

# Licensing & Zoning

Tools for Public Health



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### Regulating local businesses and land use can go a long way toward protecting and promoting public health.

Local governments have traditionally used zoning laws to promote health – for instance, by keeping polluting factories out of residential neighborhoods. But industrial pollution isn't the only environmental threat to our health. Obesity rates are higher in communities where it's difficult to walk and to find stores selling healthy foods. Underage smoking rates are higher in areas where tobacco retailers are more common.

That's why health advocates and elected officials are looking for strategies to shape local environments in healthier ways. With licensing and zoning, government agencies have two powerful tools at their disposal to shape the way land is used and how businesses operate.

Although licensing and zoning have some characteristics in common, there are important differences between the two. This fact sheet provides an overview of how licensing and zoning laws can help promote public health – and how to choose a strategy that will help achieve your community's health goals.

#### Licensing



Licensing is typically a way to **regulate businesses and professionals** working in certain fields. A license usually grants rights to the **person** who holds it.

#### Zoning

Zoning is a way to **regulate the use of property**. Zoning laws grant rights attached to the **land**.



# The Basics

Licensing is commonly used to regulate business operations. A state, county, or city may require someone to have a license in order to engage in a certain profession or business. In nearly every state, for example, retailers who sell tobacco must be licensed. A license gives them the privilege to sell tobacco products, but they may have to comply with certain requirements, such as having clerks assist or check identification for customers who purchase tobacco products.

Zoning, meanwhile, is used to regulate the use of land in a community. Zoning laws may govern both the physical nature of buildings (size, height, location on a lot) and the way buildings may be used in a particular area. Zoning laws often divide cities into different areas (residential, commercial, and industrial) and limit the kinds of uses (housing, shops, factories) that are allowed in each zone. More and more communities are now adopting “mixed-use” zoning, which allows compatible uses like homes, stores, and offices in the same building or within walking distance of each other.

Typically, zoning puts uses into one of three categories. A use may be:

- ▶ **permitted** in a particular location
- ▶ **prohibited** in a particular location
- ▶ permitted subject to a **conditional use permit** (CUP)

A community may grant a CUP when it wants to attach certain conditions to the use of land, even if that use is consistent with zoning laws. For example, while fast food restaurants are generally allowed in a commercial zone, a city might require new fast food businesses to obtain a CUP setting requirements designed to mitigate anticipated problems such as litter, noise, and excessive traffic.

**Sample Zoning Chart**

| Use: Restaurants & Bars                      | Residential | Commercial | Industrial |
|--|-------------|------------|------------|
| Bars   | -           | -          | C+         |
| Restaurant w/o alcoholic beverage sales      | C           | P          | P          |
| Restaurant w/ alcoholic beverage sales       | -           | C+         | C+         |
| Restaurant w/ drive-thru or take-out window  | -           | C+         | C+         |
| Restaurant w/ on-site brewing & sale of beer | -           | C+         | C+         |

P = Permitted use    C = Conditional use permit required  
 - = Not permitted    + = Conditional use subject to special provisions

## Form-Based Zoning

To promote mixed-use neighborhoods where it's safe and pleasant for residents to walk around, some communities are pursuing what is known as a “form-based” zoning approach. Unlike traditional “use-based” zoning, form-based codes permit a wider range of property uses but regulate the design of buildings. This way, jurisdictions can promote pedestrian-friendly streetscapes while giving developers more flexibility in mixing residential and commercial uses.

Public health advocates may still argue that “use matters”: a healthy restaurant has a different health impact than a bar, even if both are commercial activities that need a similarly sized and designed space. For more information, see *How to Create and Implement Healthy General Plans*, available at [www.changelabsolutions.org/healthy-planning/create\\_implement\\_gp](http://www.changelabsolutions.org/healthy-planning/create_implement_gp).



