

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



Restaurant Morphing. A burgeoning restaurant-to-bar trend has emerged in many California communities. Restaurants that “morph” shift operations primarily from serving meals to functioning as bars and nightclubs, usually after the dinner hour and especially during late evening hours. This practice is permitted under California Dept of Alcohol Beverage Control (ABC) licenses for restaurants, officially known as “bona fide eating places.” While many restaurants make this shift without trouble, a few establishments function like rowdy bars and loud nightclubs, becoming sites for patron problem-behaviors that affect public safety, health, and community well-being. Problem-behaviors include underage drinking, drunkenness and extreme intoxication, violence and unwanted sexual advances, injury, noise and disruption, property damage, and DUIs. These problems occur in all types of communities throughout California, but are particularly acute in cities with high concentrations of bars and restaurants in downtown areas or entertainment districts, and especially in communities such as college towns with high proportions of young people.

Problems related to morphing can put local officials and concerned community groups at odds. Cities and counties generally welcome new businesses with open arms, and many local authorities understandably encourage new and expanded restaurants by relaxing local oversight. For example, local planning and zoning ordinances often allow restaurants in many parts of the city, including sensitive areas near residences, schools, and churches. Local use-permit requirements typically provide relatively light oversight of operations for restaurants compared to bars and liquor stores. Police departments anticipate minimal needs for patrol and enforcement activities related to restaurants. These local responses are reasonable since most restaurants create few problems. However, some restaurants present special challenges – research shows that about five to ten percent of restaurants in a given community account for 50 to 60 percent of police events at all restaurants in that community. Sometimes problems appear unexpectedly soon after the establishment opens, and sometimes problems build up over time as the establishment increases emphasis on alcohol sales.



To get the attention of local authorities, the problems often must rise to a high level of public visibility, involving repeated community complaints and continuing coverage in the local press. The authorities typically respond with increased law enforcement and police presence. These efforts may continue at high levels for years without substantially reducing the problems. The ABC can offer only limited technical assistance and few preventive resources relative to the State's number of on-sale outlets. Further, ABC enforcement requires a time-consuming and demanding

evidentiary process. In response, cities are increasingly making greater use of local tools to mitigate problem-behaviors related to morphing. Enhanced local efforts combine targeted use of planning and zoning ordinances with compliance-oriented community policing to strengthen traditional enforcement of alcohol-related laws.

This Policy Brief provides historical background describing how morphing restaurants have emerged over several decades to become a growing problem; reviews what the California ABC can and cannot do to help local jurisdictions address problems with morphing; and describes steps that local jurisdictions (cities and counties) are using to make full use of their local planning and zoning authority to control the persistent tide of problematic morphing in California communities. Local control holds considerable potential for mitigating problems related to all retail alcohol outlets, including both on-sale and off-sale licenses. However, California localities have been slow to take full advantage of their local planning and zoning authority. This briefing provides a case-example showing how one hard-hit community has taken full advantage of these powers specifically to address problems with morphing. Implications follow for actions that all cities and counties can take to follow suit, and for ways the ABC and other State agencies can support city and county efforts to mitigate the effects of morphing.

History of morphing. At the end of World War II the restaurant industry was primarily a local enterprise focused on meal service with alcohol service incidental to dining. In the 1950's the nation's new interstate highway system vastly increased travel during a time of rapid economic growth. This created new business opportunities that encouraged development of chain hotels and restaurants. Expansion continues to this day at national, regional, and local levels as "restaurants" seek new combinations of dining, drinking and entertainment. This expansion is driven by local entrepreneurs; by the hospitality, hotel, and restaurant community; and by the alcoholic beverage industry.

The nature of restaurants is evolving as the field becomes more specialized and seeks specific new markets. Restaurants have differentiated to convenience and fast foods where alcohol is not served (e.g. McDonald's). Others have expanded to include bars, often operating jointly with or as neighbors to hotels and motels (e.g. Chevy's, TGI Friday's). Conversely, bars have started serving food (e.g. Red Robin) and co-locating with restaurants. The restaurant field continues to experiment with new combinations of dining, drinking and entertainment to appeal to a specific or "niche" clientele. Examples include sports bars, college-age youth bars, and bars for young professionals. The growth of social networking further enhances differentiation and marketing, and helps those seeking new and interesting establishments.

This evolution has been spurred by changes in urban development and redevelopment policies to increase residential densities and mixed-use residential-office-commercial areas in inner-city and suburban areas. "Transit-oriented" city planning seeks to encourage use of public transportation, bicycling, pedestrian movement, and shared-use vehicles in place of private autos. An increase in geographic and population densities has created high-density areas ready-made for high concentrations of bars, restaurants and nightclubs in "hospitality zones," entertainment districts, and "destination" districts designed to attract out-of-towners. High-density areas have also increased multi-occupancy land-uses that intensify contacts and conflicts between groups, including those accessing bars and restaurants and nearby residents.

These developments have created a burgeoning new scene for restaurants to serve alcohol in a variety of ways that combine eating, socializing and entertainment in high-density environments. This has created local conditions ripe for lax alcohol serving practices that result in excessive drinking, drunken behavior, neighborhood disturbances, and alcohol-related police events, injuries, aggression, and DUIs. The ABC and local jurisdictions are responsible for upholding California's alcohol laws and local ordinances to prevent and mitigate these problems. The following sections describe how the ABC and local jurisdictions carry out these oversight functions with respect to morphing.

