



How to Effectively Utilize Your State Alcohol Beverage Agency to Maximize Alcohol Education, Prevention & Enforcement Efforts in Your Community

November 13, 2012



Session Overview

- Why have alcohol regulation – Relationship to crime and public health in general & in college communities
- Historical review of the 21st Amendment
- Discuss community support for alcohol regulation/enforcement
- Overview of Illinois Liquor Control Commission



Session Overview

- Discussion of the administrative process as an environmental management tool
- Discussion of specific regulations that exist in Illinois that may be useful in your communities
- Review

Why be concerned?

- At least 85,000 Americans die each year from alcohol-related causes, making alcohol-related problems the third leading cause of death in the United States

- Mokdad, A., Marks, J., Stroup, D., and Gerberding, J. (2004) Actual Causes of Death in the United States, 2000. JAMA 291(10):1238-1245

Alcohol & Crime

- Almost one in four victims of violent crime report that the perpetrator had been drinking prior to committing the violence.

- Alcohol was involved in 32 to 50 percent of homicides

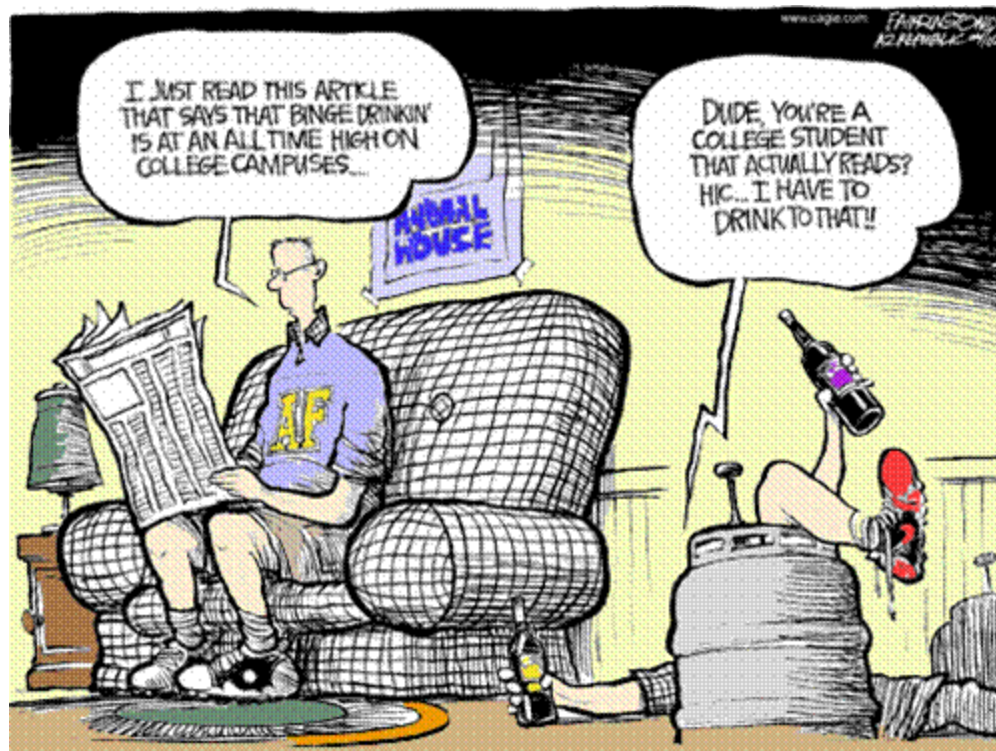
- Sprunt, B., Brownstein, H., Goldstein, P., Fendrich, M., and Liberty, J., (1995) Drug use by homicide offenders. *Journal of Psychoactive Drugs* 27(2):125-134.
- Goldstein, P., Brownstein, H., and Ryan, P. (1992) Drug related homicide in New York:1984 1and 1988. *Crime Delinquency* 38:459-476
- Greenfield, L. (1998) Alcohol and Crime: An analysis of national data on the prevalence of alcohol involvement in crime. Prepared for the Assistant Attorney General's national Symposium on Alcohol Abuse and Crime, Washington DC