## A New Zoning Code Promotes Healthy Places

In December 2011, the city of Philadelphia updated its entire zoning code, incorporating health and sustainability provisions like these:

- ▶ Density bonuses (which allow developers to build taller buildings or buildings with additional floor area than otherwise would be allowed by right) for including fresh food markets in mixed-use developments
- ▶ Density bonuses for including mixed-income housing at transit nodes
- ▶ Built-in design review of projects exceeding a certain size to determine their effect on pedestrians
- ▶ New parking regulations that include maximums for cars and requirements for bicycles and hybrid vehicles

## Who's Being Regulated?

With licensing laws, a government may determine who can (and must) get a license to operate a certain type of business, as well as whether the license can be transferred to another person or location and how the license can be renewed. A license generally expires after a fixed term, or it may terminate automatically after it is not used for a specific period of time. License requirements usually apply to both existing and new businesses.

Some communities issue “permits” to authorize various activities; the terms *license* and *permit* are interchangeable when referring to a government-issued document indicating that a person has been granted the right to engage in a particular activity.

Zoning, on the other hand, usually applies to land, not to individual owners or users. Once a piece of land has been zoned for particular uses, it will remain zoned that way unless the zoning law is changed, regardless of who owns the land. If a business relocates, it will have to comply with the zoning law in its new location. The same is true of conditional use permits: if a business has been granted a CUP to operate in a particular location, the permit is only in effect for that location. However, as long as the business remains in that location, it generally will not have to renew the CUP. A conditional use permit will also apply to all future owners of that land.

When zoning laws change, existing businesses or residences that do not comply are deemed “nonconforming,” and the government has three options:

1. Allow the nonconforming use to continue to operate until it goes out of business or substantially changes the nature of its activities (known as “grandfathering”); this is the most common option.
2. Allow it to continue to operate for a specific period of time to recoup its investments (known as “amortization”).
3. Require the owner to immediately cease operation (in which case the government may have to pay reasonable compensation).

# Enforcement

A license may be revoked or suspended if its holder does not comply with the law. Tobacco retailers, for example, can lose their license if they sell tobacco products to minors. Violations also can be punished by criminal or civil penalties. Depending on state law, the government may impose fees on license holders and applicants to fund these enforcement efforts, as long as the fees are reasonable and based on the cost of services needed to administer and enforce the licensing system.

Zoning laws are enforced administratively or through a legal “injunction,” meaning the government can ask a court to order that an individual or business comply. In the case of a CUP, the permit also may be revoked. Zoning laws may require fees for building permits or to pay for permit-related hearings and appeals; the fees must be reasonably related to the cost of reviewing a permit application and administering the review program.

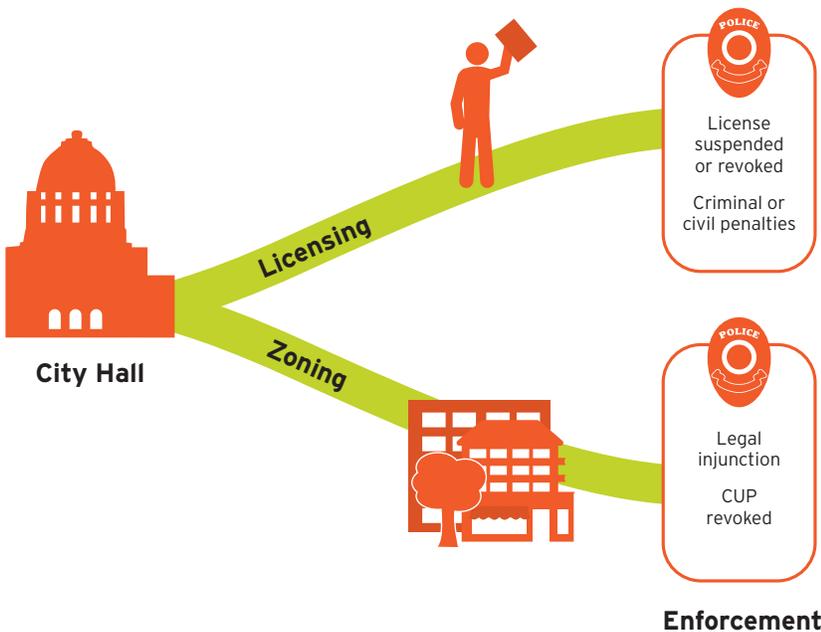
## Check Federal and State Laws First

Be sure to carefully review existing federal and state laws before using licensing or zoning to address public health concerns in your community. Systems like liquor and tobacco retailer licensing are often regulated to some extent at the state level, which does not necessarily preclude but may limit further regulation in these areas.



