

INSTITUTE FOR JUSTICE
CITY STUDY SERIES

November 2010
Written by
MICHAEL BINDAS



L.A. vs. Small Business

City of Angels No Heaven for Entrepreneurs



Cover Photos

Top—A line of taxis in Los Angeles, a city that is behind the times when it comes to empowering entrepreneurs such as taxi drivers.

Bottom—In order to accept these used books for resale, a Los Angeles bookshop owner must record personal information regarding the person bringing them in, thumbprint the person in some circumstances, and allow the police access to this information.

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Acknowledgments

The Institute for Justice wishes to thank the Diehl Family Foundation for the generous support that made this project possible.

This report would not have been possible without the gracious participation of the ten amazing entrepreneurs it profiles. This project also benefited from generous research contributions by Dominic Draye, University of Pennsylvania Law School, 2009; David Malmstrom, George Mason University School of Law, 2009; Jeffrey McCoy, University of Colorado School of Law, 2011; Allen Unzelman, Southern Methodist University School of Law, 2011; and Kristen Wolff, Duke University School of Law, 2011. Any errors, however, are the responsibility of the author.



Introduction

Los Angeles has a reputation as a city where big dreams can come true—where you can not only get ahead, but make your fortune, as well. Although that reputation may be deserved with respect to actors, athletes and celebutantes, it holds little truth for the overwhelming majority of folks who are just trying to earn an honest living and support their families as entrepreneurs. Consider a few facts:


- From January 2008 to January 2010, Los Angeles lost 150,000 jobs.¹
- In January 2010, the city's unemployment rate reached 14.4 percent.²
- A November 2009 survey found that 74 percent of Los Angeles business owners characterize the city as unfriendly to business.³

- In a recent study of the country's most vibrant metropolitan areas for small business, Los Angeles ranked 47th.⁴

The situation is so dire for Los Angeles entrepreneurs that in January 2010, Mayor Antonio Villaraigosa created a new, high-level position within city government to foster economic opportunity: Chief Executive for Economic and Business Policy (or “economy chief,” as the local press has dubbed the position).⁵ Although Mayor Villaraigosa should be applauded for recognizing that a problem exists, it does not take an “economy chief” to see what the problem is: Los Angeles entrepreneurs are being strangled by red tape—unreasonable and arbitrary government regulation.

This report highlights just a few of the regulatory barriers that hardworking Angelenos face every day in trying to launch, run or expand a business. Many of the obstacles are created by the city itself; others, by county or state government. Regardless of their source, however, these barriers make it difficult, if not impossible, for entrepreneurs to earn an honest living in the City of Angels. For example:

- Los Angeles flatly prohibits sidewalk vending—even if the vendor's cart and commissary are fully licensed by the Los Angeles County Department of Public Health.



It does not take an “economy chief” to see what the problem is: Los Angeles entrepreneurs are being strangled by red tape—unreasonable and arbitrary government regulation.

- Taco and other catering trucks have long been the target of city ordinances designed to protect brick-and-mortar restaurants from honest competition.
- Because of city-created monopolies and an artificial cap on the number of cabs authorized to operate in the city, Los Angeles taxi drivers cannot work for themselves, and most are forced to lease their vehicles at exorbitant rates from wealthier owners.
- Booksellers in Los Angeles must obtain a costly and intrusive “police permit” simply to sell used paperbacks.
- The city dictates the physical layout of Internet cafés—from their lighting to their waiting areas to their window treatments—and forces them to surveil their own customers.
- Los Angeles imposes draconian restrictions on home-based business and bans many—including dog sitting, sewing garments and cutting hair—outright.
- Would-be restaurateurs in Los Angeles must endure months, if not years, of hardship and spend tens of thousands of dollars navigating the city’s labyrinthine permitting process—a fact that has given rise to a cottage industry of “permit expeditors.”
- Tree trimmers, wallpaper hangers, fence builders and numerous other trades must obtain a state-issued “specialty contractor” license, obtainable only after several years’ experience, a state-administered test and a background check.
- Startup clothing designers on the Los Angeles fashion scene must pass a state-administered examination and pay a hefty sum to obtain a “garment manufacturer’s” license.
- eBay-type drop-off stores are required to fingerprint customers, report daily to the government and hold merchandise for 30 days before offering it for sale.

Given such utterly arbitrary barriers to entrepreneurship, it is no wonder that Los Angeles is facing so much economic woe. And while the very existence of these barriers is bad enough, they are made worse by the fact that they usually serve no purpose other than to burden entrepreneurs, sustain the city's bureaucracy or protect other businesses from competition.

To demonstrate the real-world hardships that such senseless regulation creates, this report will also profile a number of entrepreneurs—Angelenos who want nothing more than the chance to earn an honest living providing valuable goods and services to the people of Los Angeles. They are folks like Sabas Gatica, whose ice cream pushcarts are banned from the sidewalks of Los Angeles even though he has a city-issued business license and all the required health permits. They are folks like George, who simply wants the freedom to drive a cab for himself, rather than for the powerful taxi companies that have been handed the exclusive right to operate in the city. And they are folks like Francisco Gonzalez, who was cited and fined thousands of dollars by the city. Francisco's offense? Not moving his taco truck frequently enough.

All of this might be enough to break the bank—even the will—of the most determined entrepreneur. But the problems for entrepreneurs only begin with these general regulations.

This report concludes with concrete proposals for reform: measures that the government can take immediately in order to unleash the entrepreneurial spirit of Los Angeles. After all, it will be entrepreneurs who drive Los Angeles into economic recovery . . . if only their government will let them.

Doing Business

Before a would-be entrepreneur even considers the occupation- or industry-specific regulations she will have to contend with, she can expect to face a whole host of rules and regulations applicable to *all* businesses in Los Angeles. They are enough to deter many businesses from ever being launched.

For example, virtually every business in the city is required to obtain a business permit, or “business tax registration certificate,” from the city’s Office of Finance.⁶ For many businesses, the first year’s tax—which applies for the “privilege of engaging in . . . businesses or occupations” in Los Angeles—is due at the time of application for the registration certificate.⁸ To make matters worse, the business tax is assessed on gross receipts, not just profits, and the rate varies widely by business type, with some businesses paying rates 400 percent higher than others.⁹ Fortunately, the city has a small business exemption for businesses with gross receipts of \$100,000 or less and a limited exemption for certain categories of new businesses. But these exemptions are not automatic; businesses must file a timely tax renewal form and receive a letter of exemption from the Office of Finance.¹⁰

Just as bad as the business tax itself is the way in which it is administered. Recently, for example, the city’s Office of Finance capriciously—and retroactively—reclassified numerous businesses into higher tax rates and then sought back taxes from them.¹¹ In similarly egregious fashion, the city sent out tax collection notices in 2009 to thousands of freelancers who had not obtained a business tax registration certificate. Many of them had freelance income of only a few hundred, or a few thousand, dollars. Rather than assess the tax using actual receipts, the city

simply assumed that each of these individuals had grossed \$200,000 in each of the previous three years.¹²

Zoning regulations present just as many problems as the business tax regulations. Every proposed business must meet the zoning requirements for the area in which it is to be located.¹³ For many categories of business, this means obtaining a conditional use permit.¹⁴ The time, expense and frustration involved in applying for such a permit are considerable, and the outcome is far from certain. Moreover, any construction or alterations necessary for the business will require a building permit, as well, likely, as separate electrical, HVAC, plumbing and fire sprinkler permits.¹⁵ The procedures for securing these permits are notoriously slow and disjointed. The whole process seems designed for the very purpose of frustrating and, ultimately, discouraging entrepreneurs.

The city's heavy hand even impacts the ability of businesses to advertise. The municipal code's sign provisions dictate everything from the size of signs to the permits required to erect them. Even temporary commercial signs, such as posters advertising sales on milk or soft drinks at a convenience store, require their own building permit.¹⁶ And then there are the roughly 40 neighborhood-specific plans, many of which contain their own sign restrictions.¹⁷

These are just a few of the requirements that the city imposes on entrepreneurs; they do not include the countless other items mandated by Los Angeles County or the state of California, such as corporate or partnership registration; a fictitious business name statement; a public health license or permit; a seller's permit; an injury prevention program; payment of unemployment insurance; withholding and remittance of state disability insurance and personal income tax; and payment of a seemingly endless number of other taxes, including corporate income or franchise tax, business personal property tax and employment training tax.¹⁸

All of this might be enough to break the bank—even the will—of the most determined entrepreneur. But the problems for entrepreneurs only begin with these general regulations. The *real* trouble comes from the many rules and regulations governing specific occupations and industries.

Sidewalk Vending

Sidewalk vending is quintessential bootstraps entrepreneurship. Because it does not require a great deal of financial capital, it is well suited for low-income individuals looking for a start in the business world. It is a viable option for those who can work only limited hours or require flexibility in their schedule, which is why many single mothers are drawn to it. For others, including those with little formal education, vending may be one of the only forms of work available.¹⁹

Vending is particularly popular in Los Angeles' many immigrant communities, especially among immigrants from Latin America, where it is a deeply rooted part of the culture.²⁰ As one Salvadoran vendor explains, "[I]n Central America this is how we make an honest living."²¹

But certain groups in Los Angeles have no tolerance for these hardworking entrepreneurs. Opposition is especially fierce from local business owners who fear the competition that vendors present. Angry that vendors do not have the same expenses, such as rent and utilities, that they do, these brick-and-mortar businesses view vendors as "unfair competition" to be eliminated.²² Additional opposition comes from residents who have no appreciation for the cultural diversity vending brings, but rather view it as something "disgusting" and "nasty," something more appropriate for "a Third World country."²³

The city enforces its ban with periodic sweeps, routinely arresting vendors and confiscating their merchandise and equipment for the crime of earning a living. Sabas Ramirez Gatica has experienced firsthand the brunt of this senseless ban.



The victims of such hostility are folks like Sabas Ramirez Gatica, who is a classic example of how one entrepreneur can bring much-needed jobs—and hope—to a community. Sabas owns a small commissary downtown. It houses a fleet of ice cream pushcarts, which he makes available to vendors free of charge. Every morning, these hardworking men, mostly immigrants, meet at the commissary and load ice cream from the freezers to the pushcarts. They then take to the sidewalks of Los Angeles, bringing delicious, refreshing treats to the people of the city. Sabas charges the vendors only a reasonable, wholesale price for the ice cream they sell each day. The vendors keep the profits they make on their sales, enabling them to earn an honest living and support their families.²⁴

Sabas' business is by the book. He pays his taxes. His commissary and pushcarts have public health permits. He has a business license that the city issued with full knowledge of his business model.²⁵

Nevertheless, it is a crime for Sabas' pushcarts to go out the commissary door and onto the sidewalks of Los Angeles. That is because the city flatly prohibits sidewalk vending: "No person . . . shall on any sidewalk . . . offer for sale . . . any goods, wares or merchandise which the public may purchase at any time."²⁶ In fact, vending is a misdemeanor offense that carries a penalty of \$1,000, six months in jail, or both.²⁷ The city enforces its ban with periodic sweeps, routinely arresting vendors and confiscating their merchandise and equipment for the crime of earning a living.²⁸

Sabas had no idea about the vending ban when he opened his business. No one from the city or county told him that sidewalk vending was illegal when he applied for his permits and business license.

"If they would have told me that," he says, "I wouldn't have opened the commissary."²⁹

Sabas found out about the vending ban the hard way: Shortly after he opened his business, the city's Department of Building and Safety began issuing citations to the vendors and confiscating Sabas' carts and ice cream. After thousands of dollars in fines and lost equipment and product, Sabas requested a meeting with city officials. Acknowledging that the Department of Building and Safety lacked authority for the confiscations, the city agreed to stop the practice.³⁰

The city stuck to the letter, if not the spirit, of its word: Building and Safety stopped the confiscations, but the Police Department picked up the slack. Thus, the city continues to take Sabas' carts and ice cream. Although he is usually able to retrieve the carts, the ice cream (valued at between \$200 and \$300) is always a total loss. The city also continues to issue citations to the vendors at hundreds of dollars a pop. Sabas says enforcement has not defeated their willingness to vend. They continue to work, he says, because "necessity dictates," but they do so with "fear and intimidation."³¹

Purportedly to liberalize its anti-vending stance and make it easier—or at least legal—for some vendors to ply their trade, the city council passed an ordinance in 1993 allowing for the creation of "special sidewalk vending districts."³² But the process for creating a district is so difficult and bureaucratic that only two districts, in MacArthur Park and San Pedro, ever formed, and neither of them survives today.³³

Why did the only two vending districts that managed to get off the ground *not* manage to survive? Simply put, because the red tape did not end with their formation. Even after the vending districts were created, vendors were still required to obtain individual vending permits, which were allocated by lottery or some other manner "consistent with public health, safety and welfare."⁴³ A vendor who hoped for a permit had to submit an application identifying the "exact location" at which she planned to vend, a "complete



Creating a Vending District: Easy as A, B, C . . . 1, 2, 3 . . . %\$#@. . .

The process of creating a vending district begins when a group of vendors files, with the city's Community Development Department, a petition identifying the proposed boundaries of the district (which may only be in commercially zoned areas), as well as the number and location of "vending sites" to be approved.³⁴ The petition must contain the names, addresses and signatures of those persons within the proposed district who endorse its formation. To be approved, the vendors must obtain the endorsement of at least 20 percent of the businesses and 20 percent of the residences on each block in the proposed district.³⁵ In short, the vendors' right to earn a living exists at the mercy of other businesses and residents.

