
A TIME TO OPEN AND A TIME TO CLOSE—MUNICIPAL REGULATION OF BUSINESS HOURS

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I. INTRODUCTION

If there is truly “a time for every matter under heaven,”¹ does that include a time when a place of business should open and a time when it should shut its doors? Is it lawful and appropriate for the government—municipal government in particular—to set the times when the opening and closing should occur? With more and more commercial establishments remaining open very long hours, often 24 hours a day, while nearby residents and competing businesses frequently lobby for legislation that would limit such hours of operation, questions regarding municipal power in this area assume increased importance. In examining this area of regulation, it is necessary to consider (1) what purposes for municipal restrictions on business hours are valid, (2) what purposes are improper, (3) other limitations on governmental exercise of authority besides the proper-purpose requirement, such as prohibitions against discrimination, (4) the forms of legislation available for use, and (5) the division of authority between state and local governments. An examination of

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1. *Ecclesiastes* 3:1 (Rev. Standard).

these topics will delineate the circumstances under which legislative bodies are likely to impose, and courts are likely to uphold, restrictions on business hours.

II. VALID PURPOSES

Regulation of the times during which businesses may remain open occurs frequently at the local level as a result of municipal governments' exercise of the police power widely delegated to them by the state.² Thus, as a general rule, the validity of the regulation depends on the existence on some police-power purpose, or as one court noted, "the nature of the business must be such that the public health, morals, safety, or general welfare is, or might be, affected by such business being permitted to remain open or continue after certain hours."³ In the absence of such a purpose, courts will likely strike down an attempted restriction as "a tyrannical interference"⁴ with the right of business operators to earn a living in the manner they choose. On the other hand, where a police-power purpose does exist, it can sometimes even justify exclusion of a business from certain areas of the city, or from the city altogether. Therefore a valid purpose can surely justify limiting the hours of the business's operation.⁵

III. NOISE CONTROL

What are examples of purposes by which closing-hour legislation may reasonably contribute to the public health, safety, morality or general welfare? Reducing noise levels particularly at night, has been recognized as a proper reason for limiting the hours of businesses

2. See OSBORNE M. REYNOLDS, LOCAL GOVERNMENT LAW 503 (1982). See generally 7 EUGENE MCQUILLIN, MUNICIPAL CORPORATIONS §§ 24.198-245.456 (3d ed. rev. 1997).

3. Annotation, *Validity of statute or ordinance fixing closing hours for certain kinds of business*, 55 A.L.R. 242, 242 (1928).

4. *Town of Coaticook v. Lothrop* [1902] C.S. 225, 228 (Can.) (city lacked power under statute); cf. *Beauvais v. City of Montreal* [1906] C.S. 427 (Can.) (holding enabling act either unconstitutional or, if constitutional, did not authorize closing ordinance, and ordinance was not within municipality's common-law police power).

5. See *City of Charleston v. Jenkins*, 133 S.E.2d 242, 244 (S.C. 1963) (upholding ordinance that prohibited dispensing of beer in any place of business between 1:30 a.m. and 7:00 a.m.).

such as restaurants because it is related to public health.⁶ Accordingly, an ordinance requiring restaurants located in residential zones of the city to cease operations between 1:30 a.m. and 5:30 a.m. has been upheld as a reasonable attempt to reduce noise and maintain order where the sleep of nearby residents might otherwise be disturbed.⁷

As always, there are counter arguments. A court may be persuaded that the proper approach is to attack noise problems directly by ordinances against unnecessary horn-honking, loud and boisterous talking, and/or disorderly conduct, rather than using the more indirect means of restricting restaurant operating hours.⁸ While there is no reasonable need to force the closing of all restaurants or all businesses merely because a few restaurants have become nuisances,⁹ an ordinance limited to residential zones¹⁰ or to an area in which disturbances of the public peace have occurred¹¹ is justifiable. Most courts seem willing to go one step further and uphold restrictions on all restaurants, or all businesses of a certain type, because of noise problems created by some establishments. Thus, where a community experienced "great disturbances" due to noise and violation of curfew laws by patrons of "juice bars," the

6. See *State v. Grant*, 216 A.2d 790 (N.H. 1966) (upholding town regulation requiring all restaurants to be closed between midnight and 6:00 a.m.). See generally Marc L. Carmichael Annotation, *Validity of Municipal Ordinance Regulating Time During Which Restaurant Business May Be Conducted*, 53 A.L.R.3d 942 (1973). Annotation, *What Constitutes a Restaurant*, 122 A.L.R. 1399 (1939). Annotation, *What Amounts to "Restaurant" or "Restaurant Business" Within Intoxicating Liquor Law*, 105 A.L.R. 566 (1936); Annotation, *What is "Restaurant," "Café," or "Victualing House" Within Sunday Law*, 9 A.L.R. 428 (1920).

7. *City of Burlington v. Jay Lee, Inc.*, 290 A.2d 23 (Vt. 1972).

8. See *Fincher v. City of Union*, 196 S.E. 1 (S.C. 1938) (invalidating an ordinance requiring barbecue stands in residential areas to close between 11:00 p.m. and 6:00 a.m.); cf. *Ex parte Hall*, 195 P. 975 (Cal. Dist. Ct. App. 1920) (invalidating statute prohibiting dancing or dance music in any room situated within 25 feet of residence on ground that less drastic and more specific regulations could achieve the desired goals).

9. See *Painter v. Town of Forest Acres*, 97 S.E.2d 71 (S.C. 1957) (enjoining enforcement of town ordinance requiring all businesses to close between midnight and 6:00 a.m.); cf. *Town of Dyess v. Williams*, 444 S.W.2d 701 (Ark. 1969) (invalidating ordinance requiring all businesses to remain closed between midnight and 4:00 a.m.).

10. See *City of Burlington*, 290 A.2d at 23 (upholding ordinance prohibiting restaurants in any residential zone of city from remaining open between 1:30 a.m. and 5:30 a.m.).

11. See *Grant*, 216 A.2d at 790 (upholding conviction upheld for violating ordinance prohibiting operation of restaurant between midnight and 6:00 a.m.).

municipality was allowed to prohibit the operation of all such businesses during early morning hours.¹²

Sometimes the restriction is more limited in scope, as where it is made a condition of an exception or variance granted to a particular business under zoning laws.¹³ Relief of this kind allows a use not ordinarily permitted in the particular zone. In awarding such a dispensation, the appropriate administrative body may attach reasonable conditions, including limits on hours of operation. Situations where conditional variances may be appropriate include allowing a restaurant to operate in a residential zone,¹⁴ granting a special exception to a swimming club,¹⁵ or allowing a gasoline station and garage to operate despite some risk of disturbing nearby property owners.¹⁶

Closing-hour requirements have been recognized as justifiable conditions on the awarding of exceptions or variances so long as the conditions have a reasonable relation to public health, safety or welfare. Courts have upheld closing-hour requirements in cases where the sale of ice cream products¹⁷ or the operation of a laundromat¹⁸ is allowed in an area where such a use is ordinarily

12. *David E. Shelton Prod., Inc. v. City of Chicago*, 520 N.E.2d 1073, 1075 (Ill. App. Ct. 1988).

13. See Annotation, *Imposing Restrictions as to Hours or Days of Operation of Business as Condition of Allowance of Special Zoning Exception or Variance*, 99 A.L.R.2d 227 (1965).

14. *Montgomery County v. Mossburg*, 180 A.2d 851 (Md. 1962) (holding 11:00 p.m. closing hour proper condition on grant of special exception allowing enlargement of restaurant that was non-conforming use in residential zone).

15. See *Foust v. Springfield Township*, 77 Mont. Co. L.R. 242 (Pa. 1960) (conditioning special exception granted to swimming club over objections of neighbors on cessation of all activities at the club at 9:00 p.m.).

16. See *Lough v. Zoning Bd. of Rev.*, 60 A.2d 839 (R.I. 1948) (noting nine conditions attached to grant of exception for gasoline station and garage, including prohibitions on automobile repair work on Sunday or after 9:00 p.m. on other days, and gasoline sales after 10:00 p.m. any day). *But see Berdan v. City of Paterson*, 62 A.2d 680 (N.J. 1948) (holding zoning board lacked authority to grant variance allowing "heavy industrial" uses in residential zone).

17. *Vlahos Realty Co. v. Little Boar's Head Dist.*, 146 A.2d 257 (N.H. 1958) (holding 11:00 p.m. closing hour valid condition on grant of variance for sale of ice cream and other dairy products).

18. See *State ex rel. 12501 Superior Corp. v. City of East Cleveland*, 158 N.E.2d 565 (Ohio Ct. App. 1959) (upholding restrictions requiring automatic laundry to close at midnight Saturday and not reopen until midnight Sunday as condition of permit for operation in zone where laundries usually not allowed).

impermissible and could create disturbing levels of noise if unrestricted.

Even if zoning laws permit a particular use, the hours of operation may be limited. Any business may be subject to police-power regulations designed to curtail bothersome noise. Thus, an ordinance forbidding coin-operated self-service car washes from remaining open between 10:00 p.m. and 7:00 a.m. has been upheld as applied to a car wash whose operation generated complaints from neighbors of loud noise and beer drinking during late evening and early morning hours.¹⁹ However, the restriction must be so framed that it reasonably contributes to the general welfare.²⁰ Courts are unlikely to uphold a closing-hour limitation if it applies only or chiefly to activities conducted inside a building that will therefore not disturb the neighbors,²¹ or if it applies only to some limited time-period, such as Monday mornings, when no special need for quiet is proven.²²

Analogous support for the validity of closing-hour legislation aimed at reducing noise arises in cases upholding "Sunday blue laws." These laws, which prohibit the conduct of certain businesses and/or the sale of certain products on Sunday, are much less common than at one time. Where still found, Sunday blue laws are often unpopular and subject to frequent attack in the courts.²³ The U.S. Supreme Court, however, has held that these laws are reasonably designed to promote public health and well-being by securing a

19. *People v. Raub*, 155 N.W.2d 878, 881 (Mich. Ct. App. 1968).

