

# **The Zoning Diet**

**Using Zoning as a Potential  
Strategy for Combating Local  
Obesity**

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# About This Kit

Childhood obesity is a growing problem that poses substantial health risks. Ethnic/racial minorities in low income urban areas disproportionately feel the impact of this problem. The built environment is particularly dense in low income urban areas and impacts a large number of people in a relatively limited space. Fast food and fast food advertising are aspects of the built environment that influence children's eating habits and can contribute to childhood obesity.

Local Communities can use this kit as a tool to help limit the availability and impact of fast food and fast food advertising in order to combat childhood obesity in their neighborhood. Since childhood obesity is a population wide problem affecting many individuals over an extended area, solutions based on the individual are not well suited to address this problem. A large scale solution addressing childhood obesity as a population problem, will have more success.

Zoning is a population based solution, and the police power, delegated to municipalities, allows local governments to protect the public good. Such protections can affect many aspects of the built environment. As aspects of the built environment, fast food establishments and fast food advertising are subject to zoning restrictions.

Zoning is a localized set of restrictions, rules, and procedures. Every community, may have different zoning needs reflecting the particular character of that community. This kit focuses on the Mission Hill community in Boston, MA. The characteristics, needs, and zoning procedures of this community form the backdrop against which childhood obesity is viewed. Although this kit is specific to Mission Hill, other communities can use many of the same solutions.

The zoning rules and procedures of Mission Hill create three general types of solutions. First, direct restrictions limit the availability and marketing of fast food including: complete restrictions, partial restrictions, use restrictions, quotas and limitations, density and distance requirements, and special permits. Second, analogizing fast food to other aspects of the built environment subject to more stringent restrictions, including: tobacco, alcohol, hazardous waste, firearms, and adult businesses. Third, positive zoning techniques promote healthy alternatives to fast food, including: incentive zoning, community gardens, and farmers' markets.

Each community will have to decide which solution works best for its own specific environment. The source and scope of each community's fast food and obesity problems may be unique. For example, a community will have to decide on a definition of fast food and decide which fast food establishments and advertising it wants to restrict. Each community must become familiar with its specific zoning rules and procedures. Every community is different and there is no single process which can apply everywhere. This kit is a first step for communities to begin affecting the built environment in their area to impact the obesity problems within their youth population.

The solutions in this kit are rated on a scale of one to five apples, solutions receiving one apple have the least potential or have significant implementation issues. Solutions receiving five apples are the best solutions having the highest potential and fewer implementation issues. First, the individual solutions are presented, followed by a procedure section that will point community members in the right direction to get started combating childhood obesity in their neighborhood.<sup>1</sup>

# Zoning

## Total Bans

A total ban in ensures that no new formula and fast food restaurants are built in that area. These restrictions do not remove the restaurants currently there, since they are “grandfathered” in. Some restrictions do allow new restaurants to open when another fast food or formula restaurant closes, but only in the same location.<sup>2</sup> However, other restrictions are designed to “phase out” fast food and formula restaurants entirely so that when one restaurant closes, the city does not allow another restaurant to open in its place.<sup>3</sup> Zoning ordinances govern these total bans.

### Pros

- There are several current examples of cities using complete restrictions or bans.
  - Carmel-by-the-Sea, California<sup>4</sup>
  - Pacific Grove, California<sup>5</sup>
  - York, Maine<sup>6</sup>
  - Sanibel, Florida<sup>7</sup>
  - Concord, Massachusetts<sup>8</sup>
  - Winslow, Washington<sup>9</sup>

### Cons/Defenses

- These ordinances are often very carefully worded to ensure that they are not overly broad, resulting in the exclusion of too many or too few restaurants. It may be difficult to come up with wording for a new zoning ordinance that prevents unhealthy food from reaching the lower-income racial and ethnic youth population in a non-discriminatory fashion.<sup>10</sup>
- If an ordinance imposes a total ban on restaurants by excluding those that serve unhealthy food, there are several negative implications for the local community. New restaurants may be prevented from opening, even when these restaurants are locally owned or could benefit the local community by providing jobs to local residents.

