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Public Action Management

Testimony of Pamela S. Erickson, Former Executive Director of the Oregon Liquor Control Commission and Current President/CEO of Public Action Management
Before the Las Vegas City Council Recommending Committee
Regarding Public Safety Issues in Bill No. 2014-34

June 2, 2014

Mr. Chairman and members of the Committee, I am a former alcohol regulator who left to join the alcohol and drug abuse prevention community. As a prevention advocate, my admiration of our state and local regulatory systems increased as I immersed myself in the research on how to combat underage drinking and other alcohol problems. My particular mission is to explain alcohol regulations in simple terms and identify how they work to promote public health and safety. I operate a public education campaign called the "Campaign for a Healthy Alcohol Marketplace" (www.healthyalcoholmarket.com.). During the past seven years, I have worked with over 15 states providing advice on alcohol regulation and have served as a legal expert in several important cases. A detailed statement of qualifications is attached for your perusal.

Today I have three key messages:

1. **Public safety is the overriding priority in maintaining a safe and vibrant public entertainment venue.** I would like to commend this City for establishing a unique venue for community members and visitors to enjoy. The Fremont Street Experience offers a low cost opportunity for all community members and visitors to enjoy entertainment. The many "Las Vegas Best" awards testify to the success FSE has had in serving the community. It revitalizes the downtown area providing jobs and business income. It also binds the community by forging partnerships between businesses that normally compete with one another. The City has a very strong interest in maintaining the health and vitality of this venue.

    - **The safety of FSE is at risk if alcohol is not adequately controlled.** While alcohol can enhance the enjoyment of entertainment, we must recall that it can also be very destructive. The Centers for Disease Control estimate that alcohol is responsible for an average of 88,000 **deaths** annually. Alcohol is a causal factor in **crime, domestic violence** and other social problems. In 2012, highway deaths increased to **10,322** due to alcohol, after a period of decline. According to MADD, 82 people in Nevada died due to drunk driving, which is a 17% increase over the previous year. While underage drinking is at historic lows, too many kids still drink at dangerous levels and we must continue to progress on this issue. Given these facts, it is imperative that we do everything possible to prevent these tragedies.

2. **Our regulatory systems are effective in reducing social problems and increasing public safety.** After Prohibition, our states and local communities evolved systems that have effectively controlled the sale of alcohol which, in turn, have minimized problems. Our systems compare very favorably with other countries. In fact, according to the World Health Organization, the U.S. has one of the lowest rates of drinking in the developed world. How the product is sold at retail makes a big

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difference. Let me describe the research which supports the elements of control needed for FSE to maintain public safety.

- **Too many outlets are well known to increase problems with alcohol.** There is substantial research to indicate that increased availability of alcohol is related to a myriad of problems including violence, theft, increased underage drinking and public nuisance crimes. The Centers for Disease Control and Prevention uses the independent Task Force for Community Preventive Services to review credible research and make recommendations on policies that are effective in controlling problems. After review of research, the Task Force recommended not only that outlet density be limited, but that hours and days of sale be curbed. As an example, the City of Vallejo, California experienced substantial alcohol related problems in an area with a high density of outlets. After adoption of new land use and nuisance abatement policies, they experienced an 18% decline in outlets over a 10 year period and midway through that period experienced a 53% reduction in nuisance calls for police service.
- **Low prices induce excess consumption.** Price is a very effective tool in maintaining public health and safety. Time and again, research has shown that when prices go up, alcohol consumption and its attendant social problems go down. In an exhaustive analysis of over 103 studies including 1003 estimates of the effect of price and consumption, Dr. Alexander Wagenaar and colleagues from the University of Florida simply concluded, "Public policies that raise prices of alcohol are an effective means to reduce drinking." In the case of the Fremont Street Experience, alcohol by the drink is far more expensive than that being sold by the large number of competing off-sale establishments.
- **Tighter control over more dangerous alcohol products promotes safety.** In one way or another, most states require greater control over high alcohol content products. Seventeen of our states own and control the distilled spirits business because of its high alcohol content. Studies have shown that "control states" generally have lower levels of consumption. Recently, we have seen hospitalizations and deaths with products that combine alcohol and caffeine as well as products of high alcohol content in a single serving container, sometimes known as "black-out in a can."
- **Promotions and advertising can increase the availability and consumption of alcohol products.** As an alcohol regulator in Oregon, I experienced the problem of bars causing problems when they used promotions to encourage high volume consumption. An example is "all you can drink" for a decreased price over a specific period of time. To curb this problem, we developed a rule prohibiting some of these practices. Surprisingly, we got full industry support. The reason was that most licensees want safe premises and don't like to compete with others that engage in risky practices.

3. **A comprehensive approach is needed to maintain the safety and vitality of the Fremont Street Experience and Fremont East.** Based on my experience as a regulator in Oregon, I learned a great deal about public venues and the methods needed to ensure public safety. Over the years we did experience festivals and public venues that got out of control. Eventually we adopted a comprehensive rule for large public events with 2,000 or more attendees. Such venues need special rules because they are different from our usual on and off premise licenses. Venues that had large events year round, such as stadiums, were required to have an approved annual operating plan. Based on this experience, let me comment on the Fremont Street Experience:

- **It is important to maintain and strengthen the duties of on premise licensees and security personnel.** FSE is a public venue with numerous on-premise licensees responsible for a shared premise or public space. They are responsible for good serving practices and to monitor activities. Due to the large space and crowds, additional security is needed to monitor activities and "extend" the reach of what a server would normally do. In Oregon, we added a requirement for "alcohol monitors". The number of required monitors was based on the anticipated size of the crowd. The Fremont Street Experience has over 30 security agents which help perform the function of extended monitoring. However, the casinos cannot be responsible for package store violations or problems with package store patrons. Package store licensees should be held financially responsible for any additional security or monitors needed to address violations and problems with their patrons.

- **Off-premise licensees must not operate beyond their license privilege.** The off-premise license is not designed to allow immediate consumption in the vicinity, and staff is not trained for that kind of situation. Moreover, these licensees have no responsibility for monitoring or managing the behavior in the public space or premise. Off-premise purchases are supposed to be taken by the customer to a private location for consumption. Actions which facilitate a breach of the license privilege include opening cans and bottles for the customer, aggressively advertising reduced prices in order to compete with near-by on-premise outlets and other package stores, selling single serving and/or high alcohol content products and other actions which foster law violations. These practices threaten to undermine the safety of the FSE and reduce it to an unattractive or dangerous location where patrons are reluctant to visit. It is critically important to success of the venue to have the cooperation and involvement of all licensees. Without such cooperation, failure and venue deterioration are the risk.

- **Additional licenses will likely impact public safety.** At present, the large number of licensees in a small area with large crowds is proving difficult to control. Generally, no additions should be granted due to public safety concerns. It may be possible to have an exemption process. In Oregon, we allowed exemptions in "alcohol impact areas" if the candidate licensee could effectively demonstrate that they will not contribute to problems.

- **Restrictions on products and days/hours of sale may be necessary to ensure public safety.** When public safety problems persist, such restrictions become necessary. In an area with several licensees and problems in the immediate area, it is difficult to tie problems to a single premise. As a result, restrictions are necessary to curb problems. For FSE, if off-premise licensees as a group continue to foster immediate consumption of alcohol sold from their stores, restrictions should be imposed.

- **Restrictions on immediate consumption of products from off-premise establishments should be rigorously enforced.** The presence of glass bottles and, to a lesser degree, aluminum cans in a large crowd may be dangerous and represent a public safety threat. A requirement that all alcohol consumed outdoors be sold in plastic containers will help identify instances where patrons are not abiding by regulations. Security should look out for licensees that supply plastic cups to facilitate immediate consumption. Such actions should be considered a violation of the off-premise license privilege.

- **Continue to consider the alternative of confining alcohol consumption in specified areas for certain events.** "Walk-arounds" are difficult to control and sometimes the size of the crowd and the nature of the event will suggest a higher degree of control. It is good to empower management to use that option when it seems wise. Confining consumption to controlled areas also will make enforcement of off-premise responsibilities easier.

In conclusion, it is my belief that all parties stand to lose if these issues are not resolved in a cooperative manner. The beauty of this venue is that it was developed by community partners for everyone's benefit. A very large investment has been made to ensure the success of the Fremont Street Experience and it will take everyone's effort to maintain this success.

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Witness Qualifications for:

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Experience: **2007 to present: President, Public Action Management, PLC**

Business dedicated to addressing alcohol problems through public education and public policy development. Projects include:

- Designed and, currently manage, national educational campaign to educate policy makers about alcohol marketplace regulation. Includes monthly newsletter and website with extensive educational materials: healthyalcoholmarket.com.
- Produced and published five reports: "The Danger of Alcohol Deregulation, the United Kingdom Experience," "The Danger of Alcohol Deregulation, the United Kingdom Experience, 2012 Update," "The High Cost of Cheap Alcohol," "Issue briefs for States" (2011,2012, 2013 and 2014 editions), and "Safe and Sound – How the three-tier alcohol regulatory system promotes safe products and high revenue collections".
- Frequent presentations to national conferences on regulation topics as well as media
- Work with over 15 states on alcohol regulation including expert testimony to legislative committees, public speaking, assisting with customized educational pieces and work with local coalitions.
- Produce and deliver workshops for local communities to reduce underage drinking and other problems in their areas.

2003 to June 2007: Advocacy Director, Oregon Partnership

Oregon Partnership is a statewide non-profit dedicated to alcohol and drug abuse prevention and referral.

- Designed and directed "Face it Parents", Oregon's statewide media campaign designed to reduce underage drinking.
- Created Leadership for Alcohol Free Kids, a statewide task force that developed recommendations for Governor Kulongoski. Governor accepted and implemented many recommendations.
- Developed program that changed national alcohol advertising and retailing practices. Used a system of "Action Alerts", a national email network, and media relations to call attention to products that encouraged teens to drink heavily. Several retailers, including Macy's and Kohl's, removed products from their stores. Others dropped sale of t-shirts encouraging underage drinking.
- Obtained grant funds to run two large media campaigns aimed at reducing underage drinking. Developed media partnerships with radio and TV companies that resulted in large pro-bono match for small expenditures in advertising. Acted as media spokesperson on youth substance abuse.

- Developed statewide youth action program to engage youth to write and voice radio and TV ads for media campaign. TV ad received regional "Youth Emmy" award.

1996-2003: Executive Director, Oregon Liquor Control Commission, Portland, OR

Oregon Liquor Control Commission is the state alcohol regulatory agency for Oregon which includes a state controlled distilled spirits wholesale and retail business.

- Transformed antiquated bureaucracy into a high performing, results oriented organization through strategic planning, stakeholder involvement and team building.
- Completely modernized the distilled spirits business. Developed business plan with social responsibility and service ethic. Replaced all warehouse equipment using manual forms to scanning technology using bar codes. Upgraded retail stores by focusing on store appearance, location and customer service. Added stores for first time in 20 years.
- Managed large agency of over 450 employees/contractors and a $250 million annual budget. Operation included 240 retail stores, a wholesale distribution center, 10,000 liquor licensees, and 24,000 alcohol server permittees. Initiated complete review of enforcement operations to focus on evidence-based practices including minor decoy operations and other measures to reduce illegal sales of alcohol to minors.
- Created citizen/stakeholder task forces to propose major changes in rules and laws.
- Chaired Oregon Coalition to Reduce Underage Drinking, a Robert Wood Johnson Foundation funded coalition dedicated to reduction of underage drinking.

1991-1996: Planning Manager, METRO/Metropolitan Exposition-Recreation Commission, Portland, OR

METRO is Portland's regional government.

- Produced business plan for four large facilities (convention center, exposition center, stadium, basketball arena) Each plan used a citizens' committee to review and support business plan efforts
- Conducted extensive financial analysis of each facility to find additional revenue and areas for cost reduction.
- Initiated Portland's first sports marketing organization. Created a citizens' committee to shepherd its development into a non-profit aimed at attracting major sporting events to the community. It has since enjoyed many years of success.
- Managed citizen committees to plan a convention center expansion (now complete) and develop revenue sources for support of large facilities, sports and art programs

1984-1991: Assistant Administrator (major department head) Oregon Employment Division, Salem, OR

Oregon Employment Division is a state agency managing Unemployment Insurance and statewide job placement. Primary position was chief of the administrative hearings unit.

- Created new management structure for Administrative Hearings Unit and restored its reputation for fairness. Invited to join faculty of National Judicial College. Taught class on Administrative Law, High Volume Proceedings.
- Efficiently managed 25 lawyers who conducted 10,000 hearings per year.

- Directed Field Operations Division consisting of 30 local offices and 900 employees during Executive job rotation.
- Created public-private partnerships to raise private dollars for Oregon Youth Conservation Corps.
- Did extensive public speaking to raise money for youth corps environmental projects.

Positions prior to 1984:

- Deputy Administrator Oregon State Wage and Hour Division
- Deputy Administrator Oregon Criminal Justice Commission
- Research Analyst, National Institute of Law Enforcement and Criminal Justice, Washington, D.C.
- Research Staff, The Urban Institute, Washington, D.C.
- Deputy Sheriff, Multnomah County, Oregon

Education:

- M.A. Georgetown University, Government/Public Administration (Honor Society)
- B.A. Portland State University, Political Science (With Honors)

Publications:

"2014 Issue Briefs for States, Brief Explanations of Common Alcohol Regulatory Issues Facing State and local Communities," (self-published January, 2014)

"Safe and Sound – How the three-tier alcohol regulatory system promotes safe products and high revenue collections." (Self-published 2013)

"2013 Issue Briefs for States, Brief Explanations of Common Alcohol Regulatory Issues Facing State and local Communities," (self-published January, 2013)

"The Danger of Alcohol Deregulation: The United Kingdom Experience, 2012 Update." (Self-published 2012)

"2012 Issue Briefs for States, Brief Explanations of Common Alcohol Regulatory Issues Facing State and local Communities," (self-published February, 2012)

"The High Cost of Cheap Alcohol," April 2011.

