

# Alcohol Outlet Control Policy and Public Health in Baltimore: Evidence and Arguments about Creating Healthier Residential Neighborhoods

## Policy Brief

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*The intent of this brief is to provide educational resources to residents, community coalitions, policy analysts, policy makers, municipal governments, and others assessing potential responses to excess liquor outlets in Baltimore City. The following contains a summary of public health data in peer reviewed literature and current arguments for and against proposals to address liquor outlet density. This policy brief is not intended nor was written to serve as legal analysis or to constitute legal advice.*

## Introduction

Many urban areas across the United States (U.S.) and globally are considering policies to create healthier and safer community environments. The National Prevention Strategy released by the U.S. Surgeon General's Office in March 2011 serves as the *nation's* blueprint for advancing health and wellness. It also specifically highlights the importance of including health considerations in decision-making across multiple sectors in order to achieve healthier and safer community environments (National Prevention Council, 2011). This is in keeping with the growing emphasis among public health leaders on *Health in All Policies* approaches to health promotion and disease prevention. This policy brief presents the rationale, evidence and mechanisms for utilizing alcohol outlet-related policy to create healthier and safer communities. While some aspects of the brief are applicable other urban areas, the specific focus is on, Baltimore City, which is currently undergoing a comprehensive update of its zoning code for the first time since 1971.

Baltimore City residents suffer from excess mortality from almost all causes of death compared to Maryland residents overall (Maryland Department of Health and Mental Hygiene 2011). Furthermore, health outcomes vary widely for City residents depending on their City neighborhoods. A 2008 Baltimore City Health Department report showed a twenty year difference in average life expectancy between the City neighborhoods with the highest and lowest longevity (Richards et al 2008). Thus, given the health disparities between Baltimore City residents and Marylanders in general and between Baltimore City residents living in different City neighborhoods, there is a need to find ways to improve the health-promoting potential of City neighborhoods in order to decrease health disparities.

The comprehensive zoning code rewrite presents Baltimore with a unique window of opportunity to increase the health-promoting potential of neighborhoods through urban planning (Thornton et al 2010). In particular, elements of the proposed new zoning code rewrite could impact the density and location of alcohol outlets in Baltimore and, thus have the potential to create healthier residential neighborhoods by decreasing violent crime. Thus, this brief pays special attention to addressing alcohol outlet density and location through zoning policy as one potential mechanism to create healthier and safer communities.

This brief does not address the potential personal health consequences associated with alcohol outlet density and location related to individual behaviors such as alcohol consumption (e.g. cirrhosis of the liver, alcohol poisoning). Rather, it focuses on the potential neighborhood-level health considerations associated with alcohol sales in residentially-zoned areas in Baltimore City, focusing on the location and density of alcohol outlets. The main health topic of interest is the relationship between alcohol outlets and violent crime, such as homicide, aggravated assault, rape, robbery, and burglary. Furthermore, it provides a public health perspective on alcohol outlet-related policy and its potential impacts on crime. This brief does not, however, provide an authoritative review of all the legal issues and considerations that may impact such policy decisions.

## Overview of Policy Brief Sections

**Section 1** of this brief provides the rationale and the public health evidence for utilizing alcohol outlet-related policy as a way to improve the health and safety of communities. A review of the public health evidence includes a summary of scientific, peer-reviewed research regarding the relationship between the location and density of alcohol outlets and violent crime. As the research evidence is presented,

keep in mind that the ultimate goal is to ascertain cause and effect. Towards this end, we present evidence that combined provides information on the strength, temporality, coherence, consistency and specificity of the evidence.

**Section 2** presents the arguments for reducing alcohol outlet density as a means to improve neighborhood health.

**Section 3** details the agencies that govern the location and sale of alcohol outlets. This section includes a history of alcohol outlet licensing in Baltimore, the types and counts of liquor licenses.

**Section 4** outlines mechanisms that can be used to address alcohol outlet location and density. This section pays special attention to zoning as a tool that can be used by local jurisdictions such as Baltimore to address the distribution, location, and density of alcohol outlets in the City at both the neighborhood and city-wide level.

Finally, **Section 5** presents a snapshot of some of the primary arguments against alcohol outlet control policies and reduction of alcohol outlet density. This brief is not intended to examine the legal merits or implications of these arguments.

Clarifying notes, references, a glossary of key terms, and an appendix describing the types of alcohol outlets and associated licenses in Baltimore are included at the end of the brief.