# Zoning

## Density Requirements

Density requirements to regulate formula and fast food restaurants in an area focus on the distances between fast food and formula establishments. This prevents overcrowding of restaurants in certain areas of a city. Zoning ordinances govern partial bans.

### Pros

- There are several current examples of cities with density zoning ordinances including:
  - Sausalito, California<sup>11</sup>
  - Village of Westwood, Los Angeles, California<sup>12</sup>
  - Portland, Maine<sup>13</sup> (currently suspended, pending legislative review)
  - Warner, New Hampshire<sup>14</sup>
- These requirements would not completely discourage the development of locally owned restaurants or the influx of new restaurant jobs into the community.
- A city may create a density requirement that performs the same function as a complete ban. A zoning ordinance that reflects the current distances between each restaurant could ensure that there are no other viable locations for a new restaurant to build without violating the density requirements. Therefore, a new restaurant could only open when an established restaurant closes, maintaining rather than increasing the number of restaurants.

**McDonald's Corp. v. Board of Trustees, Vill. of Elmsford,**  
203 A.D.2d 733, (1994).

A court upheld the validity of Elmsford, New York's denial of a permit based on density zoning restrictions when a restaurant wanted to build. The court reasoned that the board had fairly denied the restaurant's application for a special permit to build a drive-thru restaurant because the new restaurant would violate the density requirement of 2,000 feet between each fast food restaurants.

### Cons/Defenses

- Since this is not a ban, new restaurants could conceivably continue to open in an area. The only restriction on their development is whether or not there is an overabundance of restaurants already. In some ways, this method may have little or no tangible effect on fast food or formula restaurants interested in opening in that area.

# Zoning

## Quotas

The quota method of zoning restrictions on formula and fast food restaurants sets an exact number of establishments allowed within a city or geographical area. It allows a city to determine how many fast food and formula restaurants it permits in the community. The community decides on the number of restaurants and can change the number to reflect the city's needs.

### Pros

- There are a few current examples of cities with quotas including:
  - Arcata, California<sup>15</sup>
  - Berkeley, California<sup>16</sup>
  - Coronado, California<sup>17</sup>
- These requirements do not discourage the development of locally owned restaurants or the influx of new restaurant jobs into the community.
- A city may be able to create a quota that performs the same function as a complete ban. A zoning ordinance that reflects the current number of established restaurants in the area could ensure that a no new restaurants can build. Therefore, a new restaurant could only open when another closes, maintaining, rather than increasing, the number of restaurants.

**Coronadans Organized for Retail Enhancement v. City of Coronado, Cal.**  
Rpt. 2d, 2003 WL 21363665 (Cal.App. 4 Dist.).

Coronado, California successfully defended its quota method restriction that allows only 10 formula restaurants in the city and requires that: "[the restaurant] would not result in two or more Formula Fast Food Restaurants operating on that site..."

### Cons/Defenses

- The only restriction on new restaurants' ability to develop is whether or not there is an overabundance of restaurants already. In some ways, this method may have little or no tangible effect on fast food or formula restaurants interested in opening in that area.

# Zoning

## Moratoriums

Moratoriums on development allow a city to deny new building permits for a specific length of time. Moratoriums are not zoning legislation, but rather a form of land-use restrictions. Moratoriums allow a city to address, rather than exacerbate, problems caused by certain types of land-use and development. Moratoriums are based on the premise that the specified use is permitted, but should be put on hold a brief time period in order to allow a city to address a temporary problem.<sup>18</sup>

### Pros

- The Supreme Court has upheld the validity of moratoriums on development, finding that they do not constitute a “taking” of land where they are reasonably exercised.<sup>19</sup>
- Moratoriums can give a city time to examine the affects of fast food and formula restaurants on the rates of obesity in lower-income racial and ethnic minority youth, without new restaurants developing and thereby exacerbating the problem in the meantime.