"2011 Issue Briefs for States, Brief Explanations of Common Alcohol Regulatory Issues Facing State and local Communities," (self-published January, 2011)

"The Danger of Alcohol Deregulation: The United Kingdom Experience"
(Published by the Center for Alcohol Policy, 2009).

"Campaign for a Healthy Alcohol Market Newsletter," 40 editions, September 2008 through October 2012 available at www.healthyalcoholmarket.com.

"Police Women on Patrol", with Peter Bloch and Deborah Anderson (authored under former name of Pamela Gervais), The Urban Institute, 1973.

Presentations/Testimony:

1. "Lessons from a Regulation Road Warrior," Iowa Alcoholic Beverages Commission for Symposium 21 Des Moines, IA October 2013.

2. Strengthening Alcohol Regulation: How to reduce the availability of cheap alcohol attractive to youth in your community," Community Anti-Drug Coalitions of America 23rd National Leadership Forum, Washington DC February 2013.

3. "Agency Capture & the Ethical Government Lawyer," panel presenter, National conference of State Liquor Administrators, Northern-southern Regional conference, October 2012.

4. "The Power of Price. How comprehensive price policies balance market forces and effectively regulate alcohol," Center for Alcohol Policy Alcohol Law Symposium, September 2012.

5. "The Value of Alcohol Regulation in today's Climate," Keynote speech, Maryland State Regulatory Meeting, July 2012.

6. "The Alcohol Deregulation Trend and the cost of Getting it Wrong," Michigan Policy forum Series, May 2012.

7. "Preserving a Healthy Alcohol Marketplace: Why can't we sell alcohol like tires and mayonnaise?" Basic presentation customized and presented to:

   - Georgia School of Addiction Studies, August 2012
   - NW Alcohol Policy Conference, July 2012
   - National Leadership Conference, Enforcing Underage Drinking Laws, August 2010
   - Montana Legislative Committee, April 2010
   - Oregon Webinar for prevention specialists, April 2010
   - Kansas Legislative Committee, March 2010
   - Illinois Beer Distributors, February 2010
   - Tennessee Legislative Committee, December 2009
   - Wine and Spirits Wholesalers Association State Policy Conference, December 2009
   - American Public Health Association Annual Conference, November 2009
   - Indiana Legislative Committee, September 2009
   - NCSLA Annual Conference, June 2009
   - NABCA Legal Symposium, March 2009
   - NABCA Board of Directors, January 2009
   - Oregon prevention, enforcement and moderation groups-2008
   - Washington prevention and moderation groups-2008

8. "The Danger of Alcohol Deregulation: The United Kingdom Experience," Basic presentation customized and presented to:

   - Utah Legislative Alcohol Policy summit, September 2012
   - Alcohol Policy 15 (World alcohol policy conference), December 2010
   - Center for Alcohol Policy, national webinar, November 2010
   - Beer Industry League of Louisiana, July 2010
   - Center for Alcohol Policy Law Symposium, October 2009
   - Webinar for Arizona prevention specialists, October 2009
   - NBWA Annual Convention, September 2009
   - Western States NCSLA Conference, September 2009

9. "The High Cost of Cheap Alcohol," Basic presentation customized and presented to:

- Georgia School of Addiction Studies, August 2012
- National Leadership Conference, Enforcing Underage Drinking Laws, August 2011
- Western/Central States NCSLA, October 2010

10. "How Control Systems Address Public Health Concerns," Center for Alcohol Policy Alcohol Law Conference, October 2011.

11. "Lies, Damned Lies and Statistics…so what are they good for?" NCSLA Annual Conference, June 2011.

12. "24/7 Openings: Panacea or Curse?" NABCA Legal Symposium, March 2011.

13. "The Important Role of Tied House Laws in Today's Market," NABCA Administrators' Conference, October 2010

Congressional Testimony: "The Danger of Alcohol Deregulation: The United Kingdom Experience", oral and written testimony

- Written Statement of Pamela S. Erickson, Chief Executive Officer, Public Action Management, Scottsdale, Arizona to the Subcommittee on Courts and Competition Policy, Committee on the Judiciary House of Representatives, US Congress, Hearing on: "Legal Issues Concerning State Alcohol Regulation" March 18, 2010

- Additional Statement Regarding Court Decisions Which Adversely Impacts State's Ability to Regulate Alcohol, By Pamela S. Erickson, Chief Executive Officer, Public Action Management, Scottsdale, Arizona to the Subcommittee on Courts and Competition Policy, Committee on the Judiciary House of Representatives, US Congress Hearing on: "Legal Issues Concerning State Alcohol Regulation" March 18, 2010

14. Affidavit of Pamela S. Erickson, In the United States District Court for the Northern District of Illinois Eastern Division, Anheuser-Busch, Inc. et al., v. Stephen B. Schnorf, et al., Case No: 10-CV-01601, May 2010.

Memberships:

Phoenix 100 Rotary Club
National Alcohol Beverage Control Association, Public Health Advisory Committee
National Conference of State Liquor Administrators
National Liquor Law Enforcement Association (NLLEA)
Community Anti-Drug Coalitions of America (CADCA)
Arizona Prevention Partners

Campaign for a Healthy Alcohol Marketplace

APRIL 2014 NEWSLETTER

All alcohol products are not equal.
Some require greater care.

By Pamela S. Erickson

Have you heard the phrase "alcohol is alcohol is alcohol"? It refers to the standard drink equivalents for beer, wine and spirits: 12 oz. of 5% beer = 5 oz. of 12% wine = 1.5 oz. of 40% spirits.

The "drink equivalent" is sometimes used as a rationale for selling all forms of alcohol wherever low alcohol content products are sold. Proponents argue that treating alcohol products differently amounts to discrimination and that the source of alcohol should not make a difference. But common sense and science suggests otherwise. If a product has a higher concentration of alcohol, it is easier to abuse. If the objective is to "get drunk", it's quicker with a potent product. Unfortunately, surveys show that underage drinking is mostly binge drinking and that kids are primarily interested in intoxication. Surveys also indicate that many kids—particularly girls—are favoring spirits over beer.

The container size typical for wine and spirits presents problems for potential over-consumption. The typical 12 oz. beer you buy in a store is usually close to the standard drink size. Wine and spirits are more often sold in larger 750 ml bottles. For spirits, a typical 750 ml bottle contains about 17 standard drinks. For wine, it is 5 standard drinks. And, now craft beer is sold in large containers called "growlers." Thus, how much alcohol is drunk depends on who is pouring. It is hard to imagine that youth are careful about pouring or even know about standard sizes. Even adults don't always possess that knowledge.

Also what is "typical" for beer, wine and spirits is changing. A typical bottled beer used to be 3.2% alcohol, but now stronger beer is increasingly popular with alcohol content of 6-12%. And then, you have malt-based products that come under the definition of "beer", but are 12% alcohol in a 24 oz. can. These are often sold cheaply and equate to 4.8 standard drinks. They are aptly called "Black-out in a can!" Sweet, fruity ready-to-drink products are made with malt, wine and spirits and sometimes are favored by underage female drinkers. In a recent study of brand preference for youth by the Center on Alcohol Marketing and Youth, spirit/malt based "alcopops" were two of the top ten brands. Also in the top ten were 4 beer and 4 spirit brands. So there is good reason to consider greater control over products that are more potent and that are highly favored by teens.

Historically, we have recognized that high alcohol products have more potential for harm and warrant tighter regulation. A recent court ruling affirmed that idea. In the case of *Maxwell's Pic-Pac v. Dehner*, the US Circuit Court, Sixth Circuit, ruled that "The state indisputably maintains a legitimate interest in reducing access to products with high alcohol content." Click here to read judges decision.

That case involved a Kentucky law which prohibited grocery and convenience stores from having a license to sell wine and liquor unless the products were located in a separate area with an outside entrance. The plaintiff claimed that prohibiting grocery stores from selling alcohol on their shelves like beer amounted to a violation of their constitutional right to equal protection of the law. In serving as a legal expert in that case, I wrote extensively about the history and rationale for having greater control over products of high alcohol content. I described how most states used the research work of Raymond Fosdick and Albert Scott in their book, *Toward Liquor Control* to design their regulatory systems. The judges used these resources in their order and quoted Fosdick and Scott when they said, "states must use their control systems to steer society to lower alcohol forms of products."

Based on the work of Fosdick and Scott, most states originally created a system of liquor or package stores to specialize in alcohol sales. In the case of 18 states, alcohol was originally sold primarily in state stores. Other states, licensed private individuals to sell products in a "package liquor store. These specialty store systems allow a more careful sale for more potent products. They usually don't

allow those under 21 to enter. Clerks are often older and trained in regulatory compliance. Promotion and advertising of alcohol products takes place inside the store where minors are not permitted, so they are not exposed to advertising. Aggressive product promotion—such as using loss leaders-- is less likely because the store sells only a few other products where they could make up the profit loss. Contrast this to states which have deregulated their markets so all forms of alcohol are sold in grocery, convenience, and other types of stores. Youth are frequently in these stores. Clerks are sometimes underage. Alcohol is promoted and marketed aggressively throughout the store with sales, coupons and suggestions for drinking at every holiday. Products are vulnerable to theft and self-service doesn't always prevent sales to underage and intoxicated persons.

Given that April is Alcohol Awareness Month, it is a good time to reaffirm our sensible alcohol regulations which require greater care in selling more potent products. It may be time to reevaluate our regulations that govern marketing, distribution and retail sales of alcohol products given the new package sizes, ingredients, and alcohol content. We must also acknowledge that any form of alcohol can be abused which means we need to consider each type of alcohol and its impact on public health and safety.

For more information, see www.healthyalcoholmarket.com Contact Pam Erickson at pam@pamaction.com

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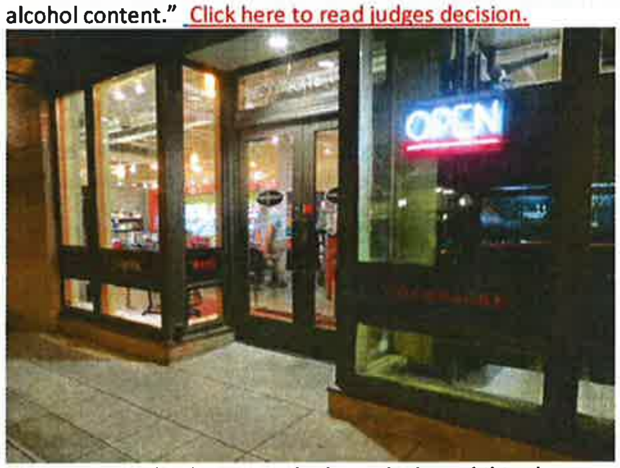

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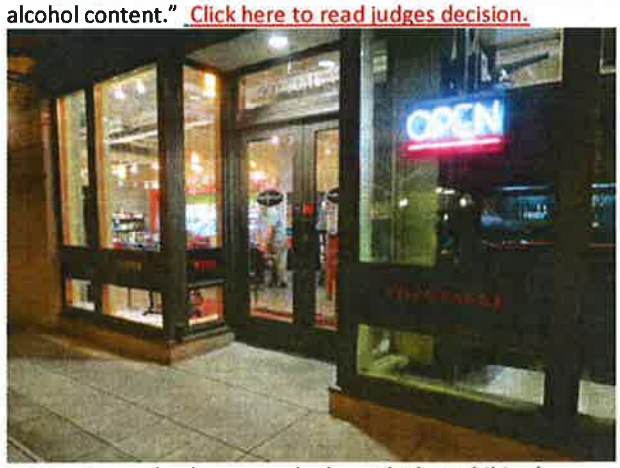

That case involved a Kentucky law which prohibited grocery and convenience stores from having a license to sell wine and liquor unless the products were located in a separate area with an outside entrance. The plaintiff claimed that prohibiting grocery stores from selling alcohol on their shelves like beer amounted to a violation of their constitutional right to equal protection of the law. In serving as a legal expert in that case, I wrote extensively about the history and rationale for having greater control over products of high alcohol content. I described how most states used the research work of Raymond Fosdick and Albert Scott in their book, *Toward Liquor Control* to design their regulatory systems. The judges used these resources in their order and quoted Fosdick and Scott when they said, "states must use their control systems to steer society to lower alcohol forms of products."

Based on the work of Fosdick and Scott, most states originally created a system of liquor or package stores to specialize in alcohol sales. In the case of 18 states, alcohol was originally sold primarily in state stores. Other states, licensed private individuals to sell products in a "package liquor store. These specialty store systems allow a more careful sale for more potent products. They usually don't

allow those under 21 to enter. Clerks are often older and trained in regulatory compliance. Promotion and advertising of alcohol products takes place inside the store where minors are not permitted, so they are not exposed to advertising. Aggressive product promotion—such as using loss leaders-- is less likely because the store sells only a few other products where they could make up the profit loss. Contrast this to states which have deregulated their markets so all forms of alcohol are sold in grocery, convenience, and other types of stores. Youth are frequently in these stores. Clerks are sometimes underage. Alcohol is promoted and marketed aggressively throughout the store with sales, coupons and suggestions for drinking at every holiday. Products are vulnerable to theft and self-service doesn't always prevent sales to underage and intoxicated persons.

