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## Commissioner rules Ventura overstepped its authority

### CONTAINER

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(fix) all that," Daily said. "But I do know the answer does not lie in charging them with something that is pre-empted by state law."

Besides the 57 pending cases there are about 30 more waiting in the wings, Leiderman said. All cases have been continued until Tuesday.

"I am hoping that a great majority end up in dismissals and acquittals," Leiderman said after the court hearing.

Leiderman went a step fur-

ther, drafting a proposed revision to the city's law that he handed to Norman in the courtroom.

"Having a statute that is fair, constitutional and enforceable is in everyone's best interest," he said.

He hopes to work with police and the city attorney to get the revised law before the City Council as soon as possible.

Norman said he could see the logic behind Daily's ruling, but said it should be easy for the city to prove a consumption violation without much change in police procedure.

# Open container law ruled unconstitutional

## Final decision on disposition of 50 cases put off until Tuesday

By Kevin Clerici

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A court commissioner Wednesday determined that a portion of a new Ventura city law that bans the possession of open containers of alcohol in public is unconstitutional but stopped short of dismissing more than 50 pending criminal cases.

Commissioner Doug Daily said the law, adopted in April, overstepped the city's authority

in regulating those holding open bottles or cans of alcohol in public. Cities, he said, have wide authority to regulate drinking in public, but possession of open containers cannot be cited as misdemeanors as Ventura's law allows.

"(Ventura's) ordinance is pre-empted by state law," Daily said.

The commissioner, however, refused to toss out some 57 current cases, most involving home-

less people. Instead, as part of his tentative ruling, he asked the city and Ventura County Public Defender's Office to find a solution and return Tuesday, when he expected to make his findings final.

Jay Leiderman, the Ventura County deputy public defender who challenged the city law, called Wednesday's ruling a "tremendous victory."

Assistant City Attorney Chris Norman said it was too early to consider the matter resolved.

"The city has lots of legal options," he said, adding that officials could appeal. The city also could agree to amend its ordi-

nance or change the way police cite violators. Norman said he would brief police and members of City Council today.

This spring, the Ventura City Council changed the city's public drunkenness law to deter repeat violators. Under the old law, violators were charged with an infraction and received tickets, but police said it did little to get people to change their ways. Many refused to pay and ignored their court appearances.

Now, violations are misdemeanors, and those who fail to appear in court typically are subject to arrest warrants and, po-

"The city has lots of legal options."

Chris Norman, assistant city attorney

tentially, jail.

Ventura officials say the beefed-up ordinance is working, and maintain the state constitution does grant cities some limited powers to go after people who possess booze in public.

Leiderman contends that the California Constitution prohibits cities from regulating the posses-

sion of alcohol, and because Ventura includes possession in its ordinance, it is acting beyond the scope of its power, he said.

Commissioner Daily agreed. He said the city's law goes too far "because these people should not be faced with misdemeanors."

Daily said he sympathized with police having to deal with growing numbers of drinking and drunkenness in public and understood the desire to hold people accountable.

"I don't have an answer to

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