



How To Use Local Regulatory and Land Use Powers To Prevent Underage Drinking

What do local regulatory and land use powers have to do with preventing underage drinking?

Communities all over the country are concerned about underage drinking and the many serious problems that go along with alcohol consumption by young people. Whether and how much young people drink depends to a large extent on community norms and expectations about drinking. These norms and expectations emerge from and reflect the community *alcohol landscape* or *alcohol environment*, including such elements as messages regarding alcohol use in the media and elsewhere; the ease with which young people can obtain alcohol through commercial and noncommercial sources; and the role of alcohol in community events. This landscape can be shaped by local regulations and land use ordinances, which are forms of *alcohol policy*.

Often communities take their alcohol landscape as a given or as the sole province of state and federal lawmakers. But many communities now are challenging these assumptions, developing local alcohol policies that have had impressive results. Local governments in most states do not have to wait for state legislatures or Congress to act to reshape their alcohol environments. This fact sheet gives a menu of local alcohol policy options that can reduce youthful drinking in our communities.

What are local regulatory and land use powers?

Local governments have the responsibility and authority to protect the public's general health, safety, and welfare. They fulfill this responsibility in part through their land use powers—by determining what activities may occur on the land within their jurisdiction. Both commercial and noncommercial activities associated with alcohol fall within these broad powers. Unless preempted by state or federal law (see “Beware of Preemption,” below), local communities can rely on land use zoning to determine where alcohol may be sold or consumed and how it is distributed and marketed. Some states allow local

governments to license commercial alcohol establishments. Licensing amplifies local zoning powers as a means to shape the local alcohol environment.

Community zoning ordinances identify the type of development that is permitted within a geographical area. For example, an R-1 zone typically identifies an area where construction of single family residences are permitted as a matter of right – no special license or public hearing is required to build a single family home in an R-1 zone. In addition to such permitted uses, however, other uses might also be permitted, but only after they have been reviewed for potential negative impacts on the area and special conditions placed on the development to minimize these negative impacts. For instance, in an R-1 zone, communities will often permit development of child care centers, schools, parks, and senior housing projects, but only after conditions have been placed on these developments to respond to concerns about the traffic, noise, and other potential negative impacts such developments might pose to the quality of life people expect in a single family neighborhood.

Although the exact term and approval process may differ from state to state, these *Conditional Use Permits* (CUPs) are a central feature of zoning laws in most states. Zoning ordinances specify which land uses require a CUP, and specify the public notice and hearing process that will be conducted to identify potential negative impacts and to decide the specific conditions that will be required to mitigate these negative impacts.

Zoning ordinances can require that any given land use, including retail alcohol outlets, must obtain a conditional use permit in order to conduct business. CUPs serve as a useful adjunct to other types of regulations and allow for specific and public consideration of each business development proposing to sell alcohol. A very important aspect of the CUP requirement is that municipalities may revoke the CUP at some later date should the required conditions be violated. This opportunity to monitor the continuing operation of an alcohol outlet, and to take

corrective action if necessary, is an important feature supporting community zoning ordinances that require that all alcohol outlets be subject to a conditional use permit.

How do local regulatory and land use powers influence the alcohol environment over time?

Specific regulatory and land use provisions affect how alcohol is made available in the community. Sales practices change over time as marketers and retailers develop innovative strategies and tactics for attracting new customers and increasing sales among current users. Once the changes occur, they become part of the community's landscape and are very difficult to reverse. For example, in the early 1980s, oil companies aggressively entered the convenience store industry, converting gas stations from auto repair centers to mini-marts that rely heavily on alcohol sales. This new marketing concept raises public health concerns because it increases the availability of alcohol (particularly in residential areas and near schools, where children are likely to be present) and combines the sales of alcohol and gasoline (possibly sending an unhealthy message about drinking and driving). Yet today, these alcohol/gas outlets are an accepted part of many communities' alcohol environment. Some entrepreneurs are now introducing alcohol to fast food outlets, beauty salons, and laundromats, marketing plans that raise similar public health and safety concerns.