## **Section 1: Rationale and Public Health Evidence**

*Violent crime* is defined as assaultive crimes including: homicide, rape, aggravated assault, robbery, and burglary. Violence is an important outcome of interest when assessing the relationship between alcohol outlets and the health-promoting potential of neighborhoods for the following reasons: 1) theoretical, i.e. within criminology there is a body of conceptual literature specifically linking alcohol outlets to crime; 2) reliability and validity of indicator, i.e. street crimes that are serious and more visible are more likely to be reported (vs. underreported or reported with bias); and 3) homicide and other violent crimes are a particular concern in Baltimore. Not only do Baltimore City residents suffer from higher mortality rates for all causes of death than residents in the state of Maryland overall (988.5 deaths per 100,000 population in Baltimore City versus 749.2 deaths per 100,000 Maryland residents overall), but the death rate from homicides in Baltimore City (11 homicide deaths per 100,000 population) is 1.3 times higher than the homicide death rate for Maryland residents overall (8.4 homicide deaths per 100,000 population) (Maryland Department of Health and Mental Hygiene 2011). This brief does not argue that alcohol outlets are the sole contributors to crime. Many factors can influence neighborhood crime, and the concentration, distribution, and location of alcohol outlets represent an important crime-attractor.

### **What Does the Peer-Reviewed, Public Health Research Say About the Association of Alcohol Outlets and Crime?**

Reducing alcohol outlet density is an evidence-based approach to community prevention that has been recommended by the Task Force on Community Preventive Services, an independent, non-federal, volunteer expert advisory group appointed by the Director of the Centers for Disease Control and Prevention to review the effectiveness of interventions. A systematic review by Campbell and colleagues (2009) conducted in collaboration with this Task Force identifies a consistent association between

increasing alcohol outlet density and worse health outcomes and alcohol related harms including injury, crime, and violence. In particular, all seven time-series studies included in Campbell and colleagues' (2009) review that examined the association between alcohol outlet density and interpersonal violence found a positive association (i.e. interpersonal violence increases with increasing alcohol outlet density). The one study in this review that examined the association between alcohol outlet density and crime suggests that there is an independent relationship between alcohol outlet density and crime such that crime increases with increasing alcohol outlet density, independent of alcohol consumption. This suggests that something about the alcohol outlets themselves is associated with increased crime.

Furthermore, several other recent studies conducted in U.S. urban areas (specifically focusing on cities with a population of at least 200,000 residents) also show that alcohol outlet density is associated with violent crime. They present evidence of the strength, consistency, coherence, temporality, and specificity suggesting that alcohol outlet density and location may, in fact *cause* increased violent crime. Below is a brief summary of these research findings:

The presence and density of alcohol outlets (including bars, taverns, and liquor stores) are associated with violent crime in cities across the U.S. A systematic review by Campbell and colleagues (2009) conducted in collaboration with the Task Force on Community Preventive Services clearly establishes an association between increasing alcohol outlet density and worse health outcomes and alcohol related harms including injury, crime, and violence. Other recent studies further support the relevance of decreasing alcohol outlet density and proximity to residential areas to improving community health in urban areas such as Baltimore (Branas et al 2009; Franklin et al 2010; Gorman et al 2005; Grubestic & Pridemore 2011; Gyimah-Brempong 2006; Reid et al 2003; Scribner et al 1999; Yu et al 2009; Zhu et al 2004).

The sections below detail some of the studies that have been conducted to examine the relationship between alcohol outlets and crime and to account for other factors that might also influence levels of crime. The first three sub-sections below (i.e. 1.1, 1.2, and 1.3) describe findings of research identified in a review of the literature focused on scientific evidence from large U.S. cities similar to Baltimore in terms of population size (i.e. 200,000 residents or larger) and diversity. As such, this research was deemed particularly relevant to a city such as Baltimore. Together these studies suggest a strong, consistent, temporal, coherent, and specific link between alcohol outlets and crime in urban areas. In addition, some of these studies that specifically assessed the relationship between off- and separately, on-premise alcohol outlets and crime found some variability but in general the studies were similar in identifying a link. Many of the studies attempted to control for confounders (i.e. factors that related to both alcohol outlets and violent crime), which strengthens the likelihood that there is, in fact a significant and specific relationship between alcohol outlets and crime.

Subsection 1.4 below further describes findings of research done in Baltimore and in other similar urban areas examining the relationship between alcohol outlet location and the health from one neighborhood to another. These findings are particularly relevant to the discussion of health disparities in Baltimore City and how alcohol outlet-related policies could make Baltimore City neighborhoods healthier, particularly considering the differences in residents' health outcomes from one neighborhood to another in Baltimore (Richards et al 2008, and Baltimore City Health Department 2011/2012 update).