Given that April is Alcohol Awareness Month, it is a good time to reaffirm our sensible alcohol regulations which require greater care in selling more potent products. It may be time to reevaluate our regulations that govern marketing, distribution and retail sales of alcohol products given the new package sizes, ingredients, and alcohol content. We must also acknowledge that any form of alcohol can be abused which means we need to consider each type of alcohol and its impact on public health and safety.

For more information, see www.healthyalcoholmarket.com Contact Pam Erickson at pam@pamaction.com

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APRIL 2014 NEWSLETTER

All alcohol products are not equal.
Some require greater care.

By Pamela S. Erickson

Have you heard the phrase "alcohol is alcohol is alcohol"? It refers to the standard drink equivalents for beer, wine and spirits: 12 oz. of 5% beer = 5 oz. of 12% wine = 1.5 oz. of 40% spirits.

The "drink equivalent" is sometimes used as a rationale for selling all forms of alcohol wherever low alcohol content products are sold. Proponents argue that treating alcohol products differently amounts to discrimination and that the source of alcohol should not make a difference. But common sense and science suggests otherwise. If a product has a higher concentration of alcohol, it is easier to abuse. If the objective is to "get drunk", it's quicker with a potent product. Unfortunately, surveys show that underage drinking is mostly binge drinking and that kids are primarily interested in intoxication. Surveys also indicate that many kids—particularly girls—are favoring spirits over beer.

The container size typical for wine and spirits presents problems for potential over-consumption. The typical 12 oz. beer you buy in a store is usually close to the standard drink size. Wine and spirits are more often sold in larger 750 ml bottles. For spirits, a typical 750 ml bottle contains about 17 standard drinks. For wine, it is 5 standard drinks. And, now craft beer is sold in large containers called "growlers." Thus, how much alcohol is drunk depends on who is pouring. It is hard to imagine that youth are careful about pouring or even know about standard sizes. Even adults don't always possess that knowledge.

Also what is "typical" for beer, wine and spirits is changing. A typical bottled beer used to be 3.2% alcohol, but now stronger beer is increasingly popular with alcohol content of 6-12%. And then, you have malt-based products that come under the definition of "beer", but are 12% alcohol in a 24 oz. can. These are often sold cheaply and equate to 4.8 standard drinks. They are aptly called "Black-out in a can!" Sweet, fruity ready-to-drink products are made with malt, wine and spirits and sometimes are favored by underage female drinkers. In a recent study of brand preference for youth by the Center on Alcohol Marketing and Youth, spirit/malt based "alcopops" were two of the top ten brands. Also in the top ten were 4 beer and 4 spirit brands. So there is good reason to consider greater control over products that are more potent and that are highly favored by teens.

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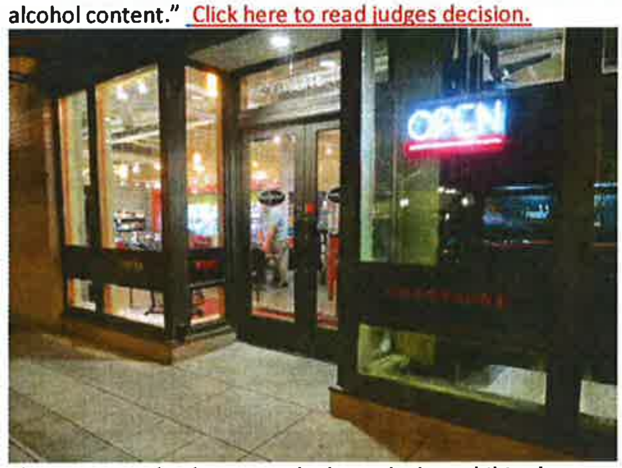

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Campaign for a Healthy Alcohol Marketplace

2014 ISSUE BRIEFS FOR STATES

Brief Explanations of

Common Alcohol Regulatory Issues

Facing State and Local Communities

Produced by Pamela S. Erickson, President/CEO

Public Action Management, PLC

healthyalcoholmarket.com

January 2014

Campaign for a Healthy Alcohol Marketplace

An Introduction to the 2014 Issue Briefs for State Policy-Makers

This is a package of simple briefs that address common issues about alcohol regulation. It is designed for community leaders, elected officials and other policy-makers who need a short, straightforward explanation of a given issue.

For each brief, research citations are given where they exist. The Appendix lists resources for further information about a given issue as well as the sources for quotations and facts cited. This publication is issued annually in order to incorporate current information.

Alcohol problems are complex and impacted by a variety of factors. Drinking is more prevalent in northern countries and in northern US states. Religious prohibitions may lower consumption rates. Young people, males and some ethnic groups drink at higher rates. A complex social problem generally requires a comprehensive system of regulation to address all its facets.

A growing body of research points to the need for a comprehensive system with multiple methods to contain price, availability, potentially dangerous products and aggressive promotions. These regulations work together, so changing a single regulation can change the workings of the entire system.

The primary purpose of the alcohol regulatory system and its individual regulations is to protect public health and safety. Whenever a change is proposed, the first question should be: How will this change affect public health and safety?

How to use these briefs:

Each brief is designed to stand alone. Please feel free to copy any of them including the attribution to healthyalcoholmarket.com. If you wish to modify one or more of the briefs, please contact the author, Pamela S. Erickson, and she will attempt to accommodate your needs. She can be reached at pam@pamaction.com. Further information can be found at healthyalcoholmarket.com.

New is this edition:

Most of the briefs have received minor editing for updated information and additional clarity. Brief #6 regarding why some states own and operate the liquor business was extensively revised to provide updated information on Washington state's recent privatization. A new brief (Brief #16) was added on the value of a strong wholesale sector. New research on privatization and the efficacy of forty-seven alcohol policies was incorporated into Brief #6 and Brief #16.

This publication is available in pdf format at healthyalcoholmarket.com. Each brief is also available as a single pdf on the same website.

Contents:

Campaign for a Healthy Alcohol Marketplace

Issue Brief #1:

Aren't our alcohol regulations antiquated? Weren't they designed to prevent organized crime and other problems of Prohibition?

Today's alcohol regulations were primarily designed to prevent problems which occurred **before Prohibition.** As Historian W.J. Rorabaugh reminds us, "For generations, Americans had been heavy drinkers, and by 1900 saloons were identified with political corruption, prostitution, gambling, crime, poverty and family destruction." Prior to Prohibition alcohol was sold in a free-market scenario with little regulation. National manufacturers controlled the industry and owned retail saloons—called "tied houses"—where almost all alcohol was consumed. To compete, each national company saturated neighborhoods with multiple outlets which were often located near factories to attract workers. Aggressive promotions encouraged high volume consumption and money was used to dissuade politicians from crack-downs.

Most of our alcohol regulations are designed to prevent companies from dominating local markets by heavily promoting large amounts of cheap alcohol. That is a very modern concern given the propensity of large corporations to do that with other commodities and to do that in countries where alcohol can be sold in virtual free-market scenarios.

The lessons from Prohibition are different. A primary lesson is that extreme measures applicable to the entire country with very little flexibility do not work. Second, laws must have public support to be effective. As a result, our alcohol regulations are state-based, allowing for differences and for experimentation.

Currently, our regulations enjoy a **high** level of support as evidenced in numerous surveys. Based on a national survey, Alexander Wagenaar and his colleagues found that the "Results showed high levels of public support for most alcohol control policies. Over 80% support restrictions on alcohol use in public places, such as parks, beaches, concert venues, and on college campuses. Eighty-two percent support increased alcohol taxes, provided the funds are used for treatment or prevention programs. Over 60% support alcohol advertising and promotion restrictions, such as banning billboard advertising, banning promotion at sporting events, or banning liquor and beer advertising on television."

"Those who cannot remember the past are condemned to repeat it."

George Santayana,
Reason in Common Sense, The Life of Reason, Vol.1.

For more information: www.healthyalcoholmarket.com

Issue Brief #2:

Why do we need regulations to balance our alcohol market systems?

The reason for regulations in the alcohol market is very simple: some common business practices can produce social harm. These practices often work well for other products, but not for alcohol.

Consider this example of three typical business plan strategies:

1. Efforts to retain and increase purchases by customers who are "**frequent buyers**."
2. Discounts and promotions to gain **new frequent buyer** customers.
3. Advertising to **young people** to build a future customer base.

When applied to alcohol sales, such business practices would:

1. Increase sales to frequent buyers, including **heavy drinkers and alcoholics**.
2. Use volume discounts and incentives to **encourage heavy use**.
3. Market alcohol to youth, thus encouraging **underage drinking**.

Alcohol regulatory systems seek to achieve a healthy balance of business practices which keep prices moderate: not too low to push consumption, not too high to push bootlegging or theft. They also make products reasonably available for customers, prohibit promotions that foster heavy consumption and strictly control sales to minors. These things are designed to foster moderation because we know from research that moderation in consumption of alcohol avoids most problems. One should be skeptical of cries for a free market environment with no regulations. A truly free-market, devoid of any rules at all, does not really exist for any commodity; for alcohol, it would result in serious unintended consequences.

Estimates indicate the alcohol market includes:

- 17.5% underage drinkers
- 20+% adult abusive/dependent drinkers
- 10-20% of alcohol sold is consumed by underage drinkers

Archives of Pediatrics and Adolescent Medicine, 2006

Campaign for a Healthy Alcohol Marketplace

Issue Brief #3:

Since alcohol is a legal product, why can't it be sold like orange juice or any other legal product?

Most "legal" products are regulated to protect the public's health and safety. In the US, food products are regulated by the Food and Drug Administration to ensure that products are safe and that the contents match their labels. When regulation is weak or sloppy, we are at risk of food poisoning, food-borne illnesses, fraudulent packaging and other problems. For similar reasons, restaurants are regularly inspected locally to ensure that they serve only safe and healthy products. Fines and other penalties are issued to those in violation. No one would suggest that we should have no food regulations merely because the sale of food products is legal.

One highly regulated product in today's market is the automobile. Regulations require that each car sold must contain a long list of equipment to ensure its safety, fuel economy, and to reduce air pollution. Once you buy a car, there are more regulations to follow, including those for proper use of children's car seats, seat belts, safe driving speeds, and so on. Once again, no one would ever suggest that we should eliminate regulations just because the automobile is a legal product.

Cigarettes are highly regulated products that have some interesting parallels with alcohol. While cigarettes are legal to buy and smoke, there are many restrictions on their sale and use. You have to be 18 to purchase cigarettes. You may not smoke in most public places. And you may have to pay higher insurance fees if you are a smoker. We all know that the reason behind these regulations is the great harm cigarettes can cause to the human body, including to those who inhale passive smoke from others. Research has shown a connection between cigarette smoke and cancer and many other health problems.

Alcohol is unique in that it is invariably harmful when used to excess. The Centers for Disease Control and Prevention estimate that 80,000 deaths occur annually due to alcohol. In 2012, drunk driving alone caused 10,322 deaths (this is an increase from 2011 and amounts to 1 every 51 minutes), 345,000 injuries and $132 billion in costs, according to Mothers Against Drunk Driving. These data alone justify the need for significant regulation.

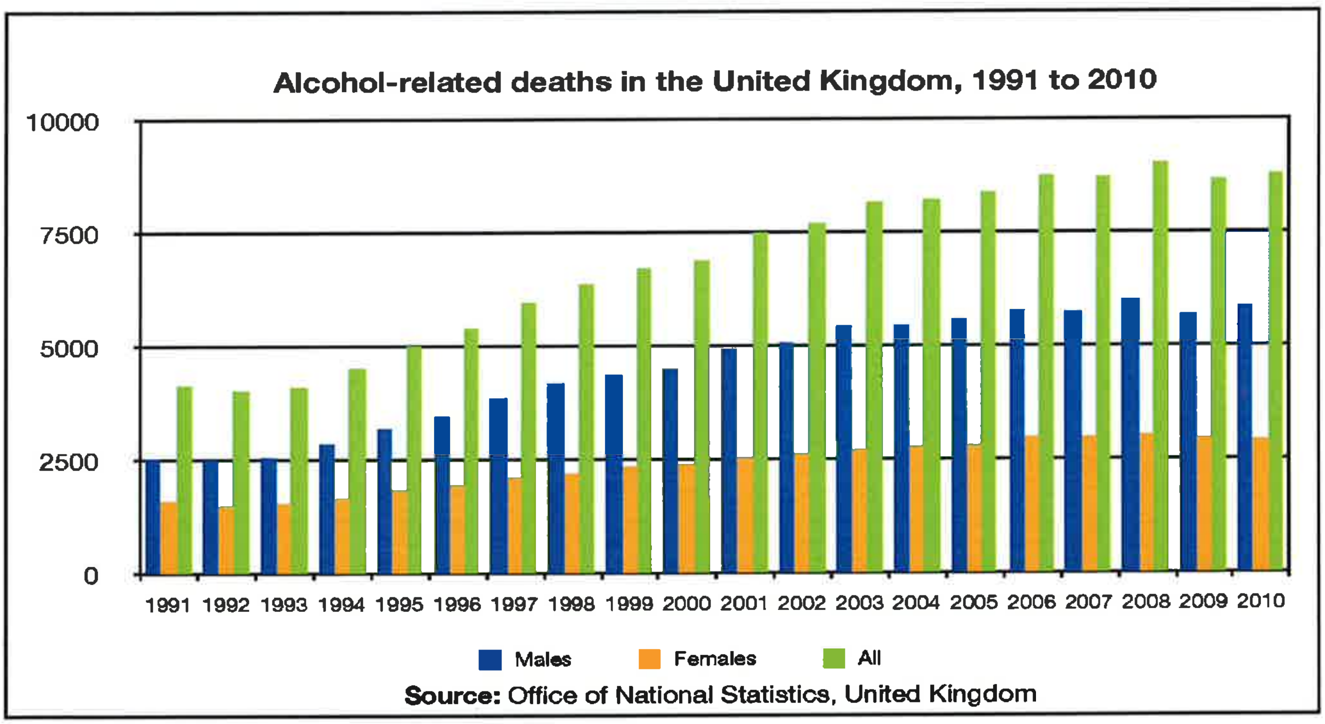
Although there are some situations where alcohol should not be used at all, alcohol can usually be enjoyed if used in moderation. Alcohol regulations both encourage moderation and restrict excessive use. This preserves individual choice while protecting public health and safety.