### Cons/Defenses

- In order to be valid, moratoriums can only be in place for a “reasonable” amount of time. In one case, a reasonable amount of time was only ten and a half months.<sup>20</sup>
- A moratorium is a temporary preventative measure and long-term impact is questionable. It is unlikely that obesity will be eradicated during the short period where new fast food and formula restaurants are prohibited. A moratorium is a band-aid; your community may need a more permanent solution.

**Schafer v. City of New Orleans**  
743 F.2d 1086 C.A.La., 1984.

The Court of Appeals in New Orleans upheld an ordinance creating a temporary ban on fast-food restaurants while the city conducted studies of land use in the area. Even though the ordinance only banned fast food restaurants, the Court found that it did not violate due process or equal protection. Due process was met because the landowners had notice of the ordinance, they were at the public hearing preceding the adoption of the ordinance, and they used the opportunity to argue against the ordinance at the hearing. The District Court similarly held that the landowners failed to prove a violation of equal protection, because there was not a permanent taking of the property. Therefore, there could not be an equal protection violation even if the ordinance only applied to certain types of businesses.

# Zoning

## Limiting the Number of Signs Advertising Harmful Substances

Fast food advertisements can negatively impact the health of America's youth. These advertisements typically market low-nutritional foods, and target youth populations. Hence, fast food advertisements lay a large role in encouraging youth consumption of unhealthy foods and this, in turn, leads to the increasing number of overweight youth. The Boston Sign Code, which serves to regulate signage in all residential and commercial zones, can be used to limit the number of advertisements for harmful substances such as fast food.

### Pros

- Article 80, Section 11-2 of the Boston Sign Code has very specific limitations on signs, permitting only “a permanent, non-illuminated sign on the inside of the glass of a window, provided that the total area of the sign does not exceed thirty percent of the total glass area of the window appurtenant to the use to which the sign is accessory and provided that signs on ground floor windows included in calculating the total area of signs on a sign frontage.” This provides solid language to turn to in order to limit signage.
- It is possible to impose fines on establishments in violation of the Sign Code. It is also possible to conduct routine inspections of all establishments displaying fast food advertisements in their windows. This kind of regulation can provide an incentive to limit fast food signs.
- The community can play an active role in this process by monitoring the number of signs on display in their neighborhood. The community can also petition city agencies to create a new, more efficacious Sign Code.

### Cons/Defenses

- The First Amendment provides considerable protection to commercial free speech and the United States Supreme Court has repeatedly ruled in favor of this right.
- The Supreme Court has made clear that First Amendment rights prevent government disruption of lawful commercial information.



# Zoning

## Incentive Zoning

Incentive zoning utilizes a quid pro quo relationship between developers and the local government to encourage a certain types of businesses to develop in a geographic area by granting special variances such as increased height and space allowances. According to the Journal of Law, Medicine and Ethics, incentive zoning may encourage specific types of development, “[E]xamples of community changes enacted [through the possible use of incentive zoning] include bringing full-service grocery stores to areas that lack sufficient access [and] creating community gardens to foster not only healthy eating, but physical activity and social connections.”<sup>21</sup> Traditionally, incentive zoning shifts the financial burden of socially beneficial amenities away from the government.

### Pros

- Incentive zoning is tailored by cities to fit their specific needs, resulting in rooftop observatories in San Francisco, California,<sup>22</sup> climate-controlled plazas in Anchorage, Alaska,<sup>23</sup> street level retail in Miami, Florida,<sup>24</sup> and historic preservation in Cincinnati, Ohio.<sup>25</sup>
- A recent trend in incentive zoning shows it can encourage the development of “social” amenities such as low-income housing, day care centers, cultural facilities, and job training.<sup>26</sup> This new trend may eventually expand to encompass public health aims, such as obesity.