## **1.1** Alcohol Outlet Density

In Los Angeles, Yu and colleagues (2009) found that higher liquor outlet density was associated with higher assault rates. Reduction in the number of outlets over a nine-year period was associated with a statistically significant drop in assaultive violence over time as well. In New Orleans, Scribner et al (1997) predicted that a 10 percent increase in the density of outlets selling alcohol for off-premises consumption would increase the homicide rate by 2.4 percent. Similar to the findings in Los Angeles and New Orleans, Reid and colleagues (2003) found that the density of alcohol outlets significantly and meaningfully added to the prediction of assaultive violence in Kansas City, Missouri.

**1.2 Independent Effect of Alcohol Outlets on Violent Crime** In Washington DC, Franklin and colleagues (2010) found that community-level alcohol outlet density is significantly associated with assaultive violence, independent of other neighborhood factors including violent crime, and the prevalence of weapons and illicit drugs. The number of alcohol outlets in a census tract was significantly related to robbery, assault, and sexual offenses. Similarly, Zhu and colleagues (2004) found that in both San Antonio and Austin, Texas, that alcohol outlet density in the target census tract was a significant predictor of violent crime rates. When considered with other neighborhood characteristics (including % of households in poverty, racial composition, and presence of vacant housing), alcohol outlet density remained independently associated with violent crime and explained an additional 18% of the variability in violent crime rates in San Antonio and close to 12% in Austin.

### **1.3 Outlet Type and Crime**

Some research has examined specifically the relationship between off-premise (vs. on-premise) alcohol outlets and crime. For example, research conducted in Philadelphia by Branas et al (2009) demonstrated that being in an area of high off-premise liquor outlet availability significantly increased the risk of being shot in an assault by 2.00 times ( $p < 0.05$ ) while being in an area of high on-premise liquor outlet availability did not significantly change this risk. Other research suggests that off-premise alcohol outlets double the risk of specific types of violent crime including assaultive violence and are associated with increased homicide rates (Franklin et al 2010; Gorman et al 2005 ; Branas et al 2009; Scribner et al 1997). Work by Franklin and colleagues (2010) found, however, that *both* on- and off-premise outlets were associated with robbery.

### **1.4 Location of Alcohol Outlets**

While separate from crime research, the location of alcohol outlets is important for understanding health disparities across City neighborhoods. This topic has been the focus of the Baltimore City Health Department's Neighborhood Health Profiles first released in 2008 (Richards et al 2008) and updated in 2011 and 2012 ( Baltimore City Health Department 2011/2012). In Baltimore, LaVeist and Wallace (2000) found that liquor stores are disproportionately located in predominantly African-American census tracts and that Census tracts that are both low income and predominantly African American have substantially more liquor stores per capita than other census tracts and have the worst health outcomes and highest mortality rates from homicides. In Detroit, Michigan, Gyimah -Brempong (2006) found that the crime effect of alcohol availability in low income neighborhoods is significantly higher than in high income neighborhoods such that increasing alcohol availability is more strongly associated with increased crime in low income neighborhoods compared to high income neighborhoods.

Work by Milam and colleagues (2012a) in Baltimore suggests that children who live in close proximity are at increased risk of seeing people selling drugs. This work also found that an estimated 54.8% of

Baltimore City Public School children have at least 1 liquor store within a quarter mile of their home while only 13.1% have a grocery store within a quarter mile. Furthermore, another study by Milam and colleagues (2012b) found that children with a liquor store on the route between their home and school are two times more likely to report that they feel unsafe in their neighborhood.

To summarize, **scientific public health research evidence suggests that there is a strong, temporal, coherent, consistent, and specific association between alcohol outlets and violent crime.** In fact, the combined strength, temporality, coherence, consistency, and specificity of the research evidence described above supports the argument that increasing alcohol outlet density and proximity to alcohol outlets may, in fact *cause* increased violent crime.

## Section 2: Arguments for addressing existing alcohol outlet density

### Why Should Baltimore Consider Strategies to Address Existing Alcohol Outlets versus New Outlets?

#### 2.1 Baltimore City Health Department Perspective

The Baltimore City Health Department (BCHD) has a commitment to making Baltimore's neighborhoods healthier places to live. The *Healthy Baltimore 2015* (Baltimore City Health Department, 2011) policy agenda explicitly links the health of city residents to improving neighborhood environments. As part of its goal to Create Health Promoting Neighborhoods, *Healthy Baltimore 2015* set a goal of decreasing alcohol outlet density by 15% as one indicator of progress. A city-wide policy agenda, *Healthy Baltimore 2015* highlights the need for a multi-sectoral effort to improve community health. These sectors include government, community stakeholders, the private sector, the health care sector, and universities. Improving neighborhood health by addressing alcohol outlet density via zoning strategies aligns with this multi-sectoral approach. A Health Impact Assessment of Baltimore City's comprehensive zoning code rewrite further suggests that reducing alcohol outlets and controlling their location (particularly in non-commercial districts) could play a critical role in improving the health-promoting potential of Baltimore City neighborhoods (Thornton et al 2010).