20. *See* *Wartman v. City of Philadelphia*, 33 Pa. 202, 209 (1859) (holding city could fix time and place of public markets for sale of food in order to promote public welfare and preserve peace).

21. *See* *City of Rochester v. Close*, 35 N.Y. Sup. Ct. 208 (1885). On the other hand, hours regulations as to street markets and outdoor peddling have often been upheld. *See* *City of Bowling Green v. Caron*, 73 Ky. (10 bush) 64 (1873) (fixing hours for street market); *City of Buffalo v. Schleifer*, 21 N.Y.S. 913 (Super. Ct. Buf. 1893) (limiting hours for peddling in the streets); *Mt. Carmel Borough v. Fisher*, 21 Pa. Super., 643 (Pa. Super. Ct. 1902) (establishing hours for curbside markets). *But see* *City of Buffalo v. Linsman*, 98 N.Y.S. 737 (N.Y. App. Div. 1906) (invalidating same ordinance upheld in *Shleifer*, 21 N.Y.S. 913, on ground of discrimination against street peddlers and in favor of shopkeepers).

22. *Spann v. Gaither*, 136 A. 41, 43-44 (Md. 1927) (holding ordinance prohibiting operation of laundry between midnight Saturday and 6:00 a.m. Monday invalid as applied to first six hours of Monday).

23. *See* John E. Theuman, Annotation, *Validity, Construction, and Effect of "Sunday Closing" or "Blue" Laws—Modern Status*, 10 A.L.R.4th 246, 252-53 (1981). *See generally* REYNOLDS, *supra* note 2, at 514-16.

common day of rest and relaxation and do not violate the constitutional prohibition against governmental establishment of religion.²⁴ Sunday closing requirements can even be valid when applied to automated operations, such as coin-operated laundries, at which no employees are kept on duty on Sunday.²⁵ Sociological and statistical evidence can demonstrate a reasonable connection between Sunday closing requirements and peace and quiet within a community.²⁶ Courts have permitted municipalities to enforce Sunday blue laws more extensive in their scope of prohibition than are the state statutes on the subject,²⁷ and to apply their prohibitions to such relatively quiet and innocuous trades as barbering.²⁸ However, if a particular law does not substantially contribute to the establishment of a uniform day of rest,²⁹ is unnecessary to the promotion of peace and quiet within a community,³⁰ or is otherwise

24. See *Braunfeld v. Brown*, 366 U.S. 599 (1961); *Two Guys From Harrison-Allentown, Inc. v. McGinley*, 366 U.S. 582 (1961); *McGowan v. Maryland*, 366 U.S. 420 (1961). See also *Gallagher v. Crown Kasher Super Mkt.*, 366 U.S. 617 (1961) (upholding Sunday blue law containing numerous exceptions as applied to business selling kosher food); *Green Star Supermarkets v. Stacy*, 411 S.W.2d 871 (Ark. 1967) (Upholding Sunday blue law against contention that allowing some items to be sold but prohibiting others rendered law arbitrary). For a discussion of the arguments for and against Sunday blue laws, see *City of Mt. Vernon v. Julian*, 17 N.E.2d 52 (Ill. 1938).

25. *Commonwealth v. Chamberlain*, 175 N.E.2d 486 (Mass. 1961).

26. See *Theuman*, *supra* note 23, at 255 (citing *Vornado, Inc. v. Hyland*, 390 A.2d 606 (N.J. 1978)).

27. See *Mack Paramus Co. v. Mayor of Paramus*, 511 A.2d 1179 (N.J. 1986) (holding state's Sunday blue law did not preempt local Sunday closing regulation by municipality).

28. See *Ex parte Caldwell*, 118 N.W. 133 (Neb. 1908); *Ex parte Kennedy*, 58 S.W. 129 (Tex. Crim. App. 1900); *Stark v. Backus*, 123 N.W. 98 (Wis. 1909). *But cf. Re Lambert* [1900] B.C. 396 (Can.) (holding ordinance preventing barbers from conducting trade on Sunday exceeded bounds of statute giving city the authority to prohibit barbershops from staying open on Sunday).

29. *Arlan's Dep't Stores, Inc. v. Kelley*, 130 N.W.2d 892 (Mich. 1964) (invalidating state law forbidding certain merchants from making sales on any successive Saturday and Sunday as not tending to create single day of rest).

30. See *State v. Smith*, 143 S.E.2d 293 (N.C. 1965) (invalidating ordinance prohibiting operation of clubs within 300 yards of public school or of church property after 2:00 a.m. on Sunday because schools are not in operation during period of prohibition, churches are not open until at least 7:00 a.m., and 300-yard classification satisfied no need); *cf. Watson v. Mayor of Thomson*, 42 S.E. 747 (Ga. 1902) (holding a municipality cannot forbid carrying on of lawful avocation on Christmas if business does not interfere with peace, good order or safety of community. See generally *James L. Rigelhaupt, Jr., Annotation, Validity under Establishment of Religion Clause of Federal or State Constitution, of Provision Making Day of Religious Observance a Legal Holiday*, 90 A.L.R.3d 752 (1979)).

unrelated to any police-power purpose, the law violates due process requirements.³¹ Both hours restrictions and Sunday laws are thus sometimes justifiable as promoting the public health by reducing noise.³²

IV. OTHER HEALTH-RELATED GROUNDS

Occasionally, more general grounds of protecting health are cited in support of closing legislation, but usually without success. For example, an ordinance requiring open-air markets to close from 7:00 p.m. until 5:00 a.m. invalidated as not lessening the dangers of dust blowing on the food or other contamination.³³ The court remarked, "It is difficult to conceive how any injury caused by the blowing of dust upon the produce would be avoided or minimized by closing the market at seven o'clock in the evening, and leaving it open during the day."³⁴

Similarly, most modern cases find no valid health justification for requiring barbershops to close in the evenings. One New Jersey court³⁵ observed that, at one time, barbers engaged in some forms of medical treatment, including leechcraft and teeth extraction. Such practices by barbers have long ceased, however, as has the presence in barbershops of spittoons, which were known to spread contagious diseases. The court concluded there are adequate legislative safeguards on the practice of barbering, and the addition of closing hour restrictions would in no way contribute to more sanitary, healthful conditions.³⁶

31. See *State v. Rockdale Associates, Inc.*, 218 A.2d 718 (Vt. 1966) (holding state Sunday law allowing sale of local products but not nonlocally manufactured goods unnecessary for general welfare and undue burden on interstate commerce).

32. On hours restrictions to reduce noise, see *supra* notes 6-22 and accompanying text. On the reduction-of-noise purpose of Sunday blue laws, see Theuman, *supra* note 23, at 252 (noting Sunday laws have been found to have secular purpose of securing common day of rest in order to promote public health and well-being).

33. *Cowan v. City of Buffalo*, 288 N.Y.S. 239 (App. Div. 1936).

34. *Id.* at 244.

35. *Tomasi v. Township of Wayne*, 313 A.2d 229, 230 (N.J. Super. Ct. Law. Div. 1973). As to barbers, see generally *Validity of statute or ordinance fixing closing hours for certain kinds of business*, *supra* note 3, at 245.

36. *Tomasi*, 313 A.2d at 232-33. See generally Annotation, *Validity of Statute or Ordinance Regulating Barbers*, 98 A.L.R. 1088, 1093-96 (1935).

Courts have likewise held that closing requirements for barbershops are not justifiable on the basis of facilitating inspections of the shops for health purposes. Although, the need for inspection is clear, it certainly does not have to be continuous, covering every hour the business is open.³⁷ One court declared, "Any regulation compelling the opening or closing of barbershops between certain hours because it will be inconvenient for the authorities to inspect them—when they are open at other hours amply sufficient for such inspection—is an unnecessary and unreasonable interference with the operation of a lawful trade."³⁸ As with other regulated businesses, barbershops cannot be forced to close merely to satisfy the convenience of inspectors or those holding hearings on alleged violations of the law.³⁹ There is no sound reason for limiting inspections, and thus the operation of the barber business, to daylight hours since many shops are located in areas where artificial light is always needed.⁴⁰

If germs develop in the shop after the hour when inspections cease, the delay in not detecting those germs until the next day "is not likely to be disastrous."⁴¹ While regulation of sanitation of barbershops and of the competence of barbers is proper, direct legislative prescription of standards and practices that barbers must adhere to better achieve these results than the imposition of closing requirements that interfere with the right to make an honest living and the convenience of customers.⁴² Thus, setting of opening and closing hours for the supposed purpose of sanitation can be an unwarranted interference with a barber's business and therefore void.⁴³ Evidence does not support the contention that working longer hours, or keeping shop open for longer hours, will increase a barber's

37. *People ex rel. Pinello v. Leadbitter*, 85 N.Y.S.2d 287, 293 (Sup. Ct. 1948).

38. *Id.*

39. *See Ganley v. Claeys*, 40 P.2d 817 (Cal. 1935).