### Cons

- The use of incentive zoning to encourage supermarket and restaurant development remains largely untested. There is very little information about the application of incentive zoning for public health initiatives at this time.
- Mission Hill may not be able to employ incentive zoning. Traditionally, incentive zoning removes zoning barriers and thereby enables establishments to develop where they were otherwise unable to do so. Mission Hill does not prohibit grocery stores or supermarkets. However, a lack of grocery stores in the area, in spite of their ability to build in Mission Hill, might relate to the lack of inducement in the neighborhood.
- There is a criticism that incentive zoning corrupts the expressed zoning plans that are intended to reflect an objective interpretation of what a city can actually handle.

# Zoning

## Use Restrictions

Several zoning restrictions target and prohibit specific types of restaurant amenities rather than banning the restaurant completely. These special or type specific zoning restrictions do not apply to just formula or fast food restaurants, but typically to any food establishment in that zoning district. These restrictions frequently target drive-in and drive-through facilities.

### Pros

- There are several current examples of cities with use restrictions zoning ordinances including:
  - Santa Cruz, California<sup>27</sup>
  - Concord, Massachusetts<sup>28</sup>
  - Bristol, Rhode Island<sup>29</sup>
  - Newport, Rhode Island<sup>30</sup>
  - Port Townsend, Washington<sup>31</sup>
- Special use restrictions have been used to ban amenities common to fast food and formula restaurants, such as drive-in and drive-thru facilities, and may make an area less attractive to those types of restaurants if the amenity is prohibited.

### Cons/Defenses

- Since this is not a ban on the availability of restaurants, just types of amenity at the restaurants, it may have no impact on the number of fast food restaurants in a village or city.

# Zoning

## Partial Ban

As an alternative to completely banning fast food and formula restaurants, a city or town can apply a ban in specific geographic areas of the city instead. These “partial bans” prevent new fast food and formula restaurants from building in certain parts of a city, usually in order to preserve the character or use of that particular area.

### Pros

- There are several current examples of cities with partial restrictions including:
  - Arcata, California<sup>32</sup>
  - Calistoga, California<sup>33</sup>
  - Davis, California<sup>34</sup>
  - San Francisco, California<sup>35</sup>
  - Solvang, California<sup>36</sup>
  - Port Jefferson, New York<sup>37</sup>

### Cons/Defenses

- Since partial bans only limit the availability of low-nutritional foods in certain areas of a city or village, fast food and formula restaurants may still be easily accessible to the lower-income racial and ethnic minority youth population. For example, if a city bans fast food from one street, there may still be a fast food or formula restaurant within traveling distance of that street. Children might therefore still have easy access to the low-nutritional foods that lead to obesity.

# Zoning

## Distance Requirements

Unlike density requirements, fast food and formula distance zoning creates a buffer zone between a restaurant and other types of establishments, rather than a buffer zone between other restaurants. The application of distance restrictions prevents nuisances since “fast food outlets are historically perceived as having the potential to create a nuisance with the litter, noise, traffic, loitering, air pollution, and odors they can generate.”<sup>38</sup>

### Pros

- There are a few current examples of cities with distance requirements zoning including:
  - Detroit, Michigan<sup>39</sup>
  - Arden Hills, Minnesota<sup>40</sup>
- Although there are only a few examples of distance requirements to restrict the location of fast food and formula restaurants, there are many examples of distance requirements successfully limiting other types of nuisances.

### Cons/Defenses

- Distance requirements do not ban or even limit the number of fast food and formula restaurants within the city, as long as they do not create a nuisance. Therefore, the same number of restaurants could exist, simply in different areas. It is conceivable that fast food establishments will still be accessible to minority youth populations even if they are in a different area.

# Rationale

As demonstrated, there are several possible zoning methods for bans and restrictions on fast food and formula restaurants. However, zoning ordinances are often ineffective unless a city or village pairs the new law with a strong argument. Zoning ordinances that restrict fast food and formula restaurants are sometimes challenged in court and struck down when they do not have a strong rationale to support them.<sup>41</sup> The two most frequently used arguments for zoning ordinances are city aesthetics and public health. The argument most consistently favored by both cities and courts is the preservation or development of an area's aesthetics.