#### 2.2 Excess outlets based on population

##### **Since 1968, Baltimore has been engaged in reducing the number of liquor licenses available in the city.**

Since establishment of Rule 2.08 in the Rules and Regulations for the Baltimore City Liquor Board, no new liquor licenses may be issued, apart from specific exceptions, so long as the number of licenses in Baltimore City exceeds 1 per 1,000 residents. (Board of Liquor License Commissioners, 1998, p.4) With 1,330 licenses, Baltimore City's current density is 2.1 licenses for every 1,000 people (based on 2011 US census data, see table below). Baltimore City has more than twice the number of liquor licenses it should, given the goal of 1 license per every 1,000 residents. Over time, several steps have been taken to limit liquor licenses. Part of this effort to reduce the number of liquor licenses included a moratorium on new licenses in 1968 (as mentioned above) and distancing standards that limit the relocation of an outlet to within a one-mile radius of its original location (Baltimore City Board of Liquor License Commissioners, 2012). More detail about the liquor licensing process in Baltimore is presented in Section 3.

Table 1. Counts of Liquor Licenses in Baltimore City by Year

Year	Number of Licenses**	Population (rounded, from most recent previous Census or ACS)	Licenses per 1,000 residents
1968*	2,318	939,000	2.5 per 1,000
1976	1,856	905,800	2.0 per 1,000
2009	1,470	651,100	2.3 per 1,000
2012	1,330	619,500	2.1 per 1,000

\*Year moratorium on new liquor licenses in Baltimore City began

\*\* License counts are derived from the following sources: Baltimore City Planning Department, 2012; City of Baltimore, 2009, and Maryland Annotated Code 2012b

### 2.3 Zoning policy and nonconforming outlets

Zoning is an urban planning tool that influences neighborhood environments (Perin 1977; Zoning and the American Dream 1989). It was developed to protect the general health, safety and welfare of citizens; provide certainty about the future land use; and designate compatible versus incompatible land uses in a district (Schilling et al 2005). Zoning codes regulate private land by restricting land uses and governing building placement, size, and design (Skosey et al 2001). Zoning codes can influence the built environment by permitting or prohibiting certain businesses from locating within a particular zoning district. They may stipulate that a mix of residential and commercial uses be permitted in a zoning district (i.e. *mixed-use*), which could increase the likelihood that residents walk to daily services (e.g. restaurants, banks, other retail); and they may also stipulate that certain uses are incompatible.

For example, in the 1971 rewrite of Baltimore’s zoning code, off-premise alcohol outlets were identified as an incompatible use in residentially zoned districts. Though Baltimore City does not have authority to revoke or issue liquor licenses, the City does have the authority to designate where such outlets can operate through its zoning powers. Some outlets were determined to be “nonconforming” because they were located in residential settings. These nonconforming off-premise outlets were legally established uses that were grandfathered into the 1971 version of Baltimore’s zoning code. No new off-premises outlets could locate in these residential areas and it was thought that over time, coupled with various other restrictions, attrition of these businesses would occur (Baltimore City Department of Planning, 2012). In other words, making these uses nonconforming in residentially-zoned districts was intended to result in phasing out of these uses over time. However most of the outlets have not closed. The current zoning proposal presents options for decreasing the per capita density of alcohol outlets in Baltimore.

Baltimore’s zoning code rewrite presents an opportunity for a land-use approach to addressing the health of Baltimore’s neighborhoods. The rewrite can revisit land uses that have negative public health impacts and were deemed inappropriate for residential settings over 40 years ago during the last zoning rewrite. The current zoning proposal includes three provisions that influence the location, density, definition and existence of alcohol outlets in Baltimore City. Below is an excerpt directly from Baltimore’s proposed new zoning code ordinance regarding these proposed provisions (see: City of Baltimore, City Council Bill 12-0152, 2012 for full ordinance):

1. **Distancing** - Section 14-335 RETAIL GOODS ESTABLISHMENTS –WITH ALCOHOL SALES. Subsection C of this section of the proposed Code states that “Except as otherwise provided

in this subsection, a retail goods establishment with alcohol sales must be located at least 300 feet from any other retail goods establishment with alcohol sales.” (p. 231, Section 14-335, subsection (C)1).

- 2. Definition** - Section 14-336 TAVERNS. Subsection B of this section of the proposed zoning code states that “Taverns may sell alcohol for off premise consumption only if:
- (1) Annually, the average daily receipts from the sale of alcoholic beverages for on-premises consumption exceeds 50% of the establishment’s total average daily receipts, not including sales of novelty items, income from vending machines, cover charges, or other receipts not derived from the sale of food or beverages; and
  - (2) More than 50% of the establishment’s public floor space is devoted to on premises consumption.” (p. 231, Section 14-336, subsection (B)1 and (B)2).