But the process does not end there—far from it. The city's "Sidewalk Vending Administrator" must notify the City Council member within whose district the proposed vending district will be located. The council member, in turn, must appoint a Community Advisory Committee comprised of his or her own representative, a street use inspector, a police officer, the Sidewalk Vending Administrator and a "balanced representation of proponents of the district, fixed businesses, and residents within or adjacent to the proposed district."³⁶ This committee then makes recommendations on the boundaries, density and location of vendors, goods to be sold, design of carts, and hours of operation for the proposed vending district.³⁷

Finished now? Not even close. The Sidewalk Vending Administrator must then transmit the petition to the Board of Public Works for a public hearing, notice of which must be mailed to all property owners, businesses and residents within the proposed district and within a 500-foot radius of its boundaries. The Sidewalk Vending Administrator must also publish notice—in English and "any other language spoken as their primary language by a substantial number of the persons residing within the proposed district"—in a newspaper of general circulation within the area of the proposed district. The vendors applying for creation of the district bear the costs of mailing and publishing the notice.³⁸

Next comes the public hearing. Any "interested person" may appear, and the Board of Public Works must consider the recommendations of merchant associations, chambers of commerce, the police department, and "other affected city departments." The comments received at the hearing are then forwarded to the City Council member who appointed the Community Advisory Committee. The council member then offers his or her recommendation.³⁹

Done *now*? Nope. Based on the comments received at the public hearing, as well as the recommendations of the Community Advisory Committee and the City Council member, the Board of Public Works must make a finding as to whether "the public welfare would be served by the establishment" of the proposed vending district. The Board forwards this finding, along with its recommendation on establishment of the vending district, to the full City Council.⁴⁰

Almost finished. The City Council gets the ultimate say on whether the vending district is, in fact, created. The Council may approve the district, reject it, or approve it subject to modifications. If the Council approves the district, the Board of Public Works must then adopt regulations governing it and the Community Development Department must execute a contract for its management.⁴¹

Phew. That, in a nutshell, is the process for forming a sidewalk vending district in Los Angeles, which is essentially the only way to legally vend in the city. Given how onerous and costly the process is, it is no surprise that there are no vending districts in Los Angeles today.

list” of the items she would sell, and “the hours per day and days per week” during which she would operate.⁴⁴ Before a permit would issue, the vendor had to:

- Provide proof of ownership, lease or rental of a pushcart that complied with specifications established by the city;
- Submit to fingerprinting;
- Present adequate identification, such as a California driver’s license, as well as two passport-sized photos;
- Obtain public liability and property damage insurance naming the city as co-insured;
- Secure approval in writing from the owner or tenant of the property neighboring where the vending would be conducted;
- Pay a non-refundable annual permit fee;
- Pay a pro-rata share of the city’s costs for entering into a contract for management of the district;
- Obtain approval from the county Department of Public Health if any food or drink item was to be sold; and
- Obtain all other necessary city, county and state licenses and permits.⁴⁵

Finally, even after the vendor obtained a permit, she continued to be regulated on everything from the length, width and height of her pushcart; to the location, size and content of her advertising; to the identification badge she had to wear when she vended.⁴⁶

In light of all this, it is no wonder the MacArthur Park and San Pedro districts failed.⁴⁷ MacArthur Park’s experience is illustrative. To participate, vendors were required to pay approximately \$700 annually for permits, insurance and other fees. Moreover, they were limited in what they could sell: To placate business owners in the area, vendors were prohibited from selling products that competed directly

with those sold by brick-and-mortar merchants.⁴⁸ Finally, vendors were also limited in *where* they could sell: Vending was permitted only along two edges of the park, and the vendors were required to remain stationary in their assigned spots. Such restrictions prevented vendors from responding to fluctuations in pedestrian traffic.⁴⁹ As one observer noted, the restrictions forced the vendors into “choosing between supplying the market in places that are profitable and becoming stationary in a small and marginal legal area—in essence their options became market forces versus legality.”⁵⁰

In the end, many vendors quit participating and the district folded.⁵¹ With the district’s demise, there is now *nowhere* in the city for sidewalk vendors to legally operate.

Sidewalk vending is an honest and legitimate business that offers great hope for people trying to get a foothold on the economic ladder. The city should welcome entrepreneurs like Sabas Gatica and the vendors he works with, not treat them as criminals.

Catering Trucks

Related to the city’s prohibition of sidewalk vending is its regulation of catering trucks: motor vehicles that sell food curbside or at other locations, such as jobsites. As in most cities across the country, catering trucks are a popular dining option in Los Angeles. They are particularly popular with workers who do not have the luxury of an hour-long lunch break or the time to wait for service at a brick-and-

mortar restaurant. Because they are mobile, they can travel to customers who might be tied to their jobsite, such as construction workers. They also tend to have lower overhead costs than brick-and-mortar restaurants, so they can pass considerable savings on to their customers and provide dining options for those who may not be able to afford restaurant prices. And although many people in Los Angeles associate catering trucks with Mexican cuisine, today the vehicles offer choices from virtually every culinary tradition.⁵²

One might think the city would welcome such businesses and the diversity of choice they provide to its residents. Think again.

Catering vehicles are already heavily regulated at the state and county level.⁵³ Owners must register their vehicles with the state⁵⁴ and obtain public health permits from the Los Angeles County Department of Public Health.⁵⁵ The public health permit alone can cost \$695.⁵⁶ The state requires that catering vehicles operate in conjunction with a regulated commissary, where the vehicle must report daily and store its food.⁵⁷ The state also regulates the types of food that may be prepared on the trucks,⁵⁸ the personal hygiene of workers and the cleaning of equipment used to prepare the food.⁵⁹ Even the design of catering vehicles is regulated—literally down to the nuts and rivets.⁶⁰ These state and county regulations, while burdensome, are usually attuned to legitimate health and safety concerns.

The city of Los Angeles, however, adds its own layers of regulation atop the comprehensive scheme already in place at the state and county level. These city regulations have little, if anything, to do with protecting public health and safety. More often than not, they are aimed at protecting brick-and-mortar restaurants from competition.

For starters, a catering truck operator has to be a cartographer to know where he can legally operate within Los Angeles. The city has banned the “dispensing of victuals” within 100 feet of any intersection; within 200 feet of Balboa Park, Banning Park, Robert Burns Park, MacArthur Park, portions of Griffith Park or a particular segment of Ferndell Drive; and within 500 feet of any school.⁶¹ In short, a catering truck needs a map, compass and calipers to stay out of trouble.

If a truck plans to sell ice cream (or candy, snack foods or soft drinks that are “primarily intended for sale to children under 12 years of age”⁶²), then the owner may also want to consider investing in a good watch. Such vehicles may not operate after 5:30 p.m. during November through March, or after 8:30 p.m. during April through October. Selling a minute later is a misdemeanor.⁶³

Most problematic, however, are the city’s attempts throughout the years to eliminate catering trucks by making it practically impossible for them to operate. For example, in the late 1970s, the City Council enacted an ordinance that prohibited catering trucks from operating within 100 feet of brick-and-mortar restaurants.⁶⁴ The courts invalidated that law, seeing it for what it was: a “naked restraint of trade.”⁶⁵

Undeterred, the city passed a similarly protectionist ordinance in 1991. Rather than regulate *where* catering trucks could operate, this ordinance regulated how long they could remain at a given location. Designed to keep the trucks away from their customer bases, the ordinance required them to move every 30 or 60 minutes, depending on whether they were in a residential or commercial area.⁶⁶ But this attempt to force the trucks to move on contained a big loophole: The drafters of the ordinance forgot to include language to prevent the trucks from immediately returning to their original location.

Urged on by brick-and-mortar restaurant owners who feared the catering trucks’ competition, as well by people in



Francisco Gonzales has been operating catering trucks like this in the Los Angeles area for 15 years.

gentrifying areas who did not like the image that taco trucks convey, the city went back to the drawing board. In 2006, it adopted a third ordinance that not only forced catering trucks to move at least a half-mile away every 30 or 60 minutes, but also prohibited them from returning to their original location for an additional 30 or 60 minutes.⁶⁷ One activist described the restrictions as an attempt to “humanely eliminate” taco trucks.⁶⁸

Armed with the new ordinance and the support of brick-and-mortar businesses, the city began enforcing the new restrictions aggressively and with a heavy hand. Hardworking entrepreneurs like Francisco Gonzalez were the ones who suffered.

Francisco has been operating catering trucks in Los Angeles for 15 years. Until 2006, he had done so without incident. But when the durational restrictions were added that year, he began receiving citations that eventually totaled more than \$12,000. Francisco and his family were forced to the brink of financial ruin.⁶⁹

But Francisco decided to fight back. With the assistance of pro bono attorneys and UCLA law students, he challenged one of the citations, determined to liberate himself and other hardworking entrepreneurs from the city’s unreasonable and protectionist restrictions. In June 2009, Francisco prevailed: The Los Angeles County Superior Court held that the durational restrictions had no legitimate public health

or safety purpose and threw out Francisco’s citation.⁷⁰ Foiled again, the city issued a directive in June 2009 prohibiting the Police Department from enforcing the restrictions.⁷¹

Although Francisco is now free to travel to, and remain with, his customers, earning an honest living in Los Angeles should not have required a team of lawyers and the stomach to litigate. Yet that is precisely the position in which the city has repeatedly put Francisco Gonzalez and other industrious entrepreneurs like him.

Sadly, the city shows no sign of changing its ways. Numerous unreasonable catering truck regulations remain on the books, and the police appear to have stepped up enforcement in the wake of Francisco’s victory. They have begun looking for any excuse to ticket catering trucks, including their parking too far away from—even too close to—the curb. To add insult to injury, police acknowledge

that this enforcement is being pursued at the behest of restaurant owners who want the catering trucks gone once and for all.⁷² It is bad enough that the city enforces unreasonable laws; it is far worse that it does so for such blatantly protectionist purposes.

Taxis

For a city that considers itself progressive and cutting-edge, Los Angeles is behind the times when it comes to empowering entrepreneurs such as taxi drivers. In recent years, other cities have moved to deregulate their taxi industries, providing opportunity for drivers to work for themselves and increased choice for consumers.⁷³ Los Angeles, however, has adopted a regulatory system that destroys economic opportunity and competition within the industry. It is one of the few large cities in the United States to regulate taxi service through a “franchise system”: The City Council hands out exclusive, geographically based franchises to a handful of powerful taxi companies in exchange for their payment of a monthly fee to the city.⁷⁴ Drivers who would like to work for themselves or form their own competing taxi company are out of luck.

The city adopted this regulatory scheme at the behest of well-heeled

industry insiders.⁷⁵ In 2000, it handed out exclusive franchises to nine cab companies, allowing each company to operate a set number of vehicles in specified areas of the city.⁷⁶ The total number of cabs authorized among the nine franchise holders was 2,303, and neither the number of franchises nor the number of authorized cabs has increased since.⁷⁷ No other taxis can lawfully operate in the city.⁷⁸

Obtaining a taxicab driver permit in order to drive for one of the nine franchise holders is relatively easy. Applicants must obtain sponsorship from one of the nine taxi companies; file an application with the Department of Transportation and pay the application fee; be fingerprinted; and demonstrate proficiency in several areas, including the English language, use of a street atlas, and familiarity with Los Angeles-area streets and freeways.⁷⁹

But earning a decent living as a Los Angeles taxi driver is another story. The large majority of drivers do not own the vehicles they drive. Because the city has limited the number of cabs and cab companies allowed to operate, most drivers are forced to lease their vehicles from their cab company or, if they drive for one of the companies organized as a co-operative, one of its shareholders. In 2006, the median lease payment was approximately \$500 *per week*, and it is estimated that leases currently run as high as \$700.⁸⁰ It is essentially a form of urban sharecropping: Drivers are forced to work long hours covering their lease before they begin to turn even one penny in profit. In fact, in 2006, the median monthly net income for lease drivers was only \$2,313, despite their working 72-hour weeks.⁸¹

The franchise system makes it incredibly difficult for the average driver to make the transition from lease driver to owner-driver. The driver has to find a shareholder in the company he drives for who is willing to sell his vehicle and share. But because the city has artificially limited the number of taxis allowed to operate, the share alone can cost tens of thousands of dollars.⁸² Moreover, a cab company's

management can effectively block a sale it does not approve of, because the prospective owner has to have the company's sponsorship before the city will issue a taxicab vehicle permit in his name.⁸³

The result of all this is that most drivers remain trapped in extortionate lease arrangements, at the mercy of politically connected cab companies, the management of which would make an organized crime syndicate blush. The strong-arm tactics that these companies use with their drivers are well documented, as is their propensity for secret dealing. In fact, a 2001 audit of one of the companies, ostensibly a co-operative, determined that \$2 million in checks made payable to "Cash" had been written from company coffers during the preceding two years.⁸⁴ The city did nothing in response to the audit's findings.⁸⁵

That is not surprising, though, as the city seems more concerned with regulating drivers to oblivion than with reforming an obviously broken regulatory system. As one observer put it, "In Los Angeles taxis are not seen as a transportation resource, but a nuisance to be regulated."⁸⁶ The city dictates every aspect of a driver's business, from the fare he can charge⁸⁷ to where he can pick up passengers: It is effectively illegal for a driver to stop when hailed,⁸⁸ except in parts of Downtown and Hollywood, where the city has enacted—no kidding—a "pilot program" to study whether allowing hailing is feasible.⁸⁹ The city even dictates what drivers wear: black dress pants, white dress shirt, black shoes and socks.⁹⁰ Until recently, a black tie was required, too. And the city enforces these senseless regulations aggressively: Between 2000 and 2004, the city recorded more than 350 dress code violations.⁹¹

The city should undertake a complete overhaul of its regulation of the taxi industry. Most importantly, it should eliminate the current franchise system, which destroys competition, deprives drivers of opportunity and artificially limits the transportation options available to consumers.

There is no question that additional taxis are needed. It is estimated that there are 2,300 "bandit" cabs operating in Los Angeles—a clear indication that demand far exceeds the supply of legally authorized cabs. In fact, Los Angeles has the lowest ratio of taxi and limo drivers—0.9 for every 1,000 people—of any large metropolitan area in the nation. Service is particularly problematic in South Los Angeles, as well as Koreatown and Pico-Union, which are not serviced by enough drivers who speak the Spanish or Korean commonly spoken in these areas.⁹²

There is no shortage of entrepreneurs willing to service those areas if the city would only let them. One such entrepreneur is George (a pseudonym used to protect this would-be entrepreneur's identity.) George is the embodiment of the American Dream. He came to the United States as a refugee in 1980 after fleeing Africa, where he had fought a communist government.

He put himself through college and graduated from California State University. The following year, he began driving a taxi in Los Angeles. He started out as a lease driver but later had saved enough money to purchase his own vehicle and a share in the cab company for which he drove. It cost him nearly \$40,000.⁹³

By the late 1990s, however, he had grown disillusioned with the taxi industry—particularly the corruption and cronyism that pervaded the cab companies and the city officials charged with regulating them. His disillusionment only became worse after 2000, when the city handed out the nine exclusive franchises for taxi service. Drivers had no choice but to work for one of the franchise holders, whose sponsorship the city required to get a vehicle or driver licensed.⁹⁴

By 2005, George had had enough. He became a vocal activist for reform within the industry. That did not sit well with the cab company for which he drove. In 2007, company management withdrew its sponsorship of him, which meant he could no longer drive his cab. He was forced to sell his vehicle and his share in the company. He called around to see if he could affiliate with one of the other franchise holders but was told he was too controversial.⁹⁵

Because he could not affiliate with another company, George has not been able to drive a cab since 2007. If the city's taxi regulations were reformed to allow him to drive independently, or to join with other drivers to form their own company, he would do so in a heartbeat.⁹⁶

There is a glimmer of hope for George and entrepreneurs like him: The current franchises for taxi service expire on December 31, 2010,⁹⁷ and the city claims to be looking at alternative regulatory schemes. But the existing franchise holders have every incentive to preserve the status quo, and, unfortunately, city officials have been

all too eager to protect these well-heeled insiders in the past. For the sake of the many hardworking drivers that serve the city's residents and visitors each day, the city should end its kowtowing to these special interests and adopt a system that respects competition and enterprise.

The Police Permit Requirement: Treating Innocent Businesses Like Crime-Prone Enterprises

For some 53 types of businesses, Los Angeles requires a “police permit”—a license to operate obtained from the Board of Police Commissioners.⁹⁸ While the permit requirement is understandable for some businesses—gun shops and strip clubs, for example—it is utterly absurd for others, such as used bookshops, skating rinks and dance schools.⁹⁹

Applying for a police permit is incredibly burdensome, time-consuming and intrusive. Before even submitting an application, the entrepreneur must have a lease or proof of ownership for the property at which he plans to open the business, along with all necessary building, fire and conditional use permits.¹⁰⁰ In other words, he has to purchase or execute a lease for the property and spend thousands of dollars contending with building and zoning regulations *before* he even knows whether he will be allowed to open his business there.