## Pros for an Aesthetics Rationale

- There are many current examples of zoning ordinances based on aesthetics including:
  - Calistoga, California<sup>42</sup>
  - Coronado, California<sup>43</sup>
  - Davis, California<sup>44</sup>
  - San Francisco, California<sup>45</sup>
  - Santa Cruz, California<sup>46</sup>
  - Sausalito, California<sup>47</sup>
  - Solvang, California<sup>48</sup>
  - Sanibel, Florida<sup>49</sup>
  - Concord, Massachusetts<sup>50</sup>
  - York, Maine<sup>51</sup>
  - Warner, New Hampshire<sup>52</sup>
  - Bristol, Rhode Island<sup>53</sup>
  - Port Townsend, Washington<sup>54</sup>
  - Winslow, Washington<sup>55</sup>
- Legislation based on aesthetics stands up in court<sup>56</sup>

## Aesthetics Cons/Defenses

- Obesity is a public health issue, not an aesthetics issue. However, where a public health argument might fail, a city can point to aesthetics instead. Since both arguments achieve the same goal, limiting fast food restaurants, it might be a good idea to include both rationales in zoning ordinances.

### Franchise Developers, Inc. v. City of Cincinnati 30 Ohio St.3d 28 (1997)

Cincinnati's decided to prevent a fast food restaurant from renovating and operating out of a theater-house on Ludlow Avenue. The court held that the city lawfully prevented the restaurant's development "in its attempt to preserve and protect the character of certain neighborhoods that the city deems important, in order to promote the overall quality of life within the city's boundaries."

### **Public Health and Safety Arguments Pros**

- There are several current examples of zoning legislation based on public health and safety arguments including:
  - Berkeley, California<sup>57</sup>
  - Coronado, California<sup>58</sup>
  - Davis, California<sup>59</sup>
  - Sanibel, Florida<sup>60</sup>
  - York, Maine<sup>61</sup>
  - Concord, Massachusetts<sup>62</sup>
  - Warner, New Hampshire<sup>63</sup>
  - Bristol, Rhode Island<sup>64</sup>
  - Port Townsend, Washington
  - Winslow, Washington<sup>65</sup>
- Zoning restrictions based on public health and safety concerns have stood up in court<sup>66</sup>

### **Public Health and Safety Arguments Cons/Defenses**

- When a public health and safety argument is not strong enough, courts will not prevent fast food and formula restaurants into that area.<sup>67</sup>
- As demonstrated by the current examples of zoning restrictions, there is almost no precedent of a city banning fast food or formula restaurants based on public health and safety arguments alone. This means that although obesity has nothing to do with aesthetics, an argument to support zoning restrictions will probably need to include both public health and aesthetic rationales.

**Bess Eaton Donut Flour Co., Inc. v. Zoning Board of Review of the Town of Westerly**  
Not Reported in A.2d, 2000 WL 976659 (R.I. Super).

Traffic concerns were central in Bess Eaton when a restaurant applied for a special permit for a drive-through window. The zoning board based its decision on concerns expressed by the neighborhood residents, "that the proposed facility was not a neighborhood business, but rather 'asphalt and lights, garbage and noise.'" When the restaurant owner brought a claim against the zoning board, the court affirmed the validity of the zoning board's denial.

# Model Tobacco Legislation

Like overweight and obesity, tobacco-related illnesses kill hundreds of thousands of people each year. Studies indicate that regulating the availability of tobacco might be one of the most effective protective measures for the public health, especially for children. One study showed that 57% of 10<sup>th</sup> graders and 38% of 8<sup>th</sup> graders perceive that it would be easy for them to obtain cigarettes from a retail source. The best predictor of adolescent experimentation with cigarettes is the perception that they are easily available. These statistics highlight the importance of limiting the availability of cigarettes as a means of regulating experimentation and addiction. If perception of availability plays a role in product experimentation, communities might have success reducing the prevalence of overweight and obesity by reducing the number of fast food retailers in their neighborhoods.