## Setting a Healthy Standard: Food Retailer Licensing

The City of Minneapolis requires all stores with a grocery license to stock a certain amount of staple and perishable foods, including fresh fruits and vegetables.



## Putting the Tools to Work

Licensing and zoning can help advance many public health goals. Both strategies can be used to confine certain types of businesses to certain places, prohibit some types of businesses from operating too close together (or too close to other uses, such as schools), and limit the total number of a specific type of business in a community. Both also can set operational standards by requiring businesses to adhere to certain practices, like maintaining their premises in a certain way, though this is much more common with licensing than with zoning. The following chart shows how each tool could be applied toward some common public health goals.

| Public Health Goal  | Licensing  | Zoning  |
|---|--|---|
|  <p><b>Limit the location or density of tobacco retailers or liquor stores</b></p> | Require a license for stores/restaurants that sell tobacco, alcohol, junk food, and/or fast food, and prohibit licenses from being issued to these retailers if they're located near schools and areas frequented by youth or if the density of such retailers is too high | Amend zoning code, or require CUP, for tobacco or alcohol retailers and fast food restaurants to control density or to keep these retailers away from schools and youth-populated areas |
|  <p><b>Create "healthy food zones" near schools</b></p>                            | Require all food retailers to obtain a license and to stock produce and staple foods as a condition of their license   | Amend zoning code to offer an incentive (density bonus, reduced parking, etc.) to developers who include grocery stores and fresh food markets in new development                       |
|  <p><b>Increase the availability of healthy foods</b></p>                         | Require licenses for corner stores, granting the license on the condition that store owners accept SNAP and/ or WIC  | Amend zoning code to make farmers' markets an allowed use in appropriate zones  |
|  <p><b>Require acceptance of federal food assistance</b></p>                     | Require a license for market operators that specifies operating standards (days/times per week, vendor mix, acceptance of SNAP/ WIC, etc.)   | Amend zoning code to make urban agriculture an allowed use in specified zones   |
|  <p><b>Encourage and promote farmers' markets</b></p>                            | Allow residents to farm or garden at a larger size/scale after they've secured an operating permit; establish permit conditions to maintain food safety and prohibit nuisance conditions   | Provide bicycle parking   |
|  <p><b>Encourage and promote urban agriculture</b></p>                           | Require licenses for specified businesses, granting the license on the condition that adequate bicycle parking is provided on the premises   | Amend zoning code or CUP to require specified businesses to provide adequate bicycle parking to receive a land use entitlement  |
|  <p><b>Provide bicycle parking</b></p>   |  |   |

# Try It Out! Zoning or Licensing?

Put your zoning and licensing skills to work! This checklist is designed to help you review the ways zoning and licensing work, and to help begin identifying a strategy that will best advance your healthy community goals. To determine whether each characteristic listed applies to zoning, licensing, or both, read through the accompanying fact sheet – or, for a quick refresher, turn the page to consult the sample answers.

## 1 Define your healthy community goal (e.g., “Stores stock more produce”):

.....

.....

| Characteristic of Regulation  | Zoning                   | Licensing                | Both                     |
|---|--------------------------|--------------------------|--------------------------|
| Applies to a specific parcel of land, regardless of the business located there  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Controls the location of businesses within a community  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Controls density or overall number of certain types of businesses   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Controls the design and form of sites and buildings   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Imposes operational standards on businesses (e.g., hours of operation, products sold)                                   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Applies standards to existing businesses as well as future businesses   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Grants rights that apply for a finite period of time  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Provides regular enforcement of required conditions and standards; fees may be charged to cover the cost of enforcement | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

## 2 Based on your answers, which policy tool(s) are the best fit to advance your healthy community goal?

| Best Policy Tools? | Why?  |
|--------------------|-------|
| .....              | ..... |
| .....              | ..... |
| .....              | ..... |

# Sample Answers: Zoning or Licensing?

The following table provides sample answers of how zoning and licensing can work alone or together to shape a community's environment.