Issue Brief #4:

What are some real-world examples of what happened when alcohol was deregulated?

The United Kingdom is today's best example, although the State of Washington recently passed a ballot measure which will make it one of the least regulated states. Over time, we will be able to measure the impact on public health and safety.

The United Kingdom deregulated over a long period of time with an increase in problems following closely in the wake. It began in the 1960's with allowing all forms of alcohol in grocery stores. As competition heated up, alcohol became cheaper and even more available. Closing hours and other controls were abandoned. Today in the UK you can buy all forms of alcohol everywhere with few restrictions, 24 hours a day, 7 days a week; this "convenience" has caused a serious alcohol epidemic. For example, hospital admissions for liver disease and acute intoxication have more than doubled over 10 years. Underage drinking in the UK is almost twice the US rate.



Other countries have also suffered severe problems from alcohol deregulation:

Finland: Since the early 1960s, Finland gradually liberalized alcohol regulations and cut taxes. As a result, **average consumption for those over age 15 increased fourfold** - from 3 liters per capita in 1969 to 12 liters in 2004. In 1998, Finland decreased its excise duties for some alcohol products by 17%. Again in 2004, it was dropped another 33% in an effort to compete with other European Union countries. In the case of each tax cut, consumption rose by 10%. Alcohol problems rose in tandem. In 1995, alcohol-related mortality rose

Issue Brief #4: What are some real-world examples of what happened when alcohol was deregulated? Continued

by 14% and in 2004 by 20%. Also in 2004, deaths from liver disease increased by 30%. The pressure for these changes came from the EU, which favored deregulation for alcohol and lower taxes. Since 2004, Finland has done a "U-turn" and raised taxes twice in an effort to reduce harm.

Russia has 500,000 annual deaths due to alcohol. Alcohol poisoning kills more than 23,000 per year.

Russia: Alcohol is a primary cause for drastically reduced life expectancy for men. In Russia, where men are very heavy drinkers, life expectancy for men is 63, versus 75 for women. Per capita consumption of alcohol is enormous – about 4 gallons. This is twice the level the World Health Organizations considers the "danger level." The number of deaths is staggering: an estimated 500,000 annually. 59% of deaths of Russians aged 15 – 54 were caused by alcohol. President Putin is working to curb this problem with a series of tax increases, penalties for sales to minors, restrictions on where liquor can be sold, health warnings, and regulations for advertisers.

"We have a problem in New Zealand with the sale of really cheap alcohol. Cheaper alcohol tends to be bought more by harmful drinkers than moderate drinkers and studies show that it is also attractive to young people."

Alcohol Advisory Council Chief Executive Gerard Vaughan

New Zealand: Loosened regulations in 1989 and problems increased. Since that time there have been numerous discussions, committees, and cries for re-regulation. In 2010, an Alcohol Reform Bill was developed. In December 2012, Parliament passed the reform bill which will allow communities to regulate outlet density and hours / days of sale, increase the drinking age, ban dangerous products and products appealing to youth, limit the size and strength of alcohol and increase penalties. An entire year was given to enact these new rules. Indeed, re-regulation takes a very long time.

Issue Brief #5:

What does a good alcohol regulatory system look like?

Today we know a great deal about what works in alcohol regulation thanks to a large body of high-quality research. The World Health Organization has done extensive review of this research and developed recommendations on how best to regulate alcohol. The following chart presents many of those recommendations in an easy-to-understand "alphabet" format:

Our greatest protection is an effective alcohol control system which addresses the ABC's of regulation:
• **Availability.** Allows alcohol to be sold by the bottle and the drink, but limits the number, location, types of alcohol products, and hours of outlets. • **No "Bargain Booze".** Regulations balance prices, control price competition, and restrict dangerous marketing and promotional practices. • **Children and Teens.** Age restrictions protect young people from the serious problems of underage drinking. • **Drunk Driving.** Creates and enforces strict measures against drinking and driving- sobriety checks, blood alcohol limits, driver's license suspension. • **Education and Enforcement.** Uses the carrot of education (alcohol awareness programs, "schools" for offenders) and the stick of enforcement (fines, community service and jail) when education fails. Source: Adapted from World Health Organization recommendations.

In a recent article in the American Journal of Preventive Medicine, "Efficacy and the Strength of Evidence of U.S., Alcohol Control Policies," a highly respected team of experts rated 47 different policies on their efficacy and strength of evidence in reducing binge drinking and alcohol-impaired driving among the general population and among the youth population. The top ten policies in rank order were:

Alcohol excise taxes
State alcohol control systems
Bans on alcohol sales
Outlet density restrictions
Wholesale price restrictions
Retail price restrictions
ABCs (Alcohol Beverage Control agencies) present, functional, adequately staffed
Dram shop liability laws
Hours of sale restrictions
Alcohol consumption restricted in public

Issue Brief #6:

Why are some states in the liquor business? Can't a control state convert to a license state and save money?

After Prohibition, eighteen of the states and a few individual local governments adopted the "control system" (government-owned liquor business) because that removed the profit motive from selling alcohol. Before Prohibition, large alcohol companies were strongly profit driven and pushed retailers to sell alcohol aggressively to factory workers, heavy drinkers and even to children. They used credit, volume discounts, and other inducements to increase the sale and consumption of alcohol. This encouraged intoxication and created major social problems.

A Control System ensures that no one will have a profit incentive to sell alcohol to people who shouldn't drink, such as youth and intoxicated persons. Several states, some local governments, most Canadian provinces and some Northern European countries have some version of a control system. Since the state takes the profit from the sale of alcohol, it can then use those funds to offset the costs to taxpayers of alcohol abuse. These costs are substantial. According to the Centers for Disease Control and Prevention, "…excessive alcohol consumption cost the United States $223.5 billion in 2006, or about $1.90 per drink."

Conversion from a control to a license system is far from simple and has consequences for public health and safety, revenue, and the local business markets. And, we now have a specific state example that illustrates the issues and complexity of conversion. In November 2011, the state of Washington passed a ballot measure (I-1183), written and sponsored by the Costco Corporation, that converted Washington's control system for spirits to a license system and eliminated other regulations so that wine and spirits could be sold in a highly deregulated environment.

It will take a few years to fully assess the impact on revenue, public health safety, and business, but some impacts are immediately apparent.

Price increase: If a control state's business is eliminated, the only way to replace lost revenue with a privatized system is to impose new, high taxes. The reason is that control systems provide revenue through both business profit and tax collection. So, you have to replace both. This is exactly what the Washington ballot measure did. First, the retail sales tax of 20.5% and the $3.77 per liter taxes were retained. Then, two new "fees" were added, a 10% distribution fee and a 17% retail fee. On top of all of these taxes and fees, an amount for profit must be added. As a result, the average price per liter of hard liquor after taxes increased by almost $4: from $24.06 to $21.59 according to the Washington State Department of Revenue. The price at the register is so high that customers have been shopping across the border in Idaho and Oregon for bargains.

Sign in a Washington State Grocery Store

Liquor Price Estimator						
		20.5% Sales Tax	Bottle Size	Liter Tax		Total
If the shelf price is =	$ 10.00	$2.05	750 ml.	$ 2.83	Your final price is =	$ 14.88
If the shelf price is =	$ 10.00	$2.05	1.75 ml.	$ 6.60	Your final price is =	$ 18.65
If the shelf price is =	$ 15.00	$3.08	750 ml.	$ 2.83	Your final price is =	$ 20.91
If the shelf price is =	$ 15.00	$3.08	1.75 ml.	$ 6.60	Your final price is =	$ 24.68
If the shelf price is =	$ 20.00	$4.10	750 ml.	$ 2.83	Your final price is =	$ 26.93
If the shelf price is =	$ 20.00	$4.10	1.75 ml.	$ 6.60	Your final price is =	$ 30.70
If the shelf price is =	$ 25.00	$5.13	750 ml.	$ 2.83	Your final price is =	$ 32.96
If the shelf price is =	$ 25.00	$5.13	1.75 ml.	$ 6.60	Your final price is =	$ 36.73

Issue Brief #6: Why are some states in the liquor business? Can't a control state convert to a license state and save money? Continued

Large, national corporations will likely dominate all tiers of the liquor business: Conversion will invariably change local markets to favor large retail, wholesale and manufacturing corporations. Since the need to replace revenue leaves a small margin for profit, large corporations are at an advantage and small businesses have difficulty surviving.

In Washington, Costco wrote the ballot measure to eliminate any barriers to large-scale purchasing directly from suppliers at discount. While Washington auctioned off all of its former state stores, these stores are finding it difficult to survive. Those located near the Oregon and Idaho border face loss of business to those states due to high prices. But, they also face competition from the large grocery retailers who can sell products cheaper thanks to their ability to execute large wholesale purchases at discount and store those products in a large warehouse.

At the wholesale level, it is difficult for small local operators to gain a foothold in newly converted markets. Established wholesalers have systems, national contracts with distillers and considerable know-how. It is relatively easy for them to step quickly into the market and capture much of the business. In Washington, two large national wine and spirits distributors immediately captured most of the market share. For the first calendar year of operation, these two companies had 93% of the total market according to the Washington State Liquor Board website.

Before conversion, Washington had a fledgling craft spirits business. Local distillers could get their products in state stores by using the state's listing process. State stores typically carried a wide variety of products. This made it easier to get a specialty product listed. After conversion, large grocery chains carried a more limited product line than state stores. Small liquor stores struggling to compete may be less willing to take a chance on buying new specialty products. All of these factors will likely thin the ranks of craft distillers. Some local wineries will also be impacted as the state stores carried wine, particularly local wine.

Privatization usually results in increased problems with alcohol due to greater availability and higher consumption. Privatization invariably makes alcohol more available with less regulation, which leads to more aggressive promotions and inducement for purchase. Higher consumption usually follows along with the associated social problems. Research on previous instances of privatization is sufficient to convince health authorities to recommend against privatization. While it is too early to clearly assess the public health and safety problems with Washington's privatization, availability has clearly increased. Under the state system there were 325 state and contract stores. Now there are over 1,400 and it will likely go higher. That is a fourfold increase in availability. While high prices may inhibit consumption, retailers now have the ability to offer inducements such as sale prices at cost (though not below cost), discounts for volume purchase, and advertising with few restrictions. These things could readily boost sales. During the first six months of conversion, reports of liquor theft were high.

A new research report by Roland Zullo et al of the University of Michigan found that state monopolies had the potential to generate 2-3 times the revenue from alcohol sales than license states. And, those that had both the retail and wholesale business did the best. Moreover, "The more valuable advantage in state ownership of retail is a reduction in alcohol-related social harm, especially alcohol-related vehicle fatalities and some types of crime."

> **"Based on its charge to identify effective disease and injury prevention measures, the Task Force on Community Preventive Services recommends against the further privatization of alcohol sales in settings with current government control of retail sales, based on strong evidence that privatization results in increased per capita alcohol consumption, a well-established proxy for excessive consumption."**
>
> **Centers for Disease Control and Prevention**

Campaign for a Healthy Alcohol Marketplace

Issue Brief #7:

Why are beer, wine and spirits regulated differently?

After Prohibition, both a new alcohol marketplace and a new regulatory system had to be created. Since state legislators knew little about alcohol markets, all states relied—more or less—on a study called Toward Liquor Control by R. B. Fosdick and A.L. Scott. This work was sponsored by John D. Rockefeller, a leading entrepreneur of the day. The two authors studied alcohol regulatory systems in other countries and developed a set of recommendations designed to foster public safety by eliminating violence in public drinking places and encouraging moderation among those who wanted to drink. To encourage moderate consumption, they recommended two types of licenses that would encourage consumption of "light alcohol products" in single-serving containers and discourage consumption of more potent products.

The first license type was for retailers who sold "lighter" beverages, which usually meant 3.2% beer because Americans did not drink much wine. The idea was to have widespread availability for the sale of these "light" products. The new approach meant that beer would no longer be sold primarily in kegs and buckets, as it was before Prohibition, but in single-serving size cans and bottles. These smaller size containers were meant to limit intake or, at least, give the consumer some idea of how much they were drinking. The license for these stores usually allowed the sale of other products, so the grocery store became the most common type of licensee.

The second type of license (or state-operated store) was the liquor store—often referred to as a "package store." There were fewer of these stores, their hours were curtailed, they did not permit entrance to those underage, and they were the only places where hard liquor and high-alcohol wine or beer could be sold. Generally, these licenses did not permit extensive sale of other products. The idea was that licensees would become specialists in the proper selling of alcohol. Moreover, they would not be able to sell alcohol very cheaply because they had no other products from which to make up profits lost by deep discounting.