Due to public health risks posed by tobacco products, the courts have held that local regulations aimed at reducing availability in the built environment legally valid. In Massachusetts, many laws are in place to reduce availability, for example, by prohibiting sales to minors and restricting promotional product “give-aways.”

Local regulations on smoking have also been widely successful. The Supreme Judicial Court of Massachusetts has held that a town board of health has the authority to impose an absolute ban on smoking in all food service establishments, lounges and bars. A Massachusetts court will presume a board’s health regulation is valid and will only invalidate it if it has “no rational relationship” to its “stated public health purpose.”

The court has been particularly sensitive to scientific health reports that discuss severe medical problems associated with Environmental Tobacco Smoke (ETS). Similarly, many studies demonstrate the severe health risks posed by overweight and obesity. These studies might lend support to a zoning rationale analogous to those used by anti-tobacco litigators. By modeling legislation after successful tobacco legislation, a community may be able to similarly limit fast food availability.

## Pros

- Overweight and obesity present comparable public health risks to those posed by tobacco products.
- Successful regulations have been implemented in the past to reduce the availability of tobacco products in a built environment, especially to minors.
- Smoking bans are an effective method of land use regulation to limit the prevalence of ETS in a community.
- Smoking bans and other tobacco regulations demonstrate the courts’ willingness to presume a health board’s regulation is valid.

## Cons/Defenses

- Although tobacco product availability has been heavily regulated, it has not been subject to zoning regulation.
- Unlike tobacco products, it is not illegal for children to buy and eat fast food.

# Other Solutions

## Trans Fat Bans

Although the link between obesity and fast food still struggles to gain recognition, one new method of regulating fast food clearly recognizes this possibility. Recently, a movement to ban trans fats in restaurants and foods has emerged as a creative use of the local police power. This type of restriction does not prohibit a type of restaurant itself, but rather regulates what a restaurant serves.

Trans fats can occur naturally in products such as milk, peas, and meat. However, making vegetable oils more solid through partial hydrogenation creates man-made trans fats. This more solid form of vegetable oil has a longer shelf life in baked products, and longer frying capabilities. Bans apply specifically to the manufactured form of trans fats, not naturally occurring trans fats.

Boston is one of the many cities that have recently passed trans fat bans. Since trans fat bans met with success in Boston, Mission Hill need not make any efforts to impose a local ban. However, trans fat bans may be novel in other communities looking for creative ways to limit the impact of fast food and low-nutritional food on public health.

### Pros

- Several cities currently use trans fat bans, including:
  - Tiburon, CA
  - New York City, NY
  - Brookline, MA
  - Albany, NY
  - King County, WA
- In January 2007, a petition was submitted to the Massachusetts House of Representatives, seeking to amend Chapter 94 of the Massachusetts General Laws in order to ban all foods containing artificial trans fats. If the amendment passes, Massachusetts will become the first state to ban trans fat.

### Cons/Defenses

- Although not specified as a cause of obesity, trans fats and obesity both lead to similar health problems. Specifically, trans fats increase the risk of heart attack, stroke, and heart disease. Although this strategy does not target obesity specifically, it provides a good starting point for regulating fast food outlets based on public health concerns.
- Low-nutritional foods are still available, as long as they are not prepared using trans fats.



# Other Solutions

## Community Gardens

Community gardening allows residents to preserve nearby open land, while also utilizing a source of inexpensive and nutritious food. In general, the presence of gardens helps renew, preserve, and stabilize a neighborhood environment.

Most community gardens in Boston are associated with non-profit organizations or public agencies. However, if joining an existing garden is not feasible, members of a community can organize a plan to create a community garden on public land. Community gardens provide residents with access to less expensive, fresh, and healthy produce. Additionally, a community garden provides an opportunity to create an interactive and beautiful neighborhood.