After securing property and obtaining all the preliminary permits, the prospective business owner must attend a police permit class. Once he has done so, he is ready to apply. In addition to completing the application, he must pay a hefty application fee, ranging from \$30 to \$730, depending on the type of business, submit to fingerprinting and pay a fingerprint processing fee.¹⁰¹

The Board of Police Commissioners then investigates the application. It has the power to examine the applicant (or any officer, partner or member of the applicant's business) under oath, and it may require a public hearing before taking action on the application. If a hearing is required, public notice must be posted at the proposed business location. The Board may also require that notice be published in the newspaper

and mailed to all property owners within 300 feet of the proposed business. The applicant bears the cost of printing, mailing, publishing and posting these notices. At the hearing itself, any “interested person” may appear and protest the entrepreneur’s application, and the Board is required to “give consideration to . . . such protests.”¹⁰²

But even if the Board is inclined to grant a permit, the applicant is not home free. The Board has the power to set the hours and days that the business may operate¹⁰³ and to impose other restrictions on everything from the number of employees to the methods of payment the business may accept from its customers.¹⁰⁴

Of course, the police permit process is not a one-shot deal. Once opened, the business must file regular reports with the Chief of Police and is subject to inspection of its premises and records at any time.¹⁰⁵ Moreover, if the business desires to change location, it must first file an application with the Board of Police Commissioners and obtain its endorsement. The “change of location fee” ranges from \$30 to \$730, depending on the type of business, and even if the business stays put, it must renew its permit annually.¹⁰⁶ Renewal costs \$100 for most businesses,¹⁰⁷ and the Board may require another public hearing.¹⁰⁸

On top of these general police permit requirements, there are additional regulations specific to each category of business for which a police permit is required. Those governing used bookshops and Internet cafés are instructive.

Used Bookshops

Even in this age of Amazon.com and impersonal warehouse bookstores, many people still appreciate the intimacy and service of a local and independent used bookshop. Unfortunately, they are a dying breed, and Los Angeles is doing everything in its power to make them extinct.

Used bookshops—or “secondhand book dealers,” as they are referred to in the municipal code—are among the 53 categories of business that require a police permit.¹⁰⁹ In addition to complying with the general police permit regulations—e.g., submitting to fingerprinting, paying the applicable permit fee (\$263), etc.—they must comply with occupation-specific regulations that create administrative

nightmares for purveyors of used paperbacks.¹¹⁰

For example, every time a used bookshop purchases or receives books in exchange, it is required to “ascertain that the person selling or . . . exchang[ing]” the books “has a legal right to do so,” then execute a consecutively numbered bill of sale for the purchase or exchange. The bill of sale must contain, among other things, the date the books were purchased or received, the name and address of the person selling or exchanging them, the name and address of the bookshop, and a description of the books “sufficient in all respect to clearly identify” them. The bookshop must immediately “stamp, write, print, or otherwise permanently affix” to each book the number of the bill of sale covering it, and the bills of sale must be kept on file and open to inspection by any police officer or representative of the Board of Police Commissioners.¹¹¹

The Police Commission, in turn, has its own set of rules governing used bookshops. Amazingly, they require that bookshops *thumbprint* every person from whom they receive a book and file a daily report with the Police Department describing all books taken

In other words, he has to purchase or execute a lease for the property and spend thousands of dollars contending with building and zoning regulations *before* he even knows whether he will be allowed to open his business there.

By treating used bookshops like gun shops and strip clubs, the city has contributed to their disappearance from the Los Angeles landscape.

in that day. They also require used bookshops to hold books for at least 30 days before selling them.¹¹² Apparently on an *ad hoc* basis, these requirements are waived for some shops.¹¹³ Although freeing some businesses from such unreasonable burdens is a good thing, the fact that others have to comply—indeed, the fact that the rules exist at all—is absurd.

By treating used bookshops like gun shops and strip clubs, the city has contributed to their disappearance from the Los Angeles landscape. Shop owner Sam's experience is telling. (Sam is a pseudonym.) Before he could even apply for a police permit to open his used bookshop, Sam had to secure a commercial lease for the building in which he hoped to open it. Having to make that kind of investment before knowing if he would even receive a permit resulted in a great deal of stress and uncertainty, which was only compounded by the fact that the Police Commission took months to act on his application—months of not knowing if he would *ever* be allowed to open. Although Sam persevered and ultimately received a permit, he believes the uncertainty inherent in the process is enough to discourage other would-be booksellers at a time when there are only a few used bookshops left in Los Angeles.¹¹⁴

Sam was lucky in one regard: A police officer informed him—orally—that he did not have to comply with the Police Commission's reporting, thumbprint and 30-day hold requirements. But no one ever explained to Sam just why he was exempted. He fears that because there is no written policy on the matter, his exemption could be rescinded tomorrow on the whim of a new enforcement officer. He would not have the administrative capability—much less the stomach—to begin thumbprinting his clients and filing daily reports with the Police Department.¹¹⁵

Finally, and perhaps most importantly, Sam believes that used bookselling is protected by the First Amendment because it involves the dissemination of ideas and opinions—especially unpopular minority viewpoints that are unlikely to be stocked on the shelves of Barnes and Noble.¹¹⁶ The courts agree with him: Bookselling is indeed a form of expression protected by the Constitution.¹¹⁷ Requiring a government-issued permit to engage in it is constitutionally troublesome, to say the least.

Cyber Cafés

Many of Los Angeles' more ridiculous regulations on economic activity are the result of the city's severe overreaction to isolated incidents at a few problematic establishments. Such is the case with the city's regulation of cyber cafés.

Cyber cafés, also known as Internet cafés or computing centers, serve a vital function in a city like Los Angeles. Numerous studies have documented the "digital divide": the disproportionately low rates of computer and Internet access among the poor, minorities and the elderly.¹¹⁸ Cyber cafés help bridge that gap. They allow job seekers to prepare résumés and search for jobs online; students to use the Internet for research projects; and persons uncomfortable with technology to develop computer skills and literacy. Los Angeles should encourage such businesses. Instead, the city has made it incredibly burdensome and expensive for them to open and operate.

Los Angeles passed its cyber café ordinance in 2004.¹¹⁹ The ordinance was prompted by incidents of violence, apparently connected to video gaming, at certain cyber cafés in Southern California.¹²⁰ Rather than deal with the problematic establishments, the City Council imposed a police permit requirement and draconian regulations on every cyber café in the city. The term "cyber café" is defined so broadly that the regulations apply to virtually anyone who allows public access to five or more personal computers, even if not for compensation.¹²¹



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In addition to subjecting entrepreneurs to the time, intrusiveness and expense¹²² of the police permit process, the cyber café ordinance imposes strict requirements governing the physical layout of cyber cafés. The city dictates everything from the number of computers (no more than one per 20 square feet of floor area) to the lighting (at least “1.5 foot-candles surface illumination on a plane 36 inches from the floor”) to the window treatments (no tinting, and any blinds or drapes must be drawn or opened during business hours, except when needed to block sun glare). The city even requires cyber cafés to construct interior waiting areas.¹²³ These requirements substantially increase costs for anyone who wishes to make computers available to the public.

Were it not intrusive and unsettling enough for the city to dictate the layout of private businesses, the city does something far creepier: It requires cyber café owners to surveil their customers. The cyber café ordinance provides, “There shall be a video or digital camera surveillance

system that monitors all entrance and exit points and all interior spaces, except bathrooms and private office areas, during all hours of operation.” The ordinance authorizes the city to inspect the surveillance system and requires the cyber café to maintain the videotapes or digital recordings for at least 72 hours.¹²⁴ Needless to say, this Orwellian surveillance provision raises substantial privacy and free speech concerns.¹²⁵

Finally, the city forces the staff of cyber cafés to act as its deputies. The ordinance imposes a curfew barring minors from cyber cafés during school hours and between 10 p.m. and sunrise. The manager of the café is charged with obtaining identification of anyone who enters during the curfew hours and appears to be under 18 years of age.¹²⁶

To the extent there truly is a problem with violence at certain cyber cafés, the city can achieve its safety objectives in a far less severe manner. For example, police patrols could be increased or security guards could be posted at cyber cafés that have actually experienced violent activity.¹²⁷ Instead, the city has imposed blanket and potentially crippling regulations that apply not only to the handful of problematic businesses, but to every entrepreneur who wants to help bridge the digital divide by making computer and Internet access available in underprivileged neighborhoods.

Home-based Occupations

Approximately half of all businesses in the United States are based in the home, and many more start out there.¹²⁸ After all, few entrepreneurs know at the outset whether their



Los Angeles prohibits home-based entrepreneurs from working in their garages—a restriction that resulted in a citation threatening fines and jail time for the Korvers because of their film post-production company.

business will succeed, so renting commercial space early on may not make economic sense. Even once a business is up and running, there are many good reasons why the owner might want to continue working from home: greater flexibility, proximity to family and lower overhead, to name a few. For some—especially those who are primary caregivers for children or elderly relatives—working from home may be the only viable option.

Given the many virtues of working from home, you would think Los Angeles would encourage it. Think again.

Paul and Kristine Korver found out about the city's intolerance for home-based businesses the hard way. In 2008, they launched a film post-production company called Cinelicious from their home's garage in the Wilshire neighborhood. As odd as it may seem, the garage played a big part in Paul and Kristine's decision to buy the home. They knew that launching Cinelicious would be a risky endeavor, and they needed to establish the business before taking on the expense and commitment of a commercial lease. Starting out from the garage would enable them to get the company off the ground.¹²⁹

And get it off the ground they did. In just two short years, Cinelicious has achieved incredible success. The company has worked on music videos for singers Christina Aguilera, Jon McLaughlin and the band Keane, as well as television commercials for Nissan, Kia and H & M. Cinelicious even worked on Hyundai's spots for Super Bowl XLIV.

Yet, according to the city of Los Angeles, Cinelicious should never have even happened. The city severely restricts the use of garages in connection with home-based businesses—

essentially, they may be used for “incidental storage” only.¹³⁰ Launching Cinelicious from their garage earned Paul and Kristine a citation from the city ordering them to “[d]iscontinue the unapproved use of the garage as a home based business.” Failure to comply, the order warned, could result in a misdemeanor conviction “punishable by a fine of not more than \$1,000 and/or six (6) months imprisonment.”¹³¹

To comply, Paul and Kristine moved Cinelicious into a commercial space in December 2009. They had to borrow money to make the move. Moreover, although Cinelicious is doing well, the burden of paying a home mortgage and commercial rent has been difficult for them.¹³² That burden is lost on the city, which has shown no sympathy for the couple.

Unfortunately, the Korvers' story is not unique. Los Angeles flatly prohibits some 37 categories of business from operating out of the home.¹³³ Granted, some of the prohibitions are reasonable. Few would argue, for example, that a strip club or gun shop should be allowed in a residential neighborhood. But there

simply is no justification for many, if not most, of the prohibitions. What possible reason does the city have for prohibiting someone from cutting hair, dog sitting, sewing, detailing a car or applying makeup in her own home?¹³⁴ Even the *Cosby Show*'s Doctor Huxtable would be out of luck in Los Angeles: Doctors cannot engage in the general practice of medicine in a home office.¹³⁵

Even if an entrepreneur's business does not fall within one of the 37 categories prohibited outright, it still may be a no-go in the home, because the city's "home occupation"¹³⁶ regulations *effectively* prohibit many more types of business. For example, a home-based business must be "conducted within the main dwelling unit."¹³⁷ That means no swim lessons in a backyard pool. Similarly, there can be "[n]o more than one client visit or one client vehicle per hour,"¹³⁸ which means half-hour piano lessons are a no-no, at least back-to-back, and teaching a group art or scrapbooking class is out of the question. "Servicing" products is not allowed, so a computer repair business would not fly.¹³⁹ And because a garage or out-building may only be used for "incidental storage,"¹⁴⁰ a painter or architect could not have his studio there. In fact, the next Microsoft, which Bill Gates and Paul Allen started in a garage, would not be welcomed in Los Angeles.

Other home occupation regulations create similar problems for entrepreneurs. For example, advertisements for home-based businesses, including websites and Yellow Page listings, may not contain the home's address.¹⁴¹ So you can have

a home-based business . . . you just can't tell your customers where it is. Deliveries and pick-ups are limited to two per day, and only one person who does not live in the home is allowed to work there.¹⁴² Strangely, with a few limited exceptions, the display, manufacturing or sale of products in the home is banned.¹⁴³

Still other regulations impose utterly vague restrictions, subject, apparently, to the interpretation—and whim—of the enforcement officer. For example, home-based businesses may not utilize "material . . . which is not associated with normal residential use" or "generate greater vehicular or pedestrian traffic than is normal for the district in which the home occupation is located."¹⁴⁴ Such broadly worded restrictions give the city *carte blanche* to shut down virtually any home-based business.

An entrepreneur who decides to ignore these regulations better be prepared to pay. Violations incur an administrative fine of \$250 (\$500 for repeat violations) or, worse, a misdemeanor conviction punishable by a \$1,000 fine and six months' imprisonment.¹⁴⁵

The city takes enforcement seriously. In 2008, it issued approximately 170 Orders to Comply under the home occupation regulations. The "violations" included everything from using a garage as a photo studio to cutting hair in the home to listing the street address of an otherwise lawful home-based business on the business' website.¹⁴⁶ In other words, entrepreneurs were earning honest livings in their own homes in ways that did no harm to their neighbors. Los Angeles should welcome such entrepreneurship, not criminalize it.

Restaurants

Among the most difficult businesses to open in Los Angeles are restaurants. Because they handle food, you would expect them to face a fair amount of regulation . . . and they do. There is no shortage of food-related laws on the books, some sensible and some—such as the 2008 moratorium on fast food restaurants in South Los Angeles¹⁴⁷—not.

The real problem in Los Angeles, however, is not the regulation of food *per se*. Rather, it is the tangled permitting process a would-be restaurateur must endure before she even gets to prepare and serve her first dish.

The typical business-related construction or remodeling project in Los Angeles must go through 12 different city departments for approval.¹⁴⁸ That is just for a building permit. It is up to the applicant to shepherd her application through each of these agencies, and it is common for an applicant to spend months, even years, being bounced around like a pinball among different departments. The problem is only compounded for restaurants, which, in addition to enduring these permitting procedures, must obtain a health permit from the Los Angeles County Department of Public Health and, if they wish to serve alcohol, a liquor license from the state and a conditional use permit from the city.

The permitting process for restaurant projects typically begins at the county Department of Public Health, which checks construction and installation plans for compliance with the California Retail Food Code. For its “plan check,” the Department requires three complete sets of construction and equipment installation plans; a completed plan check application; a plan check fee, which ranges from \$757 to \$1,213, depending on the number of seats in the restaurant; and, for remodels, the restaurant’s current public health permit. The three sets of plans must be drawn to scale and include, among other things:

- a complete floor plan with plumbing, electrical, lighting and equipment details;
- mechanical exhaust ventilation plans;
- a finish schedule for floors, walls and ceiling that indicates, among other things, material types, surface finish and color;
- a site plan;
- manufacturer specification sheets for equipment; and
- the proposed menu.