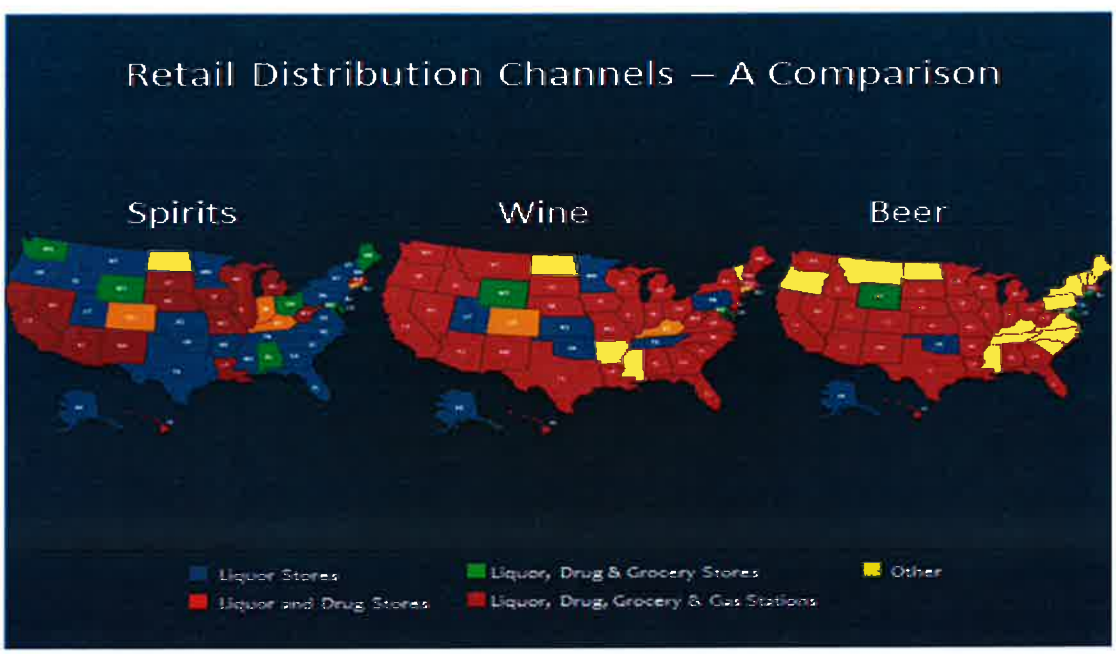
Grocery Store		Liquor Store
- Low alcohol beer in single serving containers (3.2% - 6%) - Light wine (often 12% - 13%) - Other products such as groceries available - Sale of alcohol not necessary to be a profitable store	**< Items Sold >**	- Spirits and other higher alcohol content products - Primarily sell alcohol. Loss leader is difficult without non-alcohol products to sell. Promotion / advertising sometimes controlled.
- Outlets widely available	**< Outlet Density >**	-Outlets limited by state quotas, local ordinance or state ownership
- Greater days / hours of sale	**< Hours of Sale >**	-Limited hours / days of sales: generally no Sunday, holiday or late-night sales
- Customers of any age	**< Minors >**	- Customers must be 21+. Some states cite minors for being in store.
- Usually clerks can be under 21 - High turnover provides less expertise in regulatory requirements to avoid sales to minors and intoxicated persons.	**< Employees >**	- Clerks must be 21+. - Mandatory training in alcohol regulation is common.

Issue Brief #7: Why are beer, wine and spirits regulated differently? Continued

Pressure to move from tight to light control for all alcohol products.

The original dual license system has eroded in several ways:

- The alcohol content of "lighter" products has increased. While 3.2% beer is still produced, the alcohol content of beer now averages around 4-5%, with some craft brews much higher. Many states have increased the allowable percentage of alcohol in beer sold in stores to as high as 8-12 percent. The percentage of alcohol in wine has increased from around 12% to 13-14%, with some varieties much higher.
- The place of wine in our markets has changed. For some time after Prohibition, few Americans drank wine. That has changed as about 1/3 of Americans now drink wine as their primary alcoholic beverage. And, the availability of wine has increased as more states have allowed it to be sold in grocery and convenience stores.
- New products, many of which appeal primarily to youth, are sold in grocery and convenience stores because they are "malt-based" and qualify as beer, or they are "wine-based" and qualify as wine.
- Products which appeal to youth or problem drinkers are often sold in large containers--over 20 ounces with 12% alcohol.
- Several states have allowed hard liquor and other high-alcohol content products to be sold in grocery and convenience stores without the additional controls that liquor stores have.
- Hours and days of sale have been extended; and many states are moving toward allowing the sale of all forms of alcohol for extended hours, seven days a week.
- Many grocery and convenience stores have lightly controlled check-out systems. Large grocery stores use self-service lines and many stores are lightly staffed which can increase theft as well as sale of alcohol to youth and intoxicated persons.



Source: National Alcohol Beverage Control Association.

Issue Brief #8:

What are the benefits of a three-tier system of alcohol control?

The United States has a unique system that requires alcohol to be sold through three separate market tiers: manufacturer/supplier, wholesaler, and retailer.

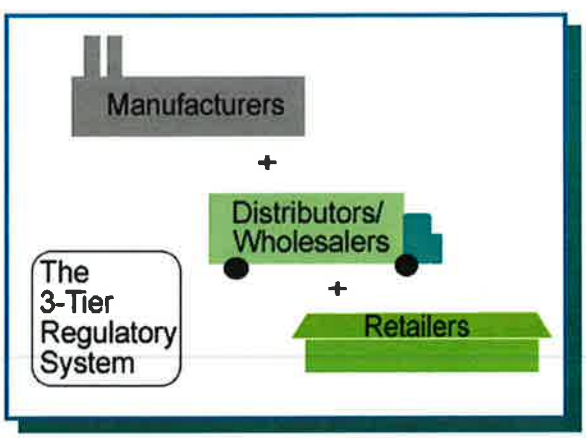
Generally, the tiers must be separately licensed and owned, independent of one another. This prevents marketplace domination by large companies that seek to greatly increase the sale of alcohol through aggressive sales practices, or by controlling the entire alcohol distribution chain, from manufacturer to consumer.

Before Prohibition, large manufacturers dominated the alcohol marketplace by owning chains of retail establishments. They pushed the retailers to sell very aggressively to make high profits. A modern version of marketplace domination can be found in the United Kingdom, where four large grocery chains dominate the market and sell alcohol so cheaply that it has fueled an epidemic of alcohol-related illnesses. It is also believed that this domination has caused many traditional pubs to close since more people are drinking cheap alcohol at home.

The tiered system in the US keeps prices balanced, prohibits or inhibits aggressive sales practices, and allows both small and large operators to be profitable. This system also uses checks and balances from one tier to another to enforce many provisions, and the middle tier is used to collect taxes and track products (a function the government would otherwise have to perform at extra cost to the taxpayers).

Below is a general illustration of how the three-tier system works. Each state does it somewhat differently and all are subject to some federal regulations preventing ownership or financial ties between manufacturers and retailers. A publication that features just two of the benefits of the three tiered system called, "Safe and Sound". How the three-tier system of U.S. alcohol regulations helps ensure safe products and protects against revenue loss, is available at healthyalcoholmarket.com.

How the Three-Tier Alcohol Control System Supports a Healthy Alcohol Marketplace



- **Financial Independence** prevents business practices which promote increased and high-volume consumption through price reductions. (Ownership prohibited between sectors)
- **Functional Independence** protects the integrity of the three-tier system by prohibiting ways to circumvent it. (One sector can't perform function of another)
- **Price Regulations** prevent increased consumption that would occur by selling large quantities of very cheap product. (Uniform pricing, ban on volume discounts
- **Promotion and Advertising Regulations** prevent business practices that target high-drinking groups and promote volume consumption.
- **Tax Collection** provides for an efficient tax collection system.
- **Product Tracking** prevents sale of tainted and counterfeit product.
- **Age Restrictions** prevent sales to underage youth.
- **Availability Limits** reduce consumption, social problems and burden on law enforcement.

For more information: www.healthyalcoholmarket.com

Issue Brief #9:

Isn't alcohol regulation bad for business? Shouldn't we loosen alcohol regulations to help local business?

The answer is generally no to both questions. In fact, for most businesses alcohol regulation offers some real benefits. While the system sometimes seems cumbersome and a business owner may wish for a free market system, most free markets end up benefiting only a few large companies. The states' alcohol regulatory systems are designed to foster alcohol moderation, prevent underage drinking and other problems **AND to allow the owners of all sizes and types of businesses to make a reasonable profit.** Much has been said about the public safety issues, but policy-makers should also consider the following benefits to business:

The Three-Tier System prevents market domination: Look at the soda pop shelf in your grocery store and you have an idea of what alcohol might look like in a deregulated environment. The soda space is occupied by two major companies. The alcohol regulatory system requires that alcohol be sold through three separate, independent tiers: manufacturer, wholesaler and retailer. In addition, most states require price policies that level the playing field. For example, uniform price laws require the wholesaler to sell their products at the same price to all retailers. This means the large corporation can't get a better deal than the local mom-and-pop store. It also keeps prices from going so low that "bargains" encourage people to drink more.

Regulations reduce some costs of doing business: For most commodities, large grocery stores require slotting fees; that is, payments made to the grocer to assure products a place on their shelves. Manufacturers and wholesalers may also have to stock shelves, pay for advertising, provide promotional point-of-sale items, and buy refrigerated units. These are generally illegal for alcohol products. If controls are removed, small players would not be able to get their product to market without paying for these "extras."

Freedom from price wars and other forms of market volatility: Most states have several ways of keeping the price of alcohol balanced, i.e. not low enough to encourage volume consumption, nor so high as to encourage bootlegging and illegal importation. Laws such as bans on volume discounts and selling below cost keep prices reasonably stable. Without these laws, large corporations with huge economic buying power would undercut small—usually local—businesses, and possibly put them out of operation.

Product tracking protects against unwarranted business ruination: Even the best manufacturing companies can make a mistake that creates a tainted batch or product. In today's market, even minor problems with product quality can ruin a company or disrupt a commodity market. This is much less likely to happen in the alcohol marketplace because wholesalers are required to track every bottle and can. With this system, a problem batch or product can be quickly identified and removed from the retail shelf. This minimizes harm and can save a business.

Predictability: Because the regulations keep the alcohol marketplace balanced and free from extreme volatility, business owners can have confidence in their investments. Predictability reduces risks and makes business planning easier.

Compliance with regulations helps prevent neighborhood and community problems: Most business people find that a clean and safe neighborhood is good for business. Alcohol regulations help. By preventing sales to underage youth and intoxicated people, fewer neighborhood problems are likely.

Policy-makers should consider these points very carefully when alcohol deregulation measures are under review. While being free of regulations may sound good, the reality is often very different. Remember that the change in rules must apply to all licensees. For example, if the law requiring uniform prices is abandoned, wholesalers would then be allowed to give some retailers special prices. Who would get that special price and how would that impact local businesses? Chances are that large, global corporations would be the only ones getting the best deals because they alone can buy a very large volume of product. Thus, a so-called "free market" would only benefit a few companies.

For more information: www.healthyalcoholmarket.com

Issue Brief #10:

Since the recession, all Americans expect good values, so what's the problem with lower prices for alcohol?

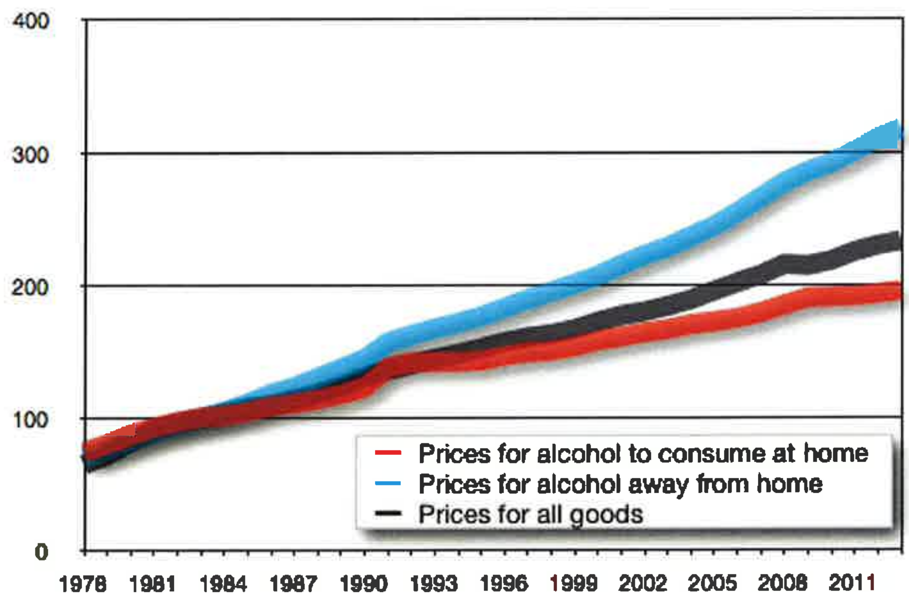
The answer is simple: lower prices increase drinking and the problems that come with drinking. Price is one of the most powerful tools available to reduce social problems with alcohol. Consider this evidence: a team of researchers from the University of Florida reviewed over 100 separate studies that had over 1000 statistical estimates of price versus consumption. The showing was very consistent, demonstrating that alcohol taxes and prices impact the level of drinking.

For Americans alcohol prices have seen primarily modest increases except for prices in bars and restaurants where they have gone up steadily and now represent a major difference between prices for at home versus away from home. This likely reflects the hyper-competitive environment of the grocery business today and the extensive use of price reductions to draw customers into a store.

"When prices go down, people drink more, and when prices go up, people drink less.

