



**Best Practices in Responsible Alcoholic
Beverage Sales and Service Training**

WITH MODEL ORDINANCE, COMMENTARY AND RESOURCES



**Ventura County
Behavioral Health**

ALCOHOL & DRUG PROGRAMS
PREVENTION SERVICES

The intent of this report is to provide useful information to municipal governments, private institutions and community coalitions who are formulating responses to the problems caused by the sale and service of alcoholic beverages.

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Suggested citation:

Best Practices in Responsible Alcoholic Beverage Sales and Service Training, With Model Ordinance, Commentary, and Resources. Center for the Study of Law and Enforcement Policy, Pacific Institute for Research and Evaluation (Ventura, CA: Ventura County Behavioral Health Department Publication, 2007).

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APRIL 2008



Ventura County
Behavioral Health

ALCOHOL & DRUG PROGRAMS
PREVENTION SERVICES



Pacific Institute
FOR RESEARCH AND EVALUATION



Center for the Study of Law
and Enforcement Policy

A Center of the Pacific Institute for Research and Evaluation

Acknowledgements

Ventura County Behavioral Health Department Prevention Services thanks Jim Mosher and Stacy Saetta of PIRE/CSLEP and their collaborators for preparing this important policy briefing. We express our deep gratitude to the researchers and practitioners in the alcohol policy field for their hard work over the last decade to advance the practice of Responsible Beverage Sales and Service (RBSS) training. We specifically acknowledge the contributions of:

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I. INTRODUCTION

A. Why is Responsible Beverage Sales and Service Training Important?

Alcohol is a legal product and alcohol retailers represent an important business sector of California's economy. Yet, unlike most other retail products, alcohol is associated with a wide variety of community and societal problems, including violence, sexual assault, motor vehicle crashes, other forms of injury, and family disruption.ⁱ Even relatively minor problems often associated with alcohol sales, such as loitering, graffiti, and noise, can constitute public nuisances that adversely affect neighboring businesses and residents and contribute to neighborhood blight.ⁱⁱ Studies have found that a substantial portion of drinking drivers start their journey while intoxicated from bars and restaurants, i.e., on-site establishments.ⁱⁱⁱ Because of these risks to public health and safety, California communities are taking proactive steps to promote responsible alcohol retail practices and reduce the risks associated with alcohol sales.

Responsible beverage sales and service training (RBS) programs are an important component of a community's comprehensive strategy to reduce the risk of problems associated with alcohol outlets. They focus on the attitudes, knowledge, skills, and practices of persons involved in selling or serving alcoholic beverages.^{iv} Their primary goal is to prevent sales of alcoholic beverages to underage and intoxicated patrons and reduce the risks of intoxication occurring on the premises.^v Additional goals include improving crowd control and other security staff functions and addressing the unique circumstances associated with alcohol sales at public events. RBS programs reach these goals by training servers and sellers on techniques to identify and refuse service to intoxicated and underage patrons; training managers to develop and implement policies and procedures to support servers' intervention techniques; and training security staff workers to manage problem behavior without escalating aggression or increasing the risk of danger to the safety of the belligerent patron or innocent bystanders.

Research has shown that RBS training is an important and effective tool in preventing alcohol problems at the community level. One study reported that RBS training generally results in reductions in blood alcohol concentration (BAC) levels of patrons and the number of patrons with high BAC levels.^{vi} Another study found that a statewide, mandatory RBS program in Oregon was associated with a reduction in single-vehicle night-time injury producing crashes across the state.^{vii} RBS training is also associated with increases in self-reported checking of identification by servers^{viii} and with decreased sales to minors and intoxicated patrons following individual manager training and policy development.^{ix}

RBS training is one component of a larger prevention strategy that includes the use of zoning policies to protect and promote the public health, safety, and general welfare from alcohol related harms. These zoning policies, implemented to prevent nuisance activity around alcoholic beverage sales establishments, require (1) approval of a *conditional land use permit* (CUP) before a new establishment will be permitted in any land use zoning district of a municipality, and (2) existing establishments that are legal nonconforming activities to comply with *deemed approved* performance standards. RBS training costs may be covered by a portion of an annual fee imposed on all new and deemed approved establishments to defray the cost of implementing the activities of a

program whose purpose is to monitor and enforce a municipality's CUP ordinance and/or deemed approved activity ordinance, and/or by revenues collected from the recovery of response costs incurred by a municipality in enforcing its mandatory RBS training ordinance. For a complete analysis of conditional use permit and deemed approved activity policies and related model ordinances, please refer to the companion guide Ventura County Behavioral Health Department *Best Practices in Municipal Regulation to Reduce Alcohol-Related Harms From Licensed Alcohol Outlets*.

B. RBS Training on the State and Local Levels

RBS training programs can be mandatory, voluntary, or a combination of both.^x In **mandated** RBS programs, managers and servers of both on- and off-sale establishments are required to take training courses before they can be employed. Voluntary programs provide incentives for owners and managers to train their staff, but the training is not required. Incentives usually involve reductions in license fees or mitigation of penalties where violation of sales to minors or obviously intoxicated persons laws occurs. **Mixed programs** mandate some but not all staff (e.g., servers, not managers) or some types of establishments (e.g. off-sale but not on-sale, or new, but not existing, licensees) to obtain training.

RBS training is strictly voluntary at the state level in California, with the primary incentive being mitigated penalties offered to licensees with trained staff if they are found to have violated laws prohibiting sales to minors or intoxicated persons.^{xi} State law permits local governments to adopt mandated or mixed programs, and many California cities and counties have decided to do so, expanding on the state's voluntary system.

Local mandated RBS training can be accomplished by adding a provision in the city conditional use permit (CUP) or deemed approved activity ordinance. In these ordinances, the RBS training provision is variously termed a:

- Performance standard or operating standard (e.g., cities of Santa Rosa, Vallejo, County of Alameda);
- Training requirement (e.g., City of Ventura, City of Rohnert Park);
- Development and operational regulation (e.g., City of Newport Beach); or
- Condition of approval in a CUP (e.g., City of Salinas).

An alternative approach is to create a *standalone* mandatory RBS training ordinance, an approach used in many jurisdictions, including Orange County and the cities of Berkeley, National City, and Poway. Standalone RBS ordinances are found in the relevant city's health and safety code or zoning code, but not within a CUP or deemed approved activity ordinance.

C. What are the Minimum Components of an Effective RBS Training Ordinance?

An effective RBS training ordinance involves several minimum components, briefly described below. The model ordinance included in this *Guide* incorporates all of these best practices, along with commentary and options for cities considering passing an RBS training ordinance.

- **Mandatory RBS training**

A best practice is to create a mandatory RBS training ordinance. Research has found that mandatory RBS training is more effective in reducing sales to minors and intoxicated persons than voluntary or incentive-based RBS programs.

- **Curriculum standards for RBS training programs**

Curriculum standards form the backbone of an RBS training program and should be stated in the ordinance.^{xii} Without required standards, program content varies widely and there is no basis for insuring training program quality. Including standards gives a municipality greater local control over the scope and depth of RBS training program content.

- **Training customized to targeted audiences.**

RBS training should be customized to *targeted audiences*. The RBS ordinance should describe the curricula standards for training *managers* and *servers*, as well as special event organizers, licensees, and security staff workers. Standards should also be tailored to both off-site and on-site establishments.^{xiii}

Sellers and managers at off-site and on-site establishments and special events should all receive a similar core curriculum that includes:

- Understanding the physiological effects of alcohol on the body and behavior, including the signs and stages of intoxication;
- Understanding and developing basic skills designed to prevent or limit sales and service to minors and intoxicated; and
- Learning about the key state and local laws and house policies and practices that apply to their job functions and how to prevent violations of these laws and policies.^{xiv}

On-site sellers and servers need more intensive training, including role-playing, that focuses on preventing intoxication on the premises. The training can include strategies for pacing customer drinking, drink size and drink equivalencies, cutting off a customer using non-confrontational techniques, and staff communication when a customer has been cut off. Training for off-sale employees need to include a focus on how to prevent shoulder-tapping activity outside the premises, an issue that does not affect most on-

sale establishments. Special event workers need training in serving alcohol at large public events in designated drinking areas.

Many RBS programs mandate training only for sellers and servers, ignoring managers. Yet managers play a critical role in effective RBS programs, because they supervise sales clerks and servers, and are responsible for implementing policies and procedures that will promote server and seller adherence to the training standards. Research suggests that these functions are at least as important as the RBS server training component.^{xv} The model ordinance therefore includes mandatory manager training as a best practice.^{xvi}

- **RBS training program format requirements**

Another best practice to include in a mandatory RBS ordinance is a set of RBS training program *format requirements*.

The ordinance should state that the RBS training program format shall consist of traditional in-person lecture and discussion, along with the use of filmed, taped or digital reenactments of common on the job situations and role-playing. Live lecture combined with skill-building techniques or reenactment and role-playing teach sellers and managers competence in proper refusal of alcohol service to intoxicated persons and persons under the age of 21.^{xvii}

- **Issuance of training certificates**

The model ordinance includes a provision that requires training programs to issue certificates to those who successfully complete the training so that the city or county verify whether licensees and special event organizers are in compliance with a city's RBS training requirements.

- **Minimum training program length**

The model ordinance includes provisions regarding minimum lengths for different RBS training programs. Program length should allow for adequate coverage of relevant information and in-depth skill building through reenactments and role-playing.^{xviii}

- **Certification of training programs and approval of trainers**

Mandatory RBS training ordinance should include as a best practice *a procedure for approving trainers and certifying RBS training programs*.^{xix} The California Department of Alcoholic Beverage Control is the entity to approve, on behalf of the state of California, RBS training providers and curricula. In addition to requiring certification by the state, however, a municipality, through its RBS ordinance, should exercise local authority by requiring local certification of trainers and RBS programs. Approval and certification functions should be carried out by a local administrator qualified to approve trainers and certify programs, such as the administrator of the city's alcohol and drug prevention program or the city police chief.

Another best practice involves *administrative follow-up after initial certification*. An RBS ordinance should include at least one compliance annual or biennial review of RBS training programs and a requirement that RBS training programs and approved trainers “self-police” whether they are in compliance to continue to train personnel of local establishments and special events.