It is unlikely the plans will be approved on initial submission. Rather, Public Health typically issues a correction list and requires the applicant to submit revised plans *in triplicate*.¹⁴⁹

If and when approval is obtained from the county, it is off to the city—specifically, the Department of Building and Safety—for a building permit and other city-issued permits, as necessary. Building and Safety has its own plan check process, which is best described as part maze, part endurance test. The procedure begins with the applicant’s payment of a plan check fee—which, depending on the project, can range from several hundred to several thousand dollars—and submission of two complete sets of plans.¹⁵⁰ As a practical matter, the plans must be prepared by an architect or engineer, which is likely to add several thousand dollars to the cost of the project.¹⁵¹

Once the required documentation is submitted, a plan check engineer at Building and Safety generates a “clearance summary” worksheet listing the various governmental agencies—city, county and state—whose approval is required before a building permit will issue.¹⁵² Again, a typical project requires approval from 12 different agencies, and restaurants often require more.¹⁵³ The task of determining which agencies must provide their approval for any given project is so complex that the city has published a 147-page “Building Permit Clearance Handbook” to help plan check

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engineers “consistently determine what kinds of departmental clearance are needed based on the type of project and its location” and “properly refer permit applicants to the right office for departmental clearance.”¹⁵⁴

To make matters more difficult for aspiring entrepreneurs, each of the agencies that an applicant must obtain the necessary approvals from has its own plan submission requirements, procedures and fees, which only add to the cost of the project.¹⁵⁵

Once the applicant has navigated this process, made any corrections required by Building and Safety or any of the other reviewing agencies, and obtained all the necessary approvals, a building permit is *almost* ready to issue. The applicant first must pay a building permit fee, which is calculated based on the valuation of the project and can reach several thousand dollars.¹⁵⁶ That is in addition to the thousands already paid during the city and county plan check processes. Once the fee is paid, a building permit can finally issue.

But building cannot begin just yet. Separate permits—and, thus separate plan checks—may be required for electrical work, plumbing, fire sprinklers, HVAC and grading.¹⁵⁷ Even though these checks are also conducted by the Department of Building and Safety, they each involve a separate application, procedure and fee.¹⁵⁸ The

Department advises applicants to “check with each discipline for specific requirements.”¹⁵⁹

Navigating the permitting process is only the first step in getting a restaurant off the ground. Inspections are required at various stages by the Department of Public Health, the Department of Building and Safety and the many other agencies involved in permit approval.¹⁶⁰ These inspections carry hefty fees,¹⁶¹ and problems inevitably arise when inspectors from the various departments and agencies fail to communicate with each other. This disjointedness results in conflicting guidance that can set a project back months, even years, and set the business owner back tens, even hundreds, of thousands of dollars.¹⁶²

Jill Bigelow

Jill Bigelow experienced these problems first hand when she and her husband were opening Provecho, a downtown restaurant that served modern Mexican cuisine. Jill found herself trapped in a ping pong game—one reporter described it as a “Kafkaesque comedy”¹⁶³—between inspectors and plan checkers. In one instance, a plumbing inspector refused to sign off on an inspection because Jill had not obtained approval for the restaurant’s self-contained water wall decoration from the Industrial Waste Management Division of the Department of Public Works. Jill went to the Department of Public Works, where officials sensibly advised her that the water wall did not produce industrial waste and required no special approval. Jill took that information back to the inspector, who was not satisfied. It took another trip to Public Works and intervention from the folks there to finally placate the inspector.¹⁶⁴ One crisis averted.

But the trips to Public Works led to another problem: While working with Jill to resolve the water wall matter, the Public Works staff bizarrely insisted that Provecho—which was located in a high-rise office building in the heart of the



Expediting the American Dream

The process for obtaining all of the permits and approvals necessary to open a restaurant in Los Angeles is so difficult, expensive and time-consuming that it has given birth to a cottage industry of “permit expeditors”—folks like Eddie Navarrette, or “Fast Eddie,” as he’s known in the field. Each year, Eddie helps between 50 and 100 restaurants navigate the bureaucracy and cut through the red tape of getting their restaurant off the ground. While many of Eddie’s clients seek him out when first developing their plans, some 70 percent or so come to him after they have already signed a lease and run into significant difficulties with the city.¹⁶⁵

Eddie blames the problems that restaurants routinely face on several factors, including the sheer number of governmental agencies involved in the permitting process, arbitrariness in the requests of city inspectors and the city’s inadequate communication with permit applicants. He also believes that, because the time and expense involved in getting a restaurant permitted is so great, bigger players—especially large national chains, such as Chili’s or T.G.I. Friday’s—have an advantage in getting projects approved. It is the small, local mom-and-pop restaurants—those establishments you would expect the city to want more of—that suffer most from the convoluted and disjointed permitting procedures.¹⁶⁶

Recognizing the need to streamline the process, the city recently proposed a “12 to 2” program, which would reduce the number of agencies a building permit applicant must deal with from the typical 12 down to just two: the Department of Building and Safety and the Department of City Planning.¹⁶⁷ The plan was prompted by the well-publicized difficulties that one woman experienced in trying to open a tiny bakery in Echo Park. The city told her that, in order to open, she would have to install a \$40,000 industrial-strength grease interceptor and add underground parking to her shop, which was smaller than a Craftsman-style house.¹⁶⁸ That incident prompted city officials to promise reform of the permitting system. To date, however, neither the “12 to 2” proposal nor any other reforms have been implemented. That means entrepreneurs who dream of opening their own restaurant in Los Angeles must continue to rely on the services of “expeditors” like Eddie Navarrette if they hope to ever make their dream a reality.

downtown business district—was instead sitting atop a landfill. It took considerable time and energy on Jill's part to convince the Department that there was, in fact, no landfill beneath the restaurant.¹⁶⁹ Another crisis averted.

But there were more problems, to be sure. During inspection of Provecho's kitchen, the city required Jill to tear out and replace many of her appliances, from stoves to coffeemakers—coffee *grinders*, even—because they were not “L.A.R.R.-certified.”¹⁷⁰ L.A.R.R., which stands for Los Angeles Research Reports, is a city-based equipment testing and certification program; the manufacturer pays the city a hefty sum—a minimum of \$1,297—to have the Los Angeles Mechanical Testing Laboratory test and certify the appliance, which, in turn, authorizes its use in city buildings. Unless certified through L.A.R.R. or another approved testing agency, appliances are a no-go.¹⁷¹ So it was for Provecho's kitchen.

But the most frustrating and absurd problem Jill encountered involved Provecho's restroom. In applying for her permits, Jill had submitted detailed plans with a finish schedule and material samples for all surfaces, including the tile for the restroom walls. The plans were approved and Jill built the restroom accordingly. But shortly before Provecho was set to open, an inspector from the Department of Public Health eyeballed the dark brown tile and determined that it did not have a high enough “reflectance value,” which, according to the inspector, meant a health official would not be able to tell if it was clean

enough. The inspector advised Jill that she would have to either tear all of the tile out or make the restroom off-limits to her employees.¹⁷²

Rather than wreck the restroom, Jill was able to work out an arrangement with her landlord by which she could remodel an existing restroom on the garage floor of the building and designate it for her employees' use. This satisfied the health inspector, if not Jill's pocketbook. No one ever explained to Jill, however, why the brown tile was satisfactory so long as the restroom was restricted to patron use.¹⁷³

In all, these and other problems delayed the opening of Provecho by five months and resulted in a cost overrun in the six figures. Jill and her husband were not the only ones who suffered. The five-month delay meant five months when the roughly 60-person kitchen and wait staff was not employed and five months when consumers had fewer dining choices downtown.¹⁷⁴

If a restaurateur is as tenacious as Jill and can endure the many senseless and unnecessary problems created by the permitting process, she can obtain a certificate of occupancy from the Superintendent of Building.¹⁷⁵ She can then schedule a final inspection with the county Department of Public Health. Upon the Department's approval—and after the owner's payment of a health permit fee ranging from \$553 to \$1,468, depending on the number of seats in the restaurant—a health permit can issue.¹⁷⁶ As stated earlier, provided the owner has all other necessary licenses and permits (*e.g.*, a seller's permit from the state, a business license from the city, food handler permits from the county), the restaurant may open for business—most likely months behind schedule and tens, if not hundreds, of thousands of dollars further in the hole than the restaurateur ever imagined she would be.

Jill Bigelow learned all of this the hard way. She never fully recovered from the setbacks she encountered in trying to open Provecho's doors for business. In May 2010, less than a year-and-a-half after opening, she closed those doors for good.¹⁷⁷

Liquor Licenses

Another significant difficulty for restaurateurs is obtaining the required California state license to serve alcohol. On a county-by-county basis, the state periodically issues a



Jill Bigelow's most frustrating experience while trying to open her restaurant was when an inspector would not allow her to open because her previously approved tile did not have enough "reflectance value."

limited number of new "on-sale general" licenses—the state license that authorizes a restaurant to sell beer, wine and spirits.¹⁷⁸ The application fee is \$12,000.¹⁷⁹ If there are more applicants than the number of new licenses authorized for a given county, the state holds a drawing to select the recipients (provided they pass an extensive background investigation).¹⁸⁰ If a restaurateur tries her luck with the drawing and loses, she can always look for a license on the secondary market: Subject to a cumbersome administrative procedure and a \$1,250 intra- or \$6,000 inter-county transfer fee, licenses are transferable.¹⁸¹ But the restaurateur had better be prepared to pay, as licenses can fetch over \$100,000 on the secondary market.¹⁸²

Of course, a state license is not enough. In order to serve alcohol, restaurants with seating for more than 50 persons must also obtain a conditional use permit from the city; for restaurants with seating for 50 or less, the permit is akin to a variance.¹⁸³ In either case, the procedure is extremely burdensome and the cost, extremely high. In fact, the *filing fee* for a conditional use permit is a non-refundable \$4,979.¹⁸⁴

The applicant must complete and file a lengthy and intrusive application with the Department of City Planning,¹⁸⁵ then undergo a hearing before the Zoning Administrator. Any individual has the right to appear at the hearing, as does the local neighborhood council, which can submit a "Community Impact Statement" indicating its support of or opposition to the permit.¹⁸⁶ As a practical matter, it is often necessary for the restaurateur to first appear before the neighborhood council

and plead for its support. Proceedings before the neighborhood councils can often devolve into NIMBY-ism (Not In My Back Yard), with little regard for the jobs and economic development that the proposed restaurant project may bring to the area. Nevertheless, a neighborhood council's Community Impact Statement is given great weight by the Zoning Administrator, so it behooves the applicant to try to win the council's support.¹⁸⁷

Whether or not the restaurateur receives the conditional use permit is ultimately up to the discretion of the Zoning Administrator. To approve the permit, he must make a number of entirely subjective findings, including that the proposed business:

- "will be desirable to the public convenience or welfare";
- will be "proper in relation to adjacent uses or the development of the community";

- will “not be materially detrimental to the character of development in the immediate neighborhood”; and
- “will not adversely affect the welfare of the pertinent community.”¹⁸⁸

In all, it can take two and a half months from the time of the application to get a decision and even longer if the applicant must avail herself of the appellate process.¹⁸⁹

Given the sheer number of permits that an aspiring restaurant owner must obtain before she can serve a single meal in Los Angeles, it is amazing that there are any restaurants in the city. Something is obviously wrong when the services of a “permit expeditor” are necessary to realize your American Dream.

The Golden State: Not So Golden for Entrepreneurs

Los Angeles entrepreneurs have their hands full enough with their city government. Unfortunately, however, the problems do not end at the city, or even county, level. Rather, they run all the way to Sacramento.

California is widely recognized as one of the most hostile states to entrepreneurship and small businesses. Study after study has confirmed as much. For example, a 2008 report by the Pacific Research Institute evaluated all 50 states on fiscal, regulatory,

judicial, government-size and welfare-spending factors. The study concluded that California was the fourth most economically oppressed state in the Union.¹⁹⁰ A 2009 study by the Mercatus Center came to a similar conclusion. It examined state fiscal and regulatory policy in order to assess economic freedom across the country. California ranked 48th among the 50 states; only Maine and New York were less free.¹⁹¹ And an extensive 2009 survey by the Small Business and Entrepreneurship Council determined that California has the second worst public policy climate for entrepreneurship in the nation, surpassed only by New Jersey.¹⁹² The Golden State, it turns out, is not so golden for entrepreneurs.

Although the types of state-level barriers to entrepreneurship are legion, one of the most pernicious is occupational licensing. California requires a government license for more occupations than any other state in the country: roughly 177, all told.¹⁹³ Oftentimes the licensing requirements serve no legitimate public health or safety purpose whatsoever. Rather, they appear to exist solely for the purpose of restricting entry into particular fields.

Specialty Contractors: Tree Trimmers, Paperhangers and Fence Builders

In California, any contractor who works on projects that exceed \$500, including labor and materials, is required to obtain a license from the Contractors State License Board. This applies not only to general building and engineering contractors, but to specific trades, as well.¹⁹⁴ State law establishes some 41 categories that require a “specialty contractor license,” including fence builders, cabinet makers and ornamental metal workers.¹⁹⁵ The last of the 41 categories, “Limited Specialty,” is a catch-all that comprises at least another 30 trades, including, specifically, wallpaper hangers and tree trimmers.¹⁹⁶

What does it take to get a specialty contractor license? The requirements for fence builders are illustrative. To even apply for the required Fencing Contractor License,¹⁹⁷ an entrepreneur who wants to go into business building fences must have at least four years’ experience working at or above the journeyman level during the previous

decade,¹⁹⁸ as well as \$2,500 in operating capital.¹⁹⁹ He then must complete the application form and supporting documentation, submit to fingerprinting and a background check, pay the Contractors State License Board a \$250 non-refundable application fee and take two written examinations: a “law and business” examination, which tests such things as human resources, contracts and accounting; and a trade examination specific to fence building.²⁰⁰ If he passes, the entrepreneur must then pay a \$150 license fee (the earlier \$250 was just for the application); file a \$12,500 contractor’s bond; file a separate \$7,500 bond for the “responsible managing employee” of the business; and present proof of workers compensation insurance.²⁰¹ Once all that is taken care of, he can sit back, wait for his license and, when it comes, start building fences. Of course, he had better remember to cut the state a check for \$300 every two years to renew.²⁰²

The process is the same for every other category of specialty license with the exception of the “Limited Specialty” category and its various sub-categories (*e.g.*, paperhanging and tree trimming). These folks are spared the trade-specific examination but must nevertheless comply with every other procedure and pay every other fee described above.²⁰³

And what would happen if someone decided to risk it and start building fences, hanging wallpaper or trimming trees without going through the licensing process? Well, they had better be prepared to pay. Building a fence without the required license is punishable by up to six months in jail, a \$500 fine and civil penalties that can range from \$200 to \$15,000.²⁰⁴

Garment Manufacturing

As discussed above with respect to cyber cafés, government oftentimes goes overboard—way overboard—in responding to legitimate public health and safety problems. Such is the case with California’s regulation of “garment manufacturing.” In response to wage, health and safety problems in the apparel industry, including a widely reported sweatshop scandal in the mid-1990s,²⁰⁵ the California legislature enacted comprehensive regulations governing the

industry. But the regulations are not just aimed at problematic manufacturers. They affect virtually everyone in the industry, from designers to seamstresses and everyone in between.²⁰⁶

Miguel (a pseudonym) is one such person. He is an upstart designer who is just beginning to make a name for himself in the Los Angeles fashion scene. He first dabbled in fashion as a hobby, designing pieces for friends and sewing them in his garage. As Miguel explains, he had “no idea where it would go.” He began selling his designs at Los Angeles farmers markets and soon his pieces were picked up by a couple of boutiques in West Hollywood. Unable to handle all the work himself, Miguel began contracting out some of his sewing to a seamstress friend. That freed him to devote more time to marketing and expanding his line. In fact, he is getting ready to roll out a new website for his thriving business.²⁰⁷

Sounds like the kind of entrepreneurial success story government would encourage, right? Wrong. According to the state of California and the city of Los Angeles, for any number of reasons, Miguel’s business should never have gotten off the ground. For starters, he has never taken the examinations and paid the thousands of dollars necessary to obtain the required “garment manufacturing” license. Nor, for that matter, does his seamstress friend have the required “garment contractor” license that she needs to legally sew for a living. And making apparel in your home, as Miguel has done since he started out, is a big no-no.

