

# CITY OF OAKLAND



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**TO: Oakland Planning Commission**

**RE: City Attorney Report on the Status of Liquor Stores in Oakland**

Liquor licenses are issued and regulated by the California Department of Alcoholic Beverage Control (ABC). Cities and planning commissions have absolutely no authority over the actual liquor license. What we do have is the authority over the land-use status that determines where and under what conditions the liquor license is used. We have the authority to allow a new alcohol use in a location, to augment use conditions in a current location, or to revoke the use altogether. Whatever rights we grant for the use of a liquor license at a property, those rights run with the land, not the liquor store or the liquor license. It is much easier to grant land-use rights for a liquor establishment than to revoke such rights. When we are able to revoke the right to use a liquor license at a location, it does not automatically mean the store will close, only that the store may no longer sell alcohol. Also, the owner of the liquor license still has the license. He or she could find a new place to use it, here with a new Conditional Use Permit (CUP) or somewhere else in California, sell it, or keep it inactive. Only ABC has the authority to revoke a liquor license.

In 1994, Assembly Bill 2897 established new regulations for liquor licenses. Among other things, it empowered ABC to regulate the number of retail on-sale and off-sale licenses allowed per census tract, based on population. When AB2897 became law, it immediately defined many Oakland census tracts as having an over-concentration of liquor stores. All of those existing liquor stores received "grandfathered" status. When ABC receives an application for a liquor license, it checks for over-concentration of both *crime* and *existing liquor licenses* where the business wants to open. While ABC is required to deny an applicant when there is over-concentration of crime or existing licenses, the Planning Commission can make a *public necessity or convenience* finding, which for ABC's purposes, serves as an exemption for their over-concentration regulation. Hence, even when ABC must say no, the Planning Commission may say yes.

In 1993 the City Council, working with the Alcohol Policy Network and the Coalition on Alcohol Outlet Issues, passed the Deemed Approved Ordinance which established operating standards for all existing alcohol outlets that did not have a CUP which were the majority. These Operating Standards are basic non-nuisance standards such as no littering, loitering, graffiti, drug dealing, prostitution, gambling, shootings, or other public nuisance activity in and around the premise.

The City enforces not only these operating standards, but also ABC regulations, such as the one preventing alcohol sales to minors, and other relevant state law.

In April of 2004, responding to overwhelming community concerns over problem liquor stores, the City Attorney's Neighborhood Law Corps reported to both the City Council and Planning Commission on the status of alcohol outlets in Oakland. At that time, there were just over 900 liquor licenses in Oakland, and of those, 359 were off-sale licenses for liquor stores. The report, "*The Good, the Bad, and the Ugly*" focused on those 359 liquor stores. It found that, among other issues, Oakland was over-concentrated by 74 liquor stores.

Working with Neighborhood Crime Prevention Councils, Oakland Police Department's Alcoholic Beverage Action Team (ABAT), City of Oakland Code Enforcement, the Alameda County Health Department, Oakland Fire Department, and the Alcohol Policy Network, we started to vigorously enforce the Deemed Approved Ordinance. Our goal was simple: forcing problem liquor stores to either shape up or shut down. The message was clear: whether a local store sells alcohol or not, it has the responsibility to be safe and not be a source of nuisances. While a liquor store may be the only store in its neighborhood providing milk and diapers, if the store places you in danger while you're getting milk and diapers, it is *not* a safe community asset.

As of October 12, 2009, there are 1,037 liquor licenses in the city of Oakland. These comprise the following: 565 on-sale (restaurants, bars and clubs); 146 non-retail (manufacturers and distributors); and 326 off-sale (stores). The number of off-sale liquor licenses has gone down, from 2004's 359 to present day 326, a **net decrease of 33**. Of the 326 licenses, 18 are inactive. Hence, the number of liquor stores open for business has decreased from 359 to 308, a **net decrease of 51** in the city of Oakland. Our city-wide over-concentration number is also down, from 74 in 2004 to present day 54, a **net decrease of 20**.

While the City's efforts have yielded good results, problems at liquor stores continue. Oakland is still over-concentrated by 54 stores. Every City Council district has an over-concentration except districts 4 and 5. One out of every three stores in Oakland has some recent disciplinary record with ABC. Overall, 106 stores have received 152 suspensions by ABC. Of those suspensions, 126 were given for selling alcohol to a minor.

The City Attorney's Office and OPD's ABAT continue to work on problem outlets.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alexander Nguyen", with a long horizontal flourish extending to the right.

Alexander Nguyen  
Director  
Neighborhood Law Corps