40. *See Ernesti v. City of Grand Island*, 251 N.W. 899, 900 (Neb. 1933).

41. *Id.*

42. *See City of Miami v. Shell's Super Store*, 50 So.2d 883 (Fla. 1951) (invalidating closing ordinance as to barbers because unrelated to health, safety or welfare of barbers or public); *cf. Chaires v. City of Atlanta*, 139 S.E. 559 (Ga. 1927) (invalidating as unreasonable night-time closing requirement for barbershops and observing that people would be unable to obtain indispensable services of such shops if ordinance were enforced).

43. *Oklahoma City v. Johnson*, 82 P.2d 1057 (Okla. 1938).

susceptibility to communicable diseases.⁴⁴ In any case, dangers inherent in barbers working excessive hours can be dealt with by restrictions on working hours rather than on business hours.⁴⁵ Because closing regulations bear no relation to protecting the public from disease, they are merely useless restriction on a harmless and lawful occupation.⁴⁶ The public interest is not furthered by these restrictions, as sanitation laws already adequately deal with possible problems.⁴⁷

On the other hand, several older decisions did find barbershop closing-hours laws to be reasonably related to protection of public health. One New Jersey case⁴⁸ concluded that barbershops provide particularly great opportunity for the spread of contagious diseases, thus necessitating inspection of such shops, which may often be inconvenient or difficult at night. The court therefore held a closing ordinance reasonable and not unduly discriminatory.⁴⁹ Relying on that New Jersey authority, an Ohio court reached the same conclusion regarding the validity of a barbershop closing law.⁵⁰ A pair of noted legal scholars commenting on the case declared the regulation to be clearly within the police power. However, the state constitution gave the legislature sole authority to restrict working hours, and therefore municipalities lacked the power to enact such regulations.⁵¹ Ohio courts subsequently reversed course and invalidated a municipal

44. *City of Alexandria v. Hall*, 131 So. 722, 724 (La. 1939) (finding closing restriction inappropriate measure for protection of public health because public health is adequately protected by provisions for shop inspections, instrument sterilization and testing of barbers suspected of having communicable diseases).

45. *Knight v. Johns*, 137 So. 509, 510 (Miss. 1931). *See State ex rel. Pavlik v. Johannes*, 259 N.W. 537, 540 (Minn. 1935) (holding no limitation of business hours required as hours of various employees can be staggered over working day so that no individual works more than eight hours).

46. *State ex rel. Newman v. City of Laramie*, 275 P. 106 (Wyo. 1929) (invalidating, without reference to constitutional provisions, closing ordinance as to barbershops as unreasonable and thus outside municipal authority).

47. *Ganley v. Claeys*, 40 P.2d 817, 818 (Cal. 1935).

48. *Falco v. Atlantic City*, 122 A. 610 (N.J. 1923), *relying on La Porta v. Board of Health*, 58 A. 115 (N.J. 1904). *But see* modern New Jersey authority, *supra* notes 35-36 and accompanying text.

49. *Falco*, 122 A. at 610.

50. *Wilson v. City of Zanesville*, 199 N.E. 187 (Ohio 1935).

51. *Fordham & Joe F. Asher, Home Rule Powers in Theory and Practice*, 9 OHIO ST. L.J. 18, 64 (1948).

ordinance fixing the hours that a barbershop could remain open, finding that the restriction made no contribution to sanitation and that, in any case, unsanitary conditions in a barbershop are no more likely to cause disease than similar conditions in numerous other places of business not subject to the restrictions.⁵²

V. GENERAL SAFETY PURPOSES

Can a safety purpose, such as prevention of fire, justify enacting a closing law? The general propriety of such a purpose has been recognized as coming within the police power,⁵³ and some cases have found night-time fires to be a significant enough danger to support the need for closing restrictions. Finding that laundries posed special fire hazards, some older cases held closing requirements for laundries justified because fires are substantially harder to fight after dark.⁵⁴ Recent cases have also sometimes found a rational purpose for limiting night-time operation of self-service laundries, due to the possibility of fire from overloaded washers or dryers,⁵⁵ from failing to remove lint from dryers or from putting improper materials into them.⁵⁶ So long as the ordinance is directed at time periods when fire danger is particularly great or when fire fighting is especially difficult, a closing ordinance may be valid.⁵⁷

52. *City of Cincinnati v. Correll*, 49 N.E. 2d 412, 415-16 (Ohio 1943).

53. *See State v. Grant*, 216 A.2d 790, 792 (N.H. 1966), *relying on State v. Freeman*, 38 N.H. 426 (1859) (recognizing right of municipality to set closing hours for restaurants).

54. *See Soon Hing v. Crowley*, 113 U.S. 703 (1885) (noting special dangers of businesses that require fires for their operation); *Barbier v. Connolly*, 113 U.S. 27 (1885) (noting special danger of fire in city composed largely of wooden buildings such as San Francisco); *Ex parte Moynier*, 2 P. 728 (Cal. 1884). *But see Yee Gee v. City of San Francisco*, 235 F. 757 (N.D. Cal. 1916) (finding a closing ordinance as to all laundries throughout San Francisco too extreme to be justified by fire hazard). *See generally* Annotation, *Validity of statute or ordinance fixing closing hours for certain kinds of business*, *supra* note 3, at 245-47.

55. *See Township of Little Falls v. Husni*, 352 A.2d 595, 599 (N.J. Super. Ct. app. Div. 1976), distinguishing *Fasino v. Montvale Mayor & Council*, 300 A.2d 195 (N.J. Super. Ct. Law Div. 1973), *aff'd*, 324 A.2d 77 (N.J. Super. Ct. App. Div. 1973) (invalidating as too extreme ordinance requiring closing of nearly all businesses during certain hours but noting special dangers of laundries).

56. *Gibbons v. City of Chicago*, 214 N.E.2d 740, 743 (Ill. 1966).

57. *See Spann v. Gaither*, 136 A. 41, 43-44 (Md. 1927) (invalidating portion of ordinance regarding laundries that prohibited operation between midnight Sunday and 6:00 a.m. Monday as no special danger was shown to exist during that time).

Courts have similarly upheld closing ordinances for drugstores where aimed at the danger of mishandling prescription drugs.⁵⁸ On the other hand, just as most cases find no special health-related reasons to limit the hours of barbershops,⁵⁹ there are in general no special safety considerations regarding drugstores either.⁶⁰

VI. CRIME CONTROL

One specific safety consideration to which courts give great deference, and which has at times been held to justify closing laws even as to barbershops, is the protection of the community from crime. According to one court, "often in our cities the barber shop in front may be a blind for a den of thieves, professional gamblers, and racketeers behind,"⁶¹ justifying restrictions on night-time operation of such businesses. While the attitude toward barbershops in this regard has largely changed,⁶² the general rule remains that night-time closing of businesses whose operation at such hours could reasonably be thought to endanger the maintenance of order and the protection of persons and property may be necessary.⁶³ Thus, restaurants may be forced to close at midnight when they have been the site of assaults and other disturbances.⁶⁴

Courts have recognized that "the lawless element" often gathers around pool and billiard halls, making it reasonable for a city to require their night-time closure.⁶⁵ A requirement that pool rooms close as early as 7:00 p.m. has been upheld as validly contributing to

58. *Spiro Drug Serv., Inc. v. Board of Commissioner of Union City*, 130 N.J.L. 1 (1943).

59. *See supra* notes 35-47 and accompanying text.

60. *See City of Cincinnati v. Correll*, 49 N.E.2d 412, 415 (Ohio 1943).

61. *Wilson v. City of Zanesville*, 199 N.E. 187, 191-92 (Ohio 1935).

62. *See infra* notes 86-87 and accompanying text.

63. *See State v. Grant*, 216 A.3d 790 (N.H. 1966) (upholding closing ordinance applicable to all restaurants as helping maintain order and protect persons and property).

64. *Id.* *See also Churchill v. City of Albany*, 133 P. 632 (Or. 1913) (discussing ordinance requiring restaurants and various other establishments to close between midnight and 5:00 a.m. to forestall sale of intoxicating liquor disguised as soft drinks); *City of Burlington v. Jay Lee, Inc.*, 290 A.2d 23 (Vt. 1972) (upholding ordinance prohibiting operation of establishments dispensing food and drink during early morning hours as necessary to maintain order).

65. *Ex parte Brewer*, 152 S.W. 1068, 1069 (Tex. Crim. App. 1913) (sustaining ordinance requiring pool halls to close from midnight until 5:00 a.m.).

the public peace and general welfare.⁶⁶ The tendency of these businesses to contribute to idleness, gambling and the commission of crimes supports the validity of closing laws.⁶⁷ Even total bans on pool rooms have occasionally been upheld,⁶⁸ and therefore *a fortiori*, the hours.⁶⁹

Courts uphold night-time closing requirements for massage parlors and bathhouses, as a reasonable exercise of the police power because of the reputation of these establishments as places where lewd and immoral acts are likely to occur.⁷⁰ Adult bookstores may be similarly regarded.⁷¹ Even self-service laundries may be validly considered places in which crime is especially likely to occur after dark and may therefore be required either to have an attendant on duty or to close during night-time hours.⁷² Indeed, automated laundries may be required to close altogether during particularly dangerous periods, without regard to whether or not they keep an attendant on duty.⁷³ Because the peak of criminal activity often occurs during certain night-time hours, even the maintenance of an

66. *Purvis v. City of Ocilla*, 102 S.E. 241 (Ga. 1920) (upholding ordinance prohibiting pool rooms from being kept open between 7:00 p.m. and 6:00 a.m.).