For now, Miguel continues to operate under the state’s radar. But as his business grows, that will become increasingly difficult to do.

California requires anyone engaged in “garment manufacturing”—essentially, anyone who works with at least one other person to produce apparel for sale²⁰⁸—to register with the Department of Industrial Relations and become licensed as either a garment “manufacturer” or “contractor.”²⁰⁹ So, for example, a young designer trying to break into the fashion world would have to obtain a manufacturer’s license before he could hire a friend to sew his designs, and the friend, in turn, would have to obtain a contractor’s license before she could sew a stitch.

Failing to register is punishable by a \$500 civil penalty if the person does not have employees and, if she does, as a misdemeanor subject to six months in jail, a \$1,000 fine and

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a civil penalty of \$100 times the number of employees.²¹⁰ Moreover, any apparel made by or on behalf of someone who fails to register is subject to confiscation by the Division of Labor Standards Enforcement. For repeat offenders, the Division may even confiscate the means of production.²¹¹

What does it take to get a license? A lot of money, for one thing. The registration fee ranges from \$750 to \$2,500 for a manufacturer's license and from \$250 to \$1,000 for a contractor's license.²¹² The applicant must also pass examinations covering garment manufacturing and occupational health and safety laws. The examination fee is \$25 (that's on top of the hundreds or thousands of dollars in registration fees),²¹³ and there are sundry other items an applicant must provide when applying for a license—a workers compensation insurance certificate, a fictitious business name statement and a public health permit from Los Angeles County, to name a few.²¹⁴

Prospective licensees would be well advised to submit their applications far in advance of when they want to begin designing or sewing. The average time for the state to act on an application is one-and-a-half months and can run as long as one year.²¹⁵

The cost and hassle of obtaining a manufacturing or contractor license is not a one-shot deal. Licenses must be renewed annually. The renewal fee schedule is the same as that for initial registration, which means a licensee can expect to be paying hundreds or thousands of dollars to the state every year for as long as he remains in business. Moreover, for the first renewal, the licensee must retake the examination he just passed the year before.²¹⁶

As is the case for so many occupations in Los Angeles, the licensing process is but one small part of a long and tangled regulatory web that encompasses the entire life of the apparel business. For example, California dictates in excruciating detail the required contents of every contract “for the manufacture, sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories.” The state requires that such contracts be maintained for at least four years and be open to inspection at any time by the Labor Commissioner or his agents.²¹⁷ Moreover, every employer engaged in garment manufacturing must keep, for at least three years, detailed

records that include the names and addresses of all workers it has employed; the hours worked daily by those employees; its daily production sheets for all work done; the wage and wage rates paid for each payroll period; and the contract worksheets indicating the price per unit agreed to between the contractor and manufacturer.²¹⁸

Then there is a host of regulations imposing joint liability on designers and apparel companies for wage and labor disputes that their contractors have with their own employees. For example, any person engaged in garment manufacturing who contracts with an unregistered contractor is jointly liable for labor and wage violations by the contractor.²¹⁹ Moreover, garment manufacturers are required to guarantee the minimum wage and overtime compensation due to the employees of even the *registered* contractors with whom they contract.²²⁰ In other words, if an upstart designer hires a sewing company to produce his first design, he is personally on the hook if that company fails to properly pay its employees.

And were all of that not enough to discourage a promising young designer or entrepreneurial seamstress, under both state law and the Los Angeles home occupation regulations, it is illegal to engage in (or to induce others to engage in) garment manufacturing in a dwelling,²²¹ sewing garments in your own home for money is prohibited—you must have a commercial site.

What does all of this mean for someone like Miguel? He was completely unaware of the registration requirements and prohibition on work in the home when he launched his business. Even if he had been aware of them, however, he is not sure he could have complied. Miguel needed what little money he had to pay for the essentials of his fledgling business, such as fabric and thread. Having to instead pay thousands of dollars to register with the state and lease commercial space would probably have prevented him from ever taking the leap from fashion hobbyist to fashion entrepreneur.²²²

Now that Miguel's business is expanding and he is in a better position to afford registration and a commercial lease, he finds himself between a rock and a hard place. In determining whether to issue a manufacturer or contractor license, the Labor Commissioner is required to consider “the applicant's character, competency, responsibility, and the manner and method by which the person proposes to engage in the business of garment manufacturing if the registration is issued.”²²³ To

that end, the registration application specifically asks applicants, “[H]ave you . . . operated in any capacity in the garment manufacturing industry? This includes, but is not limited to, manufacturing and contracting operations . . .”²²⁴ Miguel can either lie and answer, “No,” hoping the state never finds out, or answer truthfully and trust on the mercy of bureaucrats. That is a choice no entrepreneur should be forced to make.

Secondhand Dealers

You would be hard-pressed to identify a business that has done as much to expand trade and commerce in the last decade as eBay. Every day, millions of items are listed, bid on and sold through the popular online auction site. Its remarkable success has even led to the creation of entirely new industries, such as eBay “drop-off” stores, where people can bring an item they wish to sell and let the store handle everything from photographing and listing the item, to collecting payment and shipping it once it sells.

If you plan to open a drop-off store in Los Angeles, however, be warned: You’ll need a state-issued “secondhand dealer” license, a city-issued police permit, a willingness to fingerprint your

customers and report their identities to the government and a small army of staffers to handle the administrative nightmare that the secondhand dealer regulations create.

Under California law, a state secondhand dealer license is required for “any person . . . whose business includes buying, selling, trading, taking in pawn, accepting for sale or consignment, accepting for auctioning, or auctioning secondhand *tangible personal property*.”²²⁵ Tangible personal property includes, among other things, any item that “bears a serial number or personalized initials or inscription.”²²⁶ So if your business involves buying, selling or trading anything with a serial number, you need a secondhand dealer license.

The process for obtaining the license is not overly burdensome. The applicant must fill out a short application form, pay for and submit to fingerprinting, and pay the California Department of Justice a \$195 application fee.²²⁷

The real burden is in the administrative procedures a licensee must follow once in business. A secondhand dealer must fingerprint every person who sells or pledges an article of tangible personal property; obtain a verified form of identification, such as a passport, driver’s license, or state or federal identification card; and secure a certification that he or she is the owner of the property or has the authority of the owner to sell or pledge it. Within 24 hours of accepting the property, the secondhand dealer must file a report containing a complete description of the property, including, specifically, its serial number, manufacturer, and model name or number.²²⁸ The reports are filed with the local police department, which forwards them to the California Department of Justice.²²⁹

These fingerprinting and daily reporting requirements are onerous enough, but the biggest problem for secondhand dealers is the required “hold” period: dealers must hold all property that they take in for 30 days before they can sell it. The property is subject to inspection any time during that month-long period.²³⁰

The penalty for violating any of these requirements is severe. A first offense is punishable by a fine of \$1,500 and two months in jail. Those penalties increase to \$5,000 and four months for a second offense and, for subsequent offenses, \$25,000 and six months’ imprisonment.²³¹

The secondhand dealer law was enacted in 1957 to “facilitate the recovery of stolen property,”²³² but its continued utility is questionable, especially in the Internet age. Nevertheless, in

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2005, the state attorney general issued an opinion specifically determining that the onerous, half-century-old law applies to the newly emerging business of drop-off stores for on-line marketplaces.²³³

That was bad news for Melissa, who owns a very successful drop-off store in Los Angeles. (Melissa is a pseudonym.) The very nature of her business model deters anyone from attempting to drop off stolen property at her shop. For one thing, the seller is paid *nothing* upfront; payment is only made after the auction has concluded. In fact, Melissa does not even keep cash in her shop. Moreover, every item she sells is identified, photographed and listed on the Internet for the entire world—including the state of California, the Los Angeles Police Department, and anyone else with access to a computer and Internet connection—to see. It is difficult to imagine how preparing and filing the cumbersome state-required reporting forms every day does anything more to deter or reduce trafficking in stolen goods.²³⁴

The 30-day hold requirement is also troublesome to Melissa. Because her customers receive no payment upfront, the idea of her having to wait a full month before posting their items on-line is maddening. It is particularly problematic for the sale of electronics, such as smart phones, where technological advances occur so quickly that today's must-have gadget may be tomorrow's old news. Finally, Melissa thinks that having to thumbprint her customers is just "creepy."²³⁵

Given the fact that state law imposes such a comprehensive licensing and reporting scheme on secondhand dealers, you would guess that the city would be satisfied that any health or safety problems posed by secondhand dealers are adequately addressed. Guess again. The city imposes its own secondhand dealer regulations on top of the state's. Specifically, it requires secondhand dealers to obtain a police permit,²³⁶ the process for which, described above, can be incredibly costly and time-consuming. At a minimum, it means that a secondhand shop owner has to pay a \$263 police permit fee (plus a \$100 annual renewal fee) on top of the \$195 application fee that the state already charges for a secondhand dealer license.²³⁷

The city's requirements governing the *conduct* of secondhand dealers essentially mirror those of the state—there are fingerprinting, daily reporting and 30-day hold provisions.²³⁸ But there is one enormous difference between

the city and state regulatory regimes: The city's definition of "secondhand dealer" is far broader than the state's definition. Although the state limits its licensing requirement primarily to persons dealing in property that bears a serial number, the city's permit requirement extends to any "person engage[ed] in . . . the business of buying, selling, or otherwise dealing in secondhand . . . goods, wares and merchandise"—period.²³⁹ So if you own a used clothing shop or sell your old CDs on eBay, then, according to the Los Angeles Municipal Code, you are a secondhand dealer and need a police permit.

To its credit, the city suspends its reporting and hold requirements (but not the police permit requirement itself) in some circumstances. While there appears to be no written policy on this point, the city generally requires reporting and holding only if the state secondhand dealer law also requires it.²⁴⁰ This may comfort the owner of a used clothing boutique, who will not have to report and hold every T-shirt or pair of jeans that comes through the door, but it raises a very troubling question: If the city only requires reporting and holding when a business is already required to report and hold under the *state* secondhand dealer law, why does the city even have its own secondhand dealer permit requirement?

The obvious, if not cynical, answer is simple: money. The police permit requirement allows the city to charge every secondhand dealer a fee of \$263, plus \$100 each year for renewal.



Rosecrans Ave 1/2
Inglewood Ave 1 1/2
Hawthorne Blvd (107) 2 1/4

Recommendations

Transforming Los Angeles into a city that truly respects and encourages entrepreneurship will take a lot of reforming—of the laws on the books, the procedures followed by government agencies and the culture of the local bureaucracy. Although the full extent of reforms needed is—like the full extent of the problems that entrepreneurs face—beyond the scope of this study, the following measures would go a long way toward making Los Angeles a more welcoming city to those who simply want their shot at the American Dream.

- **Sidewalk Vending.** Legalize sidewalk vending. Doing so would not only liberate thousands of vendors to earn an honest living, but also likely result in increased tax compliance and revenues and, for those vendors selling food items, increased compliance with the Retail Food Law. City regulation of sidewalk vending should be limited to that which is truly necessary to preserve the public health and safety: for example, clearance requirements to preserve pedestrian passage on sidewalks; reasonable size limits on vending carts and tables; and minimum setbacks from crosswalks, driveways, emergency access/exit ways, etc.
- **Catering Vehicles.** Stop trying to regulate catering vehicles to death and embrace them as a legitimate dining option and a welcome part of the fabric of Los Angeles. Since the trucks are already comprehensively regulated by the state and county, there is little, if any, need for regulation at the city level. The city should eliminate senseless restrictions, such as the prohibition on operating near certain city parks, and it should permanently remove the 30-/60-minute durational restriction from the municipal code. So long as catering trucks comply with traffic and parking requirements applicable to other vehicles, they should be free to operate. Finally, police should stop their aggressive enforcement tactics, which border on harassment and are pursued at the behest, and for the private benefit, of brick-and-mortar restaurant owners.
- **Taxis.** Scrap the taxicab franchise system when the current franchises expire at the end of 2010. Also eliminate the

artificial limit on the number of cabs authorized to operate in the city. Los Angeles should allow any driver who passes a basic background check, drives an insured and inspected vehicle and is fit, willing and able to operate his own cab.

- **Police Permits.** Review the categories of businesses for which a police permit is required and eliminate the requirement in most cases. Although permitting may be appropriate for some businesses (e.g., firearm and ammunition vendors), for many others it serves no legitimate purpose and, instead, imposes a substantial barrier to entry. An entrepreneur, after all, should not be subjected to fingerprinting, a public hearing and hundreds, if not thousands, of dollars in permit and notice fees just to open a used bookshop, skating rink, Internet café or dance school.

Even if the city refuses to eliminate the police permit requirement for categories of business that pose no real threat to the public health and safety, it should nevertheless ease the regulations on such businesses. For example, the City Council should, at the very least, repeal the onerous bill of sale requirements for used bookshops, and the Police Commission should repeal its rules requiring the shops to file daily reports, thumbprint their customers and hold books for 30 days before selling them. Similarly, the Council should repeal the video surveillance requirement and the provisions dictating physical layout for Internet cafés.

The city should also ease the general regulations that apply to all police permit occupations. For example, the Board of Police Commissioners should not have the authority to dictate the internal business decisions—such as the number of employees—for such establishments. Nor should the city require entrepreneurs to enter into purchase or lease agreements for their property before they know whether they will even be allowed to open their business there. Finally, the city should review the application, renewal and change-of-location fees required for police permits to ensure they are no higher than necessary to cover the city's cost in administering the permitting process.



- **Home Occupations.** Undertake a complete review of the home occupation regulations. Eliminate most of the occupation-specific bans (e.g., the bans on barbering, pet care and auto detailing) and retain bans only on those businesses that are truly incompatible with residential use (e.g., adult entertainment and firearms sales). Also eliminate or amend those generally applicable regulations that interfere with the ability to effectively advertise a home-based business (e.g., the prohibition on listing the business' address); that arbitrarily restrict the business' conduct (e.g., the ban on work in a garage or outbuilding); or that impose vague and subjective restrictions that leave open-ended discretion in the hands of enforcement officers (e.g., the ban on use of "material . . . which is not associated with normal residential use").
- **Restaurants.** Simplify the process for obtaining building and related permits. There is no reason that the average entrepreneur should have to pay thousands of dollars for the services of a "permit expeditor" in order to open his or her business. Although this recommendation is not specific to restaurants, it is restaurant projects that often seem to suffer most, in terms of lost time and lost revenues, from the current labyrinthine system. The "12 to 2" reform proposal is a good start.

The city should also eliminate the conditional use permit requirement for restaurants serving alcohol. So long as the restaurant obtains a state alcoholic beverage license, it should be allowed to serve its patrons a glass of wine, cocktail or beer with their meals.

- **Specialty Contractors.** Eliminate the specialty contractor license requirement. At a minimum, the state should greatly reduce the number of trades for which the license is required. If the state is not satisfied that the market and existing consumer protection statutes provide adequate protection for consumers, it can adopt a voluntary "certification" program, whereby a person who demonstrates a baseline level of experience and expertise in a particular trade can obtain a state certification and

note that fact when advertising or bidding on a project.

