

LOCAL ALCOHOL FEES IN CALIFORNIA: WHY NOT CHARGE FOR HARM?

Why is Marin Institute promoting city and county fees?

Marin Institute is calling for city and county charge-for-harm fees because local governments are often left covering many of the costs associated with alcohol use such as health care.

Can cities and counties have alcohol fees?

Yes, localities can enact alcohol fees to support regulatory service programs that mitigate alcohol harm. Currently in California local alcohol fee programs, or “Deemed Approved Ordinances” as they are more commonly known, focus on issues of compliance and enforcement of local zoning laws that concern the sale of alcohol.

To be legally valid:¹

- The fee must bear a reasonable relationship to a benefit conferred on the party paying the fee. While the benefit need not be direct, it must directly offset the adverse effects caused by an activity that the payer engages in.
- The fee must be used solely for the purpose for which it is being charged. The money cannot be diverted to the general fund, as this makes it a tax.
- The fee amount must not exceed the reasonable cost of providing the services for which the fee is charged. Fees collected in excess of the reasonable cost cannot go into the general fund; rather they must be returned to the payer.

Have local fees been challenged legally?

Yes, the first alcohol fee program that was established was legally challenged in 1996.² Oakland alcohol retailers challenged a city ordinance that required them to pay a fee that funded compliance checks of the retailers’ establishments. The California Court of Appeals sided with the City of Oakland, saying that local fees are valid so long as they do not directly regulate alcohol and the money is used to fund a mitigation program.

Where are there currently local alcohol fees?

At least eight localities in California have alcohol fee programs, including the cities of Oakland, Rohnert Park, Santa Rosa, San Pablo, Santa Cruz and Ventura, as well Alameda County. Though there are variations, all of the fee programs collect the fee at the retail level and use the money to fund ensuring retailer compliance of state and local alcohol-related regulations.

For example, the City of San Pablo charges retailers a one-time fee of \$150 to fund education and inspection of the premises to assess retailer compliance.³ The City of Oakland charges retailers an annual fee of \$1,500 for similar services.⁴ The City of Santa Rosa uses a sliding scale, charging retailers between \$100 and \$5,000 per year.⁵ The specific fee amount is based on the retailers' annual wholesale alcohol purchases.

In the City of Ventura, the fee ranges between \$150 and \$1,700 per year and is based on several variables including the retailer's risk category, hours of alcohol sale and volume of alcohol sales.⁶ The money from the fee is used to fund a police officer position with duties that include managing and monitoring alcohol-related incidents as well as serving as a liaison on issues pertaining to alcohol enforcement and licensing.

Because the money collected from these programs is used to ensure retailer compliance with state and local alcohol-related regulations, it is generally only enforcement and education activities that are funded.

How is the current push for a local fee different than current fee programs?

The local charge-for-harm fee program differs from previous local alcohol fee programs in that it seeks to expand the use of funds beyond enforcement programs to cover alcohol-related harm costs faced by localities. The aim of this shift is to increase the efficiency of fee collection as well as to more squarely hold Big Alcohol accountable for the harm it causes.

What sorts of programs could a local fee cover?

Because a fee must directly mitigate the harm caused by the party that pays the fee, the money collected must be used for programs that mitigate the past, present or future harm caused by alcohol in the community. California law requires that counties provide medical care for all indigent residents.⁷ As a result, counties could seek to recover funds used in county hospitals that treat patients with alcohol-related injuries or illness. Similarly, counties might seek to offset the costs associated with crime and correctional facilities. Cities might want to recoup costs of policing drinking establishments.

Can cities and counties work together in a collaborative charge-for-harm program?

Generally a local fee is only effective within the boundaries of the city or the county in which it is passed. Because cities and counties are similar levels of government in California,⁸ an ordinance passed within a county is generally only effective within those areas of the county that are not incorporated as a city.

Cities and counties can create agreements that create collaborative jurisdictions that might extend the reach of such a fee, sometimes called a "joint powers agreement." Neighboring localities could work together to pass alcohol fees collected across city and county boundaries and to support programs within the collaborating cities or county. For

instance, perhaps Pasadena, the City of Los Angeles, and the County of Los Angeles could pass similar charge-for-harm fees, join together in a joint powers agreement and support their various programs of alcohol-related police, sheriff and public health activities.

Where is this being tried?

Eight localities have alcohol fee programs in place, although no localities currently have a charge-for-harm fee in place, there is increased interest as cities and counties look for new ways to close ever-growing budget deficits. One such locality is San Francisco. In a unique position as both a city and a county, San Francisco is exploring how such a fee might be established and used to offset some of the many costs it faces as a result of alcohol use.

How can we make a charge-for-harm fee happen?

The first step in working towards passing a charge-for-harm fee will be to identify the specific alcohol problems faced within the community and the costs associated with them. Because the legality of a fee largely depends on whether it in fact mitigates the harm caused by the fee payer, it is necessary to create a program that directly addresses the alcohol issues faced by the community. Additionally, a city or county may seek to include neighboring communities in the process as means of both sharing the work in creating such a program and increase its overall reach and effectiveness.

In addition to consulting your local city attorney or county counsel, it will be important to involve your local health department as well as law enforcement and other community agencies or groups that regularly expend resources on alcohol-related harm. You can also contact Marin Institute for assistance.

REFERENCES

¹ See *Sinclair Paint Company v. State Board of Equalization*, 15 Cal. 4th 866 (1997).

² *City of Oakland v. Superior Court*, 53 Cal. App.4th 740 (1996).

³ San Pablo, Cal. Municipal code § 5.10.150.

⁴ Oakland, Cal. Municipal Code Ch. 17.156; Ch. 17.134.

⁵ Santa Rosa, Cal. Ch. 10-05

⁶ City of San Buena Ventura Ordinance Code, Ch. 24.460.

⁷ See California and Institutions Code § 17000.

⁸ See California Constitution, Article 11 Local Government.