If communities do not use their regulatory and land use provisions, changes such as these in their alcohol environments will respond solely to economic considerations, without attention to potential public health and safety costs. If, for example, a local jurisdiction had enacted in 1980 a land use restriction that prohibited alcohol and gasoline sales at the same retail outlet, then this marketing scheme would not have taken hold in that locality. Communities should be alert to the health and safety concerns raised by alcohol sales practices and anticipate potential problems. They can then act early to prevent these problems through regulation.

What is the relationship of local regulatory and land use powers to state regulation?

The 21st Amendment to the U.S. Constitution, enacted at the repeal of Prohibition, gives the state the primary authority for regulating alcoholic beverages. States vary widely in the degree to which they have handed this authority to local jurisdictions. In a few cases, states have given local government the primary authority for regulating alcohol, providing only minimal statewide standards. At the opposite end of the spectrum, a few states exercise exclusive authority over alcohol commerce, taking

away (or *preempting*) related local regulatory and land use powers. The large majority of states fall between these extremes, establishing overlapping (or *concurrent*) local and state regulatory powers. States are most likely to allow at least some forms of local land use zoning powers, with local licensing authority a less common practice. Ideally, the state establishes minimum standards for regulating alcohol use and distribution and allows localities wide discretion in developing additional standards to meet their particular needs and circumstances. This is the case in many states.

Concerned citizens and groups who wish to make maximum use of local power should research state and local laws. Local officials and attorneys who specialize in these issues can be good resources for information.

Beware of Preemption

The state and federal preemption doctrine refers to the authority of higher levels of government to mandate the practices of lower levels of government. Preemption is the rule of law that if the state government enacts legislation on a subject matter it shall be controlling over local laws or ordinances and/or preclude the community from enacting laws on the same subject if the legislature has specifically declared it has "occupied the field." If the legislature has not clearly claimed preemption, a court may examine legislative history to determine the lawmakers' intent toward preemption. The fact that states can take away local powers raises a note of caution: A common strategy of commercial alcohol interests is to seek state preemption in order to eliminate local regulatory and land use policies they oppose. These preemption proposals are sometimes couched in public health terms, mandating relatively weak state controls but eliminating the possibility of more stringent local ordinances.

How do regulatory and land use policies respond to alcohol marketing practices?

A helpful typology for categorizing regulatory and land use policies is the four *P*'s of marketing—**product**, **place**, **promotion** and **price**. Marketers use these four elements to develop "total marketing" campaigns that target specific demographic groups. For example, specific *products* have been developed that appeal to young college students (e.g., 40-ounce beer containers and sweetened alcohol products). They are made available in *places* frequented by students and are offered at discount *prices* (recognizing that students have limited discretionary income). They are *promoted* using messages and images with youthful, college themes. Marketing campaigns targeting older, affluent, white males; inner-city African American youth; suburban "soccer moms," or any other demographic group will have a very different marketing mix. Unchecked, these marketing tactics can create unsafe alcohol environments

for youth. Many college communities, for example, have college bars and drinking events as the primary venue for entertainment and are saturated with promotions and low price offerings that encourage heavy drinking.

Communities can use these same marketing strategies to develop alcohol-safe environments for young people. Each of the four P's has a set of corresponding preventive responses. These responses should be coordinated with each other and applied in a comprehensive manner, targeting specific demographic groups. At stake is the shape of the alcohol environment and the level of risk to which a given population group is exposed. Here is a checklist of possible community policy options, using the four P's typology.

What specific *place* regulations can be used to reduce alcohol availability to young people?

1. Restrict the location/number of commercial alcohol outlets.

- Prohibit alcohol outlets within specified distances from schools, child care centers, youth centers, and other locations where children congregate.
- Prohibit alcohol outlets from locating within specific distances of other alcohol outlets.
- Restrict the total number of alcohol outlets based on a population ratio.

“Community alcohol outlet density and underage drinking”

PIRE researchers Joel Grube and Paul Gruenewald examined how community alcohol outlet density may be associated with drinking among youths. Their finding suggests higher initial levels of drinking and excessive drinking were observed among youths living in communities with higher alcohol outlet densities. Their conclusion was that alcohol outlet density may play a significant role in initiation of underage drinking during early teenage years, especially when youths have limited mobility.

