

WHO CAN SELL, AND WHERE?

Regulating Retail Sales of Sugar-Sweetened Beverages



ChangeLab Solutions
Law & policy innovation for the common good.



NATIONAL POLICY & LEGAL ANALYSIS NETWORK
TO PREVENT CHILDHOOD OBESITY

Selling products that can harm the public's health – such as tobacco, alcohol and hazardous materials – is an activity that's usually subject to federal and state regulation. But there are relatively few regulations that apply to the sale of sugar-sweetened beverages (SSBs), which are also harmful to the public's health and ubiquitous in many communities.

To begin scaling back the availability and accessibility of SSBs, local policymakers can impose restrictions on the venues that are eligible to sell these beverages. This fact sheet explores three approaches policymakers can take and highlights several important considerations.

Three Approaches

Limiting the number of outlets that sell sugary drinks, and where those outlets can be located, could reduce overall consumption, especially among youths. This is a relatively common tobacco control strategy. There are a number of approaches to restricting the number and location of retailers that can sell these products:

Limiting Number of Retailers

By population:

For example, retailers selling sugary drinks could be limited to one (1) per one thousand (1,000) residents of a city.

By venue type:

Certain types of stores, such as toy stores and others frequented by children, could be prohibited from selling sugary drinks.

Regulating Density of Retailers

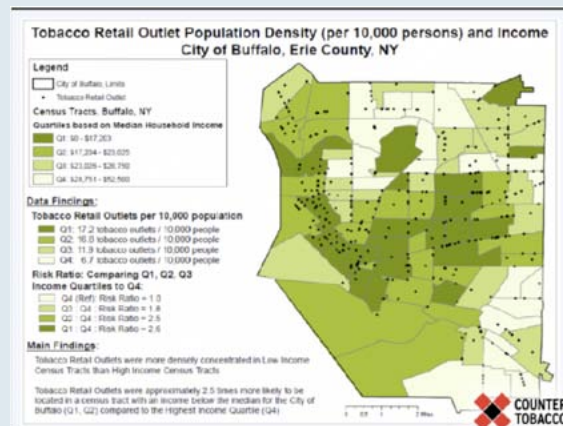
Prohibiting clusters: Retailers could be prohibited from locating too close (i.e., within 500 feet) to another retailer, and/or could be prohibited in areas (such as specific neighborhoods or supervisorial districts) with an overconcentration of retailers selling sugary drinks

Limiting Retailers Near Schools and Other Child-Sensitive Areas

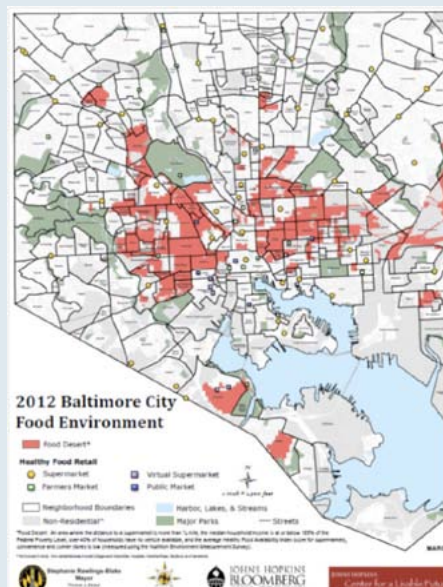
Retailers could be prohibited from locating too close (i.e., within 500 or 1,000 feet) to a school, day care center, playground, park, or other area primarily used by children.

Who's selling SSBs in your community, and where?

Assessing the existing retail environment for SSBs is a critical threshold step for any strategy that would impact retailer density or location. Creating a list is important to support administration of any intervention and to develop a rational basis to support your approach. GIS mapping shows trends in retailer distribution:



www.countertobacco.org



www.baltimorecity.gov

Several publicly available resources can be used to map food retailers, though none are SSB-specific, so data points must be chosen carefully to include all potential SSB retailers. The list below is not exclusive.

Community Commons: www.communitycommons.org

The Network for a Healthy California: www.cnngis.org

The Reinvestment Fund: www.policymap.com

Legal Authority

These strategies stem from the government's "police power," which is essentially the government's authority to enact laws to protect public health, safety, and welfare. State governments have very broad police powers; local authority is delegated from the state. Most states follow some form of a "home rule" system, under which the state grants local government bodies the authority to enact these kinds of laws at the local level. If challenged in court, many laws addressing sales of sugary drinks (rather than the advertising or promotion of these products) would be reviewed under what's known as the "rational basis" test – the lawmaking body must merely state a rational need for the law.

Implementation and Enforcement

Several different legal tools can be used to implement and enforce these types of regulations. The ones you choose will depend on both your community goals and the existing regulatory framework.

Zoning and Conditional Use Permits

Zoning is one of the most fundamental local regulatory powers. Through zoning codes, governments shape the built environment, including what kinds of land uses can exist in different areas of the community. Because most local governments already implement zoning laws, this can be an effective system for regulating where (and how many) SSB retailers can operate within the community.

Alternatively, a **Conditional Use Permit (CUP)**, which is part of a zoning code, can be required for SSB retailers. Through a CUP a local government can regulate the location and density of retailers as well as impose additional conditions of operation, such as signage or product placement. The CUP process usually requires a public hearing and a case-by-case determination of suitability for the proposed business.

Licensing

Many jurisdictions already require retailers to obtain a business license to operate, and in many cases an existing license can be amended to include additional conditions of operation. A business license generally applies to the individual running the business (as opposed to zoning requirements, which usually "run with the land"), and may be nontransferable and subject to periodic renewal. A strong licensing law can impose strict limits on eligibility for a license, and through those

eligibility limits a community can control the location and density of retailers. Licensing systems also can provide an efficient mechanism for enforcement. For more information and a comparison between zoning and licensing, see www.changelabsolutions.org/publications/licensing-zoning.

Photo by Lydia Daniller.

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