67. *City of Tarkio v. Cook*, 25 S.W. 202, 203 (Mo. 1894) (upholding ordinance under which billiard halls could not be kept open after 9:00 p.m.).

68. *See State ex rel. Baylor v. City of Hinton*, 155 S.E. 912 (W. Va. 1930) (discussing validity of city policy of prohibiting pool rooms and city's rejection of all applications for such licenses).

69. *See Cook*, 25 S.W. at 203 (noting that Missouri statutory law would allow villages to prohibit billiard halls altogether).

70. *City of Spokane v. Bostrom*, 528 P.2d 500, 501 (Wash. Ct. App. 1974) (finding ordinance that prohibited conducting massage parlor or bathhouse business between 10:00 p.m. and 6:00 a.m. to be reasonable exercise of police power).

71. *See Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986) (upholding ordinance limiting bookstore operations to hours of 10:00 a.m. to midnight Mondays through Saturdays).

72. *Township of Little Falls v. Husni*, 352 A.2d 595 (N.J. Super. Ct. App. Div. 1976 (self-service laundry could not operate between midnight and 7:00 a.m. without attendant on duty)).

73. *Schacht v. City of New York*, 219 N.Y.S.2d 53 (Sup. Ct. 1961), modified, 14 A.D.2d 526, 217 N.Y.S.2d 278 (1961) (upholding provisions requiring automatic or coin-operated laundries to close between midnight and 6:00 a.m. and requiring coin-operated laundries to have attendant on the premises between 6:00 p.m. and midnight). The court observed that even the presence of an attendant can be regarded as an insufficient safeguard after midnight because there are very few pedestrians on the street at that hour, and the presence of an attendant during early morning hours would tend to encourage crimes outside the laundromat by persons who would lie in wait for those emerging from the establishment. 219 N.Y.S.2d at 56.

attendant may not be a sufficient safeguard at such times.⁷⁴ Not only the theft of coins from the laundry machines, but also sex crimes ranging from exhibitionism to rape are likely to decrease if laundromats are required to close at night.⁷⁵ Self-service car washes may be similarly restricted if they become, or have the potential to become, the site of rowdiness and gang activity.⁷⁶ Even service stations may be restricted to day-time operation where empirical evidence shows that most crimes committed at such businesses occur at night.⁷⁷

In some instances, night-time business activity may increase the opportunity for fraud, and laws that prohibit such activity from occurring under cover of darkness may thus be valid. Jewelry auctions have often been ruled validly subject to regulations forbidding nocturnal operation.⁷⁸ Some empirical evidence demonstrates that the sale of diamonds, watches, and other jewelry under artificial light results in deception of, and fraud on, the public, thus justifying prohibitions on night-time sales.⁷⁹ Courts have taken judicial notice that the genuineness of such articles as jewelry "is more readily determined by the light of day than by artificial light."⁸⁰ Modern improvements in artificial lighting have not reduced the need for restrictions on night time sales of jewelry, because lights are adjustable and technology has also facilitated the manufacture of seemingly authentic imitation jewelry.⁸¹ Similarly, restrictions on

74. *Id.* See generally Annotation, *License, regulation, and taxation of self-service laundries*, 87 A.L.R.2d 1007, 1011-14 (1963).

75. *Gibbons v. City of Chicago*, 214 N.E.2d 740, 744 (Ill. 1966).

76. *People v. Raub*, 155 N.W.2d 848 (Mich. Ct. App. 1968) (ordinance forbidding coin-operated self-service car washes from being kept open between 10:00 p.m. and 7:00 a.m. upheld as reasonable exercise of police power).

77. See *Bi-Lo Stations, Inc. v. Village of Alsip*, 318 N.E.2d 47 (Ill. App. Ct. 1974) (ruling that village ordinance providing that gasoline stations could be operated only between 6:00 a.m. and midnight was constitutional exercise of police power reasonably related to deterrence of crime and criminal activity in village).

78. See *Davidson v. Phelps*, 107 So. 86 (Ala. 1926); *Clein v. City of Atlanta*, 139 S.E. 46 (Ga. 1927); *Wagman v. City of Trenton*, 134 A. 115 (N.J. 1926); *Biddles v. Enright*, 146 N.E. 625 (N.Y. 1926); *Alexander v. Enright*, 206 N.Y.S. 785 (App. Div. 1924); *City of Roanoke v. Fisher*, 119 S.E. 259 (Va. 1923).

79. See *Fisher*, 119 S.E. at 262.

80. *Davidson*, 107 So. at 88.

81. See *Biddles*, 146 N.E. at 628.

after-dark operation of pawnshops⁸² and second-hand stores⁸³ have been upheld in order to reduce the possibility of fraudulent sales. Here, there is the additional reason that such establishments are used by thieves for the disposal of stolen goods, and night-time restrictions on second-hand businesses may therefore help curtail night-time theft.⁸⁴

However, not all night-time closing laws have been found sustainable on the ground of reducing criminal activity. A New Jersey case⁸⁵ found no public need to legislate the night-time closing of convenience stores and gas stations, since evidence showed that robberies and other criminal acts at these businesses could occur at any time of day or night. Another New Jersey case concluded that the perception of barbershops as breeding grounds of crime is an outdated holdover from Shakespeare's day, and thus there is no need to require night-time closing of such businesses in a peaceful, well-lit shopping area.⁸⁶ It has been recognized that barbering today cannot reasonably be regarded as a noxious business that attracts loafers and derelicts to its places of operation.⁸⁷ Likewise, some courts have not been persuaded that allowing a self-service laundry to remain open after dark will encourage prowlers to commit crimes⁸⁸ or will make the maintaining of law and order so difficult as to justify closing an

82. *Solof v. City of Chattanooga*, 174 S.W.2d 471 (Tenn. 1943), reh. denied, 176 S.W.2d 816 (1944) (upholding ordinance restricting pawnbrokers hours to 8:00 a.m. until 6:00 p.m. from June to September, and until 7:00 p.m. from October to May).

83. *Hyman v. Boldrick*, 154 S.W. 369 (Ky. 1913) (upholding ordinance requiring second-hand dealers to keep their stores closed from 7:00 p.m. to 7:00 a.m.). *Cf.* *City of Butte v. Paltrovich*, 75 P. 521 (Mont. 1904) (upholding ordinance designed to ensure that pawnshops and second-hand stores conduct business during daylight hours).

84. *See Hyman*, 154 S.W. at 370.

85. *Southland Corp. v. Township of Edison*, 524 A.2d 1336 (N.J. Super. Ct. Law. Div. 1986).

86. *Tomasi v. Township of Wayne*, 313 A.2d 229, 233-34 (N.J. Super. Ct. Law. Div. 1973) (quoting Shakespeare's MEASURE FOR MEASURE on laxity of law enforcement as to barbershops in earlier times, but concluding that this was not the current situation in Wayne Township, New Jersey because "Peace reigns in Wayne.").

87. *See Oklahoma City v. Johnson*, 82 P.2d 1057, 1059 (Okla. 1938).

88. *Van Sciver v. Zoning Bd. of Adjustment*, 152 A.2d 717, 723 (Pa. 1959) (finding zoning board acted improperly in requiring, as condition for granting permit to coin-operated laundromat, that business hours be limited to 8:00 a.m. through 8:00 p.m. Monday through Saturday). *But see supra* notes 72-73 and accompanying text.

otherwise lawful business.⁸⁹ In general, however, courts have been quite willing to accept a legislative determination that closing laws will reduce crime and contribute to maintaining the peace. Such a purpose is well-established as a potentially valid one for the enactment of a closing law. All that is then required to uphold the validity of a specific law is evidence from which reasonable people could determine that crime-fighting will be aided by the closing requirement.⁹⁰

VII. LIQUOR CONTROL

One particular area of crime control relevant to closing legislation is enforcement of the liquor laws. It has been recognized that liquor presents special dangers: "Liquor itself is regarded as an evil, an enemy of civilization and of good government."⁹¹ These dangers in turn may justify special closing restrictions, otherwise unsupportable under any police-power purpose, where the sale or dispensing of ordinary items is concerned.⁹² Thus, a law requiring night-time closing of bars or liquor stores may be upheld, even if it would be invalid when applied to grocery or clothing stores.⁹³

The dangers of liquor may even justify a closing requirement for establishments selling soft drinks or other bottled goods, because the legislative body may reasonably fear that these goods are "not as 'soft' as the unsophisticated may believe them to be."⁹⁴ An ordinance may thus validly require night-time closing of restaurants, and even of catering services, in order to prevent *sub rosa* sale of intoxicating

89. See *Fasino v. Mayor of Montvale*, 300 A.2d 195 (N.Y. Super. Ct. Law. Div. 1973), *aff'd*, 324 A.2d 77 (N.J. Super. Ct. App. Div. 1973) (invalidating ordinance requiring closing of all businesses, except those limited to on-premises consumption of food and/or beverages, between 11:00 p.m. and 6:30 a.m.; cf. *Heard v. Bolton*, 131 S.E.2d 835 (Ga. Ct. App. 1963); *City of Jackson v. Murray-Reed-Slone & Co.*, 178 S.W.2d 847 (Ry. 1944) (concluding that added expense of night-time policing due to businesses remaining open after dark did not justify closing requirement).

90. See *supra* notes 61-84 and accompanying text.

91. *State v. Ray*, 42 S.E. 960, 961 (N.C. 1902).

