

LOCAL POLICY FORMATS

State Authority for Alcohol Sales

The 21st amendment gave states the primary authority to regulate alcoholic beverages. State alcohol distribution systems typically fall within one of two general classifications: control states and license states.ⁱ

- **Control States:** These states control alcoholic beverages at the wholesale and/or retail level. Retail distribution is conducted through state operated retail stores, contract agency retail outlets, private retailers, or a combination of state, agency and/or private stores.
- **License States:** These states do not participate in the sale of alcoholic beverages at the state level. However, some license states may allow municipalities to operate retail stores in certain circumstances. For example, Minnesota allows cities with a population of less than 10,000 to own and operate a municipal liquor store.ⁱⁱ

Both systems regulate alcohol industry members through licensure. Alcoholic beverage licenses are treated as a privilege rather than a right, and are issued under a set of restrictions and qualifications. Almost every state reserves the right to fine, suspend, or revoke a license. Each state has its own licensing method. Three different systems exist:

- **Exclusive State Licensing:** Alcoholic Beverage Control (ABC) agencies are state agencies with the power to license and regulate the manufacture, importation and sale of alcoholic beverages in the state. (A state's legislature gives state agencies the authority to establish their own rules and operating orders (administrative rules) which have the force and effect of law.) The state licensing authority has exclusive power to license alcohol establishments, but in certain cases may allow local governments to influence the licensing decisions to some extent. States may require local approval before the state license will be approved (e.g., through a conditional use permit process), permit local control in only limited circumstances (e.g., regarding where the establishment can be located), or give local communities an advisory role in the licensing process.
- **Dual Licensing:** In these states, alcohol retailers must obtain two licenses, one from the state and one from the municipality in which they are located. In most cases, this gives the primary responsibility for determining alcohol availability to local governments, subject to minimum standards established by the state. Both governmental entities may investigate and regulate industry members.
- **Local Licensing Only:** In a few states, the licensing authority is delegated to local governments, and the state does not issue state licenses. The states, however, may impose regulations that local governments must honor.

Alcoholic Beverage Policy Formats

Described below are several of the policy formats employed at the local level to regulate and restrict the sale of alcoholic beverages. The policies which we consider to be “local” may have been enacted by the local jurisdiction, or by the state’s alcoholic beverage control agency.

License Conditions on Individual Outlets: Operating conditions, or restrictions, may be imposed on an individual license by the licensing authority to ensure that the operation of an alcohol outlet does not adversely affect the health, safety and welfare of a community.

These legally binding documents describe specific conditions under which the retailer may operate (e.g., restricting alcohol beverage container size, alcohol content, and hours of operation). License conditions are most often imposed in high crime areas, in areas over-concentrated with liquor stores, and on retailers who have not lived up to operating standards in the past. They are generally imposed by the licensing authority on new, renewed, or transferred licenses as a result of concerns brought by the community or local law enforcement. A Petition for Conditional License (California) and Conditional Licensing Agreement (Pennsylvania) are examples of these types of administrative orders. License conditions may also be imposed on the license by a city/county if it has the authority to do so (e.g., Minneapolis).

These operating conditions are transferrable to a new owner/operator in some jurisdictions (California) or may only be effective for the duration of the license operating at a specific premise (Minneapolis). Removing conditions often requires challenging the condition before the licensing authority or through a legal proceeding.

Alcohol Impact Areas and Moratorium Zones: Alcohol Impact Areas (and the similar Moratorium Zones) give local authorities the process to address area-wide, alcohol-related problems by specifying how alcohol may be sold in a designated area under their jurisdiction. An Alcohol Impact Area (AIA) is a geographic area within a city, town, or county that is adversely affected by chronic public inebriation or illegal activity associated with alcohol sales or use. The local jurisdiction must describe the boundaries of the proposed AIA, document a pervasive pattern of chronic public inebriation or illegal activity associated with alcohol sales or use within these boundaries, show that this pattern is contributing to the deterioration of the quality of life within the area or threatens the welfare of residents and visitors, and make a good faith effort to resolve the problem through voluntary efforts for at least six months. For example, in Washington, a state with four AIAs, a city must first ask stores selling high-alcohol content low-cost beers and wines to remove these products from their shelves. If the voluntary AIA does not reduce the problems, the local jurisdiction can petition the state agency (e.g., the Washington Liquor Control Board) to make the AIA mandatory.ⁱⁱⁱ

Once an area is recognized as a mandatory AIA, the state ABC may place conditions or restrictions on all off-premise stores in the AIA such as:

- Restricting the sale of certain alcohol products (banned products list)
- Restricting container sizes available for sale
- Restricting business hours of operation

Local Ordinance: An ordinance is a law passed by a municipal government, such as a city, town, village, or borough. The power of municipal governments to enact ordinances is derived from the state constitution or state legislation. Municipalities may enact ordinances to protect the health, safety, and general well-being of the community, provided they are not in conflict with state or federal law. The scope and purpose of ordinances is broad, encompassing such areas as police and fire protection, public works, and land use. Local ordinances have been used to restrict the sale or use of high alcohol products in a variety of ways. Ordinances may include language that specifically prohibits the sale of certain products in designated areas. Examples include bans on glass containers in parks and on beaches, and bans on open containers in public areas. While these ordinances typically apply to all alcoholic beverages, many were written with the intent of restricting beverages associated with public drinking and broken glass, such as large bottles of malt liquor.

Conditional Use Permits (CUPs)/Zoning Codes: Local governments use land use regulation (zoning powers) to restrict uses of land that may harm the public. Conditional Use Permits (CUPs), sometimes called “special use permits,” allow local governments to make exceptions to the zoning code, approving land use that would otherwise be prohibited, provided the property owner meets certain conditions. In a city with a CUP ordinance, alcohol retailers are required to obtain a CUP, specific to alcohol outlets, in order to operate in certain areas. This process is usually conducted through a public hearing and gives the city the flexibility to determine whether the alcohol outlet will be a benefit to the community and compatible with neighboring land uses.

Some CUP ordinances require all new alcohol establishments under the city’s jurisdiction to conform to a specific set of operational standards meant to inhibit nuisance activities. In other cities, CUPS are required, but the city may include operational standards that apply solely to the individual establishment. Some ABC agencies (e.g., California) will not issue a license to an applicant from a local jurisdiction that requires a CUP without a copy of the approved CUP.

Deemed Approved Ordinances (DAO): In California, retail alcohol establishments that existed before the effective date of a city’s CUP ordinance are exempt from obtaining a CUP. The inability to regulate these exempt establishments prompted some cities to enact a “deemed approved” ordinance (DAO). The first city to do this was Oakland, California, in 1993. These establishments are issued a “deemed approved” permit and are required to meet performance standards to prevent nuisance activities at their business such as excessive loud noise, littering, loitering and graffiti, illegal drug activity, and public urination. Violations of a DAO result in such penalties as citations and fines, criminal penalties, and revocation of an establishment’s

deemed approved status. Since DAOs target land use and public safety issues (i.e., nuisance activities) they do not conflict with state alcohol regulations.^{iv}

Injunctions: An injunction is a court order that requires an individual to perform or refrain from performing a specific act. In the area of alcohol control, for example, since local governments have the authority to abate public nuisances, a city may file a court action seeking an injunction to force the owners of a problem liquor store to comply with certain conditions. If the owner fails to comply with an injunction, the owner may face penalties such as fines or license suspension.

Voluntary Agreements: Restrictions on the sale of high-alcohol products are sometimes achieved through the use of voluntary agreements. Voluntary, or cooperative, agreements are negotiated between alcohol retailers (or distributors or wholesalers), the licensing authority (e.g. the ABC or the city council), and/or interested third parties, such as community groups or local residents. For example, in response to residents' concerns about public drinking in the neighborhood, a retailer may voluntarily agree to refrain from selling single containers of malt liquor.

Voluntary agreements can facilitate the licensing process and resolve contested issues in lieu of more formal action. If the parties can come to an agreement that accommodates the needs of both sides, they may avoid a formal public hearing that could result in a decision by the licensing authority to deny or grant an application. A voluntary agreement may cover a specific business practice or wide range of business operations. In some cases, a good-faith attempt to resolve issues on a voluntary basis is a required first step before a city may pursue binding legislation.

ⁱ The Role of Alcohol Beverage Control Agencies in the Enforcement and Adjudication of Alcohol Laws. (2005, July). Retrieved June 18, 2015.

www.nhtsa.gov/people/injury/enforce/ABCRoleWeb/images/ABCFinal.pdf

ⁱⁱ MINN. STAT. §340A.601 (2014)

ⁱⁱⁱ <http://www.liq.wa.gov/licensing/alcohol-impact-areas>. Retrieved June 18, 2015.

^{iv} Mosher, J. F., Cannon, C., & Treffers, R. (2009). Reducing community alcohol problems associated with alcohol sales: the case of deemed approved ordinances in California. Report prepared for the Ventura County Behavioral Health Department, Alcohol and Drug Programs Prevention Services. Contract, (5891).