Alcohol & Violence/Crime

2008 Research Violence associated with bars and on premise outlet density

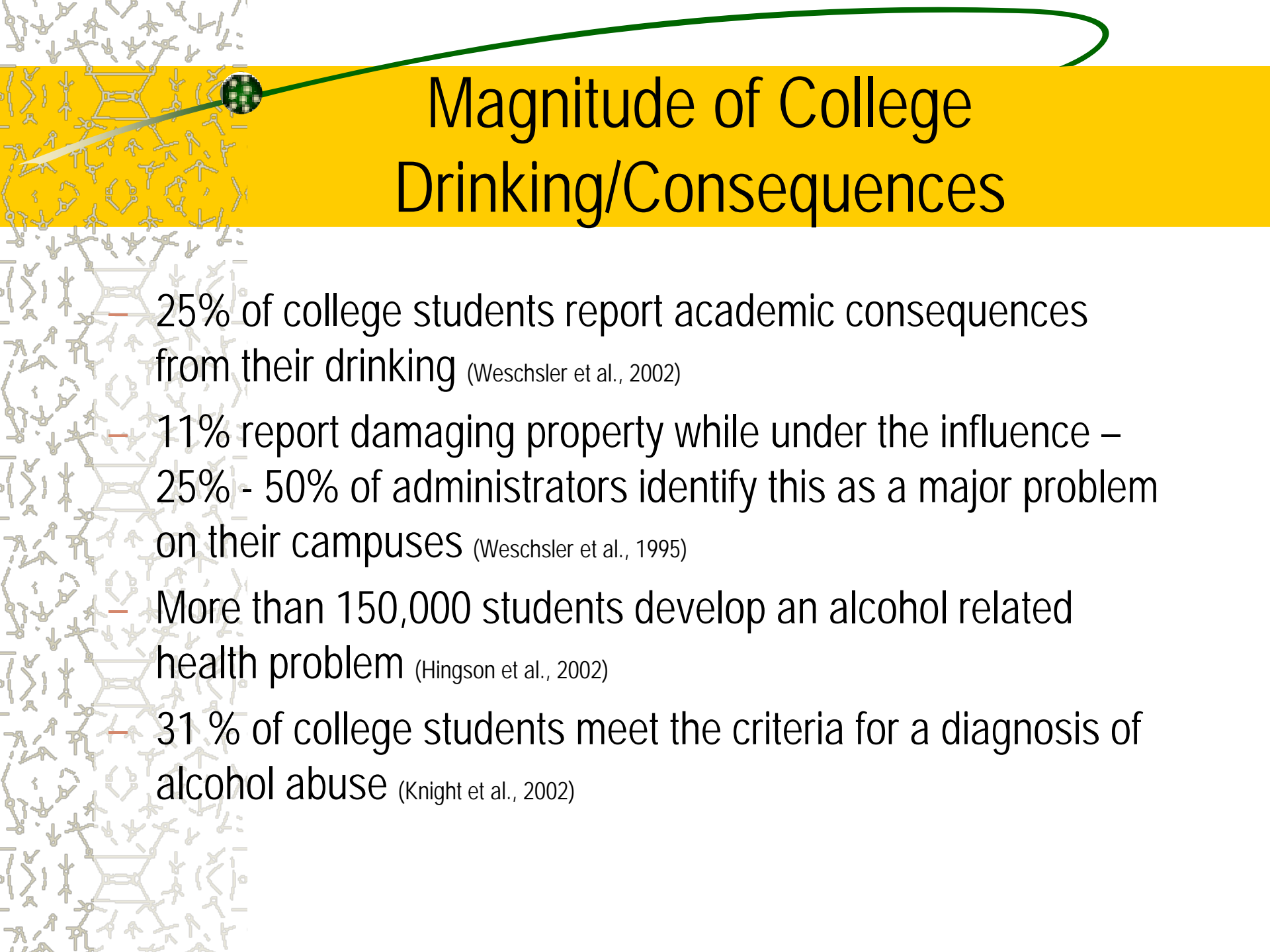
- Study found that as alcohol availability increases the more likely it is that couples will experience Male to Female Partner Violence. Specifically an increase of 10 alcohol outlets per 10,000 persons was associated with a 34% increased risk of MFPV.
- Researchers concluded that "neighborhoods with many alcohol outlets seem likely to have more problems related to drinking, including several different forms of alcohol-related violence."