- **Penalty requirements**

An RBS ordinance should include penalties. For mandatory programs, violations occur when a staff member is allowed to work at the establishment without receiving the required training or when the management fails to adhere to required administrative procedures. A best practice is to make *the licensee the target of graduated penalties*, for such violations, with the severity increasing for repeated violations.^{xx} A city may treat a violation as a misdemeanor, infraction, or administrative penalty. A city also may pursue civil remedies in court, including recovery of law enforcement costs (the costs associated with enforcing the RBS ordinance). Best practice is to rely primarily on administrative penalties and civil response costs recovery, which are more streamlined and easier to impose, than on criminal penalties. Penalties should also be included that target *RBS training program providers*. These should be included whether the ordinance is voluntary or mandatory, and should also be administrative or civil in nature. They are applicable when a training program fails to obtain and maintain its certification as required under the local ordinance. The model ordinance provides several options regarding penalties that should be adapted to the specific circumstances of the local jurisdiction.

D. The Role of Enforcement

Enforcement is an essential element of an RBS training ordinance and should be planned for when developing a local RBS program. Research has shown that compliance improves with deterrence, i.e. when those subject to the ordinance’s provisions believe that violations of the mandated provisions will be detected and punished.^{xxi} For deterrence to be effective, the punishment must be perceived to be relatively swift, certain, and severe. This is best achieved through *active surveillance* by the city, rather than passive reliance on receipt of third party complaints to identify potential violations.^{xxii}

A comprehensive active surveillance system includes key provisions of the model ordinance described above:

1. Criteria and procedures for certifying training programs and approving trainers.
2. On-site review of RBS program site to verify information provided by applicant seeking certification or recertification.
3. Regular annual or biennial review of quality of the curricula, faculty, and facilities of certified programs;
4. Requirement of licensees and RBS programs to submit documentation of persons who have attended and completed successfully RBS training.

II. HIGHLIGHTS OF THE MODEL RESPONSIBLE ALCOHOLIC BEVERAGE SALES AND SERVICE ORDINANCE

- Drafted as a standalone RBS ordinance that can be added to a city's zoning ordinance or health and safety code; alternatively, may be added to a conditional use permit ordinance to require RBS training of employees of new alcoholic beverage establishments or to a deemed approved activity ordinance to require training of employees of existing establishments.
- Provides for mandatory RBS training of licensees, managers, servers, and security staff workers of new and existing on-site and off-site alcoholic beverage establishments and of special event organizers and special event staff workers.
- May be modified to apply to particular establishments or employees, such as new establishments, off-site establishments, or servers and managers only.
- Includes optional provisions for incentive-based voluntary RBS training, providing for benefits including mitigation of penalties for violating CUP conditions or performance standards and reduction of permit/deemed approved fees.
- Sets forth comprehensive multi-tiered system of curricula standards for several targeted audiences, giving city local control over program content.
- Gives municipalities further local control over quality of local RBS training programs by enumerating RBS program format requirements, including: in-person lecture with skill-building reenactment and role-playing techniques to help servers and managers develop competence in the proper refusal of service to intoxicated persons and persons under 21 years of age; issuance of certificates of completion to trainees; and recommendations for minimum length of trainings for adequate coverage of the curriculum.
- Requires licensees and managers to develop and implement house policies and procedures on responsible seller/server practices, which, together with RBS training and active surveillance by law enforcement, can reduce heavy alcohol consumption and high-risk drinking.
- Imposes graduated set of penalties—criminal, infraction, administrative penalty--on the licensee and risk of decertification on trainers and RBS training programs for non-compliance with the municipality's standards and criteria.

MODEL RESPONSIBLE ALCOHOLIC BEVERAGE SALES AND SERVICE ORDINANCE

The City Council of the City of ___ hereby ordains as follows:

TITLE

- A. This Ordinance shall be known as the Responsible Alcoholic Beverage Sales and Service Ordinance.
- B. This ordinance holds business owners, managers, clerks and servers of any alcoholic beverage sales establishment in the City of _____ responsible for obtaining training in the sale and service of alcoholic beverages to the general public. This ordinance seeks to deter the sale of alcoholic beverages to intoxicated persons, persons under the age of 21, and adults purchasing alcoholic beverages for persons under the age of 21, thereby protecting public health and safety.

FINDINGS

The City Council of the City of _____ finds the following:

- A. There currently are _____ alcoholic beverage retail sales licenses in _____ County, and of those licenses _____ (_____%) are for retail sales in the City of _____;
- B. As of [*specify date*] in [_____ County/in the City of _____], there were _____ alcoholic beverage sales establishments per 100,000 residents¹;
- C. The sales of alcoholic beverages to intoxicated persons and persons under the age of 21 are a public health and safety concern in the City of _____ and the rest of _____ County;
- D. Alcohol-related problems include injuries and deaths caused by vehicle crashes, sexual assaults, domestic violence, drug dealing, public drunkenness, loitering, and other activities constituting threats to public health and safety. These nuisance and criminal activities negatively impact neighborhoods and occur with disproportionate frequency at and around the premises of on-site and off-site alcoholic beverage sales establishments;
- E. Local surveys in California communities show driving under the influence (DUI) arrests often take place at night, as on-site alcoholic beverage sales establishments are closing and intoxicated patrons drive onto surrounding streets and highways. For example, from 2005 through 2006, about 42.9% of all participants in a Ventura County drinking driver program reported having taken their last drink before being arrested at a bar, club, or restaurant. The data also showed that more than half of

¹ Data for Findings (A) and (B) may be determined by visiting California Department of Alcoholic Beverage Control Licensee Query System – Reports.
<http://www.abc.ca.gov/datport/SubscrMenu.asp>. Accessed Oct. 15, 2007.

persons whose place of last drink was a bar, club, or restaurant drove less than three miles from that location before being arrested. According to data from the California Office of Traffic Safety (OTS), the city of _____ ranked ___ respectively out of 47 cities across California for drivers under the age of 21 who were arrested for DUI;²

- F. Research shows that areas with greater densities of on-site and off-site alcoholic beverage sales establishments generally have higher rates of motor vehicle crashes, alcohol-related hospital admissions, pedestrian injury collisions, self-reported injury, and drinking and driving among both young people and adults. Research in the state of California found that a 1% increase in outlet densities was associated with a 0.54% increase in alcohol-related crashes. Under these conditions, a city with 50,000 residents and 100 establishments would experience an additional 2.7 such crashes for each additional establishment opened.³ Research in the state of California also found that underage and intoxicated patron sales are more likely in communities with greater densities of on-site and off-site alcoholic beverage sales establishments⁴;
- G. Aggressive behavior is a major problem associated with drinking in alcoholic beverage sales establishments.⁵ Research findings verify that alcohol intoxication plays a causal role in aggressive behavior⁶, and that personality and situational factors play key moderating roles in the effects of alcoholic beverages.⁷ For example, the high rate of problems in on-site alcoholic beverage sales establishments is at least partly related to the types of drinkers who tend to frequent these establishments (i.e., young adult males).⁸ Certain aspects of the outlet's environment also appear to increase the likelihood that drinking will be associated

² Institute for Public Strategies, "Place of Last Drink Survey Annual Report, March 2003." Ventura, CA: Ventura County Behavioral Health Department, 2003. Data for California cities are available on the Office of Traffic Safety website at <http://www.ots.ca.gov/cgi-bin/rankings.pl>. Accessed Oct. 15, 2007.

³ Treno, A.J.; Johnson, F.W.; Remer, L; and P.J. Gruenewald, "The impact of outlet densities on alcohol-related crashes: A spatial panel approach," *Accident Analysis and Prevention* (2007) 39:894-901.

⁴ Freisthler, B.; Gruenewald, P.J.; Treno, A.J.; and J. Lee, "Evaluating Alcohol Access and the Alcohol Environment in Neighborhood Areas," *Alcoholism: Clinical and Experimental Research* (2003) 27 (3): 477–84.

⁵Babor, T.; Caetano, R.; Casswell, S; *et al. Alcohol: No Ordinary Commodity, Research and Public Policy* (2003), 141. New York: Oxford University Press.

⁶ Babor, at 141, *citing* Bushman, B.J., "Effects of alcohol on human aggression: validity of proposed mechanisms. In: Galanter M. (ed.) *Recent developments in alcoholism* (1997) 13:227-44. New York: Plenum Press.

⁷ Babor, *supra*, at 141, *citing* Graham, K; Jelley, J.; and J. Purcell, *Evaluation of the safer bars training program*. Paper presented at an International Experts Forum: Setting the agenda for correctional research in substance abuse, Charlottetown, Prince Edward Island, Canada.

⁸ Babor, *supra*, at 142.

with problems⁹, including serving practices that promote intoxication; an aggressive approach taken to closing time by the establishment's staff and local police¹⁰; the inability of staff to manage problem behavior¹¹; general characteristics of the establishment-room environment such as crowding and permissiveness of the establishment's staff¹²; and the general type of on-site establishment¹³;

- H. Not all problems with aggressive behavior arise because patrons of on-site alcoholic beverage sales establishments are intoxicated. Studies show that some on-site settings attract patrons who may be looking for a fight and that sometimes problems in on-site establishments relate to aggressive security staff¹⁴;
- I. New findings suggest domestic violence and sexual assault in a neighborhood may rise as the number of liquor licenses in the area increases. Even after accounting for socioeconomic factors that could influence domestic violence, a study in the state of Maryland showed that a doubling of the density of liquor stores was associated with a nine percent increase in the rate of reported domestic violence. Several studies of college students also found a correlation between alcohol use and sexual assault. Specifically, the studies showed an increased likelihood of victimization among drinking and intoxicated women.¹⁵ In a study of 52 women bar drinkers, 85 percent

⁹ Babor, *supra*, at 142, *citing* Graham, K. and R. Homel, "Creating safer bars." In: *Alcohol: Minimizing the harm*. Plant, M. and T. Stockwell (eds.) (1997): 171-92. London, U.K.: Free Association Press.

¹⁰ Babor, *supra*, at 142, *citing* Marsh, P. and K. Kibby, *Drinking and Public Disorder* (1992) London, U.K.: Portman Group; Tomsen, S., "A top night out: social protest, masculinity, and the culture of drinking violence," *British Journal of Criminology* (1997) 37: 990-1002.

¹¹ Babor, *supra*, at 142, *citing* Homel, R.; Tomsen, S.; and J. Thommeny, "Public drinking and violence: Not just an alcohol problem," *Journal of Drug Issues* (1992) 22: 679-97; Wells, S.; Graham, K.; and P. West, "'The good, the bad, and the ugly': Responses by security staff to aggressive incidents in public drinking events," *Journal of Drug Issues* (1998) 28: 817-36.

¹² Babor, *supra*, at 142, *citing* Homel, R. and J. Clark, "The prediction and prevention of violence in pubs and clubs," *Crime Prevention Studies* (1994) 3: 1-46.