Source: Grube, J. W.; Gruenewald, P. J.; and Chen, M. J. *Addiction*, volume. 105, pages 270-278 (2010)

The reduction of excessive alcohol consumption is thus a matter of major public health and economic interest. In a 2009 report found in the *American Journal of Preventive Medicine* a comprehensive analysis of alcohol licensing policy regulations from inside and outside the U.S. suggests the regulation of alcohol outlet density may be a useful public health tool for the reduction of excessive alcohol consumption and related harms. In 2010 the Washington State legislature created a framework by which The purpose of the rules concerning chronic public inebriation and alcohol impact areas is to establish a framework under which the Washington State Liquor Control Board (WSLCB), in partnership with local government and community organizations, may act to mitigate negative impacts on a community's welfare, health, peace or safety that result from the presence of chronic public inebriation.

Source: (Am J Prev Med 2009;37(6):556–569)
Published by Elsevier Inc. on behalf of American Journal of Preventive Medicine
<http://www.liq.wa.gov/licensing/alcohol-impact-areas>

2. Restrict the types of commercial alcohol outlets.

- Restrict/prohibit concurrent sales of alcohol and gasoline.
- Restrict alcohol sales at mini-marts.
- Prohibit alcohol sales in non-traditional outlets (e.g., laundromats, movie theaters, beauty salons).
- Clearly distinguish between bars/nightclubs and restaurants (e.g., by limiting restaurants' alcohol sales to a maximum of 40 percent of their receipts; restricting late hour operations; prohibiting separate bar areas), and permit bars only in “adult” zoned areas.
- In restaurants, require that all alcohol sales be made only in conjunction with food service and sales.

3. Require commercial alcohol outlets to use responsible serving/sales practices.

- Require good management policies and training to ensure that servers and clerks routinely and effectively check age identification.
- Require minimum age of 21 for all servers and clerks.
- Prohibit employee alcohol consumption while on duty.
- Prohibit minors' access to bars and nightclubs.
- Prohibit video games and other forms of entertainment popular with teenagers in alcohol establishments where minors can be present.
- Limit the amount of square footage and shelf space dedicated to alcohol sales in retail outlets.
- Restrict home delivery sales.
- Restrict hours of sale.
- Require adequate lighting to enable staff to discern easily the appearance and conduct of persons in the outlet and adjacent areas.
- Prohibit all public nuisance activities in and around alcohol outlets, including loitering, littering, harassment of passersby, graffiti, loud noise, violations of state ABC code provisions, and criminal conduct.
- Restrict/prohibit public telephones (to deter drug dealing).
- Require adequate security, including, if warranted, the employment of a security guard.
- Conduct routine, effective compliance checks.

Underage drinking parties are common across the United States and the U.S. Territories. Regardless of whether the alcohol is either provided or brought by the underage participants many communities are taking the danger posed by these parties and the adults who permit or fail to prevent them very seriously. As of January 1, 2012, 30 states have adopted either general or specific provision to address this issue commonly referred to a "social host."

Source: Alcohol Policy Information System
http://alcoholpolicy.niaaa.nih.gov/Prohibitions_Against_Hosting_Underage_Drinking_Parties.html

4. Restrict minors' access to noncommercial sources of alcohol.

- Restrict alcohol service at community events such as fairs and holiday celebrations.
- Create alcohol-safe community events.
- Restrict the availability of alcohol in public settings such as parks and recreation centers.
- Enact keg registration and teen party ordinances to reduce the availability of alcohol to young people in noncommercial settings.
- Enact teen party ordinances that hold adults accountable for hosting teen parties.

Iowa's Alcohol Law Enforcement/Retailer Training (I-ALERT) tool was designed to support retailers in reducing youth alcohol consumption and is used in all fourteen patrol districts. Iowa's online alcohol policy tool is a standalone site from which involved departments can link to their agencies' Web pages. Iowa's Alcoholic Beverages Division has written and modified specific sections of the Iowa code to include on the Web site, and the tool provides guidelines to establishing in-store policies for retailers. With the provided guidelines, users can create a policy to either post and/or review with their employees.

Source: Success Stories News from the Field, 2011
http://www.udetc.org/documents/success_stories/ia0411.pdf

What specific *promotion* regulations can be used to reduce minors' exposure to alcohol advertising/promotions?