- **Garment Manufacturing.** Substantially reform the garment manufacturing law. At a minimum, amend it to lift the registration requirement for manufacturers with annual sales below a minimum threshold and for contractors with only a few or no employees. Also end the imposition of joint liability on manufacturers with small annual sales. This would enable startup designers and small-scale seamstresses to establish themselves and their businesses before having to pay thousands of dollars and develop the infrastructure necessary to comply with the many administrative burdens of registration. The state and city should also end their prohibitions on garment manufacturing in the home.
- **Secondhand Dealers.** Reform the state secondhand dealer law. Eliminate the fingerprint and 30-day hold requirements and eliminate or greatly simplify the reporting requirement, at least for: (1) businesses that sell on consignment and therefore provide no payment to the seller upfront, and (2) eBay-type drop-off stores, which not only sell on consignment, but also publicly identify their items on the Internet. Moreover, Los Angeles should repeal its separate police permit requirement for secondhand dealers, which is duplicative of the state secondhand dealer law.



Endnotes

1 Tamara Audi, “Los Angeles Hires a Jobs Chief,” *The Wall Street Journal*, Jan. 11, 2010, at A3.

2 Data retrieved from Bureau of Labor Statistics, U.S. Dep’t of Labor, Create Customized Tables – Local Area Unemployment Statistics, <http://data.bls.gov/cgi-bin/dsrv> (last visited Sept. 1, 2010).

3 Audi, *supra* note 1.

4 Portfolio.com, Small Business Vitality 2010, <http://www.portfolio.com/interactive-features/2010/01/small-business-vitality-2010/> (last visited June 16, 2010).

5 Audi, *supra* note 1.

6 L.A., Cal., Mun. Code § 21.03(a).

7 *Id.* § 21.00(b).

8 *E.g.*, *id.* § 21.13(a)(1).

9 *See id.* § 21.03(a); *id.* § 21.33 *et seq.*

10 *Id.* §§ 21.29, 21.30; L.A. Office of Finance, Business Tax Information FAQ, <http://www.ci.la.ca.us/finance/finA6a.htm> (last visited June 16, 2010); *see also* L.A. Office of Finance, New Business Exemption for First Two Years of Operation, <http://www.ci.la.ca.us/finance/finA5c.htm> (last visited June 16, 2010); L.A. Office of Finance, Small Business Exemption FAQ, <http://www.ci.la.ca.us/finance/finA5e.htm> (last visited June 16, 2010).

11 *See* Stuart Pfeifer, “Some Tech Firms Face Higher Bill,” *Los Angeles Times*, June 20, 2009, at B1; Alexa Hyland, “Taxes Click Off New-Media Firms,” *Los Angeles Business Journal*, Nov. 16, 2009, <http://www.labusinessjournal.com/news/2009/nov/16/taxes-click-new-media-firms>; Rick Newcombe, “Why One Company Is Making Plans to Leave Los Angeles,” *Los Angeles Daily News*, July 13, 2009, http://www.dailynews.com/search/ci_12828941.

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13 L.A., Cal., Mun. Code § 12.21(A)(1).

14 *See id.* § 12.24.

15 *Id.* §§ 91.106.1 (building), 93.0201 (electrical), 95.112 (HVAC), 94.103.1 (plumbing/fire sprinkler).

16 *Id.* §§ 14.4.16, 14.4.2, 91.6201.2; Telephone Interview with Inspector James Buchan, L.A. Dep’t of Building and Safety, in L.A., Cal. (Dec. 10, 2009).

17 *See* Specific Plans Adoption Status, <http://cityplanning.lacity.org/complan/spapage.htm> (last visited June 17, 2010).

18 Cal. Corp. Code § 200 (corporate registration); Cal. Bus. & Prof. Code § 17918 (fictitious business name statement); L.A.

County Code § 8.04.560 (public health license/permit); Cal. Rev. & Tax. Code § 6066 (seller’s permit); Cal. Lab. Code § 6401.7 (injury prevention program); Cal. Unemp. Ins. Code § 976 (unemployment insurance); Cal. Unemp. Ins. Code § 986 (disability insurance withholding); 18 Cal. Code Regs. tit. 18, § 18662-1 (personal income tax withholding); Cal. Rev. & Tax Code § 23151 (corporate income tax); *id.* § 23153 (minimum franchise tax); *id.* § 201 (business personal property tax); Cal. Unemp. Ins. Code § 976.6 (employment training tax).

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20 Susan Moffat, “Vendors Bring New Way of Life to Los Angeles Streets,” *Los Angeles Times*, Dec. 25, 1991, at A1; Kettles, *supra* note 19, at 25 & n.184.

21 Hector Tobar, “Panel Urges Districts for Street Vendors,” *Los Angeles Times*, Dec. 21, 1990, at B1.

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23 Moffat, *supra* note 20.

24 Interview with Sabas Ramirez Gatica in L.A., Cal. (Aug. 12, 2009).

25 *Id.*

26 L.A., Cal., Mun. Code § 42.00(b). There are a few, limited exceptions. For example, newsstands are permitted, subject to numerous, burdensome restrictions. *Id.* § 42.00(g).

27 *Id.* §§ 11.00(m), 42.00(b).

28 Rachel Uranga, “Pushed to the Limit Street Vending, Though Illegal, is a Booming Industry,” *Los Angeles Daily News*, Mar. 6, 2005, available at <http://www.thefreelibrary.com/PUSHED+TO+THE+LIMIT+STREET+VENDING,+THOUGH+ILLEGAL,+IS+A+BOOMING...+a0129927957>; Kettles, *supra* note 19, at 20-21.

29 Interview with Sabas Ramirez Gatica in L.A., Cal. (Aug. 12, 2009).

30 *Id.*

31 *Id.*

32 L.A., Cal., Ordinance 169319 (1993) (codified at L.A., Cal., Mun. Code § 42.00(m)).

33 Kettles, *supra* note 19, at 13 & nn.79-83; Kettles, *supra* note 22, at 90-91. *See* Sidewalk Vending Program, http://www.ci.la.ca.us/cdd/bus_side.html (last visited June 17, 2010) (“Currently, there is no active sidewalk vending programs [sic] within the City of Los Angeles.”)

34 L.A., Cal., Mun. Code § 42.00(m)(2)(C).

35 *Id.* § 42.00(m)(2)(B). If only a portion of a particular block is

to be located in the proposed district, the twenty percent requirement applies to the portion to be included.

36 *Id.* § 42.00(m)(3).

37 *Id.* § 42.00(m)(3).

38 *Id.* §§ 42.00(m)(2)(D), 42.00(m)(4).

39 *Id.* § 42.00(m)(5)–(6).

40 *Id.* § 42.00(m)(6).

41 *Id.* § 42.00(m)(6), (8), (9).

42 Kettles, *supra* note 22, at 90–91; Sidewalk Vending Program, http://www.ci.la.ca.us/cdd/bus_side.html (last visited June 17, 2010) (“Currently, there is no active sidewalk vending programs [sic] within the City of Los Angeles.”)

43 L.A., Cal., Mun. Code § 42.00(m)(10).

44 *Id.* § 42.00(m)(11).

45 *Id.* § 42.00(m)(12), (17).

46 *Id.* § 42.00(m)(22).

47 See Sidewalk Vending Program, http://www.ci.la.ca.us/cdd/bus_side.html (last visited June 17, 2010) (“Currently, there is no active sidewalk vending programs [sic] within the City of Los Angeles.”); see also Kettles, *supra* note 19, at 13 n.82 (discussing failure of San Pedro district); Kettles, *supra* note 22, at 91 & n.282 (discussing failure of MacArthur Park district).

48 Kettles, *supra* note 22, at 90–91 & n.280.

49 Cupers, *supra* note 19; Faisal Alserri, Food Vendors and the Globalization of the Los Angeles Streetscape (Dec. 7, 2007) (unpublished manuscript on file with the Institute for Justice).

50 Alserri, *supra* note 49.

51 Kettles, *supra* note 22, at 61, 91.

52 See, e.g., Ann M. Simmons, “Mobile Food Vendors Told to Leave Miracle Mile,” *Los Angeles Times*, Aug. 24, 2009, at A7; Stephanie Diani, “For a New Generation, Kimchi Goes with Tacos,” *The New York Times*, Feb. 24, 2009, at D1.

53 Catering trucks are regulated as “mobile food facilities” under state law. See Cal. Health & Safety Code § 113831(a). Pushcarts are regulated as “single operating site mobile food facilities.” *Id.* § 113831(b).

54 Cal. Veh. Code § 4000(a).

55 L.A. County Code § 8.04.373.

56 *Id.* § 8.04.720.

57 Cal. Health & Safety Code § 114295(a); *id.* § 114297(b), (c); *id.* § 114326. Mobile food facilities that engage in only “limited food preparation,” *id.* § 113818, may operate instead in conjunction with a “mobile support unit.” See *id.* § 114295(a), (e). Mobile support units, however, must operate in conjunction with a commissary. *Id.* § 114295(d).

58 See, e.g., Cal. Health & Safety Code § 114306(a) (limiting “single operating site mobile food facilities” to produce, prepackaged food, and limited food preparation); *id.* § 113818 (defining “limited food preparation”); *id.* § 113876 (defining “prepackaged food”); *id.* § 113877 (defining “produce”); *id.* § 114301(c) (requiring refrigeration unit for mobile food facilities handling potentially hazardous foods); *id.* § 113871 (defining “potentially hazardous food”); *id.* § 114313(b) (linking sink requirements to types of food prepared and sold on mobile food facility).

59 *Id.* §§ 114095–114125; 113945–113978.

60 See, e.g., *id.* §§ 114301, 114311, 114313, 114321, 114323.

61 L.A., Cal., Mun. Code §§ 80.73(b)(2)(A)(3), 80.73(b)(2)(A)(4)(i), 80.73(b)(2)(A)(5).

62 *Id.* § 42.00.1(a).

63 *Id.* § 42.00.1(c), (f).

64 See *People v. Ala Carte Catering Co.*, 98 Cal. App. 3d Supp. 1, 5, 8 (Cal. App. Dep’t Super. Ct. 1979).

65 *Id.* at 9 (internal quotation marks and citation omitted).

66 L.A., Cal., Ord. 167175 (Aug. 16, 1991).

67 L.A., Cal., Mun. Code § 80.73(b)(2)(F).

68 Interview with Victor Narro in L.A., Cal. (Aug. 13, 2009).

69 Interview with Francisco Gonzalez in L.A., Cal. (Oct. 14, 2009).

70 *Gonzalez v. City of Los Angeles Dep’t of Transp.*, No. 09K08485 (L.A. County Super. Ct. June 10, 2009) (Order Reversing Administrative Decision).

71 Memorandum from Chief William Braxton to All Sworn Personnel (June 12, 2009) (on file with Institute for Justice).

72 E.g., Simmons, *supra* note 52.

73 See, e.g., Minneapolis, Minn., Code of Ordinances title 13, ch. 341, § 300.

74 Gary Blasi & Jacqueline Leavitt, *Driving Poor: Taxi Drivers and the Regulation of the Taxi Industry in Los Angeles* 48 (2006), available at <http://www.irle.ucla.edu/research/pdfs/drivingpoor.pdf>.

75 *Id.* at 46–48.

76 L.A., Cal., Mun. Code § 71.02(b).

77 See L.A., Cal., Ordinance 173649–173657 (Nov. 29, 2000); see also Blasi & Leavitt, *supra* note 74, at 48–49; City of Los Angeles Taxi Services, <http://taxicabsla.org> (last visited June 18, 2010).

78 L.A., Cal., Mun. Code § 71.02(b).

79 L.A. Bd. of Taxicab Comm’rs, Taxicab Rules and Regulations Rules 601(c), 606, 610–13; L.A., Cal., Mun. Code § 71.06.1(h), (p).

80 Blasi & Leavitt, *supra* note 74, at 8, 49; Interview with former taxi driver in L.A., Cal. (June 25, 2009).

81 Blasi & Leavitt, *supra* note 74, at 26.

82 Interview with former taxi driver in L.A., Cal. (Aug. 12, 2009).

83 L.A. Bd. of Taxicab Comm'rs, Taxicab Rules and Regulations Rule 508(b); L.A., Cal., Mun. Code § 71.02(b); Interview with former taxi driver in L.A., Cal. (Aug. 12, 2009).

84 Blasi & Leavitt, *supra* note 74, at 76; *see generally id.* 73-83; Los Angeles Taxi Workers Alliance, *Sweatshops on Wheels: Review and Recommendations for L.A.'s Taxicab Industry* 12-14 (Sep. 2006) (on file with Institute for Justice).

85 Interview with former taxi driver in L.A., Cal. (June 25, 2009).

86 Blasi & Leavitt, *supra* note 74, at 46 (internal quotation marks omitted).

87 L.A., Cal., Mun. Code §§ 71.22(c), 71.25(a).

88 Blasi & Leavitt, *supra* note 74, at 12.

89 *See* L.A. Dep't of Transp., Hail-A-Taxi, <http://www.ladot.lacity.org/pdf/PDF118.pdf> (last visited June 18, 2010); *see also* NBCLosAngeles.com, "Program Eases Limits on Taxi Pickups," June 15, 2009, <http://www.nbclosangeles.com/news/local-beat/Program-Eases-Restrictions-on-Where-Taxis-Can-Make-Pickup.html>; laist.com, "Hail-a-Taxi Program Likely to Go Permanent, Possibly Citywide," May 11, 2010, http://laist.com/2010/05/11/hail-a-taxi_program_could_get_a_per.php.

90 L.A. Bd. of Taxicab Comm'rs, Taxicab Rules and Regulations Rules 212, 734, 735.

91 Los Angeles Taxi Workers Alliance, *supra* note 84, at 16.

92 Blasi & Leavitt, *supra* note 74, at 71.

93 Interview with former taxi driver in L.A., Cal. (Aug. 12, 2009).

94 *Id.*

95 *Id.*

96 *Id.*

97 *See* L.A., Cal., Ordinance 173649-173657 § 2.2(b) (Nov. 29, 2000).

98 L.A., Cal., Mun. Code §§ 103.02, .12. The 53 types of business for which a police permit is required are: Alarm System (Proprietor or Subscriber); Ammunition Salesperson; Ammunition Vendor; Antique Shop; Arcade (Game); Arcade (Picture); Auto Park; Bath/Tanning Salon; Bowling Alley; Café Entertainment and Shows; Card Club School; Carnival; Collectors' Exchange or Antique Show Promoter; Cyber Café; Dance Hall; Dance (One Night Public); Dance (Teenage Public); Dancing Academy; Dancing Club; Escort; Escort Bureau; Family Billiard Room; Figure Studio; Firearms Vendor; Firearms Salesperson; Game (Skills/Science); Hostess (Dance Hall); Junk Collector; Junk Dealer; Key Duplicator; Massage Business; Massage Business (Off Premises); Massage Technician; Massage Technician (Off Premises); Motion Picture Show; Parades; Pawnbroker; Peace Officer/Firefighter Organization Promoter; Peace Officer/Firefighter Organization Solicitor; Pool Room (Single); Pool Room; Rides (Mechanical); Rummage Sale (Annual); Sale (Fire, Close-Out and Removal); Secondhand (Auto Parts); Secondhand

(Books/Magazines); Secondhand (General); Secondhand (Jewelry); Shooting Gallery; Skating Rink; Swap Meet Operator; Towing Operation; and Tow Unit Operator.

99 *See id.* §§ 103.105, .115, .310.