- 3. Existence** – Sections 18-701 and 18-702 of the proposed Code detail a timeline for mandatory termination of two types of nonconforming alcohol outlets. Nonconforming outlets are existing outlets that were grandfathered in after the 1971 rewrite of the zoning code, but would have been prohibited if they were new outlets. They are legal uses that have not been aligned with the zoning code since 1971. The two Sections are excerpted below:

Section 18-701. RETAIL GOODS ESTABLISHMENT – WITH ALCOHOL SALES. Subsection (C) of this Section states: that “Except as provided in subsection (C) of this section, retail goods establishments with alcohol sales in a residential district must be terminated as follows:

- (1) For an establishment with alcohol sales that existed as a lawful, nonconforming use prior to the effective date of this Code no later than two (2) years after the effective date of this Code, notwithstanding the issuance of an prior use permit as a nonconforming package goods liquor store; and
- (2) For an establishment that becomes nonconforming on or after the effective date of this Code, by the enactment of an amendment to this Code, or by the reclassification of the property, no later than 3 years after the date on which the use became nonconforming.” (p. 324-325, Section 18-701, subsection (A)1 and (A)2).

Of note, additional considerations and waivers with respect to termination are outlined in subsequent subsections of Section 18-701.

Section 18-702. TAVERNS. Subsection (A) of this section states: “Nonconforming taverns must either:

- (1) Fully comply with § 14-336 {TAVERNS} within 2 years after they become nonconforming; or
- (2) Be terminated.” (p. 326, Section 18-702, subsection (A)1 and (A)2).

## Section 3: Location of Alcohol Outlets and Liquor Licensing in Baltimore City

### What Factors Govern the Location of Alcohol Outlets and Sale of Alcohol?

Separate from market forces that drive interest in a particular location or viability of an outlet, two sets of regulations govern the sale of alcohol in Baltimore City: 1) the zoning code and 2) the rules and regulations from the Baltimore City Board of Liquor License Commissioners (“the Liquor Board”). For a



full discussion of alcohol outlet regulation in Maryland , see <http://www.alcoholpolicyconsultations.com/storage/new%20md.pdf>.

### *The Zoning Code and Associated Hearings*

Baltimore City's **zoning code** details **where** different alcohol outlets may locate and remain (i.e. in business districts, industrial districts, and residential districts). If an alcohol-related use is permitted in a district, the zoning code also may also dictate whether that use is permitted "by right" or "conditionally." If a type of alcohol outlet, (i.e. a bar), is permitted by right, then a hearing with the Board of Municipal Zoning Appeals (BMZA) **is not** required to develop the property as a bar. If the use (i.e. a bar) is allowed conditionally, a hearing **is** required with the BMZA. This process is to ensure that certain conditions about the proposed use are being met, such as not being detrimental to or endangering the public health, safety and welfare and not being contrary to the public interest (Baltimore City Council, Council Bill, 12-0152, 2012).

### *Liquor Licensing in Maryland and the Baltimore City Liquor Board*

While the distribution of alcohol in Maryland generally occurs through private wholesale and retail entities, the state holds the sole authority to license all such businesses. The state determines the conditions under which to allow new licenses or transfer of licenses from one owner to another, imposing different restrictions among the local jurisdictions ( Alcohol Epidemiology Program, 2000).

While the zoning code governs the location of an alcohol outlet, *the Board of Liquor License Commissioners for Baltimore City* ("the Liquor Board") is responsible for regulating the sale, storage and distribution of retail alcoholic beverages (though an outlet must have the proper zoning in order to obtain a liquor license. The Liquor Board is comprised of a chairman, two additional Board members and twelve part-time inspectors (Maryland Annotated Code, 2012b). While the Liquor Board has power only in Baltimore City, it is created by state law and considered a state entity. Each local jurisdiction in Maryland has a liquor board.

The Baltimore City Liquor Board's duties fall into two major categories: licensing and enforcement. Liquor licensing includes granting licenses, expanding area of licensing, transferring licenses, one-day licenses, renewals, etc. The enforcement components take place through inspections, public hearings (held nearly weekly) and administrative decisions without a public hearing. The public hearings include weekly hearings to address operational issues and requests from license holders. The Liquor Board also holds a "protest of renewal" hearing in April of every year, as Liquor Licenses in Baltimore City last for one year and are renewable each April. If a minimum of 10 residents/property owners voice a complaint over the previous year about a particular outlet, that liquor license may not be renewed until a hearing is held. The Liquor Board may also initiate its own protest of a liquor license renewal in the absence of any community input. In the process of enforcement the liquor board may impose fines, suspend licenses, and in rare cases "fail to renew" a license.