92. See *id.* at 961.

93. *Id.* As to mercantile establishments, see generally *Validity of statute or ordinance fixing closing hours for certain kinds of business*, *supra* note 3, at 247-49.

94. *Churchill v. City of Albany*, 133 P. 632, 633 (Or. 1913).

drinks.⁹⁵ Legislative bodies typically have very broad power over the regulation of liquor, and an exercise of such power through enactment of a closing restriction will generally be upheld unless there is a clear abuse of legislative discretion.⁹⁶ Because, however, the authority to control liquor resides initially in the state,⁹⁷ a municipality's power can only derive from a state statute delegating that power⁹⁸ or from some provision of a home-rule city's charter.⁹⁹

VIII. INVALID PURPOSES

There are thus a number of valid purposes connected to public health and safety—and, to a lesser extent, connected to morality and general welfare—justifying enactment of closing legislation. What purposes have been specifically recognized by the courts as improper? Courts have invalidated closing legislation that, with nothing more than a reference to general welfare, requires the night-time closing of all or most businesses.¹⁰⁰ A closing restriction must be justified by specific dangers or conditions, otherwise it is an unwarranted interference with the right of citizens to earn a living.¹⁰¹

95. *Id. But see* Fincher v. City of Union, 196 S.E. 1 (S.C. 1938) (noting that direct regulation of noise and nuisance problems preferable to closing restrictions on restaurants). *See generally* Carmichael, *supra* note 6, at 944-45.

96. *See* Other Place of Miami, Inc. v. City of Hialeah Gardens, 353 So. 2d 861 (Fla. Dist. Ct. App. 1977) (upholding city ordinance changing required closing time for retail vendors of alcoholic beverages from 3:00 a.m. to 1:00 a.m.).

97. *See* Los Angeles Brewing Co. v. City of Los Angeles, 48 P.2d 71 (Cal. Dist. Ct. App. 1935) (holding state had exclusive right to license liquor dealers for revenue; city could not impose license tax); 7-Eleven, Inc. v. McClain, 422 P.2d 455 (Okla. 1967) (holding sale of liquor was reserved for state regulation and city zoning ordinance restricting sale of beer invalid). Thus, if there is a conflict between state and local law—even the law of a home-rule city—as to liquor, the state law will always prevail. *See* Williams v. City of Jackson, 164 N.E.2d 195 (Ohio Comm. Pl. 1959) (holding city could not forbid sale of beer during hours when state allowed beer sales); Sparger v. Harris, 131 P.2d 1011 (Okla. 1942) (holding city could not prohibit Sunday sale of beer when sale was authorized by state statute). *See generally* REYNOLDS, *supra* note 2, at 539-41.

98. *See* Other Place of Miami, 353 So.2d at 861 (upholding restriction on hours of sale for alcoholic beverages as permissible under state statute).

99. *See* State v. Ray, 42 S.E. 960, 961 (N.C. 1902) (noting that town charters generally give power to regulate establishments where liquor is sold).

100. *See Ex parte* Harrell, 79 So. 166 (Fla. 1918).

101. *See* Yee Gee v. City of San Francisco, 235 F. 757 (N.D. Cal. 1916) (invalidating ordinance forbidding laundries from washing or performing other work between 6:00 p.m. and 7:00 a.m. as unreasonable interference with liberty of persons pursuing legitimate occupation).

Laws cannot validly require night-time closing on the basis of risks or problems that exist equally during the daytime.¹⁰²

Beyond that, the courts have singled-out a few specific purposes as improper and inappropriate grounds for closing requirements. In general, a municipality cannot restrict business hours merely to save the government or its workers time or money.¹⁰³ For example, courts have held that limitations on opening hours cannot be fixed for the convenience of the authorities charged with inspecting the businesses.¹⁰⁴ So long as the businesses are open sufficient hours to make inspection reasonably possible, the public is adequately protected, and further restriction is unnecessary.¹⁰⁵ In many cities, inspectors of some businesses are not on duty for long periods of time; thus, to require the closing of those businesses whenever the inspectors are unavailable would cause severe inconvenience to both workers and customers.¹⁰⁶ Adequate provision for inspection, and for health regulation in general, is attainable without severely limiting the hours that a business remains open,¹⁰⁷ thereby preventing the financial losses that such limitations might unnecessarily cause some establishments.¹⁰⁸

102. See *Van Sciver v. Zoning Bd. Of Adjustment*, 152 A.2d 717, 723 (Pa. 1959) (holding limitation on hours of coin-operated laundromat not justified on basis of machines emitting odors or fumes or because unsavory characters might congregate in such places, as these dangers were equally present during daytime and night).

103. See *City of Jackson v. Murray-Reed-Slone & Co.*, 178 S.W.2d 847 (Ky. 1944) (holding mere fact that city might incur additional expense in policing town at night invalid reason for ordinance requiring all businesses to close between midnight and 4:00 a.m.).

104. *Justesen's Food Stores, Inc. v. City of Tulare*, 84 P.2d 140, 144 (Cal. 1938) (holding city could not require establishments dealing in foods to close at certain times merely for convenience of inspectors); *Skaggs v. City of Oakland*, 57 P.2d 478, 480 (Cal. 1936) (invalidating ordinance restricting deliveries of bakery goods to times when inspectors might reasonably be expected to be on duty). See *People ex rel. Pinello v. Leadbitter*, 85 N.Y.S.2d 287, 293 (Sup. Ct. 1948) (holding closing restriction on barbershops unnecessary and unreasonable interference with lawful business if restriction based on convenience of inspectors).

105. See *Knight v. Johns*, 137 So. 509 (1931) (holding policy of fixing reasonable time for inspecting shops invalid ground for ordinance forbidding barbershops to open before 7:30 a.m. or remain open after 6:30 p.m.).

106. *City of Denver v. Schmid*, 52 P.2d 388, 389 (Colo. 1935).

107. See *Ganley v. Claeys*, 40 P.2d 817, 818 (Cal. 1935) (finding state laws provided complete plan for regulation of barbering business, infrequent inspections did not detract from effectiveness of available process for handling complaints).

108. See *McCulley v. City of Wichita*, 98 P.2d 192, 196-198 (Kan. 1940) (invalidating ordinance restricting food sales to hours convenient for food inspectors as not substantially

Regulation of sanitary conditions at places of business is a proper and necessary government activity, but it does not in itself justify closing restrictions.¹⁰⁹ Night-time operation of businesses such as barbershops might historically have contributed to unhealthy conditions, but this is no longer the case.¹¹⁰ Furthermore, in accordance with the general rule requiring benefit to the public rather than the government,¹¹¹ the increased costs, if any, of inspections that result from longer business hours cannot justify a closing law, especially since the government can recover the costs by imposing license fees.¹¹²

Courts have also specifically held that providing employees with shorter working hours is not a valid justification for closing legislation.¹¹³ Restrictions on working hours for employees such as barbers may be reasonably related to public health and safety, but such measures "can only be effectual as health or safety measures if limited to the number of hours per day or per week that the individual barber is permitted to work."¹¹⁴ Employees at many businesses work in shifts, thus minimizing the dangers of any individual employee working too long and limiting the need for limitations on business hours.¹¹⁵

related to public health and general welfare when enforcement would cause some sellers to suffer financial losses or close their businesses).

109. See *City of Miami v. Shell's Super Store*, 50 So.2d 883, 884 (Fla. 1951) (finding regulation of barbers should deal with competence and sanitation and protection of public from disease and holding restriction on barbershop hours unrelated to these goals); cf. *Oklahoma City v. Johnson*, 82 P.2d 1057, 1058 (Okla. 1938) (holding wages and hours of labor of barbers and sanitary conditions under proper subjects of regulation which they work, but it does not follow that these purposes justify regulation of the opening and closing hours of barbershops).

110. *Tomasi v. Township of Wayne*, A.2d 229, 232 (N.J. Super. Ct. Law. Div. 1973).

111. See *Cowan v. City of Buffalo*, 288 N.Y.S. 239, 246 (App. Div. 1936) (invalidating hours restriction on open-air markets as conferring no legitimate benefit on the public).

112. *State ex rel. Newman v. City of Laramie*, 275 P. 106, 110 (Wyo. 1929) (reasonable to suppose that legislature, in granting cities power to license and regulate barbershops, intended that expense of inspection be covered by license fees or borne by public); cf. *McDermott v. City of Seattle*, 4 F. Supp. 855, 857 (W.D. Wash. 1933) (holding city may not enact ordinance depriving barbershop owner of goodwill generated during 25 years of operation without providing compensation, because goodwill is a vested property right).

113. See *State ex rel. Pavlik v. Johannes*, 259 N.W. 537, 540-41 (Minn. 1935) (holding closing law for barbershops unconstitutional and declaring that closing law did not assist in achieving shorter working hours for employees).

114. *People ex rel. Pinello v. Leadbitter*, 85 N.Y.S.2d 287, 293 (Sup. Ct. 1948).

115. *City of Denver v. Schmid*, 52 P.2d 388, 389 (Colo. 1935).

Similarly, it is not a proper purpose of municipal regulation to give relief to business operators who do not want to remain open 24 hours a day but must do so, as some gas station operators are, by agreements with their franchisers.¹¹⁶ Nor is it the function of the municipality to pass a closing law merely to protect business operators from a competitor who is willing to stay open longer hours.¹¹⁷ There must be some public benefit, which certainly does not flow from limiting competition.