- Prohibit outdoor advertising and billboards in areas where children are present (including residential zones and within 1,000 feet of schools, playgrounds and other child-oriented facilities).
- Restrict alcohol advertising to the interior of commercial alcohol outlets, and prohibit advertising inside the store that is visible from outside.
- Require signs prominently posted in commercial establishments regarding minimum age for alcohol purchase.
- Require signs prominently posted in public parks/ facilities stating that it is illegal to consume alcoholic beverages.
- Prohibit the use of cartoon characters and other child oriented images and slogans in alcohol advertising.
- Prohibit alcohol advertising by local retailers on television or radio programs with underage audiences exceeding 25 percent.
- Place limitations on the percentage of store window space devoted to advertising.
- Prohibit distribution or sale of any alcohol industry promotional materials to minors (e.g., as prizes at local fairs).
- Restrict alcohol industry sponsorship of any event sponsored or cosponsored by local government, any youth event (e.g., youth athletic events), or any event located on public property.

Study Associates Alcohol Advertising with Brand Preference among Underage Drinkers

NIAAA-supported researchers asked 2699 youth aged 16-20 about their alcohol use and alcohol brand preference as part of a long-term telephone survey of U.S. adolescents and media use. Their report shows that a majority of underage drinkers in the study identified a preference for a specific brand of alcoholic beverage, that the most-preferred brands included both distilled spirits and beer, and that brand preferences correlated with levels of brand-specific advertising expenditures. This correlation suggests that alcoholic beverage marketing efforts may be reaching and influencing underage audiences. The researchers also found that young drinkers who identified a preferred brand were also more likely to engage in binge drinking.

Author: Tanski SE, McClure AC, Jernigan DH, Sargent JD.

Date: July 04, 2011

Source: *Arch Pediatr Adolesc Med.* 2011 Jul;165(7):675-6. doi: 10.1001/archpediatrics.2011.113.

What specific *product* regulations can be used to reduce minors' exposure to alcohol marketing that encourages overconsumption or appeals especially to youth?

- Require that 12-ounce or smaller containers of beer be sold in six-packs only – no single can sales (which encourage street drinking).
- Restrict the size of single beer containers to no more than one quart.
- Require that wine be sold in containers of at least 750 milliliters in volume or in minimum four-pack cooler containers.
- Permit corked wine containers only – prohibit screw-top wine bottles.
- Prohibit sales of distilled spirits in mini-bottles unless sold in multiples.
- Prohibit/restrict sales of fortified wine and malt liquors (at least in residential areas) or specify that these products may not be chilled for sale.
- Prohibit sales of “alcopops” and other alcoholic products with characteristics that clearly appeal to youth (e.g., sweet taste; cartoon characters on packaging).

What specific *price* regulations can be used to deter discounting and to increase the cost of alcohol to minors?

- Impose fees on all commercial alcohol outlets to cover local code and law enforcement costs.
- Impose/increase alcohol taxes (if local option available), and encourage increased taxes at state and federal levels.
- Prohibit discounted alcohol prices that are lower than standard prices in the community.
- Prohibit price promotions, such as flat fee “drink and drown” night.

In 2012 Wisconsin’s Alcohol Policy Project produced a summary of various social host ordinances that exist within Wisconsin. The document distinguishes the various ordinances developed in different communities and provides the penalties for 5 Wisconsin communities highlighting the differences of ordinance language and penalties.

Two Rivers, Prairie du Chien and Manitowoc: A forfeiture of \$1,000-\$5,000 together with the costs of prosecution added

Village of Oregon:
\$100 to \$1,000 with municipal court policy requiring a court appearance.

Village of North Fond du Lac:
Not to exceed \$1,000, no minimum amount

Source: University of Wisconsin School of Law
http://law.wisc.edu/wapp/comparisonsocial_host62612.pdf

The Community Preventive Services Task Force (Task Force) is an independent, nonfederal, unpaid panel of public health and prevention experts that provides evidence-based findings and recommendations about community preventive services, programs, and policies to improve health. In 2010, the Task Force recommends increasing taxes on the sale of alcoholic beverages, on the basis of strong evidence of the effectiveness of this policy in reducing excessive alcohol consumption and related harms. Public health effects are expected to be proportional to the size of the tax increase. In formulating this recommendation, the Task Force considered several aspects of the effects of this policy intervention.