Alexander C. Wagenaar, Ph.D., Professor of Epidemiology and Health Policy Research at the University of Florida

Consumer prices, 1978-2013



Source: Bureau of Labor Statistics

Offering cheap prices for alcohol facilitates excess consumption in various ways. For example, underage drinkers are price-sensitive and generally drink to intoxication. They are the consumers who likely purchase inexpensive products in stores since they can't readily drink in bars. The rising gap also fosters pre-drinking practices which means drinkers may be impaired before and after going out.

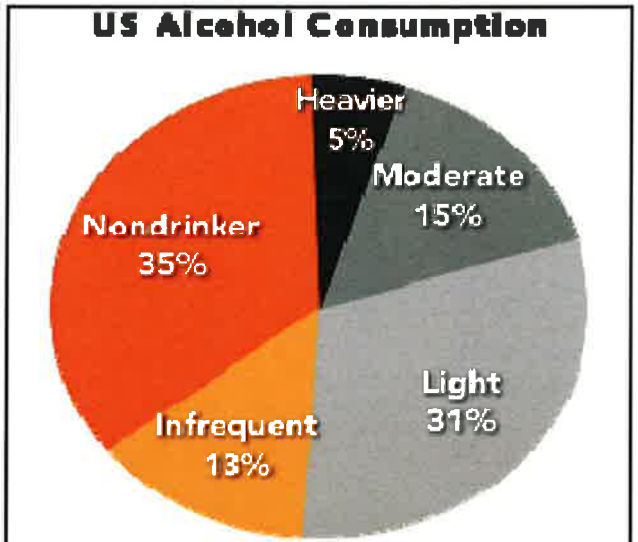
Issue Brief #11:

Why shouldn't alcohol be more convenient for customers to buy? Shouldn't those who drink exercise personal responsibility?

Additional convenience for alcohol consumers would mean more stores, longer opening hours, and more forms of alcohol in more locations. A review of the research indicates that all of these things increase consumption, which leads to more social problems. This, in turn, puts a large and costly burden on social services and law enforcement. When regulations are relaxed, most of the additional alcohol sold is purchased by heavy drinkers, a category which also includes youth.

A survey by the Centers for Disease Control and Prevention reveals that most Americans do not consume alcohol regularly.

As one can see, 35% of Americans do not drink at all, and another 13% drink only a few times a year. In addition, 31% have three drinks or fewer per week, which means they buy less than a six-pack of beer or one bottle of wine a week. This leaves moderate drinkers (1-2 drinks per day) and heavy drinkers (3 or more drinks per day) as regular alcohol customers. Thus, the expanded availability of alcohol would benefit only 20% of the population at most, but the increased social and law enforcement costs would be borne by every taxpayer.



Source: National Institutes of Health Interview Survey, 2008-2010

Another point of this survey is that the vast majority of Americans already exercise personal responsibility by limiting their consumption of alcohol. Only 5% are heavy drinkers, and only a portion of these drinkers cause serious public health and safety problems.

Given these statistics, the question becomes: "Is it sensible to inconvenience 20% of the population to protect the other 80% from the social ills and law enforcement costs that occur when problem drinkers have unlimited access to alcohol?"

As it is not illegal to be a heavy drinker, regulating the availability of alcohol remains a highly effective way to control problem drinking. Such regulations have the added benefit of being minimally intrusive for the rest of society because they affect just a small percentage of the population.

Issue Brief #12:

What is the problem with allowing more stores to sell alcohol?

We've always known that a neighborhood saturated with bars, liquor stores and other alcohol outlets can be a recipe for disaster. Now we have research that confirms this idea. The Centers for Disease Control and Prevention hosts an independent task force that reviews credible research. That group, the Community Preventative Services Task Force, recommends using regulatory authority, such as licensing and zoning, to limit outlet. Their research shows a positive link between the number of establishments selling alcohol, over-consumption and related harms.

Here are some examples of specific research findings: Two Indiana University professors reported on their analysis of crime and outlet density in Cincinnati. They found that off-premise outlets were responsible for one in four simple assaults and one in three aggravated assaults. In another study of eight college communities, E. R. Weitzman and her team from the Harvard School of Public Health found that alcohol outlet density was correlated with heavy drinking, frequent drinking, and drink-related problems, particularly among women, underage students, and students who did not drink prior to coming to college.

Using alcohol regulation or local zoning to reduce outlet concentration can be complicated. It usually involves a process of establishing problem areas by mapping crime and nuisance incidents and locations of licenses. These are the areas where caution is needed when considering applications for new licenses. This is particularly true for the types of licenses that generate the most police calls, i.e. places where alcohol constitutes the bulk of sales. In Glendale, Arizona, police found that the top six convenience stores for police calls cost the city $39,000 a year. Four of those six had over 1,000 calls to police in just one year. While most licensees are responsible, adding many more outlets can overwhelm law enforcement. There are helpful resources available to guide local communities in dealing with this issue. The Center for Alcohol Marketing and Youth (camy.org) and the Community Anti-Drug Coalitions of America (cadca.org) have an action guide for use by local coalitions.

The Community Preventive Services Task Force recommends: "the use of regulatory authority (e.g., through licensing and zoning) to limit alcohol outlet density on the basis of sufficient evidence of a positive association between outlet density and excessive alcohol consumption and related harms."

Issue Brief #13:

Why are there special hours for alcohol sales? Why do some states prohibit alcohol sales on Sunday or holidays?

Research shows that when regulations change to allow more hours and days of sale, alcohol problems get worse. In fact, a national task force has generally recommended that these types of limits be retained. The Task Force on Community Preventive Services states, "On the basis of strong evidence of effectiveness, the Task Force recommends maintaining existing limits on the days on which alcoholic beverages are sold as one strategy for the prevention of excessive alcohol consumption and related harms." This evidence came from the Task Force's assessment of studies on the impact of repeal of these limits. The Task Force is an independent, nonfederal group that is developing a Guide to Community Prevention Services with the support of the US Department of Health and Human Services.

Generally, research has found that the more widely available alcohol is in a community, the more problems that community has with alcohol. The Task Force, which conducted a systematic review of research, noted that removal of days of sale for off-premise licensees (grocery and convenience stores) resulted in small increases in alcohol consumption and motor vehicle fatalities. Removal of such limits for on-premise licensees (bars, taverns, restaurants) was associated with substantial increases in motor vehicle related harm and smaller increases in consumption.

The Community Preventative Services Task Force on "recommends maintaining existing limits of the days on which alcoholic beverages are sold as one strategy for the prevention of excessive alcohol consumption and related harms."

Regarding hours of sale, the Task Force states, "On the basis of sufficient evidence of effectiveness, the Task Force recommends maintaining existing limits on the hours during which alcoholic beverages are sold at on-premise outlets as another strategy for preventing alcohol-related harms." It found that increasing hours of sale by two or more hours for on-premise places resulted in significant increases in vehicle crash injuries, emergency room admissions, and alcohol-related assault and injury. Changes of less than two hours showed inconsistent results, and there were no studies of off-premises hour changes to review.

The United Kingdom has generally abandoned limits on hours and days of sale, now allowing alcohol to be sold 24 hours a day. The theory was that bar violence would decrease when there was no "last call" for drinks, and patrons could exit any time of the day or night. This regulation is now widely recognized as a failure because patrons drink for more hours per bar visit, and police and emergency medical resources are experiencing greater stress and utilization.

A final consideration is that of police resources. Laws cannot be effective with little or no enforcement. As more hours and days of sale are added, this puts a strain on enforcement agencies that work to prevent illegal sales to minors, sales to intoxicated patrons, disturbances at bars and drunk driving. All of these things increase with longer hours, creating dangers for our communities.

For more information: www.healthyalcoholmarket.com

Issue Brief #14:

Can't we save taxpayers some money by eliminating the liquor cops and using local law enforcement or state police instead?

Today, states are under great pressure to reduce budgets. All government agencies are vulnerable. However, budget changes which result in greatly reduced alcohol law enforcement can have serious consequences.

There are some disturbing trends. According to former Michigan regulator Pat Gagliardi, the burden for liquor enforcement has increased significantly. The number of licensees per liquor enforcement agent went up 22% from 2003 to 2012. While some states added staff, more of them decreased it. Some states have taken drastic steps to downgrade liquor law enforcement, adding this function to already burdened local or state law enforcement, or merging with other agencies such as lottery or tobacco.

All states should carefully review these kinds of proposals to clearly understand the losses and gains. While merging liquor enforcement with a criminal justice or other regulatory agency may gain some administrative efficiency, it may result in less effective liquor law enforcement. Here are some potential impacts of such a measure:

Loss of effective industry partnerships: Regulating the alcohol industry is very different from enforcing criminal laws. It requires an effective and active working relationship with the regulated community. The reason is that major responsibilities for prevention of problems are placed on the shoulders of licensees. These include stopping sales to minors and intoxicated persons. For these functions the retail licensee is the front line of defense. Substantial responsibilities are also required of licensed wholesalers. They collect the excise tax. They must track every bottle and can to guard against fake and tainted products. When a damaged product is identified, they must quickly remove it from the market. In some states, wholesalers are required to implement pricing regulations to prevent price wars. Such price practices invariably increase consumption, particularly among young people.

Low priority for liquor enforcement: Local law enforcement naturally puts a priority on serious criminal offenses such as murder, robbery, rape and assault. While law enforcement is keenly aware that a large portion of those crimes are committed under the influence of alcohol, they are often overwhelmed with the need to respond to specific criminal incidents. In many instances, they have sustained recent budget cuts, are already over-burdened with responsibility, and don't have much capacity for additional functions.

Loss of effective means to control underage drinking and intoxication: Public health officials have consistently recommended that enforcement of liquor laws be strengthened in order to reduce commercial availability of alcohol to minors. Programs to reduce public intoxication and bar violence are critical to community livability. While local law enforcement has often been active in conducting compliance checks to reduce underage drinking, the alcohol beverage control agencies have been the statewide leaders that facilitate

Issue Brief #14: Can't we save taxpayers some money by eliminating the liquor cops and using local law enforcement or state police instead? Continued

partnerships with local and state enforcement. They often establish standards, conduct training for local enforcement, publicize results to increase deterrence, and track effectiveness. Many beverage control agencies have active programs to deal with problem bars and to reduce public intoxication. While law enforcement can do these things also, the alcohol beverage agency can use the liquor license as leverage to gain compliance. All laws must be enforced to some degree. To allow lawlessness is an affront to the honest businessperson. And, sometimes only a little enforcement is needed. When coupled with publicity, a little enforcement goes a long way to deterring future offenses.

"The Community Preventive Services Task Force recommends enhanced enforcement of laws prohibiting sale of alcohol to minors, on the basis of sufficient evidence of effectiveness in limited underage alcohol purchases."

www.thecommunityguide.org/alcohol/lawsprohibitingsales.html

Loss of efforts to educate licensee community: If we expect licensees to comply with regulations and perform their duties, they must know what they are, why they exist and specifically what actions are required. For example, retailers must know how to judge age, check ID and effectively refuse sales to minors. They should be able to spot obvious fake ID and inform law enforcement when there are thefts and obvious situations in which adults furnish alcohol to minors. Without these actions, the prohibition against sales to minors would be quite ineffective. Bar personnel must know the laws concerning service to intoxicated persons, be able to spot signs of intoxication and effectively refuse additional sales. In order for these functions to be performed routinely and effectively, there needs to be ongoing communication and educational efforts.

Loss of Cooperation and Compliance: No system of law or regulation can work by intensely scrutinizing and policing all laws and all those subject to regulation. It would be too big of a job requiring enormous resources. All systems—from criminal law to child labor regulations—count on compliance by most parties. The partnership between regulatory enforcement and the regulated community, which seeks to maximize compliance, is very cost-effective and saves taxpayer dollars.

In a study of the efficacy and strength of forty seven alcohol policies, a team of researchers ranked "ABCs present, functional, adequately staffed" seventh highest in terms of impacting binge drinking and drunk driving.

Issue Brief #15:

Why don't we have problems with fake alcohol or tax revenue loss?

Have you ever noticed that there are no stories about counterfeit alcohol in the United States? Did you know that tax collections for alcohol excise tax are almost 100%? Indeed, these are major problems elsewhere. In February 2011, the BBC was quoted as saying, "Up to a quarter of licensed premises in some parts of the UK have been found to have counterfeit alcohol for sale." It was also noted that alcohol fraud costs the UK about 1 billion pounds per year in lost revenue. (Feb. 15, 2011, "Fake alcohol on sale in many UK off-licenses".) More recently, over 35 people died in the Czech Republic because counterfeit spirit products containing methanol were distributed to stores in that country. The government had to ban spirit sales for a period of time to ensure safety. It caused substantial loss to business and in tax revenue. Problems with fake alcohol have occurred in Turkey, Ecuador, China and India.

The reason for our good fortune is the strength of our "three-tier regulatory system." The United States has a closed distribution system which prevents adulterated and contaminated products from reaching the consumer. In the U.S. we require that alcohol go from a licensed manufacturer to a licensed distributor to a licensed retailer. The businesses in each tier are separately licensed and no manufacturer can own or have a financial interest in a retailer. Many states also prohibit ownership between all three tiers.

Distributors have major regulatory responsibilities. They collect the excise tax on alcohol and are responsible for tracking all products. Because of the tracking system, spoiled or recalled products can be quickly identified and pulled. An added benefit is the fact that these regulations are not expensive to enforce. Because distributors visit retailers regularly, they notice a product that they did not supply. It is their obligation to immediately report such products to the regulatory agency. Under this system, it would be very difficult for a retailer to systematically sell counterfeit or untaxed products. And, a distributor is unlikely to jeopardize their license by offering a fake product to a retailer.