Just as the possible additional cost of inspections does not justify a closing law,¹¹⁸ the additional expense of policing the city at night because businesses remain open is not a sufficient reason to sustain a closing requirement.¹¹⁹ One of the principal duties of government is to provide protection against crime, and the government cannot force lawful businesses to close on the basis that additional resources will otherwise have to be spent to supply adequate protection.¹²⁰ Furthermore, closing requirements for harmless businesses such as barbershops cannot be upheld on the ground that they provide places where crimes are particularly likely to occur, thus making enforcement of criminal laws more difficult.¹²¹ While it may be true that policing the city would be easier if all places of business, or at least all unattended businesses, were required to close at dark, but this does not justify the resulting inconvenience to customers and loss of patronage to owners of such an extreme measure.¹²² Laws should deal directly with the harmful conduct that the lawmakers desire to prevent, rather than indirectly approaching the problem by requiring

116. *Southland Corp. v. Township of Edison*, 524 A.2d 1336, 1347-48 (N.J. Super. Ct. Law. Div. 1986) (holding ordinance requiring closing of convenience food stores during certain hours unconstitutional).

117. *State v. Ray*, 42 S.E. 960, 961 (N.C. 1902) (holding no legislative power exists to pass ordinance interfering with personal liberty by compelling unwilling merchant to close at 7:30 p.m.). Cf. *City of Buffalo v. Linsman*, 98 N.Y.S. 737, 738 (App. Div. 1906) (invalidating ordinance prohibiting produce peddling in streets between 5:00 a.m. and 1:00 p.m. as improperly compelling customers to patronize grocers and shopkeepers).

118. See *supra* notes 110-11 and accompanying text.

119. *City of Jackson v. Murray-Reed-Slone & Co.*, 178 S.W.2d 847, 848 (Ky. 1944).

120. See *Fasino v. Mayor of Montvale*, 300 A.2d 195, 202-03 (N.J. Super. Ct. Law. Div. 1973), *aff'd*, 324 A.2d 77 (N.J. Super. Ct. App. 1973).

121. *Chaires v. City of Atlanta*, 139 S.E. 559, 561 (Ga. 1927) (finding closing ordinance for barbershops unreasonable).

122. See *Heard v. Bolton*, 131 S.E.2d 835, 837 (Ga. Ct. App. 1963).

basically beneficial establishments to close merely because criminal conduct may sometimes occur there. Thus, for example, laws cannot require picture arcades to close at night in order to prevent masturbation by their customers.¹²³

IX. EQUAL PROTECTION REQUIREMENTS

Due process arguments that result in the invalidation of a closing law not reasonably related to a police-power purpose overlap with equal protection arguments that invalidate closing restrictions which unreasonably discriminate against some businesses. Thus, when a closing restriction targets particular businesses, such as barbershops it may not only lack a valid purpose, but may also violate equal protection principles.¹²⁴ If, for instance, a law prohibits barbershops from night-time operation, but fails to place similar restrictions on beauty shops, it is likely to be ruled arbitrary and unreasonably discriminatory.¹²⁵ Similarly, a court invalidates an ordinance regulating the hours during which grocery stores may sell food, but exempting from the regulation the sale of food prepared on a business's premises for immediate consumption.¹²⁶ A closing law that singles-out shoe stores is also highly suspect,¹²⁷ as is a law that applies only to "lunch wagons" and not to restaurants.¹²⁸ Courts have

123. *People v. Glaze*, 614 P.2d 291 (Cal. 1980) (invalidating ordinance requiring picture arcades to close between hours of 2:00 a.m. and 9:00 a.m. as unnecessary to legitimate governmental interest of preventing masturbation by customers and declaring ordinance should deal directly with objectionable conduct).

124. *See Chaires*, 139 S.E. 561, 563.

125. *See City of Denver v. Schmid*, 52 P.2d 388, 389 (Colo. 1935); *Ernesti v. City of Grand Island*, 251 N.W. 899 (Neb. 1933) (invalidating as unreasonably discriminatory closing laws that applied to barbershops but not beauty shops). *But see State ex rel. Melton v. Nolan*, 30 S.W.2d 601 (Tenn. 1930) (upholding discriminatory closing law); *Gerard v. Smith*, 52 S.W.2d 347 (Tex. Civ. App. 1932) (upholding discriminatory closing law). *See generally* Annotation, *Validity of Statute or Ordinance Regulating Barbers*, *supra* note 36, at 1090-91.

126. *McCulley v. City of Wichita*, 98 P.2d 192, 197-98 (Kan. 1940).

127. *See Dave Abrams, Inc. v. City of Buffalo*, 228 N.Y.S. 239 (1945), *aff'd* 12 N.E.2d 174, 175 (N.Y. 1937).

128. *See Hart v. Teaneck Township*, 50 A.2d 856 (N.J. 1947) (holding closing ordinance limited to lunch wagons unreasonably discriminatory because lunch wagons do not differ substantially from restaurants). As to distinctions among various kinds of eating establishments, see generally *What Constitutes a "Restaurant," supra* note 6, at 1399. *See also What Amounts to "Restaurant" or "Restaurant Business" Within Intoxicating Liquor Law, supra* note 6, at 428.

also held that there is no reason for a closing law to set different business hours for masseurs who operate as single practitioners than for massage parlors in which two or more masseurs practice.¹²⁹ A closing law that applies generally to retail stores, but exempts drug stores, delicatessens, and a wide variety of other retail businesses, has been held "clearly discriminatory."¹³⁰ Similarly, a closing requirement applicable to commercial establishments that exempts drug stores and dealers in perishable necessities, but does not restrict the exempted businesses to the sale of drugs or perishable necessities during the hours when other businesses must close, has been found to involve improper favoritism.¹³¹

Closing laws that exempt, or apply different standards to, some businesses may be valid if there is good reason for the disparate treatment. Thus, a general closing requirement may exempt restaurants on the ground that food is a necessity.¹³² Courts may uphold more stringent restrictions on pawnshops than on other businesses because pawnshops facilitate the commission of crime and its concealment.¹³³ Indeed, this special treatment may apply to all dealers in second-hand goods.¹³⁴ Laws may validly restrict auction

Courts have also invalidated Sunday blue laws as discriminating without good reason against certain businesses. *See* *Allen v. Colorado Springs*, 75 P.2d 141 (Colo. 1938) (invalidating closing law that applied to grocery stores but not retail drugstores or certain other businesses as discriminatory); *Kislingbury v. Treasurer*, 160 A. 654 (N.J.C.P. 1932) (holding ordinance excepting sale of milk and medicine from Sabbath restrictions); *Ex parte Hodges*, 83 P.2d 201 (Okla. Crim. App. 1938) (holding ordinance applicable only to certain businesses such as grocery stores unconstitutional). *See generally* Annotation, *Constitutionality of Discrimination by Sunday Law or Ordinance as Between Different Kinds of Business*, 119 A.L.R. 752 (1939).

129. *Hart Health Studio v. Salt Lake County*, 577 P.2d 116 (Utah 1978).

130. *Crawford's Clothes, Inc. v. Board of Comm'rs*, 35 A.2d 38, 38-39 (N.J. 1944) (finding no reasonable basis was shown "to prohibit the sale of clothing and permit the sale of stationery supplies, to prohibit the sale of shoes and permit the sale of gasoline, to prohibit the sale of hats and permit the sale of liquor.")

131. *Saville v. Corless*, 151 P. 51, 52 (Utah 1915).

132. *See Opyt's Amoco, Inc. v. Village of South Holland*, 486-87, 568 N.E.2d 260, 268 (Ill. App. Ct. 1991), *aff'd* 595 N.E.2d 1060 (Ill. 1992) (upholding constitutionality of village's Sunday closing ordinance and indicating that test for validity of treating businesses differently is whether invidious discrimination is present).

133. *See City of Butte v. Paltrovich*, 75 P. 521 (Mont. 1904); *Solof v. City of Chattanooga*, 174 S.W.2d 471, 472 (Tenn. 1943).

134. *See Hyman v. Boldrick*, 154 S.W. 369, 370 (Ky. 1913) (finding ordinance requiring all second-hand dealers to close their stores from 7:00 p.m. to 7:00 a.m. nondiscriminatory and based on a reasonable classification).

sales of diamonds, watches and jewelry due to the strong possibilities of deception and fraud when such goods are sold under artificial lights.¹³⁵ Consequently, courts may find the restriction reasonable even if it applies to all sales of jewelry.¹³⁶

Dealers in intoxicating liquors, both at wholesale and retail levels, can be subject to special closing requirements due to the dangers inherent in the use of these products.¹³⁷ Closing requirements may legitimately discriminate between places of business, such as restaurants, that sell intoxicating liquors and restaurants not engaging in the sale of liquor.¹³⁸ The presence of liquor on the premises and the acquisition of a liquor license are sufficient factors to distinguish businesses from establishments where liquor is not available. Even the sale of soft drinks or bottled goods may be a sufficient basis imposition of a special closing requirement.¹³⁹ Similarly, businesses that sell sexually-explicit materials may be subject to regulations on hours of operation that do not apply to other establishments, because of the unique and significant community interests at stake.¹⁴⁰ Places of business where criminal elements are reasonably likely to gather, such as billiard halls,¹⁴¹ or places where robberies and other crimes are especially likely to occur, such as service stations,¹⁴² may be forced to close at night. Laws may also restrict the hours of

135. *City of Roanoke v. Fisher*, 119 S.E. 259, 263 (Va. 1923).