¹³ Babor, *supra*, at 142, *citing* Stockwell, T.; Somerford, P.; and E. Lang, "The relationship between license type and alcohol-related problems attributed to licensed premises in Perth, Western Australia," *Journal of Studies on Alcohol* 53:495-98; Gruenewald, P.J.; Stockwell, T.; and A.J. Treno, "Drinking and driving: drinking patterns and drinking problems," *Alcoholism* (1996) 91:1637-49.

¹⁴ Babor, *supra*, at 146, *citing* Burns, T.F. "Getting rowdy with the boys," *Journal of Drug Issues* (1980) 10: 273-86; Graham, K.; LaRocque, L.; Yetman, R.; *et al.*, "Current directions in research in understanding and preventing intoxicated aggression," *Addiction* (1998) 93: 659-76; Homel, R.; Tomsen, S.; and J. Thommeny, "Public drinking and violence: Not just an alcohol problem," *Journal of Drug Issues* (1992) 22: 679-97; Graham, K. and S. Wells, "Aggression among young adults in the social context of the bar," *Addiction Research* (2001) 9: 193-219.

¹⁵ Abbey, A.; McAuslan, P.; and L.T. Ross, "Sexual assault perpetration by college men: The role of alcohol, misperception of sexual intent, and sexual beliefs and experiences." *Journal of Social and Clinical Psychology* (1998) 17(2): 167-95.

of the women reported some form of nonsexual physical aggression. Thirty-three percent reported an attempted or completed rape occurred after drinking in a bar. The risk of sexual victimization increased for women who went to bars frequently;¹⁶

- J. Research has established that responsible beverage sales and service training can reduce alcohol-related problems, including the rates of alcohol-related motor vehicle crashes. For example, one study conducted in the state of Oregon found that there was an 11% reduction in fatal, alcohol-related car crashes in one year, and a 23% drop in single-vehicle nighttime injury crashes over three years, after training became mandatory statewide¹⁷;
- K. A recent study by the San Diego based Responsible Hospitality Coalition found that 83% of alcohol retail sales workers trained in responsible beverage service practices were “likely” or “very likely” to change the way they do their jobs, and 99% said they would recommend the training to other such workers¹⁸; and
- L. The ordinance is necessary to protect the peace, health, safety and general welfare of persons living or working in the affected areas.

Commentary

The Findings section provides the legislative body’s rationale for enacting the ordinance. It creates the legal nexus between the community problems caused by alcoholic beverage sales establishments engaging in activities that constitute nuisances and/or crimes (e.g., sales to intoxicated persons or to persons under the age of 21, drinking-driving, sexual assaults, domestic violence, drug dealing, public drunkenness, and loitering) and the manner in which these establishments are operated and managed. The findings also establish the municipality’s need for RBS training of servers, security staff workers, managers, and owners of alcoholic beverage sales establishments to help prevent or reduce the number and frequency of these problems in the community. Local data on the number and concentration of alcoholic beverage retail sales outlets and reports of nuisance or criminal activities by alcoholic beverage sales outlets in a municipality should be included in the findings.

¹⁶ Parks, K., and B.A. Miller, “Bar victimization of women,” *Psychology of Women Quarterly* (1997) 21(4): 509–25.

¹⁷ Holder, H.D. and A.C. Wagenaar, “Mandated server training and reduced alcohol-involved traffic crashes: A time series analysis of the Oregon experience,” *Accident Analysis & Prevention* (1994) 26(1): 89-97.

¹⁸ Inzunza, N. and F. Lopez, “Responsible service to an evolving city,” *San Diego Union-Tribune* (Feb. 16, 2006). Accessed online at http://www.signonsandiego.com/uniontrib/20060216/news_lz1e16inzunza.html (15 October 2007).

Section 1. PURPOSE AND INTENT.

It is the intent of this ordinance to:

- A. Prevent nuisance activities where alcoholic beverage sales occur in order to protect the peace, health, safety and general welfare of the residents of the City of ___;
- B. Prevent the sale at on-site and off-site alcoholic beverage sales establishments and at outdoor social events to intoxicated persons and persons under the age of 21;
- C. Prevent the over-service and over-consumption of alcoholic beverages by patrons while on the premises of on-site alcoholic beverage sales establishments and at social events requiring a city permit;
- D. Reduce injuries and deaths resulting from intoxicated drivers after consuming alcoholic beverages obtained from on-site and off-site alcoholic beverage sales establishments;
- E. Provide licensees, managers, and servers with knowledge and skills that will better enable them to comply with their responsibilities under state and local law; and
- F. Assist alcoholic beverage sales establishments and their staff to develop and implement responsible policies for the promotion, sales and service of alcoholic beverages.

Commentary

Findings and purposes provide guidance to courts interpreting legislative intent and publicly explain the goals and objectives of a city council in enacting the ordinance. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 858.)

Section 2. DEFINITIONS.

As used in this Chapter, the following definitions apply:

- A. "Alcohol" or "alcoholic beverage" means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.
- B. "Alcoholic beverage sales" means the retail sale or furnishing of alcoholic beverages for on-site or off-site consumption.
- C. "Alcoholic beverage sales establishment" means a licensed establishment in the city of _____ where alcoholic beverage sales occur.
- D. "Approved trainer" means a person who is approved by the certifying/licensing body designated by the State of California and [the administrator of the alcohol and drug prevention division of the city behavioral health department/Police Chief] in

accordance with regulations adopted by resolution of the City Council, as the same may be amended from time to time.

- E. "California Department of Alcoholic Beverage Control" or "ABC" or "Department" refers to the department of the State of California empowered to act pursuant to Article 20, section 22, of the California Constitution and authorized to administer the provisions of the Alcoholic Beverage Control Act.
- F. "Certificate of Completion" means a certificate issued to any person who attends and successfully completes an RBS training program.
- G. "Full-service restaurant" means a place that: (1) is primarily, regularly and in a bona fide manner used and kept open for the serving of at least dinner to guests for compensation; and (2) has kitchen facilities containing conveniences for cooking an assortment of foods that may be required for those meals; and (3) obtains a minimum of sixty-seven percent of its gross receipts from the sale of meals and other food and drink non-alcoholic products; and (4) submits evidence of total meal and other non-alcoholic product sales to municipal officials upon request for purposes of determining its status under this ordinance. A place that sells or serves only sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or only snack foods, or both, is not a full-service restaurant.
- H. "Licensee" means any person holding a license issued by the ABC to sell alcoholic beverages.
- I. "Manager" means a person, regardless of job title or description, who has discretionary powers to organize, direct, carry on, or control the operations of an alcoholic beverage sales establishment. Authority to control one or more of the following functions shall be prima facie evidence that such a person is a manager of the alcoholic beverage sales establishment:
 - 1. Hire or fire employees;
 - 2. Contract for the purchase of furniture, equipment, or supplies other than the occasional replenishment of stock;
 - 3. Distribute funds of the licensed business other than for the receipt of regularly replaced items of stock; or
 - 4. Make or participate in policy decisions regarding operation of the alcoholic beverage sales establishment.
- J. "Off-site alcoholic beverage sales establishment" means an alcoholic beverage sales establishment providing the sale and service of alcoholic beverages for consumption by patrons off the premises. Off-site alcoholic beverage sales establishments include but are not limited to the following: liquor stores; beer and wine stores; convenience markets; markets; neighborhood specialty food markets; retail sales establishments; wine shops; and service stations.

- K. “On-site alcoholic beverage sales establishment” means an alcoholic beverage sales establishment providing the sale and service of alcoholic beverages for consumption by patrons on the premises. On-site alcoholic beverage sales establishments include but are not limited to the following: taverns; clubs; cocktail lounges, ballrooms, cabarets, dance bar, piano bars; billiard or game parlors, bowling alleys; nightclubs cafes; dance halls; bars; restaurants with bars; full-service restaurants; and fast food establishments.
- L. “Responsible beverage sales and service training program” or “RBS training program” means a program in responsible alcoholic beverage sales and service training:
1. Conducted by an approved trainer; and
 2. Certified by the certifying/licensing body designated by the State of California and [the administrator of the alcohol and drug prevention division of the city behavioral health department/Police Chief].
- M. “Security staff worker” means any person who, as part of his or her employment, works in an alcoholic beverage sales establishment, provides security functions to the establishment and its patrons, and is not a manager or server.
- N. “Server” means any person who, as part of his or her employment, sells, serves or delivers any alcoholic beverage at an alcohol beverage sales establishment.
- O. “Shoulder tapping” is a method of obtaining alcoholic beverages by a person under 21 years of age, whereby the person under 21 years of age stands outside an off-site alcoholic beverage sales establishment, such as a liquor store or supermarket, and asks a person over 21 years of age to purchase an alcoholic beverage on his or her behalf.
- P. “Special event” means a social occasion or activity for which a [one-day][three-day] permit must be obtained from the city of _____, as required by Section ___ of the City of _____ Municipal Code.
- Q. “Special event organizer” means any person who is responsible for organizing a special event.
- R. “Special event staff worker” means any person, whether an employee or a volunteer, who, as part of his or her employment or position as a volunteer, either:
1. Sells, serves or delivers any alcoholic beverage at a special event; or
 2. Provides security functions to the event and its attendees.

Commentary

A definitions section is essential, as terms and phrases used in the ordinance will likely not appear elsewhere in a city’s municipal code. Some definitions, such as “alcoholic beverage” and “California Department of Alcoholic Beverage Control” may refer directly

or indirectly to appropriate portions of the California Business and Professions Code. Other definitions incorporate by reference definitions used in other portions of the city municipal code. For instance, “special event” refers to an event for which a one-day or three-day permit must be obtained pursuant to another provision of the city municipal code. Presumably, “one-day permit” and “three-day permit” are terms defined elsewhere in a municipal code. Other definitions specific to an RBS training ordinance, such as “approved trainer,” and “RBS training program” need to be specifically defined.

A carefully-worded definitions section can make a difference in whether an ordinance ultimately is effective in reducing alcohol-related harms. On the other hand, vaguely-defined terms could render an ordinance useless. For instance, the model ordinance is intended to apply to certain employees of an alcoholic beverage sales establishment. This section describes who is an employee to whom the ordinance applies, by including definitions of “server,” “manager,” and “security staff worker.” By carefully describing the employees to whom the ordinance applies, licensees are on notice as to precisely which of their employees must undergo RBS training.

As shown by the definitions for “approved trainer” and “responsible beverage server training program,” a municipality may authorize its own police chief or administrator of the alcohol and drug prevention division of the city behavioral health department (or similar department) to approve RBS trainers and certify RBS training programs. An approved trainer is one who is approved by the certifying body of the state of California, which today is the California Department of Alcoholic Beverage Control, as well as by the city through its administrator of the alcohol and drug prevention division of the city behavioral health department or, alternatively, the Police Chief. An RBS training program is one that is conducted by an approved trainer and is certified by both the ABC and the city. By requiring local certification of trainers and training programs, these definitions, together with other provisions in the model ordinance, provide a city with strong local control over the quality of RBS training programs attended by licensees and employees of local alcoholic beverage establishments and by organizers and staff workers of local special events.