As the United Kingdom and other countries grapple with alcohol regulation, the lessons learned by the United States should be considered by policy-makers. While lost revenue is a problem, the consequences of consuming counterfeit alcohol can be quite serious. Illegal products often contain high levels of methanol. Methanol is not fit for human consumption and can cause blindness or death. Public safety needs to be the first consideration when considering changes to alcohol regulation.

Issue Brief #16:

Why do we need a strong wholesale tier?

One of the unique features of the US alcohol regulatory system is the wholesale structure. It is one of the most effective methods of controlling alcohol problems, producing state revenue and fostering strong local businesses. Unfortunately, these benefits are virtually unknown and unappreciated. Because of that, we are in grave danger of losing them thanks to heavy lobbying from the retail and manufacturing sectors. Let's review the unique and beneficial features of this system:

Price balancing reduces alcohol abuse problems. Price is a very strong driver of consumption; therefore, it is important to prevent the deep discounting practices which foster increases in drinking rates particularly among youth. Our wholesale system does that in several ways:

- High volume, deep discounts are curtailed by requiring all products to be sold through a three-tiered licensed system.
- "Same price for all" laws, common in many states, require wholesalers to sell all products for the same price to all retailers. This levels the playing field for small and large operators and reduces the incentive to engage in deep discounting.
- Prohibitions against selling below cost, again common in several states, prevent extreme price reductions and price wars that generally induce greater consumption.
- A balanced market with many players provides sufficient competition to keep prices from going too high. High prices can foster theft, bootlegging and other illegal practices.

Tied house laws foster markets characterized by increased sales due to product performance as opposed to pay-to-play systems which limit choice and stifle innovation. Tied house laws prevent a system where payments or other things of value are offered a retailer if that retailer will favor a particular product through special promotions, favorable placement, or carrying products to the exclusion of others. In today's commodity markets, pay-to-play systems and exclusive contracts are very common. These systems are anti-competitive because they reduce the number of products on the market. Products get favorable treatment, not because they have great sales performance or are a high quality product, but because someone has paid for the favorable treatment.

Wholesale price restrictions are rated highly by alcohol researchers for effectiveness in reducing binge drinking and drunk driving. Generally these policies restrict volume discounts and other discount practices and prohibit credit extensions. These practices keep prices balanced and help prevent aggressive deep discounting.

Appendix: Sources for Information

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   Toward Liquor Control, Raymond Fosdick and Albert L. Scott, originally published in 1933, republished by the Center for Alcohol Policy, 2011.
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2. Why do we need regulations to balance our alcohol market systems?
   "Why can't we sell alcohol like tires and mayonnaise?" a PowerPoint presentation by Pamela S. Erickson available at healthyalcoholmarket.com
   "Big Beer, A Moral Market, and Innovation," By Barry C. Lynn, New America Foundation, January 2, 2013 | Harvard Business Review
3. Since alcohol is a legal product, why can't it be sold like orange juice or any other legal product?
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   Center for Disease Control Fact Sheet, cdc.gov/alcohol/fact-sheets/alcohol-use.htm
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5. What does a good alcohol regulatory system look like?
   "What are the most effective and cost-effective interventions in alcohol control?" World Health Organization, February 2004, who.int (Nelson et al / Am J Prev Med 2013 3;45(1):19 - 28, ajpmonline.org

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   "Recommendations on Preventing Excessive Alcohol Consumption: Privatization of Retail Alcohol Sales," Task Force on Community Prevention Services, available at: thecommunityguide.org
   "The Illusion of Privatization Success: An Inventory of Tricks", Updated February, 2012, by Roland Zullo, Research Scientist, Institute for Research on Labor, Employment and the Economy, University of Michigan.
   "The Fiscal and Social Effects of State Alcohol Control Systems", by Roland Zullo et al., Institute for Research on Labor, Employment and the Economy, University of Michigan, May 2013.
7. Why are beer, wine and spirits regulated differently?
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9. Isn't alcohol regulation bad for business? Shouldn't we loosen alcohol regulations to help local business?
   "The High Price of Cheap Alcohol," Pamela S. Erickson, a report available at healthyalcoholmarket.com

Individual system elements:

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14. Can't we save taxpayers some money by eliminating the liquor cops and using local law enforcement or state police instead?
    Deregulation by Defunding, Why We Shouldn't Let the Players Make the Rules When it Comes to Alcohol, By: Pat Gagliardi, President, Gagliardi Associates, Former Michigan Liquor Control Commissioner, Former Floor Leader of the Michigan House of Representatives. To be published?
15. Why don't we have problems with fake alcohol or tax revenue loss?
    "An Analysis of the Structure and Administration of State and Local Taxes Imposed on the Distribution and Sale of Beer," Prepared for the National Beer Wholesalers Association, by Washington National Tax, KPMG LLP, Washington, DC, March 2009.
    "Safe and Sound, The Three-Tier Alcohol Regulatory System: Ensuring Safe Products, Protecting against Revenue Loss", by Barry Finnemore, produced by Public Action Management, Feb. 2013.
16. Why do we need a strong wholesale tier?
    "Efficacy and the Strength of Evidence of U.S. Alcohol Control Policies", Toben F. Nelson et al., Am J Prev Med 2013; 45(1):19-28.
    "The Government turns the screws on alcohol fraudsters," Wholesale News, December 2013. Available at: wholesalenews.co.uk/news.

RECOMMENDING COMMITTEE MEETING of June 4, 2014

PAMPHLET
Submitted by Pamela Erickson as BACKUP for ITEM 5 FILED WITHIN MINUTES

Hawkins FYI

Susan Finucan

From: Frank Hawkins [FrankH@cdpcn.com]
Sent: Monday, June 02, 2014 8:56 AM
To: Susan Finucan
Subject: Reduced CLV Bus License comments 6-3-2014
Attachments: Reduced CLV Bus License comments 6-3-2014.docx

Good morning can you pass my comments to the Councilman please. This is for the MME meeting this morning.

Frank

Definitions

"Medical marijuana dispensary" has the meaning ascribed to it in NRS 453A.115, and means a business that is registered under NRS 453A.322 and which acquires, possesses, supplies, sells or dispenses marijuana or related supplies and educational materials to the holder of a valid registry identification card. So we can sell related items?

6.95.080

D. Upon approval of a medical marijuana compliance permit, the Director shall prepare a notice to the State regulating authority pursuant to NRS 453A.322.3(a)(5), outlining that the proposed location has been found in conformance with land use and zoning restrictions and that the applicant is eligible to be considered for a medical marijuana establishment business license. Can or will the city send more than 12 dispensary applications if they meet the above?

6.80.090.

F. Prior to issuance or renewal of a license, medical marijuana establishment licensees shall provide a surety bond as set forth in this section. The bond must be at the licensee's own expense and remain in force throughout the term of the license. The bond must cover licensee's obligation, for itself and its agents, employees, subcontractors, and the agents and employees of any subcontractors, to, indemnify, defend, and hold harmless the City, and any of its elected or appointed officers, agents, or employees, from any and all claims, demands, actions, damages, decrees, judgments, attorney fees, costs, and expenses which the City, or such elected or appointed officers or employees, may suffer, or which may be recovered from, or obtainable against the City, or such elected or appointed officers or employees, as a result of, by reason of, or arising out of the use of the license, or the exercise by the licensee of any or all of the rights, privileges, permission, and authority conferred herein, or as a result of any alleged act or omission on the part of the licensee in performing or failing to perform any of its obligations. Such surety bond shall be in the amount of $500,000.

J. Prior to the issuance or renewal of a license, medical marijuana establishment licensees shall file, and must maintain, a bond from a surety company qualified and authorized to do surety business in the State of Nevada in the penal sum of $50,000. Such bond must be conditioned to be paid to the City for all license fees and penalties owing against such license.

6.95.110.

F. Except as otherwise provided in LVMC Title 19, it shall be unlawful for any person licensed under this Ordinance or any other person to advertise any medical marijuana, edible marijuana product, medical marijuana infused product or medical marijuana establishment, as defined in this Ordinance, anywhere in the City where the advertisement is visible to members of the public from any street, sidewalk, park or other public place, including advertising utilizing any of the following media: delete

1. Any sign mounted on a vehicle;

2. Any hand-held, human signage or other portable sign;

3. Any handbill, leaflet or flier directly handed to any person, deposited, fastened, thrown, scattered, cast, or placed in a public place, left upon a motor vehicle, or posted upon any public or private property without the consent of the property owner. delete

4. Any video, radio or broadcast medium available to the general public.

The prohibition set forth in this Subsection shall not apply to:

1. Any sign as defined by LVMC Title 19 located on the same lot as the medical marijuana establishment which exists solely for the purpose of identifying the location of the medical marijuana establishment and which otherwise complies with the state regulating authority, the conditions of approval of the license, conditions of the approved Special Use Permit and other applicable city laws and regulations; or

3. Any advertisement contained within online media, a newspaper, magazine, or other periodical of general circulation; or

4. Advertising which is purely incidental to sponsorship of a charitable event by a medical marijuana establishment.

G. The presence of minors on the premises of a medical marijuana establishment is prohibited unless the minor is a qualified patient on the premises of a dispensary and is accompanied by his or her parent or legal guardian. No licensee shall cause, permit or allow, either by act or by failure to act, the violation of this subsection.

H. A medical marijuana dispensary is prohibited from transporting medical marijuana, edible marijuana products, and/or marijuana-infused products off of the licensed medical marijuana dispensary premises. Medical marijuana, edible marijuana products, and/or marijuana-infused products may only be transported by a licensed cultivation facility or licensed medical marijuana production facility. Transportation must meet all requirements of the state regulating authority. Product must be placed in unmarked, non-transparent transportation containers.
Is the City going to address the delivery service for those who can't leave their homes?

I. Each licensee is responsible to obtain a bi-annual building inspection from the Building Official prior to renewal of any license. You would need a building permit each time to call them out?

F. In addition to complying with all requirements set by the State regulating authority, any licensed cultivation facility shall:

1. Secure the cultivation facility with full video surveillance capable of clearly identifying any activities occurring within twenty (20) feet of the exterior of the building and any parking, fenced, or loading areas. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.

2. . Must provide on-site security between the hours of 10:00 p.m. and 6:00 a.m. are they when the business is open as well?

G. In addition to complying with all requirements set by the State regulating authority, any licensed medical marijuana production facility shall ensure all production, transport, delivery, shipping, labeling and packaging areas have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet.

H. In addition to complying with all requirements set by the State regulating authority, any licensed medical marijuana dispensary shall contain the following areas, meeting the detailed conditions, separated and segregated:

1. Waiting area containing only one entrance for the public, which is visible immediately from one fixed staffed security station. The entire waiting area must also be monitored by surveillance cameras.

2. Consultation room where medical marijuana products are viewed for purchase, which must be:

a. Separated and segregated from any waiting area;

b. Any windows or viewing areas must be obscured from the public right of way or waiting area;

c. Any customer allowed to enter any room where medical marijuana, edible marijuana products, or marijuana infused products are viewed for purchase is required to be accompanied by an employee of the establishment;

d. Only sample products may be viewed for purchase in such a room; samples may be shown to customers outside of nontransparent packaging.

e. Customers may not remove any medical marijuana, edible marijuana products, or marijuana infused products from the consultation room.

3. All medical marijuana, edible marijuana products, or marijuana infused products, during non-business hours, must be stored in a separated and secured area.

a. The area must meet the Building Officials standards for odor control; Is there a standard now? Non cultivation

b. The area must be under surveillance by the camera system at all times.

c. One area may store both product and legal tender, however separate storage devices must be maintained and both must be under video surveillance.

4. All medical marijuana, edible marijuana products, or marijuana infused products must be placed in an opaque bag or cover that does not allow the product to be visible from outside of the bag or cover and closed by the attendant of the dispensary prior to transfer to a customer.

6.95.120 Cultivation Facility.

A. A cultivation facility must meet all odor control regulations established by the building department. Within 24-hours of any complaints concerning odors, a cultivation facility shall respond to the complaints and file with the Director and the Building Official all action taken to address odor complaints. The Building Official, upon determination of the existence of detectable odor from any cultivation facility, may require additional measures by the facility to control such odor and a timeframe for the implementation of such measures at any cultivation facility. Failure to complete required improvements within the timeframe specified by the Building Official is grounds for suspension of the license by the Director.

B. Any medical marijuana that is transported to a medical marijuana dispensary must be packaged for retail sale in tamper evident containers of not more than two and one-half ounces and placed in unmarked, non-transparent transportation containers. Cultivations facilities must sale to dispensaries in the sizes and quantities they need pre packaged with all the required packaged information on them correct?

C. Any medical marijuana that is transported to a medical marijuana production facility must meet all State regulating authority standards.

D. Applicants must designate on their permit application the size of the area proposed to be under cultivation on the premises. The cultivation area will be limited to the square footage granted on the license. Other floor space of the facility may be used for walkways, ventilation, storage or any other purposes required by the state regulatory authority or the licensee for operations of the business. Allocated square footage of cultivation area may be requested to be increased upon petition to the Director prior to the renewal of the license.

E. The Council may reduce the square footage of any applicant or licensee if the Council determines the size of the proposed facility is not in the interest of the surrounding community;

F. **Prior to accepting any plant materials into the cultivation facility for the first time, the cultivation facility shall notify the Department to conduct a pre-operational inspection and shall pay all related inspection fees.** What fee?

6.95.150 Medical Marijuana Dispensary - Requirements and Limitation.

Each licensed medical marijuana dispensary shall comply with the following requirements:

A. Prices for all products shall be prominently posted in the waiting area in a location and manner readily visible to prospective and actual clients. Prices shall not be posted on the exterior of the licensed premises.