136. *Davidson v. Phelps*, 107 So. 86, 88 (Ala. 1926) (noting that courts have taken judicial notice of fact that public are especially susceptible to deception in sale of merchandise from jewelry stock and that genuineness is more easily assessed in daylight than by artificial light).

137. *See State v. Calloway*, 84 P. 27, 32 (Idaho 1906) (liquor trade as a whole subject to different laws and regulations than other business because of public health and moral implications).

138. *Cowan v. City of St. Petersburg*, 6 So.2d 269, 271 (Fla. 1942) (upholding ordinance requiring restaurant licensed to sell alcoholic beverages to close, where same restriction did not apply to restaurants without a liquor license).

139. *See Churchill v. City of Albany*, 133 P. 632, 633 (Or. 1913) (finding city council could reasonably believe that compelling sellers of soft drinks to close at midnight promoted good government).

140. *See Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074, 1080 (5th Cir. 1986).

141. *See City of Tarkio v. Cook*, 25 S.W. 202, 203 (Mo. 1984) (ordinance required billiard halls had to close at 9:00 p.m.).

142. *See Bi-Lo Stations, Inc. v. Village of Alsip*, 318 N.E.2d 47 (Ill. App. Ct. 1974) (finding ordinance requiring service stations to close between midnight and 6:00 a.m. reasonably related to deterrence of crime). *But see Southland Corp. v. Township of Edison*, 524 A.2d 1336 (N.J. Super. Ct. Law. Div. 1986) (holding closing ordinance as applied to gasoline stations violated constitutional rights of citizens to acquire, possess and protect property).

businesses that have a history of causing loud noise and disturbing neighbors, even if the business is as seemingly innocuous as a car wash.¹⁴³ Similarly, restrictions may limit restaurants to certain hours of business because of their potential for producing noise,¹⁴⁴ particularly if the restriction applies only to hours when it is commonly known that most people are attempting to rest.¹⁴⁵

A closing law applicable to businesses that may be validly regulated can be invalid if its limitations are unreasonably discriminatory. Thus, a court invalidated an ordinance allowing service stations to sell gasoline to common carriers, but prohibiting sales to private persons during certain hours, on the ground that the two different kinds of sales did not present different hazards.¹⁴⁶ An ordinance specifically limiting laundry operations on Monday mornings has been found unreasonable,¹⁴⁷ as has an ordinance applicable only to barbecue stands and not to other eating establishments.¹⁴⁸ A law is not necessarily invalid merely because only one particular type of business currently comes within its terms if those terms are of general application.¹⁴⁹ If, however, a disturbance to the community results purely from the manner in which one particular establishment is being conducted, rather than from the intrinsic nature of a class of businesses, the law of nuisance may provide the appropriate means of dealing with the problem.¹⁵⁰

143. See *People v. Raub*, 155 N.W.2d 878, 881 (Mich. Ct. App. 1968) (upholding closing restrictions on car wash resulting from reports of loud noise, beer drinking and disturbances at establishment).

144. See *State v. Grant*, 216 A.2d 790, 791-92 (N.H. 1966) (upholding ordinance requiring restaurants to closed between midnight and 6:00 a.m.). See generally *Validity of Municipal Ordinance Regulating Time During Which Restaurant Business May Be Conducted*, *supra* note 6, at 944-45. However, restaurants may also be exempted from closing restrictions on the ground that the service they provide is a necessity. See *supra* note 132 and accompanying text.

145. See *City of Burlington, v. Jay Lee, Inc.*, 290 A.2d 23, 26 (Vt. 1972).

146. *Heil v. Kaufman*, 189 S.W.2d 276, 278 (Mo. 1945).

147. *Spann v. Gaither*, 136 A. 41 (Md. 1927).

148. *Fincher v. City of Union*, 196 S.E. 1 (S.C. 1938).

149. *Township of Little Falls v. Husni*, 352 A.2d 595, 598 (N.J. Super. Ct. App. Div. 1976) (upholding ordinance of general application to laundromats, even though it affected only defendant's business).

150. See *Fincher*, 196 S.E. 3, 5 (holding ordinance prohibiting operation of barbecue stand in residential area of city during certain hours not justified by particular stands partially causing nuisance).

X. FORMS OF REGULATION

In enacting a closing restriction, a municipal legislative body is acting under the police power delegated by the state.¹⁵¹ Enactments may take different forms and involve different aspects of the police power. Some are simply broad exercises of that power based on the city's wide authority "to determine not only what the public interest and welfare require but what measures are necessary to secure such interests."¹⁵² Often, municipalities enact regulations of business, including closing regulations, as part of a general program for licensing businesses in order to protect public health, safety, morality and general welfare.¹⁵³ Sometimes, a closing regulation may rely on a more specific provision of the police power, such as the authority to control the liquor trade.¹⁵⁴ While in some jurisdictions the state government has completely preempted the power to control the hours for selling liquor, in other states the laws leave room for further municipal restrictions, or even specifically provide municipalities with authority in this area.¹⁵⁵ Therefore, the validity of municipal regulation of liquor sales is largely a matter between the state and the municipality; the basic power to restrict the hours of such sales is well established,¹⁵⁶ including the power to limit sales at restaurants and other businesses whose trade is not limited to liquor.¹⁵⁷

151. See *supra* notes 2-5 and accompanying text.

152. *Bi-Lo Stations, Inc. v. Village of Alsip*, 318 N.E.2d 47, 50 (Ill. App. Ct. 1974) (quoting *Tometz v. Board of Educ.*, 237 N.E.2d 498, 502 (Ill. 1968)).

153. See *David E. Shelton Prod., Inc. v. City of Chicago*, 520 N.E.2d 1073, 1075 (Ill. App. Ct. 1988) (upholding conditional license for juice bar that restricted licensee from operating during early morning hours).

154. See *State v. Calloway*, 84 P. 27, 29 (Idaho 1906) (noting that city charter gave council power to enact ordinances and make regulations governing sale of intoxicating liquors).

155. See generally REYNOLDS, *supra* note 2, at 539-41; Frank D. Wagner, Annotation, *Validity of Municipal Regulation More Restrictive Than State Regulation as to Time for Selling or Serving Intoxicating Liquor*, 51 A.L.R.3d 1061, 1063-64 (1973). See *Other Place of Miami, Inc. v. City of Hialeah Gardens*, 353 So.2d 861, 863 (Fla. Dist. Ct. App. 1977) (finding that state statute permitted municipal regulation of sales hours for alcoholic beverages).

156. See *Mallon v. Commonwealth*, 98 S.W. 315 (Ky. 1906) (upholding conviction for violation of law restricting liquor sales where defendant had barroom partitioned from rest of premises, and opened entire premises during prohibited hours, even though defendant did not sell liquor).

157. See *Cowan v. City of St. Petersburg*, 6 So.2d 269, 271 (Fla. 1942) (upholding ordinance requiring restaurant that sold liquor be fully closed and not serve meals during hours when other restaurants were allowed to operate); *State v. Gerhardt*, 44 N.E. 469, 477 (Ind.

Occasionally, zoning laws which themselves are always exercises of the police power contain closing restrictions.¹⁵⁸ Thus, the city's interest in protecting the welfare of its neighborhoods may justify limits on the hours of operation of adult businesses located in certain areas of the city.¹⁵⁹ The restrictions may take the form of conditions attached to special permits, such as exceptions or variances, that allow a business to operate in a zone where it is ordinarily prohibited.¹⁶⁰ However, granting a variance or other special permission does not preclude a city from also applying closing regulations of general application to the establishment.¹⁶¹ Restaurants¹⁶² and laundries¹⁶³ are examples of businesses that sometimes are subject to hours restrictions included within the applicable zoning laws.

1896) (upholding statute providing that any room where intoxicating liquors sold must be locked, and all persons excluded therefrom, during hours when sale of liquor prohibited); *cf. Orme v. Mayor of Tusculumbia*, 43 So. 584 (Ala. 1907) (upholding ordinance interpreted as requiring liquor dealer to close any part of premises used for retailing business on Sunday). See generally Annotation, *Validity, Construction, and Application of Statute or Ordinance Requiring Closing, During Certain Hours, of Places Where Intoxicating Liquor Is Sold, as Affected by Fact that Such Places Are Also Used for Other Business*, 139 A.L.R. 756 (1942).

158. As to the recognition and development of zoning as an exercise of the police power, see REYNOLDS, *supra* note 2, at 354-62.

159. See *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074, 1080 (5th Cir. 1986) ("A community's interest in furthering the welfare of its neighborhoods justifies its regulation of sexually explicit commercial speech so long as such regulation is restricted to protect designated neighborhoods justifiably and does not constitute a broad ban on the availability of such material throughout the community.").

160. See *Montgomery County v. Mossburg*, 180 A.2d 851 (Md. 1962) (holding 11:00 p.m. closing requirement proper condition of special exception for enlargement of restaurant). See generally Annotation, *Imposing Restrictions as to Hours or Days of Operation of Business as Condition of Allowance of Special Zoning Exception or Variance*, 99 A.L.R.2d 227 (1965).

161. *City of Burlington v. Jay Lee, Inc.*, 290 A.2d 23, 26 (Vt. 1972) (finding not estopped from applying closing law to restaurant even though restaurant granted variance with no closing restrictions attached).

162. *Id.* See generally Annotation, *Zoning Regulations as Forbidding or Restricting Restaurants, Diners, "Drive-ins," or the Like*, 82 A.L.R.2d 989 (1962).