Section 3. RBS TRAINING PROGRAM CURRICULUM

- A. As set forth more fully in subsections B and C of this section, the RBS training program curricula standards shall consist of:
 - 1. Four levels of RBS training program curriculum standards for licensees, managers, servers, and security staff workers, and
 - 2. Two levels of RBS training program curriculum standards for special event organizers and special event staff workers.

Subsections (B) and (C) of this section set forth the curriculum standards for each level.

- B. Curricula standards for RBS training program for licensees and employees of alcoholic beverage sales establishments.

1. Level I

- Off-site alcoholic beverage sales establishment servers
 - Off-site alcoholic beverage sales establishment security staff workers
 - Minimum of 2 to 3 hours of instruction
- a. Alcohol as a drug and its effects on the body and behavior, including:
- (1) Signs and stages of intoxication (including five levels of intoxication varying from legally intoxicated to obviously intoxicated);
 - (2) Factors that vary blood alcohol concentration (body weight, gender fitness, environment, health, tolerance, food, alcohol concentration); and
 - (3) Alcohol-impaired driving;
- b. The interaction of alcoholic beverages and other commonly used drugs, legal and illegal, prescription and non-prescription;
- c. State laws, including ABC regulations, local ordinances, and criminal and civil penalties, covering the sales or service of alcoholic beverages and the operation of establishments serving alcoholic beverages, including:
- (1) Sales to persons under the age of 21 (Cal. Bus. & Prof. Code, § 25658);
 - (2) Possession by persons under the age of 21 (Cal. Bus. & Prof. Code, § 25662);
 - (3) Minors on public premises (Cal. Bus. & Prof. Code, § 25665);
 - (4) Keg registration (Cal. Bus. & Prof. Code, § 25659.5);
 - (5) Sales to obviously intoxicated persons and server's duty of care (Cal. Bus. & Prof. Code, § 25602);
 - (6) "Driving while under the influence" (Cal. Veh. Code, § 23152);
 - (7) Hours of operation (Cal. Bus. & Prof. Code, §§ 25630-25633);
 - (8) Age of servers (Cal. Bus. & Prof. Code, § 25663);
 - (9) Unsupervised sales by person(s) under 18 (Cal. Bus. & Prof. Code, § 25663(b));
 - (10) Sale and/or consumption after hours (Cal. Bus. & Prof. Code, §§ 25631, 25632);
 - (11) Employees accepting alcoholic beverages (Cal. Code Regs., § 143);

- (12) Battery and assault and defenses thereto;
- (13) Disorderly/disruptive premises (Cal. Bus. & Prof. Code, § 25601; Cal. Code Regs, §§ 143.2 & 143.3); and
- (14) Retail Operation Standards – (Cal. Bus. & Prof. Code, § 25612.5).

In addition, knowledge of how these laws apply to the job functions of the trainee.

- d. Methods and skills for limiting service to patrons:
- e. Recognizing signs of intoxication and intervening with intoxicated patrons;
- f. Recognizing patrons under 21 years of age, including:
 - (1) Checking age identification documents (e.g., FLAG system (**F**eel, **L**ook, **A**sk, **G**ive back));
 - (2) Knowledge of acceptable forms of identification;
 - (3) Methods and skills for recognizing false identification;
 - (4) Methods and skills for eliciting information from patrons with questionable identification; and
- g. Recognizing shoulder tapping;
- h. Intervening with belligerent patrons; and
- i. A comprehensive test to ensure that the trainee has a working knowledge of the concepts presented in the program as well as the skills needed to implement them.

2. Level II

- On-site alcoholic beverage sales establishment security staff workers
- Minimum of 2 to 3 hours of instruction.
- a. Same as Level I, described in subdivision (B)(1) of this section, and:
- b. Methods and skills for:
 - (1) Intervening with belligerent patrons, including effective methods for serving patrons to minimize chances of intoxication, and methods of cutting off service and protecting the safety of patrons;
 - (2) Use of alternative means of transportation to ensure that intoxicated patrons reach home safely;

- (3) Controlling crowds and other security measures;
- (4) Recognizing patrons using illegal drugs on the premises (Cal. Bus. & Prof. Code, § 24200.5; Cal. Health & Safety Code);
- (5) Recognizing persons using premises for the sale or purchase of illegal drugs (Cal. Bus. & Prof. Code, § 24200.5; Cal. Health & Safety Code); and
- (6) Recognizing illegal gambling activities on the premises (Cal. Bus. & Prof. Code, § 24200(a); Cal. Pen. Code, § 330).

3. Level III

- On-site alcoholic beverage sales establishment servers
- Minimum of 3 to 4 hours of instruction
 - a. Same as Levels I and II, described in subdivisions (B)(1) and (B)(2) of this section, and:
 - b. Methods and skills for appropriately pacing customer drinking so that the customer will not leave the premises in an intoxicated condition, including suggestive selling techniques and food promotion; and
 - c. Knowledge of mixology, including knowledge of alcohol equivalencies and their effects on the body, drink size and limits, and marketable alternatives to alcoholic beverages.

4. Level IV

- Managers and licensees of off-site and on-site alcoholic beverage sales establishments
- Minimum of 3 to 4 hours of instruction
 - a. Same as Levels I, II, and III, described in subdivisions (B)(1), (B)(2), and (B)(3) of this section, and:
 - b. State laws, including ABC regulations, local ordinances, and criminal, civil, and administrative penalties, including:
 - (1) Duties and responsibilities of licensees and those in supervisory roles;
 - (2) Insurance;
 - (3) Not operating a bona fide full-service restaurant (Cal. Bus. & Prof. Code, §§ 23038, 23396);
 - (4) Illegal solicitation of alcoholic beverages (Cal. Bus. & Prof. Code, §§ 24200.5(b), 25657(a) & (b), Cal. Pen. Code, § 303(a));

- (5) Disorderly house, prostitution, and lewd conduct (Cal. Bus. & Prof. Code, § 25601);
 - (6) Licensee or employee not permitting inspection of premises (Cal. Bus. & Prof. Code, § 25755) or records (Cal. Bus. & Prof. Code, § 25616); and
 - (7) Licensee or employee resisting arrest or interfering with investigation on the premises (Cal. Bus. & Prof. Code, § 24200(a) & Cal. Pen. Code, § 148));
- c. Advertising and marketing for safe and responsible drinking patterns (including compliance with marketing and signage provisions of Retail Operation Standards (Cal. Bus. & Prof. Code, § 25612.5));
- d. Understanding of management practices and their relation to safe and responsible drinking patterns, including, but not limited to, the following:
- (1) Hiring practices (including background checks and references, verifying age of applicant to comply with age of server laws, and completing RBS training within required time frames);
 - (2) Adequate staffing;
 - (3) Interior design of the premises;
 - (4) Hours of operation;
 - (5) Drink size and number limits;
 - (6) Use of food promotional techniques;
 - (7) Handling patrons who arrive intoxicated; and
 - (8) Effective supervision of employees with respect to:
 - (9) Eliminating employee use of alcoholic beverages or illegal drugs on the job;
 - (10) Accepting tips from patrons; and
 - (11) Illegal sale or service of alcoholic beverages to persons who are intoxicated or who are under 21 years of age.
- e. Development of standard operating procedures (also known as house policies) for addressing:
- (1) All of the practices in Section 3(B)(4)(d)(1) through (8);

- (2) Belligerent patrons, obviously intoxicated persons, and persons under 21 years of age; and
 - (3) Shoulder tapping activities and illegal drug sales or purchases on the premises;
- f. Recognizing the need for documenting, and maintenance of written records on, incidents of sales to obviously intoxicated persons, persons under 21 years of age, and shoulder tapping;
- g. Methods to support employees in their interactions with belligerent patrons, obviously intoxicated persons, and persons under 21 years of age;
- h. Recognition of signs and symptoms of alcohol-related problems with regard to employees and methods to develop or access employee assistance programs (including compliance with licensee or bartender working in premises while intoxicated (Cal. Bus. & Prof. Code, § 24200(a)));
- i. Assessment, development and dissemination of written policy and procedural guidelines for the implementation of responsible business practices, including practices for maintaining a positive relationship with surrounding neighborhood and community at large;

The following curriculum standards apply to RBS training programs for licensees and managers of off-site alcoholic beverage sales establishments only.

- j. Proper display and storage of alcoholic beverages on the premises, including:
 - (1) Isolation of alcoholic beverages from non-alcoholic beverages;
 - (2) Display and storage of alcoholic beverages that maximize opportunity for monitoring patrons in establishment and to prevent theft;
- k. Recognizing how inventory may be used in the manufacture of illegal drugs; and
- l. Recognizing public safety risks of the off-site sale of the following alcoholic beverages:
 - (1) Malt beverage products with alcohol content greater than five and one-half percent by volume;
 - (2) Containers of beer or malt liquor larger than thirty-nine ounces;
 - (3) Distilled spirits in bottles or containers smaller than three hundred seventy-five milliliters;

- (4) Flavored alcoholic beverages (FABs), including alcoholic energy drinks (AEDs), which contain both alcohol and stimulants (typically caffeine and guarana).

C. Curricula standards for RBS training program for special event organizers and special event workers.

1. Level I

- Special event workers
 - Minimum of 1-2 hours of instruction
- a. Same as Level I, described in subsection (B)(1) of this section, and:
 - b. Methods and skills in crowd control and security at special events; and
 - c. Importance and methods of limiting drinking alcoholic beverages to designated areas of the special event.

Level II

- Special event organizers
 - Minimum of 3 to 4 hours of instruction
- a. Same as Levels I, II, III, and IV, described in subdivisions (B)(1), (B)(2), (B)(3), and (B)(4) of this section, and:
 - b. State laws, including ABC regulations, local ordinances, and criminal, civil, and administrative penalties, covering marketing of the special event and event sponsorship by the alcoholic beverage industry, including any rules or regulations regarding:
 - (1) Manner, location and size of any proposed advertisement or sponsorship signs (e.g., banners, posters);
 - (2) Proximity of the proposed advertisement or sponsorship signs to entertainment and activities for persons under 21 years of age; and
 - (3) Visibility of proposed advertisement or sponsorship signs to persons under 21 years of age;
 - c. Methods and skills in crowd control and security at special events; and
 - d. Development of policies and standard operating procedures in:
 - e. Limiting consumption of alcoholic beverages to designated drinking areas of the special event;
 - f. Checking age identification documents; and

- g. Age identification bracelet, badge, or similar system that verifies special event staff workers have conducted patron age identification.

