

Proximity Restrictions

Pursuant to 32B-1-202, alcoholic beverage licenses **will not be granted** within specific proximity measurements to a community location. These restrictions affect the location of state liquor stores, package agencies and all retail licenses (such as restaurants and bars).

- A "community location" is defined as a church, public or private school, a public park, public playground or a library.
- Trade or technical schools, infant daycare centers and nursery schools are NOT considered community locations.
- **RESTAURANTS** may not be located within 300 feet measured by ordinary pedestrian travel, or 200 feet measured in a straight line.
- **ALL OTHER OUTLETS** may not be located within 600 feet measured by ordinary pedestrian travel, or 200 feet measured in a straight line.

Please note that distances are measured from the nearest *patron* entrance of the proposed outlet to the property boundary of the community location. Please note that the property boundary of the community location includes all contiguous lands obviously connected to and for the use of the community location (such as parking lots and ball fields).

Previously Granted Variances

- **Previously granted variances will be continued** if an outlet held a license on or before May 9, 2017, even if there has been a subsequent change in ownership of the property or outlet. The variance will remain in place unless there is a change in license type, or a gap in licensing where the premises is used for different purposes (such as office space).
- An outlet or a restaurant that has continuously operated at a location since before January 1, 2007 is considered to have a previously approved variance.
- **If a community location was established AFTER** an outlet receives a license, the outlet may continue to operate. If there is a subsequent change in ownership of the property or outlet, the variance will remain in place unless there is a change in license type, or a gap in licensing where the premises is used for different purposes (such as office space).

**LOCAL ALCOHOLIC BEVERAGE ORDINANCES
AND THE STATE ALCOHOLIC BEVERAGE CONTROL ACT**

Our department often receives inquiries from local governments concerning the relationship between Utah's Alcoholic Beverage Control Act and local ordinances, and the respective roles state and local officials play under these laws. It is clear that the Act requires state and local governments to work closely with each other in licensing and regulating businesses which sell alcoholic beverages, and in enforcing the general alcoholic beverage control laws. As questions arise, please feel free to contact our Licensing and Compliance Division.

I. RELATIONSHIP BETWEEN STATE ALCOHOL LAWS & LOCAL ORDINANCES – WHICH LAW GOVERNS?

Utah Code Ann. §32B-1-204 of the Alcoholic Beverage Control Act provides:

32B-1-204. Powers of local authority.

(1) If this title expressly addresses an issue related to alcoholic product control in this state, a local authority may not regulate in relation to that issue except when a local authority is expressly granted regulatory authority to regulate the issue by this title.

(2) If this title does not expressly address an issue related to alcoholic product control, a local authority may regulate that issue if the regulation:

- (a) is of the sale, offer for sale, furnishing, or consumption of an alcoholic product; and
- (b) does not conflict with this title.

This provision attempts to provide uniformity of alcoholic beverage laws statewide. State law governs most aspects of alcoholic beverage control except where expressly delegated to local government, and overrides local ordinances that are inconsistent with state law. If state law is silent on an issue regarding the sale, offer for sale, furnishing, or consumption of an alcoholic product, local governments may regulate by local ordinance, but only in a manner consistent with the intent of state law. To avoid confusion, local ordinances should be reviewed to ensure their consistency with state law.

The Act *expressly* grants regulatory control to local governments in many areas:

A. LOCAL CONSENT. Before a person may apply for any state alcoholic beverage package agency, license or permit, written consent must first be obtained from local governmental authority.¹ This allows each local government to decide the extent to

¹*See 32B-5-201(2)(d) (retail licensees); 32B-6-504(1)(a) (airport lounge), 32B-9-201(1)(c) (event permits); 32B-10-202(1)(g) (special use permits); 32B-11-203(4) (manufacturer); 32B-12-202(4) (liquor warehouse); and 32B-13-202(4) (beer wholesaler).*

which it will allow alcoholic beverage outlets in its community.² Some local jurisdictions by ordinance put a limit on the number of outlets for which their governing authority will grant local consent. An alcoholic beverage business license issued by a local government under Section 11-10-1 does not constitute written consent. Local consent of the airport authority must also be obtained before locating an airport liquor lounge in the terminal of an international airport.³

B. LOCAL BUSINESS LICENSES. Before a business may apply for any state alcoholic beverage license, it must first obtain a local business license.⁴ Local licensing fees may not exceed \$300.⁵ Local authorities may adopt ordinances making it unlawful to operate such establishments without being locally licensed.⁶ Local business licenses may be suspended or revoked by local governments for any violation of Title 32A, and local governments may establish criteria and procedures for granting, denying, suspending or revoking such licenses. However, at a minimum, licensees must be of good moral character, over the age of 21 years, and must not have been convicted of a felony or crime involving moral turpitude.⁷ Note that the minimum qualifications for a state alcoholic beverage license or package agency are even more comprehensive.⁸ Local governments should therefore supplement the minimal requirements of Utah Code Sections 11-10-1 and -2 with these additional state qualifications.

C. CONSULTATION BEFORE LOCATING ESTABLISHMENTS; ZONING ORDINANCES. Local governments must be consulted before any state liquor store may be located.⁹ Local governments may enact and all state stores, package agencies, and state licensees must comply with local zoning ordinances governing the location of such

²*See Boulder Mountain Lodge, Inc. v. Town of Boulder*, 983 P.2d 570 (Utah 1999). "While the state reserves ultimate control over licensing, the statutory requirement [of local consent] affords the local authority significant participation in licensing decisions. The requirement, in fact, gives local authorities 'veto power' over the submission of applications to the Commission." See also Utah Code Ann. §10-8-42.

³32B-6-504(1)(a).

⁴11-10-1 to -6. See e.g. 32B-5-201(2)(e). However, 32B-5-205 allows the commission to issue a "conditional license" for a full service restaurant or a limited service restaurant prior to the applicant obtaining a local business license. Sale of alcohol is not permitted under a conditional license. Within six months of being granted a conditional license, the applicant must submit a copy of the current business license before the conditional license is converted to a "valid license", otherwise the conditional license expires.

⁵11-10-3.

⁶11-10-4.

⁷11-10-1(5) and 11-10-2. The statutes also require that the licensee be a citizen of the United States. However, the Utah Attorney General rendered a legal opinion on May 24, 1991 (No. 91-21) concluding that this provision is unconstitutional.

⁸See e.g. 32B-5-201.

⁹32B-2-502(2)(a).