163. See *State ex rel. 12501 Superior Corp. v. City of East Cleveland*, 158 N.E.2d 565, 569 (Ohio Ct. App. 1959) (holding Sunday closing restriction properly imposed as condition on permit for laundry in area where such use not allowed as matter of right). *But see Van Sciver v. Zoning Bd. of Adjustment*, 152 A.2d 717, 723 (Pa. 1959) (holding conditioning issuance of use permit for laundromat on closing the operation at night and on Sunday improper). See generally Annotation, *License, Regulation, and Taxation of Self-Service Laundries*, 87 A.L.R.2d 1007 (1963).

XI. LOCAL V. STATE REGULATION

Because all closing restrictions are exercises of the police power—regardless of whether they are enacted as general welfare measures or more specifically as liquor-control or zoning measures—municipalities only have the power to enact these laws if the state expressly or impliedly confers it.¹⁶⁴ A delegation of power from the state must result either from a statute or, if the city has home rule, from a provision of the city's home-rule charter.¹⁶⁵ The courts traditionally apply the doctrine known as "Dillon's Rule" to these two sources of power in order to determine if a specific municipal power exists, i.e. the city has powers expressly or impliedly given by these sources or essential to the declared purposes of the municipality.¹⁶⁶ Thus, a statutory grant of authority to regulate garages may imply the power to regulate the hours of operation of service stations.¹⁶⁷

Because the doctrine of "inherent home rule" has been almost totally rejected in the United States,¹⁶⁸ municipalities can only exercise home rule when authorized by state law and obtained, through the method prescribed in the state law, by the particular city. Where home rule applies, municipal laws will prevail over conflicting state laws regarding matters of purely local concern. In non-home rule municipalities, on the other hand, state laws always prevail in situations of conflict.¹⁶⁹ In matters of statewide or general

164. *Knight v. Johns*, 137 So. 509, 510 (Miss. 1931) (invalidating as unreasonable a closing ordinance for barbershops).

165. See *Wagner*, *supra* note 155, at 1063. See generally 56 Am. Jur. 2d *Municipal Corporations, Counties, and Other Political Subdivisions* § 428-34 (1971). On interpreting municipal charters, see *Ex parte Harrell*, 79 So. 166, 167 (Fla. 1918) (rejecting contention that general welfare clause of city charter granted power to enact closing ordinance applicable to nearly all business, when ordinance not authorized by statute); *Ex parte Perkins*, 226 S.W. 411 (Tex. Crim. App. 1920) (finding no power to pass closing ordinance for pool rooms under charter).

166. See REYNOLDS, *supra* note 2, at 135-39. See generally Sandalow, *Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643 (1964).

167. See *Bi-Lo Stations, Inc. v. Village of Alsip*, 318 N.E. 2d 47, 50 (Ill. App. Ct. 1974) (interpreting state statutes).

168. See *Fordham & Asher*, *supra* note 51, at 18. See generally REYNOLDS, *supra* note 2, at 66-74; Howard Lee McBain, *The Doctrine of an Inherent Right of Local Self-Government*, 16 COLUM. L. REV. 190, 299 (1916).

169. See *Ex parte Hitchcock*, 166 P. 849 (Cal. Dist. Ct. App. 1917) (noting that municipal

(rather than purely local) concern, however, including most exercises of the police power, state law prevails over conflicting local law, even in home-rule municipalities.¹⁷⁰ Thus, in the case of restrictions on the permissible hours of liquor sales, state law will always prevail over conflicting local restrictions, because this is clearly an area of statewide concern.¹⁷¹ The same is generally true regarding operating hours restrictions for other businesses as well; the municipal regulation is valid if, and only if, it does not conflict with state law, whether the businesses affected are pool halls,¹⁷² barbershops¹⁷³ or any other establishment.

Occasionally, the state may preempt a field of regulation and left no room for municipal laws at all.¹⁷⁴ Except in this relatively rare circumstance, local closing laws must yield to state laws only if there is a conflict.¹⁷⁵ Otherwise, the two laws may coexist,¹⁷⁶ with the municipal restriction complementing the state law.¹⁷⁷ As one court noted, "The preservation of the health, safety, welfare and comfort of dwellers in urban centers of population often requires the

matters are those relating to internal business affairs of municipality). *See generally* REYNOLDS, *supra* note 2, at 102-19.

170. As to what are matters of general or statewide concern, see Maurice H. Merrill, *Constitutional Home Rule for Cities—Oklahoma Version*, 5 OKLA. L. REV. 139, 159-61 (1952) (noting inadequacy of treating "general" matters as those that affect the state or people at large and proposing instead a "wider public interest" test).

171. *See Neil House Hotel Co. v. City of Columbus*, 58 N.E.2d 665 (Ohio 1944) (holding city could not forbid liquor sales after midnight when state law expressly permitted liquor sales at all hours). *See generally* Wagner, *supra* note 155, at 1063-64.

172. *See Ex parte Brewer*, 152 S.W. 1068, 1069 (Tex. Crim. App. 1913) (finding no conflict with state law).

173. *See Eanes v. City of Detroit*, 272 N.W. 896, 899 (Mich. 1927) (finding no conflict between municipal closing ordinance and state statutory regulations).

174. *See Mack Paramus Co. v. Mayor of Paramus*, 511 A.2d 1179, 1184-87 (N.J. 1986) (discussing preemption and finding that state's statutory Sunday blue law did not preempt local Sunday closing regulations). On state preemption, see generally REYNOLDS, *supra* note 2, at 119-22.

175. As to the question of when a conflict is present, see REYNOLDS, *supra* note 2, at 116-19.

176. *See Holsman v. Thomas*, 147 N.E. 750, 751 (Ohio 1925) (finding no conflict between municipal ordinance regulating length of time for which jewelry could be sold at auction during year and state statute on appointment and licensing of persons to make sales by auction).

177. *See Eanes v. City of Detroit*, 272 N.W. at 897-99 (holding ordinance fixing open hours for barber shops generally complementary to similar to state statute and valid, even though specific ordinance was struck as not reasonably related to public health or general welfare).

enforcement of very different and usually much more stringent police regulations in such district than is necessary in a State taken as a whole."¹⁷⁸ Thus, a state law requiring taverns to close at 2:00 a.m. and a municipal law requiring them to close at 1:00 a.m. may legitimately coexist, because the local restriction merely sets a higher standard than the state.¹⁷⁹ However, if state law expressly allows taverns to stay open until 2:00 a.m., a municipal enactment requiring them to close at 1:00 a.m. will conflict with the state law and be void.¹⁸⁰

XII. CONCLUSION

Municipalities have broad authority within the police power usually delegated to them by the state to set closing hours for businesses. The main limitations on the exercise are the due process requirement of reasonable relationship to a police-power purpose and the related equal protection requirement of a reasonable ground for treating the particular business as different from others. Crime control is probably the justification that courts most frequently and most forcefully endorse as a valid basis for closing restrictions.¹⁸¹ Noise control¹⁸² and liquor control¹⁸³ have also often been found sufficient grounds. Other health- or safety-related reasons for hours restrictions

178. *City of Charleston v. Jenkins*, 133 S.E.2d 242, 244 (S.C. 1963).

179. *See Leavenworth Club Owners Ass'n v. Atchison*, 492 P.2d 183 (Kan. 1971) (finding no conflict between ordinance prohibiting serving of liquor between 1:30 a.m. and 9:00 a.m. and statute prohibiting serving liquor between 3:00 a.m. and 9:00 a.m.); *cf. Beatrice Foods Co. v. City of Okmulgee*, 381 P.2d 863, 865 (Okla. 1963) (city could prescribe higher sanitation standards for milk than set by state). *But cf. Noey v. City of Saginaw*, 261 N.W. 88, 89-90 (Mich. 1935) (holding state regulations as to closing hours binding on all liquor licensees and not affected by city ordinance). For cases finding law prevails over local law in cases of conflict, compare *City of Coral Gables v. Seiferth*, 87 So. 2d 806 (Fla. 1956) (voiding ordinance permitting septic tank contractors to connect buildings with sewers that conflicted with state statute on plumbing); *Arrow Club, Inc. v. Nebraska Liquor Control Comm'n*, 131 N.W.2d 134, 139 (Neb. 1964) (voiding ordinances imposing restrictions on bottle clubs that were not contained in state statute as inconsistent with the statute); *Eastern Carolina Tastee-Freeze, Inc. v. City of Raleigh*, 123 S.E.2d 632 (N.C. 1962) (voiding ordinance prohibiting peddling of ice cream on streets and sidewalks since conduct legal under state law).

180. *See Neil House Hotel Co. v. City of Columbus*, 58 N.E.2d 665 (Ohio 1944).

181. *See supra* notes 61-90 and accompanying text.

182. *See supra* notes 6-31 and accompanying text.

183. *See supra* notes 91-99 and accompanying text.

have been of little significance.¹⁸⁴ On the other hand, courts have specifically declared purposes such as the convenience of local administrators or the limitation of competition improper.¹⁸⁵ A municipality desiring to enact, or seeking to defend, a closing restriction can often best do so on the basis of maintaining the peaceful order of the community and achieving “the deterrence of crime and criminal activity.”¹⁸⁶ It is better to close the business than to invite the thief in the night—or so the municipal legislative body may reasonably believe.

184. *See supra* notes 32-60 and accompanying text.

185. *See supra* notes 100-23 and accompanying text.

186. *Gibbons v. City of Chicago*, 214 N.E.2d 740, 743-44 (Ill. 1966).

NOTES