Commentary

The model ordinance sets forth a tiered system of curricula standards for RBS training programs for licensees and their employees and for special event organizers and their workers: four levels of RBS training program curriculum standards for licensees, managers, servers, and security staff workers, and two levels of RBS training program curriculum standards for special event organizers and special event staff workers. It provides the curriculum standards for basic training for off-site servers and security staff workers. It then provides a second level of curriculum standards for on-site security staff workers who need additional training in crowd control and related security measures. It provides a third level of standards for on-site servers, including standards on pacing customer drinking and mixology, and a fourth level of standards for training managers and licensees who have supervisory and policymaking responsibilities. Separate levels of curricula standards for special event workers (level 1) and special event organizers (level 2) focus on the unique considerations of special events, such as crowd control issues and laws and policies concerning alcohol marketing and sponsorship and designated drinking areas at the events.

Only those training programs certified by the State of California and that meet the curricula standards described in this section and the criteria described in subsection (B) of Section 4 are eligible for certification. As provided in Section 4 below, a municipality may not certify an RBS program that has not also met state standards; at the same time, the standards and criteria listed in the ordinance enable a municipality to influence the quality of the RBS training received by the staffs of local alcoholic beverage establishments and special events.

Existing RBS ordinances typically require that the curricula of RBS training programs meet the standards of the California Coordinating Council on Responsible Beverage Service (C3RBS) or other certifying/licensing body designated by the State of California. (See City of Ventura Municipal Code, § 24.460.440 (C3RBS or state designee); City of Berkeley Municipal Code, § 9.84.020(F) (city or state designee); and City of Newport Beach Municipal Code, § 20.89.050(C)(9)(c) (C3RBS or state designee).)

For several years, the ABC recognized the C3RBS as the entity to approve responsible beverage training providers and curricula. C3RBS developed curriculum standards, provider qualifications, instructor qualifications, and the process for provider applications. In 2005, C3RBS was dissolved and its certification of RBS training function was transferred to the California Department of Alcoholic Beverage Control. In 2006, the Department received a grant from the Office of Traffic Safety (OTS) recognizing the Department as the entity to approve, on behalf of the state, RBS training providers and curricula. The same year, the Department updated the C3RBS curriculum standards, and in April 2007, published the updated standards, accessed on the Internet at http://www.abc.ca.gov/programs/RBS_training_standards_booklet.pdf.

Section 3 provides for strong local involvement in improving attitudes, knowledge, skills, and practices of persons involved in selling or serving alcoholic beverages and in providing security management on licensed premises and/or at special events. These

standards are consistent with the Department's updated standards, but go one step further. Section 3 gives localities greater control than exists under current ordinances over the scope and depth of RBS training provided to licensees, managers, servers and security staff at local alcoholic beverage establishments and to staff workers of local special events. Section 3 standardizes in detail the curricula of RBS training programs instead of leaving the quality of training to the individual training provider or to certifying bodies unfamiliar with a city's specific goals. The number and level of detail of these standards can be customized to meet the goals of the specific city.

Section 4. CERTIFICATION OF TRAINING PROGRAMS.

- A. Only training programs certified by the State of California Department of Alcoholic Beverage Control and that meet the curricula standards set forth in Section 3 of this Chapter and the criteria in subsection (B) of this section, as determined by [the administrator of the alcohol and drug prevention division of the city behavioral health department/the Police Chief], are eligible for certification.

- B. [The administrator of the alcohol and drug prevention division of the city behavioral health department/the Police Chief] shall certify all new and existing RBS training programs pursuant to the curricula standards set forth in Section 3 and the following criteria:
 - 1. Experience of trainers in instructing commercial servers of alcoholic beverages;
 - 2. Trainer's knowledge of management policies relating to alcoholic beverage service;
 - 3. Trainer's knowledge of the alcohol treatment and prevention fields;
 - 4. Existence of comprehensive written curricula that adequately cover the standards for all levels of training, as described in Section 3(B) and Section 3(C) of this Chapter;
 - 5. Training equipment and facilities available to the applicant program;
 - 6. Training shall be provided through more than one medium including, but not limited to, video, training manual and/or role playing;
 - 7. The training format for RBS programs shall include:
 - a. Traditional in-person format lecture and discussion on curricula standards (traditional lecture format excludes on-line, correspondence, televised and similar educational formats);
 - b. Use of filmed, taped or digital reenactments of specific scenes involving potential intoxication, intoxication and attempts at illegal purchase of alcoholic beverages;
 - c. Focus on how to assess and evaluate situations and behavior;

- d. Lecture and discussion of both effective and ineffective intervention techniques; and
 - e. Role playing allowing each participant an opportunity to practice new skills by interaction with other participants and/or approved trainer in creation of "real-life" situations;
8. The content of the RBS program shall be developed and maintained by recognized subject matter and industry experts in the field;
 9. RBS programs shall follow sound instructional design forms for the target audience; and
 10. RBS programs shall be regularly updated as science, technology and standards change.
- C. An on-site review shall be conducted by [the administrator of the alcohol and drug prevention division of the city behavioral health department/the Police Chief] to verify information provided by an applicant seeking certification or recertification of an RBS training program.
 - D. [The administrator of the alcohol and drug prevention division of the city behavioral health department/the Police Chief] shall on an [annual/biennial] basis conduct a review of RBS training programs. The [administrator/Police Chief] shall review the quality of the curricula, faculty, and facilities of certified programs. Any curriculum changes made by the RBS training programs shall be reviewed for adherence to the curricula standards established in Section 3 of this Chapter.
 - E. An approved trainer must remain approved by the certifying/licensing body designated by the State of California and in compliance with regulations adopted by resolution of the City Council, as the same may be amended from time to time.
 - F. An RBS training program must remain certified by the certifying/licensing body designated by the State of California and in compliance with the curricula standards and criteria set forth in this chapter.
 - G. Any and all approved trainers of RBS training programs are required to issue certificates of completion to any person who has attended and completed successfully an RBS training program conducted by the trainer. The certificate of completion shall indicate all of the following:
 1. Name of provider of RBS training program, type of RBS training provided (e.g., off-site alcoholic beverage sales establishment servers, special event staff workers);
 2. Name of trainee;
 3. Date(s) of attendance and successful completion of RBS training program; and

4. Length of completed RBS training program (e.g., 4 hours (for on-site alcoholic beverage sales establishment servers)).

H. Within twelve (12) months of the effective date of this ordinance and annually thereafter, any and all approved trainers of RBS training programs are required to submit in writing to the [administrator of the alcohol and drug prevention division of the city behavioral health department/the Police Chief] a list of any and all persons issued certificates of completion of any RBS training program conducted by the trainer.

Commentary

As discussed previously, in mandatory RBS training, enforcement targets both training programs and licensees. The essential element in establishing this accountability is called *active surveillance*.

Part of active surveillance involves administrative certification. Thus, a best practice to include in a mandatory RBS training ordinance is *a procedure for approving trainers and certifying RBS training programs*. (Mosher, et al. 2002.) Here, the city administrator or its police chief has the duty to approve trainers already approved by the ABC and who meet the city regulatory requirements. She or he must certify RBS training programs already certified by the ABC Department and that meet local city standards in Section 3 and the criteria listed in this section. In addition, an on-site review of the programs must be conducted for initial certification.

Another part of active surveillance involves *administrative follow-up after initial certification*. Under Section 4, the city administrator or its police chief must conduct at least one compliance review of RBS training programs every year or every other year. In addition, the terms “approved trainer” and “RBS training program” in Section 2 create a self-policing mechanism, whereby approved trainers and RBS training programs, by definition, must maintain approval/certification in order to continue to train personnel of local establishments and local special events. Subsections (E) and (F) of this section restate these certification obligations and thus are duplicative of the definitions in Section 2.

Another best practice to include in a mandatory RBS ordinance is a set of *RBS training program format requirements*. One requirement is that the format consist of traditional in-person lecture and discussion; the use of filmed, taped or digital reenactments of common on the job situations; and role-playing. (Mosher et al., 2002.) Many training programs throughout the country consist only of viewing a videotape, on-line training, or some other correspondence format without facilitation. (Toomey, et al. 1998.) While such programs may be cost-effective and easy to access, they lack the skill-building capability of live, in-person training. During live trainings, the use of filmed, taped, or digital reenactments allows the trainer and the attendees to exchange ideas, opinions, and comments about what they have just seen. Role playing at in-person training allows trainees to use what they just learned during a lecture by experiencing “real life” situations and by problem solving in the presence and with the assistance of a trained RBS expert.

A further best practice found in Section 4 is that RBS programs must issue *certificates of completion* upon successful completion of the program and submit to the city the identities of attendees who successfully completed the program. With the certificates of completion and accounting by the programs of successful trainees, the city can verify whether licensees of establishments and special events organizers are complying with the RBS training requirements of the ordinance. Such a requirement should be included even in a voluntary RBS training ordinance, so that a city can determine an establishment's compliance for purposes of reducing any fees associated with the licensee's obtaining a business permit.

Section 5. LICENSEE, MANAGER, AND SERVER RBS TRAINING REQUIREMENTS.

[Option 1: Mandatory RBS Training for Both New and Existing Alcoholic Beverage Sales Establishments]

- A. Every licensee shall attend and complete successfully an RBS training program within 90 days of the issuance of the use permit, or within 90 days of the issuance of a certificate of occupancy authorizing the occupation and operation of the on-site or off-site alcoholic beverage sales establishment, or within six (6) months of the effective date of this ordinance, whichever last occurs.
- B. No on-site or off-site alcoholic beverage sales establishment may continue to employ after six (6) months of the effective date of this ordinance any person who works as a manager, server, or security staff worker unless such person completes successfully or has completed successfully an RBS training program.
- C. No on-site or off-site alcoholic beverage sales establishment shall employ any person to work as a manager, server, or security staff worker unless such person, within thirty (30) days of their date of hire, attends and completes successfully or has attended and completed successfully an RBS training program.
- D. Notwithstanding anything to the contrary, a licensee, manager, server, or security staff worker of an off-site or on-site alcoholic beverage sales establishment who has attended and completed successfully a responsible beverage sales and service training program certified by [the certifying/licensing body designated by the State of California] within the twelve (12) month period immediately preceding the effective date of this ordinance ("pre-ordinance training") and who verifies such attendance and successful completion to the [the administrator of the alcohol and drug prevention division of the city behavioral health department/the Police Chief] shall not be required to attend and complete successfully the RBS training program as set forth in subsections (A) and (B) of this section until two (2) years from the date of the successful completion of the pre-ordinance training.
- E. Every licensee, manager, server or security staff worker of an off-site or on-site alcoholic beverage sales establishment shall attend and complete successfully a subsequent RBS training program every two years from the date of the initial successful completion of an RBS training program.