Alcoholism: Clinical & Experimental Research-ACER-"Alcohol availability and intimate partner violence among US Couples" Raul Caetano, T. Robert Harris, Malembe S. Ebama of the University of Texas Houston School of Public Health, Dallas Regional Campus



Magnitude of College Drinking/Consequences

- 1,825 Alcohol –Related unintentional injury deaths. (Hingson et al., 2009)
- 3,360,000 drove under the influence. (Hingson et al., 2009)
- 599,000 injured. (Hingson et al., 2009)
- 400,000 had unprotected sex. (Hingson et al., 2002)
- 100,000 had sex when unable to consent. (Hingson et al., 2002)
- 97,000 victims of sexual assault. (Hingson et al., 2009)
- 696,000 assaulted. (Hingson et al., 2009)



Magnitude of College Drinking/Consequences

- 25% of college students report academic consequences from their drinking (Weschler et al., 2002)
- 11% report damaging property while under the influence – 25% - 50% of administrators identify this as a major problem on their campuses (Weschler et al., 1995)
- More than 150,000 students develop an alcohol related health problem (Hingson et al., 2002)
- 31 % of college students meet the criteria for a diagnosis of alcohol abuse (Knight et al., 2002)

College Substance Abuse

- Nearly half (46.6) of all substance abuse treatment admissions involving college or other postsecondary school students aged 18-24 were primarily related to alcohol
 - SAMHSA Treatment Episode Data Set (TEDS) 2009





Consequences Dangerous/Illegal Behavior

University of Kentucky – March 2012





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Why be concerned?

- "A considerable volume of literature describes the association between harm and the consumption of alcohol on licensed premises. Such harms are of particular relevance as licensed premises are intended, through legislation, to provide an opportunity for alcohol consumption in a controlled and safe environment."
- Harm Reduction Digest 26 – Strategies and outcomes in translating alcohol harm reduction research into practice: the Alcohol Linking Program- Drug & Alcohol Review (September 2004) 23, 355-364, John Wiggers et al.



Historical Perspective

• The 21st Amendment to the Constitution

- Gave the States the primary responsibility to regulate the alcohol trade as a means to protect public health and safety.
- In many States this has historically been accomplished through oversight by a State Alcohol Beverage Agency which was tasked with regulating the sale and distribution of alcohol within their borders.



Historical Perspective

• Most States chose to develop a three tier system of distribution and imposed laws and regulations on each of these tiers in an attempt to ensure public health & safety

- Manufacturer
- Wholesaler
- Retailer



Historical Perspective

- ✦ In many instances the state retains the exclusive right to regulate in the alcohol arena or severely limit locals from regulating in this area through preemption.
- ✦ You will need to review your state statute to determine what you can accomplish through city and/or county ordinances. Are there issues of preemption?



Support for Alcohol Regulation

- Recent Survey by the Center for Alcohol Policy – Conducted in July or 2012 found the following:
 - 72% of those surveyed agreed that alcohol is different than other consumer products and needs a different set of rules and the state should be regulating the industry
 - 78% support the current drinking age of 21 or older
 - 81% support the rights of the state to determine their own laws regarding the sale of alcohol

Review Existing Laws

- Know what your controlling state statute is and learn what it prohibits and/or allows. No need to reinvent the wheel. In Illinois the controlling Statute is 235
- Example – In Missouri to ensure smooth commerce local entities cannot enact any regulations with respect to keg registration only the state can.



Illinois Liquor Control Act of 1934

- 235 ILCS 5/1 – Establishes the framework for issuing licenses in Illinois and sets forth specific rules governing the manufacture, distribution and sale of alcoholic beverages in the State of Illinois.
- Established the Illinois Liquor Control Commission (ILCC) to oversee the implementation and enforcement of the Liquor Control Act.



Illinois is a license State

- Illinois is a license state which allows for a great deal of local municipal/county control.
- Dual-Licensing-Locals issue first.
- Although Illinois allows for local control there are limitations placed on locals authority.
 - For example the State is the only one who can set the legal drinking age.

Structure of the ILLC

- The agency is broken down into several divisions with specific duties
 - Licensing Division
 - Legal Division
 - Trade Practices Violations
 - Investigations Division
 - Regulatory Agents
 - Industry Education Division

ILCC Powers

- Issues State Licenses-After locals issue-If no licensing occurs at the local level State can issue.(28,000 Licenses).235 ILCS 5/13-12
- Adopt Rules & Regulations for the orderly manufacture, sale and distribution of alcoholic beverages (Illinois Administrative Code Title 11A, Ch. I Part 100, Title 77 Ch. XVI, Part 3500).