B. All edible marijuana products and marijuana infused products offered for sale at licensed dispensaries shall meet the requirements, restrictions and labeling of edible marijuana products and marijuana infused products in accordance with LVMC 6.95.140 (B). (see Medical Marijuana Production Facility)

C. Any dispensary that sells edible marijuana products or marijuana infused products must display a placard that states the following:

1. Edible Marijuana and Marijuana Infused Products: There may be health risks associated with consumption of edible marijuana products or marijuana infused products.

2. Edible products and marijuana infused products contain marijuana or active compounds of marijuana.

3. Should not be used by women who are pregnant or breast feeding.

4. When eaten or swallowed, the intoxicating effects of this product can be delayed two or more hours.

5. Follow all recommended dosage and serving guidelines and recommendations.

6. "KEEP OUT OF REACH OF CHILDREN"

The placard shall be no smaller than 8 inches tall by 12 inches wide, with font size letters no smaller than 48. The placard shall be clearly visible and readable by customers and shall be written in English.

D. A medical marijuana dispensary is not allowed to sell gifts, novelties or participate ancillary business sales activity within a medical marijuana dispensary with the exception of the following:

1. Paraphernalia, the sale of which is limited to the consultation room and only to a display area of 10 square feet of gross retail space in the room.

2. Ancillary services which are services approved in the educational plan by the State regulating authority, and which also must be approved for an ancillary license by the City.

E. A dispensary may locate one automatic teller machine for access to patients only for the dispensing of money if the person operating the machine has been approved by the Director under LVMC 6.06.125 and the business is licensed to operate such by the City. Money and legal tender may not be stored onsite except as detailed in the approved security plan.

F. The following activities to promote the use of marijuana are prohibited:

1. The giving of free samples or free product to any person, employee or customer; Compassionate care for seniors, veterans, poor?

2. No employee shall be paid for services in the form of marijuana product;

3. Reward programs, customer loyalty programs, promotional activities;

4. No novelty merchandise may be produced or allowed to have any approved logo or business name to be used on such merchandise.

5. The display of any product in any manner visible to the general public from the right of way or outside of the facility.

H. The following activities are prohibited for all licensed medical marijuana dispensaries:

1. Off-site transportation or sale of medical marijuana, edible marijuana products or marijuana infused products. All sales and distribution of medical marijuana, edible marijuana products or marijuana infused products by a licensed medical marijuana dispensary shall occur only upon the licensed premise, and the licensee shall be strictly prohibited from transporting or selling medical marijuana to any person at any other location. Will the city address delivery service?

2. A drive-thru or walk-up window for transactions or product transfer.

3. A dispensary shall not dispense or distribute, sell, transfer or in any other way provide marijuana, edible marijuana products or marijuana infused products other than by direct, face-to face, in-person transaction with the holder of a registry identification card or designated primary caregiver at the licensed facility. Marijuana shall not be provided by any other means of delivery including, without limitation: so a care giver can come in an purchase for card holders?

a. Internet sales.

b. Transport, mail or private delivery of product.

6.95. 220 Fees.

A. Annual License Fee:

1. Each annual fee is due in advance on July 1st of each year. Applicants who receive license approval on a date other than such due date shall have their license fees prorated on a monthly basis. License fees paid pursuant to the code are not refundable.

2. Any annual fee which is not received by the Department on or before the due date shall be assessed a late-payment penalty amount equal to ten percent of the amount of such annual fee.

3. If the annual fee and penalty is not received by the Department within fifteen days after the due date, an additional penalty in an amount equal to twenty-five percent of such annual fee shall be assessed.

4. If the annual fee and all penalties are not received by the Department within sixty days after the due date, the license shall be automatically revoked.

5. Each licensee shall pay to the Department in advance, the annual fees

set forth in the following schedule:

License Category	Annual License Fee (Dollars)
Medical Marijuana Cultivation Facility	$20,000 for 1st 5,000 square feet of approved cultivation area and $10,000 for each additional 5,000 square feet, or portion thereof, of approved cultivation area
Medical Marijuana Edible Products Facility	$25,000
Medical Marijuana Dispensary	$75,000
Medical Marijuana Laboratory fees per LVMC 6.04	$10,000

B. Semi-Annual Gross Revenue Fee for Medical Marijuana Dispensary:

1. Gross revenue fees shall be administered in accordance with LVMC 6.02.160 through 6.02.220, LVMC 6.02.240 through LVMC 6.02.260.

2. If the Semi-annual fee and all penalties are not received by the Department within sixty days after the due date, the license shall be automatically revoked.

3. A semiannual license fee based on the gross sales of the medical marijuana dispensary facility according to the following schedule:

   a. All medical marijuana products received directly from the medical marijuana cultivation facility for sale shall be calculated on 4% of gross sales. Cultivation company pays this fee?

   b. All medical marijuana products received directly from the medical marijuana production facility for sale shall be calculated at 6% of gross sales. Production company pays this fee?

   c. Sales other than medical marijuana shall be calculated pursuant to LVMC 6.04.005. what fee does the dispensary pay?

May 29, 2014

Karen Duddlesten
Business License Manager
Department of Planning
333 N Rancho Drive
Las Vegas, NV 89016

RE: Bill No. 2014-33

Dear Ms. Duddlesten:

This letter contains comments and questions on Bill No. 2014-33 pertaining to medical marijuana establishments licensing and regulations proposed by the City of Las Vegas. In hope that the City tries to be fair across the board in their licensing of businesses in the City, review of this bill reveals inconsistency with methods applied to other business license types. As the City and the industry move forward, I believe it's important to recognize the need to stay consistent with the regulations adopted by the State of Nevada and Clark County Business Licensing. I will break down my comments and questions by each section.

I would like clarification and an explanation on bond requirements for the following sections:

6.95.060 (M) and 6.95.090 (I)
Each section provides a requirement of a **$500,000** surety bond to indemnify the City from claims arising from the issuance of a license and/or actions of the licensee in the conduct of his business.

Questions – how is this amount determined? What is the City's concern to justify such an exorbitant amount of the bond? Are these bond requirements independent of each other?

In a letter obtained from Aniello Insurance in Las Vegas **NO** bonding company will write a bond in that amount (see attached letter). How is a licensee able to comply with this requirement?

8550 W Charleston Blvd., Suite 102, PMB 348
Las Vegas, NV 89117
Jim@Difioreconsulting.com – (702) 275-6929

6.95.090 (J) states:

*Prior to the issuance or renewal of a license, medical marijuana establishment licensees shall file, and must maintain, a bond from a surety company qualified and authorized to do surety business in the State of Nevada in the penal sum of **$50,000**. Such bond must be conditioned to be paid to the City for all license fees and penalties owing against such license.*

Question – is this bond requirement in addition to the bonds required in sections 6.95.060 (M) and 6.95.090 (I)? Other classifications requiring bonds are listed below and are more reasonably applied depending on the purpose of the bond (see chart below). Additionally, **LVMC 6.02.060 (C) (2)** states all licenses under this Chapter "…May also be conditioned upon the licensee posting a bond in an amount determined by the Director to be reasonably appropriate to guarantee the performance or fulfillment of all conditions, or compliance with all restrictions, imposed upon the license, licensee, applicant or its principal(s)." Wouldn't it be more appropriate to determine the bond amount based upon the work history of the applicant/licensee in a "reasonable" amount at the initial outset of licensing and during the bi-annual review?

License type	Code reference	Bond amount	Purpose
Coupon book sales	LVMC 6.30	$5,000	Any person who suffers damage from misrepresentation…
Peddlers/Solicitors	LVMC 6.62.100	$5,000	Any person suffering injury by reason of any violation of the provisions of this Code by the principal, his agents or employees…
Secondhand dealer	LVMC 6.74.090	Amount determined by the Director	Any person suffering injury by reason of any violation of the provisions of this Code by the principal, the principal's agents or employees,
Auctions	LVMC 6.14.050	$10,000	Any person who purchases from the licensee and suffers injury by reason of any violation of the provisions of this Code by the licensee, his agents or employees
Drug stores	N/A	N/A	N/A
Pharmacies	N/A	N/A	N/A

6.95.150 (D) states:

A medical marijuana dispensary is not allowed to sell gifts, novelties or participate ancillary business sales activity within a medical marijuana dispensary with the exception of the following:

1. *Paraphernalia, the sale of which is limited to the consultation room and only to a display area of 10 square feet of gross retail space in the room*

*"Paraphernalia" is defined as, the meaning ascribed to it in **NRS 453A.125**. (means accessories, devices and other equipment that is necessary or useful for a person to engage in the medical use of marijuana).*

This appears to conflict with **LVMC 10.92.010** which makes it a misdemeanor to sell, possess with the intent to deliver or sell, or manufacture with the intent to deliver or sell any drug paraphernalia.

Question – is a licensee at risk of being arrested or issued a citation for a misdemeanor if these codes conflict with each other?

6.95.160 Bi-Annual review of license.

(C) (2) [in conjunction with an application for renewal, the licensee will submit]
A nonrefundable application fee of $1,000.00.

Question – how is that amount determined? Can the City justify a review of a license application, not much different from other types of privilege licenses at 10 times the expense to the licensee?

Type of License	Application fee amount
General	$50.00
Privilege	$100.00

6.95.220 Fees

The City is proposing an annual fee schedule significantly higher than the State of Nevada. Clark County has not determined its fee schedule to this point but hopes to have a draft prepared shortly. For a dispensary the fees required include not only an exorbitant "flat" fee but also multiple fees based on gross sales. This deviates from the normal fee scheme for other licenses. For example, liquor fees are flat or fixed based on the type of license possessed. For tavern licenses, no fees are assessed on the gross liquor sales, only the non-liquor products sold. For like businesses, a drug store pays a fee based on gross sales under LVMC 6.04.005, less than 1%, significantly lower than the proposed 4% or 6% depending on product purchases by the MME licensee. Pharmacies pay a flat fee of $200 annually per professional.

Questions – can the City justify the high flat fees and the significantly higher percentage rate for products sold?

The proposed fees for the MME's will ultimately drive the cost to the medical marijuana client. If due to these high fees, the licensee is forced to raise their prices, the potential exists for the medical marijuana

Aniello Insurance Agency

Assurance in Insurance

Trusted Choice®

May 29th, 2014

Samantha, Inc. dba Med-Releaf
2040 Edgewood Avenue
Las Vegas, Nevada 89102

RE: Bond for Medical Marijuana Licensing for the City of Las Vegas

Mr. Drobkin,

Please be advised that we have gone to several Bonding Companies and all have refused to issue a 500,000 dollar bond for this license. The carriers that we have approached are as follows:

Western National Bonding Company - Declined due to amount of Bond
C N A – Western Surety – Declined due to amount of Bond
Merchants Bonding - Declined due to amount of Bond
Surety Place – (Hard to Place Bonds) - Declined due to amount of Bond
CBIC/RLI Bonding - Declined due to amount of Bond
NFP Property & Casualty Services - (Hard to Place Bonds) - Declined due to amount of Bond

All Bonding Companies have stated that they need to see what type of bond form the City of Las Vegas is going to want on this bond. Also checking with other states the maximum bond amount they could find for this type of business was 50,000.

Please let me know if you need any other information.

Sincerely,

Ernie Cramer, Producer
Aniello Insurance Agency

3012 West Charleston Blvd.
Suite 150
Las Vegas, NV 89102
www.anielloinsurance.com
Phone: 702 259-0250 Fax: 702 259-0662

Medical Marijuana Licensing Analysis
(Enforcement costs)

Person Name	Organization	Job	Work Group	Gross Wages	Base Salary
Ackley, Elizabeth G. (Liz)	PD - Business License	License Officer	CEA	86,003.51	77,953.87
Cone, Robert A.	PD - Business License	License Officer	CEA	55,470.56	55,002.33
Jimenez-Kraft, M. Grace	PD - Business License	License Officer	CEA	86,631.88	77,836.38
Oliverius, Kelly G.	PD - Business License	License Officer	CEA	84,369.34	77,836.42
Pisani, Fabiana P. (Paola)	PD - Business License	License Officer	CEA	83,846.04	77,836.30
Webb, Latania D.	PD - Business License	License Officer	CEA	83,883.42	77,836.40
				480,204.75	444,301.70
	CY2013	Average hourly wage per unit	57.32	38.48	35.60
	CY2013	Average Annual salary- Unit	119,220.96		74,050.28

ANALYSIS:

PROJECTED MONTHLY INVESTIGATION/INSPECTION COSTS

Basis: Investigation/inspection (1 visit/week; 1 hour)	**Avg w/benefits**	**Avg Hourly**
Per facility	229.28	142.40
12 licensed facilities	2,751.36	1,708.80
Annual cost per facility	2,751.36	1,708.80
Annual cost 12 licensed facilities	33,016.32	20,505.60

Basis: Investigation/inspection (bi-weekly; 1 hour)	**Avg w/benefits**	**Avg Hourly**
Per facility	114.64	71.20
12 licensed facilities	1,375.68	854.40
Annual cost per facility	1,375.68	854.40
Annual cost 12 licensed facilities	16,508.16	10,252.80

Basis: Investigation/inspection (1 per month; 1 hour)	**Avg w/benefits**	**Avg Hourly**
Per facility	57.32	35.60
12 licensed facilities	687.84	427.20
Annual cost per facility	687.84	427.20
Annual cost 12 licensed facilities	8,254.08	5,126.40

NOTE:

(1) Salary source: http://www.lasvegasnevada.gov/Government/25713.htm

(2) Salary is based on CY2013 records