- F. Every licensee shall verify that all new managers, servers, and security staff workers employed by the licensee have completed successfully an RBS training program within the first 30 days of such employment.
- G. Every licensee shall verify that all managers, servers and security staff workers who have been employed by the licensee before the effective date of this ordinance and who continue to be employed have completed successfully an RBS training program within six (6) months of the effective date of this ordinance.

Commentary

Option 1 requires all licensees, managers, servers, and security staff workers of both on-site and off-site alcoholic beverage establishments to attend and complete successfully an RBS training program. A city can customize this ordinance to limit its application to off-site or on-site establishments and to specify which of the licensee's employees should be required to undergo RBS training. Some cities may desire that only licensees, managers, and servers of alcoholic beverages undergo RBS training. In many cases, however, security personnel need to understand the importance and unique concerns of responsible beverage sales, service, and safety.

This option allows a new licensee to obtain a conditional use permit and a certificate of occupancy, so long as the licensee agrees both to undergo RBS training within a specified period and to ensure that its new staff undergoes RBS training within 30 days of hire and any existing staff within six months of the effective date of the ordinance. It gives an existing establishment six months within which to comply with the provisions of this section.

This option requires retraining every two years. The ordinance can be customized to require abbreviated refresher programs for retraining, rather than the full-fledged RBS training programs suggested by the curricula standards in the model ordinance.

[Option 2: Mandatory RBS Training for New Alcoholic Beverage Establishments Only]

- A. No conditional use permit may be issued under and pursuant to Section _____ of the City Zoning Code to a licensee who applies to the City for a retailer's on-site or off-site alcoholic beverage sales establishment permit without the licensee having first attended and completed successfully an RBS training program.
- B. No alcoholic beverage sales establishment issued a permit after the effective date of this ordinance shall employ any person to work as a manager, server, or security staff worker unless such person, within thirty (30) days of their date of hire, attends and completes successfully or has attended and completed successfully an RBS training program.
- C. Notwithstanding anything to the contrary, a licensee, manager, server, or security staff worker of an alcoholic beverage sales establishment issued a permit after the effective date of this ordinance who has attended and completed successfully a responsible beverage sales and service training program certified by [the certifying/licensing body designated by the State of California] within the twelve (12)

month period immediately preceding the effective date of this ordinance (“pre-ordinance training”) and who verifies such attendance and successful completion to the [the administrator of the alcohol and drug prevention division of the city behavioral health department/the Police Chief] shall not be required to attend and complete successfully the RBS training program as set forth in subsections (A) and (B) of this section until two (2) years from the date of the successful completion of the pre-ordinance training.

- D. Every licensee, manager, server, or security staff worker of an alcoholic beverage sales establishment issued a permit after the effective date of this ordinance shall attend and complete successfully a subsequent RBS training program every two years from the date of the initial successful completion of an RBS training program.
- E. Every licensee of an alcoholic beverage sales establishment issued a permit after the effective date of this ordinance shall verify that all new managers, servers, and security staff workers employed by the licensee have completed successfully an RBS training program within the first 30 days of such employment.

Commentary

Option 2 applies to new on-site or off-site alcoholic beverage sales establishments only. Under Option 2, RBS training is not required of establishments already in existence on the effective date of the ordinance.

Option 2 provides that the licensee of new on-site or off-site alcoholic beverage sales establishments (establishments not in existence on the effective date of the ordinance) must undergo RBS training *before* obtaining a conditional use permit from the city.

[Option 3: Mandatory Training for Problem Alcoholic Beverage Establishments Only]

Every licensee, manager, server, and security staff worker may be required to attend and complete successfully a RBS training program, as part of a decision and order of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] to revoke, suspend, or modify a conditional use permit or deemed approved status.

Commentary

Option 3 does not assume that a city has enacted either a voluntary or mandatory RBS ordinance. It focuses on problem establishments operating as nuisance activities. It authorizes the city through its zoning powers to order RBS training of a problem licensee’s staff as part of decision to revoke, suspend, or modify a conditional use permit or deemed approved status.

[Option 4: Voluntary RBS Training]

If a licensee and his or her managers, servers, and security staff workers attend and complete successfully an RBS training program and if the licensee provides the city with documentation of such attendance and successful completion, the city shall reduce the

fee associated with the initial issuance and renewal of a licensee's on-site or off-site alcoholic beverage sales establishment permit, pursuant to a resolution of the City Council, as the same may be amended from time to time, setting forth the reduced fee schedule for such permits.

Commentary

Voluntary programs appear to be less effective than mandatory programs or programs using incentives. (Dresser and Gliksman, 1998.) Thus, Option 4 provides that an establishment that voluntarily undergoes RBS training for all of its employees shall see a reduction in the fee associated with issuance or renewal of the conditional use permit or with maintaining a deemed approved status. The reduction shall be implemented pursuant to a fee schedule established by city council resolution.

Section 6. LICENSEE POLICIES AND PROCEDURES REQUIREMENTS.

[Option 1: When RBS Training for New and/or Existing Alcoholic Beverage Sales Establishments is Mandatory]

- A. Within six (6) months of the effective date of this ordinance, every licensee shall develop and maintain on the premises of the alcoholic beverage sales establishment a set of written policies and procedures regarding:
 1. Dealing with intoxicated patrons, including:
 - a. Methods and skills for appropriately pacing customer drinking so that the customer will not leave the premises in an intoxicated condition; and
 - b. Knowledge of mixology, including knowledge of alcohol equivalencies and their effects on the body and marketable alternatives to alcoholic beverages;
 2. Recognizing patrons under 21 years of age, including:
 - a. Methods and skills for recognizing false identification; and
 - b. Checking age identification documents;
 3. Intervening with belligerent patrons, including methods for:
 - a. Serving patrons to minimize chances of intoxication; and
 - b. Cutting off service and protecting the safety of patrons;
 4. Use of alternative means of transportation to ensure that intoxicated patrons reach home safely;
 5. Controlling crowds and other security measures;
 6. Recognizing patrons using illegal drugs on the premises;

7. Recognizing persons using premises for the sale of illegal drugs;
8. Information on state and local laws, including ABC regulations, criminal laws and associated penalties, covering:
 - a. Sales to persons under the age of 21 (Cal. Bus. & Prof. Code, § 25658);
 - b. Possession by persons under the age of 21 (Cal. Bus. & Prof. Code, § 25662);
 - c. Minors on public premises (Cal. Bus. & Prof. Code, § 25665);
 - d. Keg registration (Cal. Bus. & Prof. Code, § 25659.5);
 - e. Sales to obviously intoxicated persons and server's duty of care (Cal. Bus. & Prof. Code, § 25602);
 - f. "Driving while under the influence" (Cal. Veh. Code, § 23152);
 - g. Hours of operation (Cal. Bus. & Prof. Code, §§ 25630-25633);
 - h. Age of servers (Cal. Bus. & Prof. Code, § 25663);
 - i. Unsupervised sales by person(s) under 18 (Cal. Bus. & Prof. Code, § 25663(b));
 - j. Sale and/or consumption after hours (Cal. Bus. & Prof. Code, §§ 25631, 25632);
 - k. Employees accepting alcoholic beverages (Cal. Code Regs., § 143);
 - l. Battery and assault and defenses thereto;
 - m. Disorderly/disruptive premises (Cal. Bus. & Prof. Code, § 25601; Cal. Code Regs, §§ 143.2 & 143.3);
 - n. Retail Operation Standards – (Cal. Bus. & Prof. Code, § 25612.5);
 - o. Illegal drugs on the premises (Cal. Bus. & Prof. Code, § 24200.5; Cal. Health & Safety Code);
 - p. Sale or purchase of illegal drugs (Cal. Bus. & Prof. Code, § 24200.5; Cal. Health & Safety Code);
 - q. Illegal gambling activities on the premises (Cal. Bus. & Prof. Code, § 24200(a); Cal. Pen. Code, § 330).
 - r. Not operating a bona fide full-service restaurant (Cal. Bus. & Prof. Code, §§ 23038, 23396);

- s. Illegal solicitation of alcoholic beverages (Cal. Bus. & Prof. Code, §§ 24200.5(b), 25657(a) & (b), Cal. Pen. Code, § 303(a);
 - t. Disorderly house, prostitution, and lewd conduct (Cal. Bus. & Prof. Code, § 25601);
 - u. Licensee or employee not permitting inspection of premises (Cal. Bus. & Prof. Code, § 25755) or records (Cal. Bus. & Prof. Code, § 25616); and
 - v. Licensee or employee resisting arrest or interfering with investigation on the premises (Cal. Bus. & Prof. Code, § 24200(a) & Cal. Pen. Code, § 148));
9. Marketing of alcoholic beverages, including policies on window and other store advertising and on drink specials;
10. Crowd control and other security measures;
11. Maintaining written records on incidents of sales to obviously intoxicated persons, persons under the age of 21, and shoulder tapping; and
12. Effective supervision of employees with respect to:
- a. Eliminating employee use of alcoholic beverages or illegal drugs on the job;
 - b. Accepting tips from patrons; and
 - c. Illegal sale or service of alcoholic beverages to persons who are intoxicated or who are under the age of 21.
- B. Licensees shall provide an employee on the initial date of employment and annually thereafter on the anniversary his or her employment a copy of the alcoholic beverage sales activity establishment's policies and procedures described in subsection (A) of this section. Licensees shall require the employee to sign and acknowledge in writing that he or she has read, understood and agreed to comply with the policies and procedures as a condition of his or her employment.

[Option 2: When RBS Training is Voluntary]

- A. If a licensee complies with the provisions set forth in subsections (B) and (C) of this section, the city shall reduce, in an amount beyond the reduction provided by Section 5 Voluntary RBS Training, the fee associated with the initial issuance and renewal of a licensee's on-site or off-site alcoholic beverage sales establishment permit, pursuant to a resolution of the City Council, as the same may be amended from time to time, setting forth the reduced fee schedule for such permits.
- B. Within six (6) months of the effective date of this ordinance, the licensee shall develop and maintain on the premises of the alcoholic beverage sales establishment a set of written policies and procedures regarding:

[Repeat here text appearing under section (A)(1) through (12) of Option 1 of this section.]

- C. The licensee shall provide an employee on the initial date of employment and annually thereafter on the anniversary his or her employment a copy of the alcoholic beverage sales activity establishment's policies and procedures described in subsection (B) of this section. The licensee shall require the employee to sign and acknowledge in writing that he or she has read, understood and agreed to comply with the policies and procedures as a condition of his or her employment.