ILCC Powers

- Assist Local Liquor Commissioners in the implementation of Illinois Liquor Control Act of 1934.
- Conduct inspections of licensed premises. (24 agents – Over 20,000 inspections a year).
- Hear appeals from decisions of local liquor commissions.
- Develop training and educational programs for servers of alcoholic beverages.
- 235 ILCS 5/13-12

ILCC Powers

- Conduct alcohol & tobacco compliance check operations throughout the state & maintain a database
- Respond to complaints from the general public regarding licensed establishments.
 - Online complaint process is available
- 235 ILCS 5/13-12

ILLC Powers

- Assists local law enforcement agencies with specialized investigations and enforcement details.
- In many jurisdictions the agents will conduct the undercover investigations within the establishments and then coordinate arrests with local PD – Agents do not have arrest powers
- 235 ILCS 5/13-12

ILCC Powers

- May fine, suspend or revoke a license.
 - Fine cannot exceed \$500 per violation.
 - Cannot exceed \$20,000 per license period.
 - Typically, the State will not discipline a licensee if the local jurisdiction has disciplined the licensee.
 - 235 ILCS 5/13-12



ILCC Powers

- Keep in mind that if you have a problem establishment within your community you want to reach out to the ILCC agents for assistance, many times the establishment may be in violation of a number of technical or specialized liquor laws or regulations for which they can be administratively sanctioned and/or fined. (ex: buying from other than a licensed wholesaler, failure to pay sales tax etc...).



ILCC Powers

- Keep in mind that many of the violations outlined in the administrative code do not rise to the level of a criminal offense and can only be administratively addressed by the ILLC and its agents.
- Thus many activities of liquor establishments which impact your communities often can only be addressed by ILLC and not the local PD

Administrative Process

• Most States ABC Administrative System allows for the following potential sanctions of a licensed premise for violations of the statute or administrative code.

- Monetary Fine
- Suspension of liquor license
- Revocation of liquor license



Administrative v. Criminal

- Many liquor law violations can trigger both criminal and administrative sanctions
 - Ex: Sale to a minor could result in a criminal summons to the individual clerk who sold and/or the minor who purchased as well as an administrative sanction against the establishments liquor license or business license.





Enforcement of Administrative Penalties

- ✦ The penalty structure needs to make the costs for violating the law significantly outweigh any benefits derived.
- ✦ Deterrence v. Cost of doing business
 - Specific Deterrence aimed at the specific offender
 - General Deterrence- Is aimed at potential offenders & uses punishment of an individual offender to set an example for others



Enforcement of Administrative Penalties

- If you want to change the environment you need to hold the establishments accountable as well
- Simply writing a ticket to the offending minor or clerk does not change the nature of the business
- If the business is held accountable as well they will ultimately change their practices to avoid sanctions against their license.

Enforcement of Administrative Penalties

- Monitor Prosecutor's/District Attorney's to ensure they are filing cases.
- Monitor Court and ABC/AHC dispositions on underage drinking cases. ex: MADD
- Issue press releases on those dispositions.
- Recognize Prosecutors/Judges/Courts that are fairly and consistently dealing with underage cases and alcohol related offenses- reward them.
- Invite them to be an active member of your coalition.



Licenses

235 ILCS 5/6-1

- ✦ A liquor license is a privilege not a right.
- ✦ The term of a license is one year and is required to be renewed on an annual basis.
- ✦ A liquor license is non-transferable.
- ✦ A liquor license cannot be issued/renewed if the applicant owes any taxes imposed by the Department of Revenue.

Restriction on Use in Public Places

• Illinois law which bans use on school property.

- Petty Offense for anyone to possess alcohol on public school property on school days.
- Petty Offense for anyone to possess alcohol at events on public school property when children are present.
- 235 ILCS 5/6-16(e).



Illinois Prohibits Advertising Directed Toward Children

- Alco pops-Advertising – 235 ILCS 5/6-35 Prohibits the advertising, promotion or marketing of alcopop beverages toward children (No use of cartoons, video games, sponsorship at athletic events where the primary audience is kids, billboards within 500 feet of school, in public parks & amusement parks). Fines \$500
1st Offense - \$1000 -2nd Offense





Alcohol Sponsorship

- Alcohol Sponsorship of public events may already be regulated by your state alcohol beverage control agency through limitations on “trade practices”
- What are “Trade Practices”?