In their decision making, the Liquor Board is supposed to consider factors such as compliance with existing tax laws; the impact on the general health, safety, and welfare of the community, including issues relating to crime, traffic conditions, parking, or convenience; and public need

and accommodation for the development of a new outlet. The Liquor Board is also supposed to enforce the requirement that a liquor license holder be a Baltimore City resident and the maximum period of time a license can be renewed after a vacancy (Maryland Annotated Code, 2012a; Liquor License Exceptions).

## Section 4: Tools Available to Reduce Alcohol Outlet Density

### What are the Means of Decreasing Alcohol Outlets Density and Addressing Specific Outlets That Have Had Negative Neighborhood Health Impacts in Baltimore?

#### 4.1 Mechanisms that can be used by local jurisdictions:

Zoning. As discussed above, in Baltimore City, zoning law can address the density and location of new alcohol outlets by 1) regulating what districts they are allowed and prohibited in, 2) determining whether the use will require an additional hearing as part of a conditional use permit, and 3) requiring minimum distances between new outlets and other sensitive uses (schools, parks, places of worship, other alcohol outlets).

Zoning - Amortization/Mandatory termination of uses. One additional means of reducing density is through the amortization or mandatory termination of existing, nonconforming outlets. Rather than being grandfathered despite a zoning change, the concept of amortization is used to terminate a use that is no longer permitted by the zoning code. Amortization is the time period given to a property owner that allows him or her to either conform to a new zoning regulation or sell the property. The rationale behind a mandatory termination or time limit is that it provides the property owner sufficient opportunity to make alternative plans for the property, while the public is assured that the district in which the nonconforming use exists will eventually benefit from a substantial uniformity of uses within the district. The rationale behind amortization is that the public gain from this mandatory termination of a use outweighs the private loss (Collins, 2000).

Maryland courts have upheld amortization for a reasonable period of time on a variety of other issues. *See e.g., Grant v. Mayor and City Council of Baltimore*, 129 A. 2d 363, 370 (1957) (five-year phase-out of non-conforming billboards upheld); *Eutaw Enterprises, Inc. v. Mayor and City Council of Baltimore*, 216 A.2d 348, 352 (1966) (18 months phase-out of non-conforming check cashing services upheld).

The City of Baltimore's zoning history also supplies examples where this tool has been implemented, including the following: amortizing firearm and ammunition sales (Ordinance 02-0854, Zoning §13-624); amortizing check cashing, money changing and similar agencies operated primarily for the cashing of checks or changing of money over 3 years (Ordinance 99-547, Zoning §13-615); and adult entertainment (Zoning § 11-505).

#### 4.2 Legislative mechanisms for reducing outlet density:

State legislation. In the State of Maryland, various amendments have been made to Article 2B of the Annotated Code – the section that details regulations and grants authority for the control of liquor sales and distribution within the state. The Maryland General Assembly has passed

regulations that affect the location, distance, operating hours, and licenses per population quotas applicable to the different counties (i.e. no new outlets in a particular district). Section 9-204.1 of the Maryland code details the districts in Baltimore City – in which new licenses are prohibited. While these measures do not decrease existing density, they prevent new establishments from locating there. The Liquor Board operates under the authority of Article 2B of the Maryland State Annotated Code.

#### **4.3** *Currently available means that can be used by the state licensing board or that are associated with loss of licensure:*

Closing, vacancies, and expiration. Over time alcohol outlets close and are sometimes unable to reopen or sell their business. According to article 2B of the Maryland Annotated code, any store that closes or goes vacant has 180 days to re-establish a business with their license (up to 360 if a hardship extension is requested). After this time, the license expires and cannot be used at the original or a new site (Maryland Annotated Code, 2012c). If the site where the license was used was nonconforming, no new liquor license may be used to sell alcohol there. If the site was conforming (i.e. in a commercial area), someone may be able to start another alcohol outlet if they can purchase or transfer an existing liquor license. If the liquor license has expired, no new liquor license can be issued because of the 1 per 1,000 residents rule.

Failure to renew. The Liquor Board in rare circumstances can fail to renew a liquor license. In this situation, that particular operator may no longer sell alcohol as they no longer have a valid liquor license. If the site where the license was used was nonconforming, no new liquor license may be used to sell alcohol there. If the site was conforming (i.e. in a commercial area), someone may be able to open another alcohol outlet if they can purchase or transfer an existing liquor license.