Commentary

Policy development and implementation within establishments, a best practice in responsible seller/server practices, may be as important as RBS training. (IOM Report, p. 171, citing Saltz, 1997.) There is increasing evidence of the need to focus on house rules and management support for RBS. (Babor, supra, at 142, citing Stockwell, 2001.) Research indicates that establishments with firm and clear policies (e.g., checking ID for all patrons who appear under the age of 30) and a system for monitoring staff compliance are less likely to sell alcohol to persons under 21 years of age. (IOM Report, p. 171, citing Wolfson et al., 1996a, 1996b.) Staff must be made aware of their legal responsibilities not to serve intoxicated or underage persons, among other legal duties, and of establishment policies and consequences for violating those policies. (IOM Report, p. 171.) Research also suggests that RBS training, if supported by actual changes in serving policies of establishments and reinforced by local policing enforcement, can reduce heavy consumption and high-risk drinking. (Babor, supra, at 144.)

Section 6 has two options. Option 1 concerns mandatory development and dissemination of policies and procedures. Failure to develop and disseminate procedures is a violation subject to the penalties set forth in Section 9. Option 2 concerns voluntary implementation of policies and procedures. An establishment that voluntarily develops and disseminates policies and procedures is not subject to penalties. Instead, development and dissemination of policies and procedures permits the establishment to a reduction in the fee associated with the issuance or renewal of the establishment's conditional use permit or with continued deemed approved status.

Section 6 requires that licensees provide a copy of an establishment's policies and procedures each year to its employees and for the employee to sign and acknowledge receipt of the policies and procedures. By providing copies to employees of house policies and procedures, an employer notifies his or her employees that such policies/procedures exist and that employees are expected to become familiar with them and to follow them.

Section 7. LICENSEE RECORD-KEEPING REQUIREMENTS.

- A. A licensee shall be required to maintain on the premises of an alcoholic beverage sales establishment:
 - 1. A list of the names of the licensee and all employees who have completed the RBS training program as set forth in Section 5;
 - 2. Dates of successful completion of RBS training by the licensee and all employees;
 - 3. Dates when the licensee and each employee must renew his/her certificate showing successful completion of an RBS program;
 - 4. Certificates of completion, as described in Section 4(E), verifying attendance and successful completion of the most recent RBS program attended by the licensee and employees; and
 - 5. Employees' signed acknowledgements as required by Section 6(B).
- B. All of the items described in subsection (A) of this section shall be provided for inspection and copying upon the request of any police or other law enforcement officer.

Commentary

Section 7 describes a licensee's record-keeping responsibilities with respect to compliance with RBS training by its employees. The city can compare the paperwork maintained by the licensee with the list of attendees maintained by the RBS training program and submitted to the city pursuant to Section 4 to determine whether a licensee has complied with the RBS training requirements of this ordinance.

Section 8. SPECIAL EVENTS MANDATORY RBS TRAINING AND RECORD KEEPING REQUIREMENTS.

- A. Alcoholic beverages may not be sold or served at a special event unless the special event organizer who has attended and completed successfully an RBS training program is on the site at which the special event is held.
- B. Every special event organizer and special event staff worker shall attend and complete successfully an RBS training program within one (1) year of the date of the special event.
- C. The special event organizer or his or her designee shall be required to maintain at the site of the special event all of the following, so that they may be provided for inspection and copying upon the request of any police or other law enforcement officer:

1. List of the names of the special event organizer and all special event staff worker(s) who have completed successfully the RBS training program;
2. Dates of each organizer's and worker's successful completion of an RBS training program; and
3. Certificates of completion, as described in Section 4(E), verifying attendance and successful completion of the RBS training program by the special event organizer and special event staff workers.

Commentary

Section 8 describes a special event organizer's record-keeping responsibilities with respect to compliance with RBS training by the organizer, the server staff, and special event security staff. The city can verify the accuracy of the paperwork maintained by the event organizer with the list of attendees submitted by the RBS program pursuant to Section 4 to determine whether the organizer has complied with the RBS training requirements of this ordinance.

Section 9. ENFORCEMENT REMEDIES.

[The following provision holds the licensee liable for a violation of the provisions of the model ordinance. The provisions provide in the alternative that a violation is a misdemeanor, an infraction (a quasi-criminal penalty), an administrative penalty, or a penalty against which a city could take civil action.]

- A. A violation by the licensee of any of the provisions of this Chapter or any failure to comply with any of the mandatory requirements of this Chapter shall be a misdemeanor, punishable by a maximum of 6 months in the county and a \$1,000 fine. At the discretion of the enforcing authority, a violation may be charged and prosecuted as an infraction. Alternatively, a violation may subject the licensee to an administrative penalty not to exceed five hundred dollars (\$500.00) for the first violation, and not to exceed one thousand dollars (\$1,000.00) for a second or subsequent violation within twelve (12) months. Nothing in this section shall prevent the city from taking civil action against a licensee for any violation of or failure to comply with this Chapter, including seeking injunctive relief, civil fines and penalties, and reasonable attorney's fees.

[The following provision is included here for informational purposes only but typically would be best be included in a conditional use permit/deemed approved ordinance. It notifies the licensee that mandatory RBS training may be required for an alcoholic beverage establishment that has violated one or more conditions of approval of its conditional use permit or operational or performance standards and is facing suspension or revocation of its use permit.]

- B. Every licensee, manager, server, and security staff worker may be required to attend and complete successfully a subsequent RBS training program after the date of the initial successful completion of an RBS training program, as part of a decision and

order of the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] to revoke, suspend, or modify a conditional use permit.

[The following provision allows a municipality to recover the cost of law enforcement services incurred in enforcing the provisions of this ordinance.]

- C. Administering departments will be authorized to charge cost recovery fees for services provided under this Chapter. Cost recovery fees may also be recovered for equipment and personnel expenses incurred. All penalties, application fees and related costs recovery fees shall be credited to the “Responsible Beverage Service and Sales Regulation Fund.” The fund shall be used exclusively, and may be expended without further council action, for those expenses associated with the administration and enforcement of this ordinance.

[The following provision is for cities that require conditional use permits for the operation of, or confer deemed approved status on, alcoholic beverage establishments and are considering an ordinance making RBS training strictly voluntary]

- D. When penalizing a licensee who has violated a condition of approval of its conditional use permit or a performance or operational standard applicable to new or existing alcoholic beverage establishments pursuant to the City of _____ Zoning Code by serving a minor or obviously intoxicated person during a compliance check, the [Board of Zoning Adjustment/Zoning Administrator/Planning Commission] shall consider it a mitigating factor if the licensee has complied with all of the provisions of Section 5 Voluntary RBS Training.

Commentary

Enforcement will create a deterrent effect only if violations result in a penalty. To act as a deterrent, the penalty needs to be severe, swift, and certain. (Mosher et al., 2002.)

With regard to a mandatory RBS training ordinance, a best practice is to make *the licensee the target of penalties*. Section 9 gives cities several options for penalties. It provides that a city may treat a violation as a misdemeanor, infraction, or administrative penalty. It also allows a city to pursue civil remedies in court. Section 9 allows recovery of law enforcement costs (the costs associated with enforcing the RBS ordinance) and permits the city to require RBS training as part of a decision and order to revoke an establishment’s permit or deemed approved status.

The monetary criminal or administrative penalties under Section 9 are *graduated*, which increase for repeat violations occurring within a year from the initial violation. A misdemeanor carries possible jail time and a fine. An infraction, a quasi-criminal penalty, carries no jail time, just a monetary fine. In general, administrative penalties are preferable to criminal sanctions because they are easier to implement. (Mosher et al., 2002.) An administrative penalty takes the matter out of criminal court and permits a licensee to appeal the imposition of the administrative penalty in a streamlined process to an independent hearing officer.

With regard to a voluntary RBS training ordinance, the focus is not on penalties but rather on creating *incentives* for encouraging licensees to participate in RBS training for their staffs but that do not eliminate liability for irresponsible alcoholic beverage sales or service. (Mosher et al., 2002.) One such incentive is to consider participation in RBS training a *mitigating factor* when penalizing a licensee for violation of a condition of approval in a permit or a performance or operational standard by selling to intoxicated persons or to persons less than 21 years of age. Other incentives may be considered to address local concerns and to be consistent with the applicable municipal code.

Section 10. APPEALS OF ADMINISTRATIVE PENALTIES.

- A. A person aggrieved by the imposition of an administrative penalty or imposition of response costs pursuant to this Chapter may appeal the decision by filing with the City Clerk a statement addressed to the City Manager and setting forth the facts and circumstances regarding the appealed action. The City Clerk shall notify the applicant, in writing, of the time and place set for the hearing on the appeal.
- B. The hearing on the appeal must be held within 20 business days of the City Clerk's receipt of the appeal.
- C. The City Manager or his designee shall serve as Hearing Officer unless the appellant objects thereto at the time of the filing of the appeal, in which case an independent Hearing Officer shall be appointed in accordance with this code. The Hearing Officer shall issue a decision regarding the appeal within 10 business days of the conclusion of the hearing. The Hearing Officer's decision is final.

Commentary

Due process requires an administrative appeal procedure for the imposition of administrative fees and response costs. The appeal section should reference the existing administrative appeal process in the particular jurisdiction. If none exists, the model ordinance suggests a city appellate procedure.

Section 11. SEVERABILITY.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

Section 12. EFFECTIVE DATE.

This ordinance shall take effect on _____.

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APPENDICES

Are RBS Ordinances Subject to the Doctrine of State Preemption?

Under the California Constitution, cities and towns may “make and enforce within their limits all such ‘local, police, sanitary and other regulations as are not in conflict with general laws.’” (Cal. Const., art. XI, § 7.) In the exercise of its police power, the city has broad discretion in determining what is reasonable in endeavoring to protect the public health, safety, morals, and general welfare. (*Carlin v. City of Palm Springs* (1971) 14 Cal. App. 3d 706, 711, 92 Cal. Rptr. 535.) Local government independence is curbed, however, by the doctrine of state preemption, which may limit the power of local government when there is a conflict with the general laws of the state. When such conflict is present, local law is “preempted.”

The California Constitution specifies the state has exclusive authority to license and regulate the sale of alcoholic beverages. Article XX, section 22 of the California Constitution provides: “The State of California, subject to the internal revenue laws of the United States, shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the state....” The State of California exercises this exclusive jurisdiction through the Alcoholic Beverage Control Act (Bus. & Prof.Code, §§ 23000, et seq.), which is enforced and administered by the California Department of Alcohol Beverage Control (ABC).