## 1 Define your healthy community goal:

Neighborhood stores will stock more produce

| Characteristic of Regulation  | Zoning                              | Licensing                           | Both                                |
|---|-------------------------------------|-------------------------------------|-------------------------------------|
| Applies to a specific parcel of land, regardless of the business located there  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Controls the location of businesses within a community  | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Controls density or overall number of certain types of businesses   | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Controls the design and form of sites and buildings   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            |
| Imposes operational standards on businesses (e.g., hours of operation, products sold)                                   | <input type="checkbox"/>            | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| Applies standards to existing businesses as well as future businesses   | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Grants rights that apply for a finite period of time  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| Provides regular enforcement of required conditions and standards; fees may be charged to cover the cost of enforcement | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

\* Possible, but politically and practically difficult

## 2 Based on your answers, which policy tool(s) are the best fit to advance your healthy community goal?

| Best Policy Tools? | Why?  |
|--------------------|---|
| Licensing          | Easier to enforce business practice standards |
|                    | Applies to new and existing businesses        |
|                    |   |
|                    |   |

## Additional Resources

### Licensing Tools

- ▶ **Model Ordinance Requiring a Tobacco Retailer License**  
[www.changelabsolutions.org/tobacco-control/products/Licensing\\_Ordinance](http://www.changelabsolutions.org/tobacco-control/products/Licensing_Ordinance)
- ▶ **Model Produce Cart Ordinance**  
[www.changelabsolutions.org/publications/model-ordinance-produce-carts](http://www.changelabsolutions.org/publications/model-ordinance-produce-carts)
- ▶ **Model Healthy Food Retailer Licensing Ordinance**  
Coming soon!

### Zoning Tools

- ▶ **Zoning Talking Points**  
[www.changelabsolutions.org/publications/fact-sheet-zoning-talking-points](http://www.changelabsolutions.org/publications/fact-sheet-zoning-talking-points)
- ▶ **Establishing Land Use Protections for Farmers' Markets**  
[www.changelabsolutions.org/publications/establishing-land-use-protections](http://www.changelabsolutions.org/publications/establishing-land-use-protections)
- ▶ **Model Healthy Food Zone Ordinance**  
[www.changelabsolutions.org/publications/model-ordinance-healthy-food-zone](http://www.changelabsolutions.org/publications/model-ordinance-healthy-food-zone)
- ▶ **Pedestrian-Friendly Code Directory**  
[www.changelabsolutions.org/childhood-obesity/pedestrian-friendly-code-directory](http://www.changelabsolutions.org/childhood-obesity/pedestrian-friendly-code-directory)
- ▶ **Seeding the City: Land Use Policies to Promote Urban Agriculture**  
[www.changelabsolutions.org/childhood-obesity/products/urban-ag-toolkit](http://www.changelabsolutions.org/childhood-obesity/products/urban-ag-toolkit)

### Legal Research

- ▶ **Limits on Government Power over Private Property: What Advocates and Government Officials Need to Know About Takings Law**  
[www.changelabsolutions.org/publications/limits-government-power-over-private-property](http://www.changelabsolutions.org/publications/limits-government-power-over-private-property)
- ▶ **Regulating Food Retail for Obesity Prevention: How Far Can Cities Go? (an article from the *Journal of Law, Medicine, and Ethics*)**  
[www.aslme.org/media/downloadable/files/links/2/0/20.Diller.pdf](http://www.aslme.org/media/downloadable/files/links/2/0/20.Diller.pdf)



### Bicyclists Welcome! Supporting Active Transportation Through Licensing

The City of Cleveland requires a special license for parking lots and garages. One condition of renewing the license is to provide at least one bicycle parking space for every 20 automobile spaces.

The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN) is a project of ChangeLab Solutions. ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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