## **Section 5: Arguments against Alcohol Outlet Density Reduction**

In the course of the discussion about alcohol outlets and policy options in Baltimore, several arguments against reduction of alcohol outlets have emerged. What follows is a cross-section of the current discussion. These come from observations of public meetings, local press, and other reaction to proposed policy measures. The inclusion of these arguments in this brief highlights only that this perspective exists and makes no claims on the relative merits.

Summarized below are general arguments against reducing alcohol outlet density or increasing alcohol control policies in Baltimore (5.1), specific legal arguments against the current proposals to address nonconforming outlets through zoning (5.2), and other arguments against the current proposals to address nonconforming outlets through zoning (5.3).

### **5.1** *General arguments against reducing alcohol outlet density or increasing alcohol control policies in Baltimore:*

A variety of constituencies argue that alcohol outlets play a role in the social fabric and tourism policy of the city. On- and off-premise outlets can be amenities to neighborhoods, Entertainment Districts and other commercial areas. In deciding where to permit alcohol outlets, city policy makers and residents weigh the relative costs and benefits of tourism,

economic development, crime and public need for such an outlet. In an effort to promote tourism or other policies, policy makers may decide that outlet density should not be reduced in parts of the city. Similarly, some residents are interested in keeping the nearest nonconforming, off-premise alcohol outlet open for the ease of purchasing alcohol and/or other drinks, foods and convenience store items. Some fear the potential closure of local alcohol outlets because the store may not be viable unless it sells alcohol.

Others argue that alcohol, unlike other substances such as narcotics, is legal to sell and purchase in the US and efforts to limit the sale are paternalistic and overreaching. Some reject the reduction of alcohol outlet density based on the argument that other factors besides alcohol outlets play a role or a more important role in generating local crime.

Finally, some base their argument on one of preemption, that is only the State has the authority to regulate liquor sales hold that the Liquor Board and not the process of a zoning rewrite should address any alcohol outlet-related issue. Some have made this argument with the awareness that the Liquor Board has faced criticism over the years for its inability to adequately address community concerns and enforce the existing law in Article 2B (City of Baltimore, 2009).

## **5.2** *Specific legal arguments questioning and affirming the constitutionality of amortization/phasing out of nonconforming, off-premise alcohol outlets in Baltimore .*

In this instance, *both “sides” of the concern are presented because of the legal rather than philosophical nature of the argument.* As noted previously, this brief is not intended to serve as a legal analysis, but rather as a summary of key issues:

### *Arguments questioning constitutionality of amortization:*

The major legal and constitutional concern that has arisen is as follows: While these outlets are non-conforming, they were legally established uses. As these nonconforming alcohol outlets are legally established uses, efforts should not be taken to close them, irrespective of any associated health impacts. From this, some have raised the concern based on the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution about whether the proposal to phase out nonconforming alcohol outlets violates due process and constitutes a “taking” of property that requires owners to be compensated for the loss of business (Cohn, 2012).

### *Arguments affirming constitutionality of amortization:*

Although the Fifth and Fourteenth Amendments to the Constitution prevent governments from taking private property without just compensation, amortization would not implicate these Constitutional provisions when it provides the property owner due process through a reasonable period of time to conform to the current zoning. In other words, the amortization plan is designed to prevent a taking of property from occurring. Proponents of amortization outline that the plan does not constitute a taking of property because owners have had sufficient time to recover their investment. Since no taking occurred, no compensation is required. The Maryland Code specifically notes this in Article 2B, section 10-501: “Except as otherwise provided under this section, licenses issued under provisions of this article shall not be regarded as property or as conferring any property rights. All such licenses shall be subject to

suspension, restriction or revocation, and to all rules and regulations that may be adopted as herein provided.”

Amortization satisfies due process concerns through balancing the interests of the government (such as protecting public health) with those of the property owner. By providing a reasonable time period for the property owner to take steps to adjust to the new zoning laws, amortization serves to help reduce the financial impact on the property owner from the change in zoning law. The case of *Harris v. Mayor and City Council of Baltimore* explains this distinction. (371 A.2d 706 (Md. App., 1977). *Harris* stated that it was “unreasonable and unconstitutional for a zoning law to require immediate cessation of non-conforming uses otherwise lawful,” *Id.* at 710, but eliminating, “existing non-conforming uses within a reasonable time and with the use of a reasonable amortization scheme provided an equitable means of reconciliation of due process requirements.” (*Id.*).

### 5.3 Other arguments opposing amortization/phasing out of nonconforming, off-premise alcohol outlets in Baltimore .

Some opponents disagree with the manner of possible crime reduction. The current proposal to phase out (amortize) nonconforming off premise outlets is, in part, based on an argument that crime will be reduced in the immediate vicinity of the closed outlet. Since these outlets are in residential areas, the crime in that residential area associated with that outlet would decrease. Some argue that closing alcohol outlets would not reduce crime overall, but would just move it to the next closest conforming outlet. In public meetings, store owners have argued that their particular outlet has not contributed to crime and reject density reduction on these grounds. Other owners argue that the nonconforming and more numerous BD7 outlets that are allowed to sell packaged goods should also be subject to the amortization.