An RBS ordinance does not conflict with these state provisions, and therefore is not preempted, because its purpose and effect is not to regulate the manufacture, sale, purchase, possession or transportation of alcoholic beverages. Rather, as should be included in the findings of an RBS ordinance, such an ordinance is necessary to protect the peace, health, safety and general welfare” of persons living or working in the affected areas. A mandatory RBS ordinance requires licensees and special events organizers and their employees/staff to undergo RBS training and to engage in policy development and certain recordkeeping within certain time frames. RBS programs and their trainers must comply with certain curriculum standards, including teaching methods and various documentation and administrative requirements. Such an ordinance does not regulate the selling or service of alcoholic beverages. Similarly, a voluntary RBS ordinance provides incentives if an establishment’s staff undergoes RBS training but does not regulate the selling or service of alcoholic beverages.

None of these provisions involves the sale of alcoholic beverages or any of the other activities included in the state law. The ordinance does not directly regulate, or have as its effect the regulation of, alcohol licenses or the manufacture, sale, purchase, possession or transportation of alcoholic beverages. Instead the curricula standards and attendance requirements for establishment and special event staff attempt to control or eradicate the unlawful or undesirable activity which often occurs on the premises and in the immediate vicinity of establishments which dispense alcoholic beverages for on-site and off-site consumption. Thus, the purpose and effect of an RBS ordinance is not to dictate, restrict or regulate the actual sale of alcoholic beverages. Instead the focus of such an ordinance is to abate or eradicate criminal (sales to persons under 21 and to intoxicated persons) and nuisance activities (public intoxication, violence, sexual assault,

drink driving, etc.) by requesting establishments and special event organizers to take the pro-active step of RBS training to prevent or reduce the occurrence of these illegal activities. These are typical and natural goals of zoning and land use regulations. (*Floresta, Inc. v. City Council* (1961) 190 Cal. App.2d 599, 605, 12 Cal. Rptr. 182.)

Accordingly, an RBS ordinance does not appear to invade the exclusive power given to the state by article XX, section 22 of the California Constitution by regulating alcohol sales. Instead such an ordinance constitutes a valid exercise of the City's police powers under article XI, section 7 of the California Constitution to control and abate nuisances. (*See City of Oakland v. Superior Court* (1996) 45 Cal. App.4th 740, 53 Cal. Rptr.2d 120 (municipal ordinance regulating nuisance or criminal activities associated with alcohol sales, and imposing regulatory fee based on costs of administering ordinance, not preempted); *City of Rancho Cucamonga v. Warner Consulting Services, Ltd.* (1989) 213 Cal. App.3d 1338, 1345, 262 Cal. Rptr. 349 [city's authority to regulate entertainment in clubs licensed to sell alcoholic beverages derives from its general police powers and not from article XX, section 22 of the Constitution which reserves the right to regulate alcohol sales and licensees to the ABC]; *Korean American Legal Advocacy Foundation v. City of Los Angeles* (1994) 23 Cal. App.4th 376, 28 Cal. Rptr.2d 530 (city's plan approval and revocation processes with respect to conditional use permits for off-site alcoholic beverage sales in city not expressly preempted by state constitution); *see also Cristmat, Inc. v. County of Los Angeles* (1971) 15 Cal. App.3d 590, 93 Cal. Rptr. 325 (ordinance prohibiting persons in model studios while possessing, consuming, using or under the influence of alcoholic beverages was a valid police regulation which did not invade exclusive power of the state to regulate alcohol sales).)

STATE STATUTES

California Business and Professions Code section 25612.5. Retail licensee; operating standards; local regulations

(a) This section shall apply to licensees other than a retail on-sale licensee or on-sale beer and wine licensee who is licensed and operates as a bona fide public eating place, as defined in Section 23038, 23038.1, or 23038.2, or as a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16; a winegrowers license; a licensed beer manufacturer, as defined in Section 23357; a retail licensee who concurrently holds an off-sale retail beer and wine license and a beer manufacturer's license for those same or contiguous premises; and a retail on-sale licensee or on-sale beer and wine licensee who is licensed and operates as a bona fide public eating place, as defined in Section 23038, 23038.1, or 23038.2, or as a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16, a licensed beer manufacturer, as defined in Section 23357, or a winegrowers license, who sells off-sale beer and wine under the on-sale license on those same or contiguous premises.

(b) The Legislature finds and declares that it is in the interest of the public health, safety, and welfare to adopt operating standards as set forth in this section for specified retail premises licensed by the department. The standards set forth in this section are state standards that do not preclude the adoption and implementation of more stringent local regulations that are otherwise authorized by law.

(c) Other than as provided in subdivision (a), each retail licensee shall comply with all of the following:

(1) A prominent, permanent sign or signs stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee. The size, format, form, placement, and languages of the sign or signs shall be determined by the department. This paragraph shall apply to a licensee only upon written notice to the licensee from the department. The department shall issue this written notice only upon a request, from the local law enforcement agency in whose jurisdiction the premises are located, that is supported by substantial evidence that there is loitering adjacent to the premises.

(2) A prominent, permanent sign or signs stating "NO OPEN ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED ON THESE PREMISES" shall be posted in a place that is clearly visible to patrons of the licensee. The size, format, form, placement, and languages of the sign or signs shall be determined by the department. This paragraph shall apply to a licensee only upon written notice to the licensee from the department. The department shall issue this written notice only upon a request, from the local law enforcement agency in whose jurisdiction the premises are located, that is supported by substantial evidence that there is drinking in public adjacent to the premises.

(3) No alcoholic beverages shall be consumed on the premises of an off-sale retail establishment, and no alcoholic beverages shall be consumed outside the edifice of an on-sale retail establishment.

(4) The exterior of the premises, including adjacent public sidewalks and all parking lots under the control of the licensee, shall be illuminated during all hours of darkness during which the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, the required illumination shall be placed so as to minimize interference with the quiet enjoyment of nearby residents of their property.

(5) Litter shall be removed daily from the premises, including adjacent public sidewalks and all parking lots under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis to control debris.

(6) Graffiti shall be removed from the premises and all parking lots under the control of the licensee within 72 hours of application. If the graffiti occurs on a Friday or weekend day, or on a holiday, the licensee shall remove the graffiti 72 hours following the beginning of the next weekday.

(7) No more than 33 percent of the square footage of the windows and clear doors of an off-sale premises shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises.

(8) Upon request of the local law enforcement agency in whose jurisdiction the licensed premises are located or at the discretion of the department, each public telephone located on off-sale premises (or located in an adjacent area under the control of the off-sale licensee) shall be equipped with devices or mechanisms that prevent persons from calling into that public telephone.

(9) Every licensed retailer who sells or rents video recordings of harmful matter, as defined by Section 313 of the Penal Code, shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material that advertises the sale or rental of these video recordings. This area shall be labeled "adults only." The licensed retailer shall make reasonable efforts to arrange the video recordings in this area in such a way that minors may not readily access the video recordings or view the video box covers. The failure to create and label the "adults only" area is an infraction punishable by a fine of not more than one hundred dollars (\$100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction.

(10) A copy of the applicable operating standards shall be available during normal business hours for viewing by the general public.

ENDNOTES

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ⁱⁱⁱ O'Donnell, M., "Research on Drinking Locations of Alcohol-impaired Drivers: Implications for Prevention Policies," *J. Public Health Policy* (1985) 6:510-25; Wood, L.J.; McLean, S.; Davidson, J.; and I.M. Montgomery, "One for the Road: On the Utility of Citation Data for Identifying Problem Hotels," *Drug Alcohol Rev.* (1995) 14:115-24.

^{iv} Babor, at 142, *citing* Carvolth, R., *The Contribution of risk assessment to harm reduction through the Queensland safety action approach*. Proceedings of the Window of Opportunity Congress. Brisbane, Australia; Toomey, T.L.; Kilian, G.R.; Gehan, J.P.; Perry, C.L.; Jones-Webb, R.; and A.C. Wagenaar. "Qualitative assessment of training programs for alcohol servers and establishment managers," *Public Health Reports* (1998) 113(2):162-69.

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^{vi} Babor, at 143, *citing* Geller, E.S.; Russ, N.W.; and W.A. Delphos, "Does server intervention training make a difference? An empirical field evaluation.," *Alcohol, Health and Research World* (1987) 11:64-9; Lang, E.; Stockwell, T.; Rydon, P., et al., "Can training bar staff in responsible serving practices reduce alcohol-related harm?," *Drug and Alcohol Review* (1998) 17:39-50; Russ, N.W. and E.S. Geller, "Training bar personnel to prevent drunk driving: A field evaluation." *American Journal of Public Health* (1987) 77:952-54; Saltz, R.F., "The roles of bars and restaurants in preventing alcohol-impaired driving: An evaluation of server intervention," *Evaluation and the Health Professions* (1987) 10:5-27; Stockwell, T.; Lang, E; and P. Rydon, "High risk drinking settings: the association of serving and promotional practices with harmful drinking," *Addiction* (1993) 88:1519-26. *See also* Saltz, R.F., "Prevention where alcohol is sold and consumed: Server intervention and responsible beverage service." In M. Plant, E. Single, and T. Stockwell (eds.), *Alcohol: Minimizing the harm. What works?* (1997). New York: Free Association.

^{vii} Holder, H.D. and A.C. Wagenaar, "Mandated server training and reduced alcohol-involved traffic crashes: A time series analysis of the Oregon experience," *Accident Analysis & Prevention* (1994) 26(1):89-97.

^{viii} Buka, S.L. and I.J. Birdthistle, "Long-term effects of a community-wide alcohol server training intervention," *Journal of Studies on Alcohol* (1999) 60:27-36.

^{ix} Toomey, T.L.; Wagenaar, A.C.; Gehan, J.P.; Kilian, G.; Murray, D.; and C.L. Perry, "Project ARM: Alcohol risk management to prevent sales to underage and intoxicated patrons," *Health Education & Behavior* (2001) 28(2):186-99.

^x Alcohol Policy Information System. Beverage Service Training and Related Practices. <http://alcoholpolicy.niaaa.nih.gov/ServerTraining>.

^{xi} (Cal. Admin. Code tit. 4, § 144. ABC Penalty Guidelines (*see* Appendices).)

^{xii} Mosher et al., 2002.

^{xiii} *Ibid.*

^{xiv} *Ibid.*

^{xv} IOM Report, p. 171, citing Saltz, 1997; Babor *supra* 171.

^{xvi} Mosher et al., 2002.

^{xvii} *Ibid.*

^{xviii} *Ibid.*

^{xix} *Ibid.*

^{xx} *Ibid.*

^{xxi} *Ibid.*

^{xxii} *Ibid.*



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