

## **MEMORANDUM**

To: Committee on Government Operations and Military Affairs  
From: Taylor Newton, Planning Program Manager  
Date: February 15, 2024  
Re: Testimony regarding alcohol outlet density regulation

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Regarding the recently introduced act relating to miscellaneous amendments to the laws governing alcoholic beverages and the Board of Liquor and Lottery I am pleased to offer the following testimony on municipal regulation of alcohol:

CCRPC commissioned a report from the Vermont League of Cities and Towns (VLCT) in 2016. The report reviews municipal authority to regulate alcohol and tobacco use and sales. The full report can be read [here](#). The findings of the report are still relevant in 2024.

Currently, a municipality can choose to have alcohol sales, or to prohibit alcohol sales, by voting (7 V.S.A. § 161). Beyond this specific statute there is a lack of clarity regarding Vermont municipalities' authority to limit alcohol retailer location, type and density. This lack of clarity is important because Vermont is a Dillon's Rule state and municipalities are only allowed to regulate if expressly enabled by the legislature. Regulating without express authority is a risk for municipalities if asked to justify or defend the legality of their locally adopted rules.

Zoning is a tool enabled under Title 24, Chapter 117 that a municipality can use to regulate location, type, and density of development. Retailers, including retailers that sell alcohol, are subject to zoning regulations adopted by a municipality as authorized by Title 24, Chapter 117. While a municipality could make an argument that it could regulate alcohol retailers via zoning authority, it is important to understand that statute does not expressly enable municipalities to use zoning to regulate in this manner.

Municipalities can also adopt ordinances under Title 24, Chapter 59. The specific powers municipalities have to regulate is enumerated under [24 V.S.A. 2291](#). This statute does specifically allow municipalities to regulate open containers and alcohol consumption in public places.<sup>1</sup> Similarly to zoning, this statute does not enable municipalities with authority to limit alcohol retailer location, type and density.

Municipalities have been expressly enabled to regulate public nuisances (7 V.S.A. 167). This could theoretically be used to regulate alcohol retailer location, type, or density. However, VLCT indicates in their report that the Vermont Supreme Court has warned municipalities that they should not stretch

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<sup>1</sup> Public place means municipal property, including a municipal park, a recreation area, or a municipal building. (24 V.S.A. § 2501a)

this nuisance authority beyond the point of losing all recognition (See Napro Development Corporation v. Town of Berlin, 135 Vt. 353, 356 (1977), in which the Court declared that “[w]e believe that the concept of public nuisance is vague and amorphous...”). Regulating alcohol retailer location, type or density via the public nuisance approach is inadvisable given this Supreme Court decision.

Unlike alcohol, Vermont does regulate the location of retail cannabis establishments. Per 18 V.S.A. 4237:

*The selling or dispensing of a regulated drug to a person on property abutting school property is a violation under this section only if it occurs within 500 feet of the school property. Property shall be considered abutting school property if: (1) it shares a boundary with school property; or (2) it is adjacent to school property and is separated only by a river, stream, or public highway."*

This locational rule is a state regulation (not a municipal regulation). This rule does establish precedent for putting limits on age restricted products to protect youth/young adults. This rule also fulfills much of the work the CCRPC and our partner RPCs have been doing, in cooperation with the Vermont Department of Health and substance use prevention coalitions, for years related to healthy community design and protecting children from the harms of use and messaging.

One other issue worth mentioning: some municipalities in Vermont have incorporated healthy community design principles into their comprehensive plans. The lack of explicit authority for municipalities to regulate alcohol retailer concentration means there is a gap between municipal planning and implementation.