100 *See* L.A. Office of Finance, Police Permits, <http://www.ci.la.ca.us/FINANCE/finC2.htm> (last visited June 18, 2010) ("You should not apply for a Police Permit until all Fire and Building Permits are complete and approved, including Conditional Use Permits (CUPs)."); *see also* L.A. Police Comm'n, Second Hand Dealers California State License Requirements & Los Angeles City Permit Requirements (on file with Institute for Justice).

101 *See* L.A. Office of Finance, Police Permits, <http://www.ci.la.ca.us/FINANCE/finC2.htm> (last visited June 18, 2010); L.A., Cal., Mun. Code §§ 103.02.1(a), 103.12.

102 L.A., Cal., Mun. Code §§ 103.03, .28.

103 *Id.* §§ 103.24, .40.2(a).

104 *Id.* §§ 103.40.1, .2.

105 *Id.* §§ 103.14, .15.

106 *Id.* §§ 103.10, .12.

107 *Id.* §§ 103.06, .12.

108 *Id.* § 103.03.

109 A "secondhand book dealer" is defined as any "person engaging in, conducting, managing or carrying on the business of buying, selling, exchanging or otherwise dealing in secondhand books and magazines, secondhand text books or secondhand educational materials." *Id.* § 103.310(a)(1).

110 *See generally id.* § 103.310.

111 *Id.* § 103.310(d)-(g).

112 *See* L.A. Police Comm'n, Form 16.14.0: Rules and Regulations Governing Secondhand Dealers, Rule No. 1, 2(a) (Oct. 1986) (on file with Institute for Justice).

113 Interview with used bookshop owner in L.A., Cal. (June 24, 2009) (explaining he was told during police permit application process that he would not have to comply with reporting and hold requirements); Interview with officer at Police Permit Processing Section, L.A. Police Dep't in L.A., Cal. (June 23, 2009) (explaining that reporting and 30-day hold requirements apply to used bookshops but that individual applicants may be able to obtain exemptions).

114 Interview with used bookshop owner in L.A., Cal. (June 24, 2009).

115 *Id.*

116 *Id.*

117 *See, e.g., Wexler v. City of New Orleans*, 267 F. Supp. 2d 559, 565 (E.D. La. 2003).

118 *E.g., Jennifer Cheeseman Day et al., U.S. Census Bureau, Computer and Internet Use in the United States: 2003* (2005);

see also U.S. Census Bureau, Computer and Internet Use in the United States (October 2007), <http://www.census.gov/population/www/socdemo/computer/2007.html>.

119 See L.A., Cal., Ordinance 176100 (2004).

120 See Phillip W. Browne, “Cafés Get Logged On,” Los Angeles Daily News, Aug. 21, 2004, available at [http://www.thefreelibrary.com/CAFES+GET+LOGGED+ON+NEW+CITY+RULES+GO+INTO+EFFECT.\(News\)-a0121142211](http://www.thefreelibrary.com/CAFES+GET+LOGGED+ON+NEW+CITY+RULES+GO+INTO+EFFECT.(News)-a0121142211).

121 The Municipal Code defines “cyber café” as “an establishment that provides five (5) or more personal computers and/or electronic devices for access to the system commonly referred to as the ‘internet,’ electronic mail (E-mail), computer video games, and word processing, to the public for compensation and/or public access.” L.A., Cal., Mun. Code § 103.101.4(a)(1) (emphasis added). There is an exemption for “businesses where personal computer access is clearly incidental to the permitted use, as determined by the Zoning Administrator.” *Id.*

122 The permit application fee is \$183; annual renewal, \$100. *Id.* § 103.12. These costs are in addition to those associated with the police permit notice requirements, discussed above.

123 *Id.* § 103.101.4(e)(3)–(7).

124 *Id.* § 103.101.4(e)(2).

125 See, e.g., *Vo v. City of Garden Grove*, 115 Cal. App. 4th 425, 450 (Cal. Ct. App. 2004) (Sills, J., concurring, in part, and dissenting, in part); see also Anita Ramasastry, “Can a City Require Surveillance Cameras in Cybercafes Without Violating the First Amendment?,” FindLaw, Feb. 19, 2004, <http://writ.news.findlaw.com/ramasastry/20040219.html>.

126 L.A., Cal., Mun. Code § 103.101.4(e)(13)–(14).

127 *Vo*, 115 Cal. App. 4th at 451 (Sills, J., concurring, in part, and dissenting, in part).

128 Henry B.R. Beale, *Home-Based Business and Government Regulation 1* (2004).

129 Telephone Interview with Kristine Korver in L.A., Cal. (Mar. 17, 2010).

130 L.A., Cal., Mun. Code § 12.05(A)(16)(a)(12); see also *id.* at § 12.05(A)(16)(a)(3) (restricting conduct of home occupations to “the main dwelling unit”).

131 L.A. Dep’t of Building and Safety, Order to Comply, Case No. 235462 (Sep. 18, 2008).

132 Telephone Interview with Kristine Korver in L.A., Cal. (Mar. 17, 2010).

133 The businesses prohibited outright are: adult entertainment; ambulance service; animal training; automotive repair; automotive painting; body/fender work; automotive upholstery; automotive detailing; automotive washing; beautician; barber; body piercing; dentist (except as a secondary office which is not used for the general practice of dentistry); funeral chapel; funeral home; firearms manufacturing; firearms sales; garment manufacturing; gunsmith; massage therapist (unless the therapist has procured a massage technician’s license and a massage business license); non-psychiatric medical physician (except as a secondary office

which is not used for the general practice of medicine); photography lab; recording studio; motion picture studio; video production studio (except for editing of pre-recorded material); restaurant; retail sales; tattoo studio; tow truck service; upholstery; veterinary services; animal care; animal breeding; animal grooming; welding; machine shop; and yoga/spa retreat center. L.A., Cal., Mun. Code § 12.05(A)(16)(b). Although, by its own force, Section 12.05(A)(16)(b) only prohibits these businesses in areas Zoned A1 (Agricultural), the prohibitions are elsewhere made applicable to every agricultural and nearly every residential zone in the city—specifically, Zones A2 (Agricultural), RA (Suburban), RE (Residential Estate), RS (Suburban), R1 (One-Family), RU (Residential Urban), RZ (Residential Zero Side Yard), RW1 (Residential Waterways), R2 (Two-Family), RD (Restricted Density Multiple Dwelling), RMP (Mobilehome Park), RW2 (Residential Waterways), R3 (Multiple Dwelling), R4 (Multiple Dwelling), and R5 (Multiple Dwelling). See *id.* §§ 12.06(A)(2)(i), .07(A)(12), .07.01(A)(8), .07.1(A)(8), .08(A)(8), .08.1(B)(5), .08.3(B)(6), .08.5(B)(4), .09(A)(6), .09.1(A)(9), .09.3(B)(8), .09.5(B)(5), .10(A)(6), .11(A)(8), .12(A)(6).

134 See *id.* § 12.05(A)(16)(b) (prohibiting “garment manufacturing,” “automotive . . . detailing,” “care . . . or grooming of dogs,” and work as a “beautician or barber”).

135 *Id.* § 12.05(A)(16)(b) (prohibiting a non-psychiatrist physician from maintaining a home office, “except as a secondary office which is not used for the general practice of medicine”).

136 A “home occupation” is defined as “[a]n occupation carried on by the occupant or occupants of a dwelling as a secondary use in connection with the main use of the property.” *Id.* § 12.03.

137 *Id.* § 12.05(A)(16)(a)(3).

138 *Id.* § 12.05(A)(16)(a)(8).

139 *Id.* § 12.05(A)(16)(a)(19).

140 *Id.* § 12.05(A)(16)(a)(12); see also *id.* § 12.05(A)(16)(a)(3) (requiring that the home occupation be conducted “within the main dwelling unit”).

141 *Id.* § 12.05(A)(16)(a)(13). The Municipal Code also prohibits signage for home occupations. See *id.* §§ 12.05(16)(a)(2), 12.21(A)(7)(a), (d), (h). These restrictions, however, were held unconstitutional by the Los Angeles County Superior Court in *People v. Cripps*, No. 3CR12109 (L.A. County Super. Ct. 2006), and the city is not currently enforcing them.

142 L.A., Cal., Mun. Code § 12.05(A)(16)(a)(3), (10).

143 Specifically, the Municipal Code provides: “No sales or exchange of products, processing, manufacturing, display or servicing of any product is conducted on the premises, except for handicrafts, or intellectual or artistic products, or direct sales, or sales where the orders have been previously made by telephone, at a prior meeting or a sales party, and in accordance with the other standards of operation.” *Id.* § 12.05(A)(16)(a)(19).

144 *Id.* § 12.05(A)(16)(a)(6), (11).

145 *Id.* §§ 11.00(m), 12.05(16)(d).

146 The number and examples of Orders to Comply are based on documents received in response to a public records request sent by the Institute for Justice to the Los Angeles Department of Building and Safety on September 29, 2009.

- 147 L.A., Cal., Ordinance 180103 (Aug. 4, 2008). For a discussion of the ordinance's ineffectiveness at achieving its purported goals, see Rand Corporation, South Los Angeles Ban on Fast-Food Chains Misses the Mark (2009), available at http://www.rand.org/pubs/research_briefs/2009/RAND_RB9489.pdf.
- 148 See Jessica Gelt, "Reams of Red Tape," *Los Angeles Times*, Feb. 18, 2009, at F1; Duke Helfand, "L.A. Unveils Plan to Speed Building Project Approvals," *Los Angeles Times*, Mar. 26, 2008, at B3.
- 149 L.A. County Dep't of Pub. Health, Retail Construction Guideline 4-8 (rev. Aug. 6, 2008), available at <http://www.lapublichealth.org/eh/docs/GUIDELINES%20RETAIL%20CONSTRUCTION%20REQUIREMENTS.pdf> [hereinafter Retail Construction Guideline]; L.A. County Dep't of Pub. Health, 2010-2011 Plan Check Fees, http://publichealth.lacounty.gov/eh/docs/Plan_Check/PlanCheckFees.pdf.
- 150 L.A., Cal., Mun. Code § 91.107.3.1.1 & Table 1-A; § 91.106.3.2.2; Interview with Eddie Navarrette in L.A., Cal. (Oct. 14, 2009); L.A. Dep't of Building and Safety, Permit Fee Estimate, <http://netinfo.ladbs.org/feecalc.nsf> (last visited June 21, 2010).
- 151 L.A. Dep't of Building & Safety, Document Submittal Requirements for a New Commercial/Industrial Building (Doc. No. P/GI 2008-010) 3 (Jan. 1, 2008), available at <http://www.ci.la.ca.us/LADBS/faq/info%20bulletins/general%20info/2008/IB-P-GI%202008-010%20New%20Comm&Indust%20Submittal.pdf>; L.A. Dep't of Building & Safety, Document Submittal Requirements for Tenant Improvement, Addition, or Alteration to an Existing Commercial/Industrial Building (Doc. No. P/GI 2008-006) 3 (Jan. 1, 2008), available at <http://www.ci.la.ca.us/LADBS/faq/info%20bulletins/general%20info/2008/IB-P-GI%202008-006%20Insurance%20&%20Lic%20Reqs.pdf>; Interview with Eddie Navarrette in L.A., Cal. (Oct. 14, 2009).
- 152 Interview with Eddie Navarrette in L.A., Cal. (Oct. 14, 2009).
- 153 See Gelt, *supra* note 148; see also Eric Garcetti, L.A. City Council, 2020 Vision: Economic Leadership for Our City's Future, Address Before Central City Association (Sep. 27, 2007), available at http://ens.lacity.org/council/cd13/speechesclips/cd13speechesclips66747989_09272007.pdf; see generally L.A. Dev. Servs. Comm., Building Permit Clearance Handbook (rev. May 5, 2010).
- 154 L.A. Dev. Servs. Comm., Building Permit Clearance Handbook I-1 (rev. May 5, 2010).
- 155 Interview with Eddie Navarrette in L.A., Cal. (Oct. 14, 2009); see, e.g., L.A., Cal., Mun. Code § 64.72.05 (regarding Bureau of Sanitation's "Best Management Practices plan check fee").
- 156 See L.A., Cal., Mun. Code §§ 91.107.2, 107.2.1 & Table 1-A.
- 157 See, e.g., L.A. Dep't of Building & Safety, Requirements to Change the Use of a Building to a Food Establishment (Doc. No. P/GI 2008-005) 3 (Jan. 1, 2008), available at <http://www.ladbs.org/faq/info%20bulletins/general%20info/2008/IB-P-GI%202008-005%20Food%20Establishment%20Change%20Occupancy.pdf> [hereinafter Requirements to Change Use]; see also L.A., Cal., Mun. Code §§ 91.106.1 (building/grading), 93.0201 (electrical), 95.112 (HVAC), 94.103.1 (plumbing/fire sprinkler).
- 158 E.g., L.A., Cal., Mun. Code §§ 94.103.1.1.3 (separate plumbing permit requirement), 94.103.4.1 (plumbing permit fees), 94.103.4.2 (plumbing plan check fees).
- 159 Requirements to Change Use, *supra* note 157, at 3.
- 160 See, e.g., L.A., Cal., Mun. Code § 91.108.1; see also L.A. Dep't of Building and Safety, Inspection, <http://www.ladbs.org/inspection/inspection.htm> (last visited June 21, 2010); L.A. County Dep't of Pub. Health, Fact Sheet: How to Obtain a Restaurant (Food Facility) Permit, available at <http://www.lapublichealth.org/eh/docs/HowToOpenRestaurant.pdf> [hereinafter Fact Sheet]; see also Retail Construction Guideline, *supra* note 149, at 7.
- 161 See, e.g., L.A., Cal., Mun. Code § 98.0412.
- 162 See Gelt, *supra* note 148.
- 163 *Id.*
- 164 Interview with Jill Bigelow in L.A., Cal. (Oct. 15, 2009); Gelt, *supra* note 148.
- 165 Interview with Eddie Navarrette in L.A., Cal. (Oct. 14, 2009); Gelt, *supra* note 148.
- 166 *Id.*
- 167 See Gelt, *supra* note 148; see also Helfand, *supra* note 148.
- 168 Garcetti, *supra* note 153; see also Gelt, *supra* note 148.
- 169 Interview with Jill Bigelow in L.A., Cal. (Oct. 15, 2009); Gelt, *supra* note 148.
- 170 Interview with Jill Bigelow in L.A., Cal. (Oct. 15, 2009).
- 171 L.A., Cal., Mun. Code § 98.0502.
- 172 Interview with Jill Bigelow in L.A., Cal. (Oct. 15, 2009); Gelt, *supra* note 148.
- 173 Interview with Jill Bigelow in L.A., Cal. (Oct. 15, 2009); Gelt, *supra* note 148.
- 174 Interview with Jill Bigelow in L.A., Cal. (Oct. 15, 2009); see also Gelt, *supra* note 148.
- 175 See L.A., Cal., Mun. Code §§ 91.109.1, .3.
- 176 See Retail Construction Guideline, *supra* note 149, at 7; Fact Sheet, *supra* note 160; L.A. County Dep't of Pub. Health, Los Angeles County Public Health License & Permit Fees (July 1, 2010 to June 30, 2011), available at <http://www.lapublichealth.org/eh/docs/LicensePermitFees.pdf>.
- 177 Eric Richardson, "Provecho Closes Three Months After Filing for Bankruptcy," *blogdowntown.com*, May 7, 2010, <http://blogdowntown.com/2010/05/5335-provecho-closes-three-months-after-filing>.
- 178 Cal. Bus. & Prof. Code § 23816.
- 179 *Id.* § 23954.5(b); see also Cal. Dep't Alcoholic Beverage Control, Schedule of Fees (Nov. 19, 2009), available at <http://www.abc.ca.gov/permits/2010FeeSch.pdf>.
- 180 See Cal. Bus. & Prof. Code §§ 23961(a), 23958.
- 181 See generally *id.* §§ 24070–24082.