ABC oversight – roles and challenges. The ABC faces three challenges that make it difficult to oversee problems related to morphing in the restaurant industry. First, the California Alcoholic Beverage Control Act does not formally recognize morphing as a regulated activity. The ABC keeps no records on morphing per se, nor does it have licensing and enforcement policies specifically for morphing. Written in 1957, the ABC Act recognizes restaurants as “bona fide eating places” (the official ABC term) where alcoholic beverages are sold along with meals (breakfast, lunch, dinner) prepared in a kitchen on the premises. The ABC Act also recognizes bars as “public premises” where alcoholic beverages are sold separately and meals are NOT served, and where minors are NOT allowed on the premises. Further, the ABC Act contains no language defining “nightclubs,” “dancehalls” or other places of entertainment where alcohol is sold. Under these ABC definitions it is possible for “bar” and “nightclub” operations to merge with “restaurant” operations at the licensee’s discretion. Over the last twenty years, the total number of ABC-licensed “bars” (public premises) has decreased by nearly a quarter while the total number of “licensed “restaurants” (bona-fide eating places that may include bar-like and club-like functions) has increased by the same percentage. At this writing, it is unlikely that State law regarding this matter will change any time soon.

Second, ABC resources are stretched thin to monitor late-night restaurant operations and to help with local law enforcement generally. Statewide, the ABC oversees approximately 40,500 on-sale outlets (bars/restaurants) and 28,600 off-sale retail alcohol outlets (stores where alcohol is sold in packages for off-site consumption). Over the last five decades, ABC staff ratios to oversee the State’s outlets have fallen from one investigator per 220 outlets to about one investigator per 1,000 outlets in 2012. Today, the ABC offers less than 250 basic training sessions annually for almost 70,000 retail outlets through the agency’s popular LEAD program (Licensee Education on Alcohol and Drugs). The ABC provides about 50 technical assistance grants annually for almost 500 city police departments and 58 county sheriffs. The ABC also works with local law enforcement to prevent sales to minors through a well-respected Decoy Buy program, and collaborates with other agencies that conduct DUI roadside check-points. However, these labor-intensive technologies currently operate at a small fraction of their useful potential. These resource constraints are not likely to be eased in the foreseeable future.

Third, the ABC depends on local jurisdictions to use local planning ordinances and zoning oversight to prevent problems related to morphing. Licensing is a two-phase activity in which the ABC grants the retail alcohol outlet license to the operator of a restaurant only *after* the city or county approves a local use-permit for the exercise of that license in a community setting at a specific address defined by local zoning and governed by local use permit requirements. Local planning and zoning for retail alcohol outlets has great potential for controlling alcohol-related problems. Local jurisdictions can regulate where alcohol is sold in the community by approving locations (zoning districts) where alcohol sales are permitted. Local jurisdictions can also regulate how alcohol is sold (mode and manner of sale) by requiring the outlet to follow certain operational requirements that protect public health and safety (use permit restrictions).





The ABC requires a prospective licensee to show local zoning approval before issuing a license for a bar or restaurant. Doing so officially recognizes local planning and zoning ordinances as the State's primary means for regulating the locations, numbers (density), and operations of bars and restaurants in local community contexts. However, the ABC, as a State agency, has neither mandate nor resources to direct how local jurisdictions shall use their planning and zoning powers. Instead, the State vests these decisions with cities and counties, which in turn choose whether to adopt a liberal "laissez faire"

approach to planning and zoning that allows restaurant operators considerable latitude to decide without public review ("as of right") where and how to operate; or to adopt a "local control" approach that applies public oversight for each outlet on a case-by-case basis with attention to safe premises management and alcohol serving practices.

What cities and counties can do. The "laissez faire" approach assumes restaurants rarely create trouble and will need little if any preventive oversight and enforcement. In contrast, the local control approach recognizes that while most restaurants will not create trouble, a few restaurants will create considerable trouble requiring substantial city resources. Local control further recognizes that certain types of "restaurants" operating like bars and nightclubs are far more likely to create trouble than restaurants that do not have these features. "Local control" cities seek to prevent these problems by adopting definitions that differentiate restaurants, bars, and nightclubs. These definitions impose minimal controls on traditional restaurants while creating greater oversight for higher risk establishments. Greater oversight is accomplished by creating land-use policies that avoid conflicts with neighbors; by regulating operations through conditional use permits (CUPs) for new outlets and deemed-approved ordinances (DAOs) for existing or "grandfathered" outlets; and by administering the local ordinance through a transparent public review process. This process includes public review of use permit applications and routine collection of surveillance data describing problems at all retail outlets. Ideally these data start with police event information (call for service data) and are supplemented by community call-ins, direct observations, and community comments at public hearings and neighborhood meetings.

California cities regulate retail alcohol outlets somewhere along the continuum between laissez-faire permits given "as of right" and local control administered through restrictive zoning controls and operating conditions on a case-by-case basis. As concern grows about restaurant morphing, and as the ABC continues to face challenges to do more with less, local jurisdictions are stepping up and expanding local oversight. The field is ripe for formal studies and greater training to support adoption of local control policies for restaurants and other on-sale and off-sale retail alcohol outlets.

To encourage further exploration of the potential of local control, this paper includes an exemplary case-study of one community heavily affected by problems with restaurant morphing, the City of San Luis Obispo. A multi-year effort to contain late-night drinking in a concentrated downtown area through use of augmented police patrols failed to result in substantial reductions in late-night problems. Accordingly, the city engaged in a three-year planning process that increased industry responsibility (formation of a local association of on-sale operators to improve operating practices) and strengthened local control through the local use-permit process (new operating standards for alcohol outlets, new land-use definitions for late-night restaurants, and a deemed-approved ordinance requiring all existing late-night restaurants to adopt the new operating standards). At this writing, the city is implementing its new policies as planned and continues to work closely with the bar-restaurant operators. The results may serve both as a model for other communities similarly affected by problematic morphing, and for exploring ways the ABC and other State agencies might help spread positive findings through additional evaluation, training and technical assistance.