<http://www.thecommunityguide.org/alcohol/IncreasingAlcoholBeverageTaxesRecommendedReduceExcessiveAlcoholConsumptionRelatedHarms.pdf>

Best Practices for Implementation

- Alcohol is a legal but potentially hazardous product that requires special regulatory and planning attention. To the extent permitted by law in each state, local governments should retain oversight and promote public involvement to ensure a safe alcohol environment. This means that communities should maintain an *active* regulatory posture regarding land use controls for alcohol outlets. Permits should not be issued automatically based on an unvarying set of criteria. Each case should be considered individually based on its potential to be an asset to the community rather than a liability.
- State alcohol licensing agencies usually examine the character and business history of the applicant in making decisions about granting a license. In order to complement the state review, community planning and land use decisions about alcohol outlets should focus on the nature of the business activity and its community impacts. Business owners come and go, but an alcohol outlet once approved is often a permanent fixture in a community. Land use permits should include conditions that define business practices and the manner and mode of business operations consistent with community values and standards, independent of the qualifications of current or future business owners.

- No local planning process can predict the problems or conditions that may occur in the future. As a consequence, when there is a proposed change in ownership or in the manner and mode of operation of an alcohol outlet, local governments should require a new public hearing to review the conditions placed on the alcohol outlet. The sale of alcohol is a regulated public privilege, and land use ordinances provide important opportunities to bring and retain balance between public and private interests.

Conclusions

In most states, communities have the power to establish local regulations and land use policies. These policies can help create and maintain an environment with regard to alcohol that protects public health and safety and that, in particular, protects young people from underage drinking. Communities should explore the scope of the powers they have in their particular state and use policy to control the place, product, pricing, and promotion practices used to sell alcohol. These actions can be extremely effective in reducing underage alcohol use and the serious problems related to alcohol.

Where can I get more information?

Other publications from the Office of Juvenile Justice and Delinquency Prevention's Underage Drinking Laws Program (Available by contacting the Underage Drinking Enforcement Training Center at 11140 Rockville Pike, 6th floor Rockville, MD 20852. 1-800-335-1287):

The Los Angeles Lawyer: Local Regulation of Alcohol Licensees

This article from a California legal journal provides a comprehensive overview of the alcohol regulatory environment in California and explores the topic of preemption as it relates to state regulation and local ordinances on alcohol.

<http://www.lacba.org/Files/LAL/Vol29No8/2292.pdf>

Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices (1999).

This publication reviews 22 regulatory options for reducing youth access to alcohol, assessing available research on their effectiveness and presenting criteria for prioritizing their implementation.

Strategies To Reduce Underage Alcohol Use: Typology and Brief Overview

This document provides a summary of the various

strategies commonly used to reduce underage drinking and indicates the level of effect that might be expected from each strategy. The information is designed to assist states in setting priorities for activities to be funded with block grant money.

Guide to Conducting Alcohol Purchase Surveys

Guide to Conducting Youth Surveys

These two documents provide step-by-step information for data collection efforts that can be undertaken by states or localities to identify specific problem areas and to measure and monitor changes over time in alcohol use, sources of alcohol, and merchant compliance with the law.

The Cost of Underage Drinking

This document provides information on the various health and social problems related to underage drinking and can be used by state coordinators and others to generate support for enforcement of underage drinking laws.

Strategic Media Advocacy for Enforcement of Underage Drinking Laws

The vast majority of states identified media campaigns as a major component of their state action plans. In addition, media coverage is an essential component of enforcement. This guide provides state coordinators and others with practical information on using the media efficiently and effectively to bring about better enforcement of underage drinking laws.

Tips for Soliciting Cohesive Program Plans (Writing Effective RFPs for the Sub-granting Process)

This brief document provides state coordinators with a format for constructing requests for proposals that are likely to elicit cohesive and effective plans from local communities.

Preventing Sales of Alcohol to Minors: What You Should Know About Merchant Education Programs

This fact sheet defines merchant education and distills current research knowledge on the effectiveness of merchant education programs, the components they should include, and how these programs fit within a larger community effort.

Campbell, Carla Alexia, et al. "The effectiveness of limiting alcohol outlet density as a means of reducing excessive alcohol consumption and alcohol-related harms." *American journal of preventive medicine* 37.6 (2009): 556-569.