- 182 Interview with Jill Bigelow in L.A., Cal. (Oct. 15, 2009).
- 183 L.A., Cal., Mun. Code § 12.24.W.1, .X.2.
- 184 *Id.* § 19.01.E, .K.6.
- 185 *Id.* § 12.24.B; Special Instructions for: Conditional Use Permit—Alcohol (CUB) (rev. Mar. 27, 2003), available at http://cityplanning.lacity.org/Forms_Procedures/7773.pdf.
- 186 See Submit a Community Impact Statement, <http://www.lacityneighborhoods.com/documents/How%20to%20Submit%20CIS.pdf> (last visited June 21, 2010); Welcome to the City of Los Angeles Community Impact Statement, <http://cityclerk.lacity.org/cis/> (last visited June 21, 2010).
- 187 Interview with Eddie Navarrette in L.A., Cal. (Oct. 14, 2009).
- 188 L.A., Cal., Mun. Code § 12.24.E, W.1(a)(1).
- 189 See *id.* § 12.24.G, .I.
- 190 Lawrence J. McQuillan, et al., Pacific Research Institute, *U.S. Economic Freedom Index 2008 Report 7-11* (2008).
- 191 William P. Ruger & Jason Sorens, Mercatus Center, George Mason University, *Freedom in the 50 States 9-10* (Feb. 2009).
- 192 See *Small Business & Entrepreneurship Council, Small Business Survival Index 2009 22* (Dec. 2009).
- 193 Adam B. Summers, Reason Foundation, *Occupational Licensing: Ranking the States and Exploring Alternatives 6* (Aug. 2007).
- 194 See Cal. Bus. & Prof. Code §§ 7028, 7048, 7055; Cal. Code Regs. tit. 16, §§ 830, 832.
- 195 See Cal. Code Regs. tit. 16, §§ 832.2—.61; Contractors State License Bd., Description of Classifications 3-12 (2009), available at <http://www.cslb.ca.gov/Resources/GuidesAndPamphlets/DescriptionOfClassifications.pdf> [hereinafter Description of Classifications]. The 41 categories of specialty license are: Insulation and Acoustical Contractor; Boiler, Hot Water Heating and Steam Fitting Contractor; Framing and Rough Carpentry Contractor; Cabinet, Millwork and Finish Carpentry Contractor; Low Voltage Systems Contractor; Concrete Contractor; Drywall Contractor; Electrical Contractor; Elevator Contractor; Earthwork and Paving Contractors; Fencing Contractor; Flooring and Floor Covering Contractors; Fire Protection Contractor; Glazing Contractor; Warm-Air Heating; Ventilating and Air-Conditioning Contractor; Building Moving/Demolition Contractor; Ornamental Metal Contractor; Landscaping Contractor; Lock and Security Equipment Contractor; Masonry Contractor; Construction Zone Traffic Control Contractor; Parking and Highway Improvement Contractor; Painting and Decorating Contractor; Pipeline Contractor; Lathing and Plastering Contractor; Plumbing Contractor; Refrigeration Contractor; Roofing Contractor; Sanitation System Contractor; Sheet Metal Contractor; Sign Contractor; Solar Contractor; General Manufactured Housing Contractor; Reinforcing Steel Contractor; Structural Steel Contractor; Swimming Pool Contractor; Ceramic and Mosaic Tile Contractor; Water Conditioning Contractor; Well Drilling Contractor; Welding Contractor; and Limited Specialty. *Id.* The state also requires special certifications for asbestos work and hazardous substance removal. See Cal. Bus. & Prof. Code §§ 7058.5, .7.
- 196 See Cal. Code Regs. tit. 16, § 832.61; see also Description of Classifications, *supra* note 195, at 12-17.
- 197 Cal. Code Regs. tit. 16, § 832.13.
- 198 *Id.* tit. 16, § 825(a).
- 199 Cal. Bus. & Prof. Code § 7067.5.
- 200 See *id.* §§ 7065, 7066; Cal. Code Regs. tit. 16, §§ 811, 816, 824, 840; see generally Contractors State License Bd., Blueprint for Becoming a California Licensed Contractor (2006), available at <http://www.cslb.ca.gov/Resources/GuidesAndPamphlets/BlueprintForGettingLicensed.pdf> [hereinafter Blueprint].
- 201 Cal. Code Regs. tit. 16, § 811(f); Blueprint, *supra* note 200, at 23.
- 202 Cal. Code Regs. tit. 16, § 811(g).
- 203 Blueprint, *supra* note 200, at 17.
- 204 Blueprint, *supra* note 200, at 8.
- 205 See, e.g., *Bureerong v. Uvawas*, 922 F. Supp. 1450 (C.D. Cal. 1996).
- 206 See Cal. Lab. Code § 2670 et seq.; Cal. Code Regs. tit. 8, § 13630 et seq.
- 207 Interviews with fashion designer in L.A., Cal. (June 24 and Oct. 14, 2009).
- 208 “Garment manufacturing” is defined as “sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for sale or resale by any person or any persons *contracting to have those operations performed* and other operations and practices in the apparel industry as may be identified in regulations of the Department of Industrial Relations consistent with the purposes of this part.” Cal. Lab. Code § 2671(b) (emphasis added). In light of the italicized language (as well as the definition of “person,” which excludes “any person who manufactures garments by himself or herself, without the assistance of a contractor, employee, or others,”) *id.* § 2671(a), it appears the registration provisions would not apply to a person who produces apparel entirely on his own, with no assistance, and sells directly to the public.
- 209 *Id.* § 2675; Cal. Code Regs. tit. 8, § 13630.
- 210 Cal. Lab. Code § 2678(a)(2), (c), (d); *id.* § 2676; Cal. Penal Code § 19.
- 211 Cal. Lab. Code § 2680(a), (b).
- 212 Cal. Code Regs. tit. 8, § 13635(a), (b); Cal. Lab. Code § 2675(a) (5).
- 213 Cal. Lab. Code § 2675(c); Cal. Code Regs. tit. 8, § 13635(f).
- 214 Cal. Code Regs. tit. 8, § 13634(a)(5), (10); Div. of Labor

Standards Enforcement, Cal. Dep't of Industrial Relations, Garment Registration Requirements for New Applicants (rev. Apr. 2005), <http://www.dir.ca.gov/dlse/GarmentRequireNewApp.pdf>.

215 Cal Code Regs. tit. 8, § 13635.1(e).

216 Cal. Lab. Code § 2675(c), (f); Cal Code Regs. tit. 8, § 13635(a)–(b); *id.* § 13636.

217 Cal Code Regs. tit. 8, § 13659(a), (b).

218 Cal. Lab. Code § 2673; Cal Code Regs. tit. 8, § 13631.

219 Cal. Lab. Code § 2677.

220 *Id.* § 2673.1; Cal Code Regs. tit. 8, § 13634(b).

221 Cal. Lab. Code §§ 2651, 2658.5, 2659; Cal Code Regs. tit 8, §§ 13620, 13621; L.A., Cal., Mun. Code § 12.05(A)(16)(b).

222 Interviews with fashion designer in L.A., Cal. (June 24 and Oct. 14, 2009).

223 Cal. Lab. Code § 2675(a)(1)(A).

224 Div. of Labor Standards Enforcement, Cal. Dep't of Industrial Relations, Application for Registration: Garment Manufacturing Industry (rev. Mar. 2002), available at http://www.dir.ca.gov/dlse/Forms/Garment/Application_For_Registration_Garment_Manufacturing_VIET.pdf (question 15a).

225 Cal. Bus. & Prof. Code § 21626(a) (emphasis added); *see also id.* § 21641(a).

226 *Id.* § 21627(a), (b)(2). “Tangible personal property” also includes items deemed by the California Attorney General to constitute “a significant class of stolen goods.” *Id.* § 21627(b)(3).

227 *See* Cal. Dep't of Justice, Application for Secondhand Dealer or Pawnbroker License (Form JUS 125) (rev. 10/05); *see also* L.A. Police Comm'n, Second Hand Dealers California State License Requirements & Los Angeles City Permit Requirements (on file with Institute for Justice).

228 Cal. Bus. & Prof. Code § 21628(b), (c), (e), (g). If the property is nonserialized, the description must include the property's “size, color, material, manufacturer's pattern name (when known), owner-applied numbers and personalized inscriptions and other identifying marks or symbols.” *Id.* § 21628(d).

229 The state's secondhand dealer law is administered largely by local law enforcement agencies. *See, e.g., id.* §§ 21630, 21634.

230 *Id.* § 21636(a), (b).

231 *Id.* § 21645(a)–(c).

232 *Id.* § 21625.

233 Op. Cal. Att'y Gen. 04-1001 (2005).

234 Interview with drop-off store owner in L.A., Cal. (June 23, 2009).

235 *Id.*

236 L.A., Cal., Mun. Code § 103.311(b).

237 *Id.* § 103.12.

238 *See* L.A., Cal., Mun. Code § 103.311(g); L.A. Police Comm'n, Form 16.14.0: Rules and Regulations Governing Secondhand Dealers Rules No. 1, 2(a) (Oct. 1986) (on file with Institute for Justice).

239 L.A., Cal., Mun. Code § 103.311(a).

240 Telephone Interview with Detective Jackson, Pawn Shop Detail, L.A., Cal. Police Dep't, in L.A., Cal. (Nov. 24, 2009).

MICHAEL BINDAS

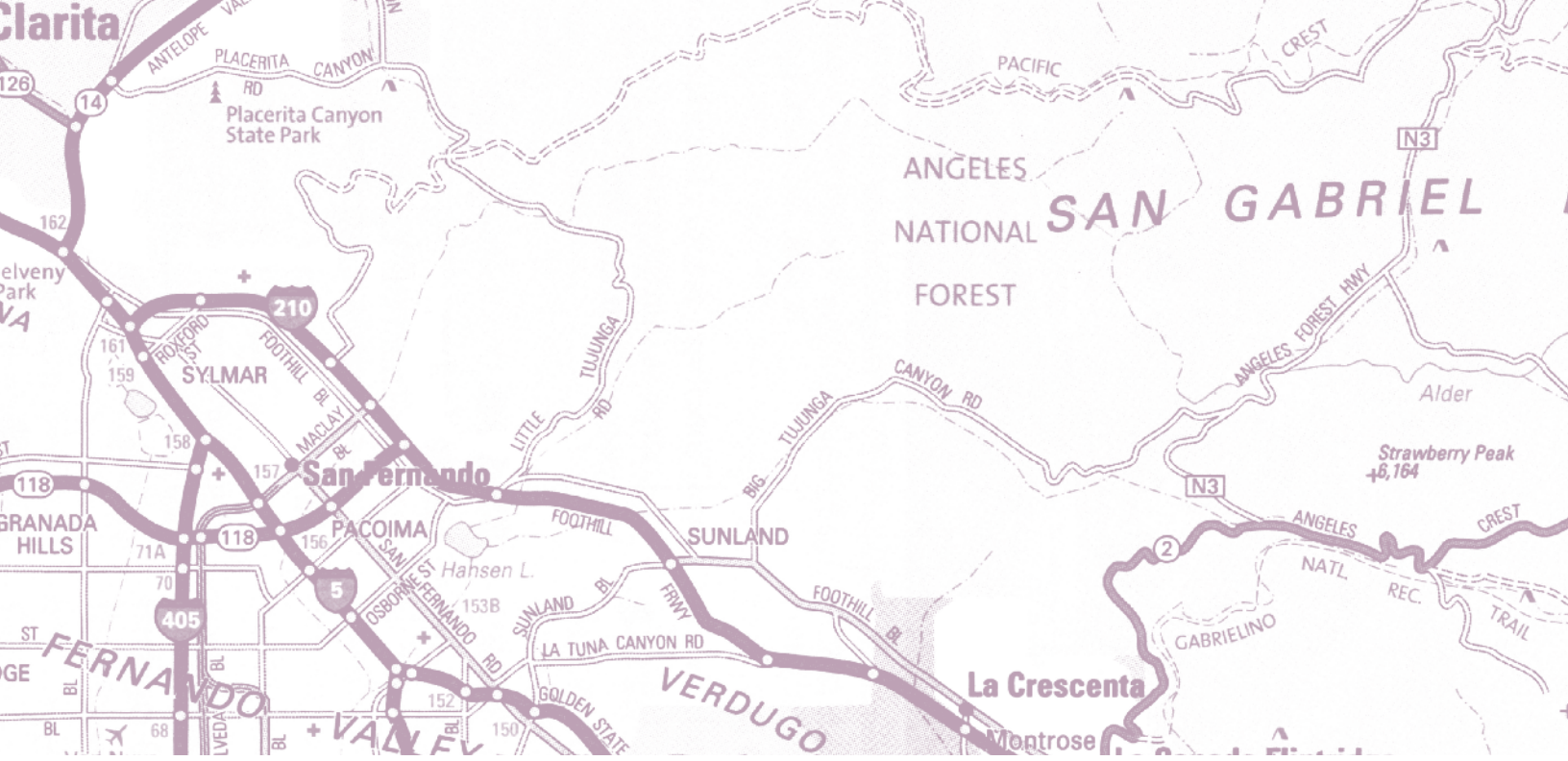
Senior Attorney Michael Bindas joined the Institute for Justice Washington Chapter (IJ-WA) in 2005. IJ-WA litigates in the areas of economic liberty, private property rights, educational choice, freedom of speech, and other vital liberties secured by the Washington State Constitution.

Michael successfully represented Blayne and Julie McAferty when the City of Seattle tried to shut down their bed and breakfast under an arbitrary and irrational land use regulation, and he helped defend the free speech and association rights of the No New Gas Tax initiative campaign when several Washington municipalities tried to use campaign finance laws to regulate media commentary concerning the initiative. On behalf of the DeBoom, Apodaca and Hamilton families, Michael successfully challenged Washington's denial of special education services to children in religious schools. He also helped home and small business owners in Seattle and Renton defeat governmental attempts to use bogus "blight" designations to unconstitutionally take property through eminent domain. Currently, Michael is representing property rights activist Jim Roos in challenging St. Louis' attempt to force him to remove a mural protesting the city's abusive eminent domain practices.

Prior to joining IJ-WA, Michael spent three years as an attorney with Perkins Coie LLP, where he litigated constitutional and False Claims Act issues. He is a former law clerk to Judge Rhesa Hawkins Barksdale of the U.S. Court of Appeals for the Fifth Circuit and served as an engineer officer in the United States Army and Pennsylvania Army National Guard before beginning his legal career.

Michael received his law degree cum laude from the University of Pennsylvania Law School in 2001, where he served as Articles Editor for the Journal of Constitutional Law and was elected to the Order of the Coif. He received his undergraduate degree from the United States Military Academy at West Point in 1995, where he was a Distinguished Cadet.





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INSTITUTE FOR JUSTICE 901 N. Glebe Road Suite 900 Arlington, VA 22203 www.ij.org p 703.682.9320 www.facebook.com/instituteforjustice