Trade Practices

• “Trade Practices” limit what various levels of the three tiered system can provide to another level of the tier in the way of

- Free Product
- Advertising through
 - Consumer novelty items & giveaways (t-shirts, ball caps etc...)
 - Signage
 - Traditional Advertising – media outlets – radio, television ads
 - Sponsorship at concerts & sporting events

Trade Practices

- Most States through their State Alcohol Beverage Agency limit the dollar amount that can be provided to a retailer by a wholesaler or manufacturer and is usually done by brand name
 - Ex: Budweiser, Bud Light, Bud Light Lime would all be considered a different brand even though they are manufactured by the same company.





Some Other Common Liquor Code Violations

- ✘ Impermissible signage and/or advertising materials
- ✘ Gambling
- ✘ Receiving something of value from a distributor
- ✘ Giving away of alcoholic beverages
- ✘ Happy hour violations
- ✘ Contaminated liquor-Sanitation Issues



If you determine additional regulation is needed

- ✦ Work with legislators/councilmen to enact stronger/tougher laws regarding alcohol related offenses both against youth, adult providers and businesses.
- ✦ Police can advise the coalition as to loopholes and or implementation problems with current laws or ordinances and possible changes which would make their job easier.
- ✦ Coalition can then advocate for the appropriate change needed to address the issue.

If You Determine Additional Regulation is Needed

• Methods to Regulate

– Licensing

- Business license
- Liquor license
- Sales tax license

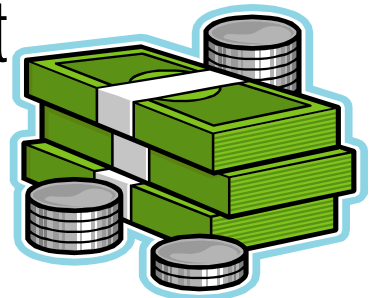
– Zoning

- Residential
- Commercial
- Mixed Usage



Ordinance Formation Overview

- Understand the process to bring an ordinance/statute up for a vote
- Have an attorney help draft the language
- Find a sponsor to shepherd it through the process
- Address implementation pitfalls upfront
 - Who will enforce, what will it cost to enforce/implement etc..





Education

- Educate the general public on the issue/proposal

- Forums
- Fact Sheets
- Press Conferences/Media Events
- Letters to the Editor
- Blogs/Twitter/Facebook

- Educate those that will vote on the proposed ordinance

- Quick one page fact sheets, policy briefs, white papers



Know Your Opposition

- Lawmakers/City Council
- Alcohol Industry
- Identify their opposition
 - Financial
 - Philosophical
 - Lack of knowledge

Assess the Individuals Who Can Give You What You Want

Who has the power to adopt your policy – The Omaha City Council

City Council member's name	Who can provide information about this council member's position on the ordinance?	What is the self-interest of this council member?	Who can influence this council member?	Who will approach the person who can influence the council member?



Voluntary v. Mandated

- ✦ In many instances you can achieve your objectives through voluntary means as opposed to enacting ordinances or laws.
- ✦ In addition, in the alcohol arena issues of preemption, interstate commerce and free speech may factor into what you can legislate.



Review

- Alcohol regulation is important because it is a product that when abused has the potential for serious harm to communities.
- With certain limitations communities have the right to set standards as to what is acceptable within their community.
- Be an active part of the process up front



Review

- Be open to compromise - reasonable limitations as opposed to outright bans may be just as effective in achieving your goal of a healthier environment.
- Familiarize yourself with your existing state liquor code and local liquor ordinances.
- Identify your opposition and seek ways to overcome the opposition.

Review

- Monitor courts, local commissioners and administrative agencies to ensure they are imposing meaningful sanctions against youth violators, adult providers and liquor vendors.



Final Thoughts

“... You may be disappointed if you fail, but you are doomed if you don't try.”

– Beverly Sills – American Opera Singer

– May 25, 1929-July 2, 2007



Note

- This course covers general principles of law and is for educational purposes only, this course and its associated materials do not replace specific legal advice about your particular situation and should not be regarded as legal advice.



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