Land Use Laws and Access to Tobacco, Alcohol, and Fast Food

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Montrece McNeill Ransom
The built environment has a powerful impact on health choices and outcomes. As early as 1926, the U.S. Supreme Court in *Euclid, Ohio v. Amber Realty Co.* recognized zoning ordinances as a proper exercise of the state’s police power in that they protect the health and safety of the community. Today, there is both substantial public health experience in and a strong legal basis for using zoning and land use law to limit the availability of consumer products that contribute to ill health. Tobacco, alcohol, and poor diet are among the top three actual causes of death in the United States. This session will focus on the application of traditional city planning tools including zoning and conditional use permits (CUP) to address these public health threats.

Lisa M. Feldstein
This presentation will provide an overview of the connections between land use and public health. In addition, we will examine land use as a tool to encourage the availability of nutritious food and limit the proliferation of fast food.

Every land use decision has public health consequences. For example, zoning may support or limit access to nutritious foods. Two examples of early land use legislation to achieve public health goals include *New York City’s Tenement House Act of 1901* that required sanitary plumbing facilities. Another example dates back to 1866, when San Francisco enacted laws that kept slaughterhouses out of residential areas. Today land use and public health have diverged. Land use planners and public health envision the same community but for different reasons. From the land use planner’s perspective, there are specific land use tools available to help order and regulate the built environment. These include: general/comprehensive/master plans, zoning controls, specific plans, area plans, and conditional use permits (CUP).

Zoning divides a community into districts and determines what can and cannot be built on the parcels of land within those districts. Zoning regulations typically address two issues contained within the question of “what” can be built. Zoning addresses the height, bulk, and sometimes design of buildings, and to what use buildings may be put. Zoning can encourage or disallow certain uses. For instance, relaxed zoning standards may promote public health goals or there may be more restrictive zoning such as no longer allowing fast food, big box chains, or drive-thrus.

Conditional use is closely related to zoning. It is a use that is permitted at a specific location subject to additional scrutiny, which may include a public hearing or grant of permission by the planning commission. Permission is granted in the form of a CUP. The standard for conditional use is broad as the proposed use must be found to be “necessary” or “desirable.” This can be a powerful public health tool by allowing health-promoting uses while subjecting unhealthful uses to stricter scrutiny. For instance, one challenge communities face includes “food deserts” which are residential areas without convenient access to healthy foods. There are areas where there are little or no fresh fruits and vegetables and when available, they are in extremely limited quantity and quality. For the low-income populations in these areas, the primary food access may be through liquor stores or fast food restaurants. However, land use planning tools can maximize access to healthy foods and establish restrictions on the density and location of fast food stores. Through zoning, one can require or encourage the development
of retail stores, farmer’s markets, and other sources of healthy foods. Many communities have limited or banned chain stores and/or chain restaurants, often as a strategy to preserve neighborhood character.\(^2\) One note of caution is that neighborhood-preserving ordinances can have unintended consequences. For example, San Francisco allows commercial uses of about 2,500-5,000 square feet in neighborhood commercial districts, but the average modern supermarket is 60,000 square feet. Possible solutions include creating exceptions in the code for desirable uses and allowing desirable uses subject to conditional use.

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**Mary M. Lee**

This presentation will provide an overview of my work with the Community Coalition in South Los Angeles to prevent the rebuilding of over 150 problem liquor stores through conditional use permits (CUP) and other land use laws. In South Los Angeles, liquor stores are a fixture in low-income communities. The stores impact the quality of life of those who live in the community and these stores tend to be the only location to buy groceries. In 1991, the Community Coalition surveyed over 1,500 neighborhood residents who expressed concern about their corner liquor stores. The liquor stores sold mostly cheap, high potency alcohol, sold single cans of alcohol and distributed free cups of ice, sold single cigarettes, sold drug paraphernalia, were open late hours, and sold to minors. Research conducted found that South L.A. had more alcohol outlets than 13 different states.

Following the civil unrest that occurred in Los Angeles in 1992, The Community Coalition collected 35,000 signatures from residents opposed to rebuilding more than 200 liquor stores destroyed during the upheaval. Essentially, these residents were fighting to preserve the right to use land use tools such as CUPs to limit the number of alcohol outlets in their community. The Coalition sponsored legislation to prevent liquor stores from being rebuilt without a public hearing process. Once the right to use land use tools and hold such hearings was affirmed, residents attended and gave testimony at hundreds of public hearings. Ultimately, the Coalition intervened as “real parties in interest” in state court litigation, defending the right of local government to make land use decisions on whether a new alcohol outlet can open in the community and how existing stores should operate. As a result of the Coalition’s work, 150 of the liquor stores that were burned down after the 1992 civil unrest did not rebuild. Further, the Coalition supported the conversion of 44 former liquor stores into new, non-alcohol-related businesses.

A related issue being addressed by the Coalition is access to quality food. South L.A. lacks the basic components needed for a healthy community. Liquor stores are still prevalent, they charge high prices for food, and offer little fresh food. Only a few chain supermarkets are located in the area, and often the quality of the food in their South L.A. stores is inferior to that the chain sells in its other locations. The Coalition launched a campaign to address this issue. Members documented that the meat sold at supermarkets in their South L.A. neighborhoods was often green and spoiled, and that produce was wilted and brown. Community members protested the conditions in these stores, met with the store managers and corporate executives, and county health officials. As a result of community initiative, conditions have improved: meats are stored at appropriate temperatures, meat and fish and produce are fresh, and the facilities are clean. However, constant monitoring by the community is required to maintain these standards.

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**Marice Ashe**

This presentation will provide an overview of land use and health and it will discuss the use of zoning to limit the location and number of tobacco retail outlets. Land use complements other tobacco control laws such as licensing tobacco retailers, self service display bans, general sign ordinances, and state tobacco control laws. Land use adds enforcement options such as conditional use permits (CUP) to enforce tobacco laws (for example, CUPs issued based on complying with all laws). All tobacco retailers, including Mom n’ Pops, gas stations, grocery stores, and pharmacies, may be subject to land use regulation. Also, a community may choose to impose additional land use requirements to regulations for “tobacco-only” stores. Tobacco-only stores in Oakland, California are defined as having 20% or more floor space or display area for tobacco-related products or 75% or more gross sales receipts from tobacco-related products. These stores tend to sell tobacco products at a cheaper price.

Zoning may be used to regulate the location of tobacco stores to keep tobacco retailers away from children by restricting stores to certain zones and requiring set-offs from youth-oriented facilities and residential zones. Also, zoning can limit the number of tobacco retailers by placing limits on the density and proximity of stores. With CUP one can condition a store’s permit on certain rules such as no self-service displays, clerks selling tobacco must be at least 18 years old, minors are prohibited without a parent, and the retailer complies with all state and local tobacco laws. In addition, the permit can be suspended if con-
dations are violated. There are several ways to eliminate tobacco stores, which include buying them out, amortizing legal non-conforming uses, or waiting for the stores to close. Since each of these options is very expensive, time-consuming, or entails a high risk of litigation, land use tools are most effective when used prospectively in advance of a proposed use of the land that may not be in the best interest of public health.

In conclusion, zoning can be used to limit the conduct, location, density, and proximity of tobacco retailers. Finally, CUP can require tobacco retailers to conform to special rules relating to the sale of tobacco. All land use tools are best if used prospectively.

References
2. For more information on these ordinances, please visit: http://www.newrules.org.