

Figure 5  
Advertising for bar-restaurants in Downtown San Luis Obispo

Figure 6  
Patrons crowd bar-restaurant in Downtown San Luis Obsipo

<sup>1</sup>These comments and the images were presented by Chief Deborah Linden, San Luis Obispo Police Department, at the Alcohol Policy XV Conference held in Washington, DC on December 7, 2010: Session C-28 How California restaurants morph into bars and what the state ABC and cities are doing about it.



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