The owners of an alcohol outlet identified for amortization have argued against the proposal on the grounds of economic hardship. First and foremost has been the argument that this policy may lead to the loss of jobs and that this is a particularly undesirable outcome given the current economy and concerns with high unemployment figures. Details of these economic hardship arguments include: 1) loss of the ability to sell liquor would end their business, 2) it is too costly to re-establish their business in a location where liquor is permitted to be sold, and 3) they do not possess the skills to start another kind of business. Owners have expressed concern the potential inability to sell their business as a result of the new policy significantly alters their savings and retirement plans.

Finally, some owners have voiced concern about possible discrimination. The majority of the nonconforming off premise liquor store owners in Baltimore are Korean-American (Cohn, 2012). In public meetings, some store owners and their representatives from the Korean-American Grocers and Licensed Beverage Association (KAGRO) have argued that the proposed amortization plan is discriminatory (Valcourt, 2012) and other laws focusing on the nonconforming outlets racist (Bednar, 2012) and should be rejected on these grounds.

## Conclusion

This brief presents the rationale, evidence and mechanisms for utilizing alcohol outlet-related zoning policy to create healthier and safer communities. In particular, it provides an overview of the public health argument for addressing alcohol outlet density and proximity of alcohol outlets to primarily residential areas in Baltimore. Public health research that is particularly relevant to Baltimore City and has been conducted in comparable urban areas shows strong, consistent, coherent, temporal, and specific evidence suggesting that decreasing alcohol outlets density will lead to decreases in local violent crime.

Furthermore, Baltimore has an excess concentration of alcohol outlets per capita, which has been the impetus for limiting issuance of new licenses within the City. Through the zoning ordinance, Baltimore City, does have the power to regulate where alcohol outlets are located. This local authority to use zoning to regulate the location and operations of existing alcohol outlets in the City could be an important tool for improving public health. In particular, because certain existing alcohol outlets in Baltimore have been *nonconforming* (i.e. located in an area where they are considered an inappropriate use) since the zoning code was last revised in 1971, there is an opportunity to utilize the current zoning code revision to address such uses in order to decrease the risk of exposure to violence and other related risks for City residents, particularly those living in primarily residentially zoned areas.

There are many challenges and substantial opposition to addressing alcohol outlet density and location through zoning. But public health research suggests that if such zoning law changes were passed, implemented and enforced so as to produce a decrease in alcohol outlet density, they might also result in decreases in violent crime. As such, changing zoning laws to facilitate efforts to decrease alcohol outlet density in Baltimore is a critical step in realizing potential improvements to health and well-being of City residents that might be associated with decreasing alcohol outlet density City-wide and decreasing the number of alcohol outlets located in primarily residentially zoned neighborhoods. But having such laws on the books along is not enough. Enforcement is a central ingredient in this process. Without effective efforts to enforce such laws, there is unlikely to be substantial reduction in the number of *nonconforming* alcohol outlets City-wide. Furthermore, a comprehensive alcohol outlet and violence policy would involve action by a larger set of actors and agencies. Changes through zoning constitute one tool amidst the many that will ultimately be required. Without consistent and coordinated efforts City-wide, problematic alcohol outlets of all types are likely to continue to operate and contribute to negative health outcomes of City residents in the future.

## Glossary

Alcohol outlets – For the purposes of this document, alcohol outlets are establishments that are licensed to sell alcohol (beer, wine and/or liquor) for on- or off-site consumption. See the section below on alcohol outlet types and their associated licenses.

Alcohol outlet density – For the purposes of this document, alcohol outlet density refers to the number of alcohol outlets in a particular geographic area. Density can be assessed at a city-wide scale or at a neighborhood scale using defined neighborhood geographic boundaries. To compare alcohol outlet density among different geographic areas, the number of outlets per square mile may be used. To assess density based on population in a given area, density may be reported as the number of outlets per

population (e.g. 2.3 outlets per 1,000 people). Finally, alcohol outlet density may be characterized for a given group or type of alcohol outlet.

Amortization is the time period given to a property owner that allows him or her to either conform to a new zoning regulation or sell the property.

Off premise outlets are those that sell alcohol for consumption elsewhere. Patrons purchase their alcohol and cannot drink it on site.

On premise outlets are those that sell alcohol for consumption on site. Patrons may purchase and drink alcohol in the same location.

Violent crime is defined as assaultive crimes including: homicide, rape, aggravated assault, robbery, and burglary.

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