Sparks, M., Jernigan, D. H., Mosher, J. F., Community Anti-Drug Coalitions of America (CADCA), & United States of America. (2011). *Regulating Alcohol Outlet Density: An Action Guide*.

Gruenewald, Paul J., and Lillian Remer. "Changes in outlet densities affect violence rates." *Alcoholism: Clinical and Experimental Research* 30.7 (2006): 1184-1193.

Britt, Heather R., et al. "Neighborhood level spatial analysis of the relationship between alcohol outlet density and criminal violence." *Environmental and Ecological Statistics* 12.4 (2005): 411-426.

Scribner, R., Mason, K., Theall, K., Simonsen, N., Schneider, S. K., Towvim, L. G., & DeJong, W. (2007). The contextual role of alcohol outlet density in college drinking. *Journal of Studies on Alcohol and Drugs*, 69(1), 112.

Publications on land use controls and their application to alcohol availability:

Wittman, F. and Shane, P. *Manual for Community Planning to Prevent Problems of Alcohol Availability*, Berkeley, CA: CLEW Associate, 1988.

Wittman, F. *Development and Use of Conditional Use Permits to Prevent Problems Related to Retail Alcohol Outlets: An Overview*. University of California at Berkeley, Institute for the Study of Social Change, 1994.

These two publications provide an excellent overview of community zoning principles and applications to alcohol land uses. Although they focus particularly on California law (which has state preemption statutes that are unique to that state), the presentations of land use concepts and strategies are applicable to communities in other states. Contact: Community Prevention Planning Program, Institute for the Study of Social Change, 837 Folger Ave., Berkeley, CA 94710, 510-540-4717.

Sparks, M. *The Conditional Use Permit as a Prevention Tool*. The Alcohol and Other Drug Prevention Extension. Folsom, CA: The EMT Group, Inc. 1998.

This is the workbook used for a one-day training with the same title developed by the EMT Group under the auspices of the California Department of Alcohol and Drug Programs. It also focuses on California law but is a useful tool for those from other states. For information on the training and manual availability contact: The EMT Group, Inc., 771 Oak Avenue Parkway, Suite 2, Folsom, CA 95630, 916-983-6680.

Publications reviewing specific land use/local regulatory options:

Pratt, L., Rothstein, C., Meath, J., and Toomey, T. *Keeping Alcohol Away from Underage Youth: Policy Solutions*. Minneapolis, MN: Alcohol Epidemiology Program, University of Minnesota, 1997.

La Fond, C., Klaudt, K., Toomey, T., and Gehan, J. *Model Alcohol Ordinances*. Minneapolis, MN: Alcohol Epidemiology Program, University of Minnesota, 1998.

These two publications provide background information on and sample ordinance language for 12 specific local policy options for reducing youth access to alcohol. Available on the Internet at <http://www.epi.umn.edu/alcohol/default.htm> or contact: Alcohol Epidemiology Program, School of Public Health, University of Minnesota, 1300 South Second Street, #300, Minneapolis, MN 55454-1015, 612-626-9070.

Resources on Environmental Prevention Strategies for Preventing Alcohol-Related Problems:

Center for Substance Abuse Prevention, Environmental Prevention Strategies: Putting Theory into Practice. *Training and Resource Guide*. Rockville, MD: CSAP, 1999.

This guide includes a 30-minute video, research review, and resource materials. It is an excellent tool for introducing environmental prevention concepts and strategies, including local land use/regulatory strategies, to community groups and policy makers. Materials may be ordered from NCADI via mail, fax, telephone, or email. Phone (toll free) 800-729-6686 to speak to an information specialist, or write to The National Clearinghouse for Alcohol and Drug Information, PO Box 2345, Rockville, MD 20847-2345. Fax 301-468-6433. E-mail: info@health.org

Marin Institute for the Prevention of Alcohol and Other Drug Problems, The Alcohol Policy Slide Set Series: Resources for Organizing and Advocacy, *Marin Institute: San Rafael, CA*, 1997.

This compilation of six sets of scripted slides (with topics including alcohol and violence, alcohol outlets and community economic development, alcohol availability regulatory options, and alcohol advertising) is an additional resource for introducing environmental strategies to community groups and policy makers. Contact: Marin Institute, 24 Belvedere Street, San Rafael, CA 94901, 415-456-5692.

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