### Pros

- Because of their prevalence in Boston, a community garden is likely already available nearby. In Boston there are 175 community gardens.
- If starting a new community garden, there is likely a local gardening network or organization available to help with planning, funding and staffing.
- A community garden offers not only healthy food, but community bonding and physical activity.

### Cons/Defenses

- A community garden will usually not provide the same convenience as a grocery store or offer the same volume and variety produce that is available in a grocery store.
- A community garden will not be available year-round.
- Not everyone in the community will have access to the community garden.

# Other Solutions

## Farmers' Market

Creation of a farmers' market is often a simple process for a community and can make fresh and locally grown produce available in an area where there is typically a lack of healthy food options. Many markets participate in government nutrition programs and some aid with the distribution of food to needy families. A farmers' market can be a very effective way of providing healthy food to low-income neighborhoods. This is particularly important in low-income neighborhoods where supermarkets are far away.

Farmers' markets are held in the spring and summer months in many Boston locations including: Copley Square, Boston City Hall Plaza, Dudley Street in Roxbury, Constitution Beach in East Boston, Centre Street in Jamaica Plain, Thomson Square in Charlestown, West Broadway in South Boston, and Dewey Square. Mission Hill has a summer farmers' market, which takes place weekly at Brigham's Circle. Mission Main Streets and the Parker Hill/Fenway Neighborhood Service Center sponsor this market in an effort to help residents supplement their diets with fresh produce.

Typically, there are specific rules governing what items can be sold at a farmers' market. For example, the Mission Hill Farmers' Market allows only Massachusetts-grown items like fresh fruits, vegetables and herbs, plants, and flowers.

### Pros

- Farmers' markets do not require the approval of a zoning commission.
- Farmers' markets make fresh and locally grown produce available to a community.
- There are already many existing Farmers' markets in the Boston area.

### Cons/Defenses

- Like a community garden, a farmers' market will usually not provide the same convenience or volume of food as a grocery store.

# Other Solutions

## Menu Limitations

Limiting the menus of fast food establishments serves as a way to change the dietary behavior of individuals by encouraging the purchase of healthier alternatives.

### Pros

- One benefit of implementing menu limitations is the elimination of especially low-nutrition fast food items. Ideally, these options would be replaced with healthier alternatives.
- Companies may be inclined change their menus in order to prevent litigation. It is possible that the threat of class actions may prompt them to change their menus.<sup>68</sup>

### Cons/Defenses

- As it stands, no legislation exists that would force companies to offer healthy alternatives. As a result, implementing this kind of solution through the community could be problematic.
- Fast food companies are privately owned and may contest external attempts to limit their products.

## Menu Nutritional Information

Menu nutritional information requirements would require fast food and formula restaurants to post the health content of their products. Posting the health content of food allows people to assess the options themselves. By assessing how energy dense certain food options are, people may make better and healthier decisions about what they eat.

### Pros

- In September 2007, California passed a bill that requires all fast food vendors to provide nutritional information to their customers at the time of purchase.<sup>69</sup> In essence, the bill requires that information regarding trans fat, saturated fat, calories, sodium, and carbohydrates be disclosed.

### Cons/Defenses

- One study indicates that even with access to the nutritional information of fast food, only 10% of Californians could identify the healthiest food option from a list.<sup>70</sup>

# Other Solutions

## Refrigeration

One solution for getting more healthy food into your neighborhood is to lobby your legislature to fund refrigeration programs for convenience and corner stores. Fresh fruits and vegetables require refrigeration, and many of these small stores do not have the funds to purchase the necessary equipment to carry healthy food. By funding programs that encourage local stores to carry refrigeration, the community can positively influence the variety of healthy options available to them.

### Pros

- Introduces healthier foods into corner stores and convenience markets.
- Gives youth the option to choose healthier foods at local establishments.

### Cons/Defenses

- This strategy would require legislature support to obtain the necessary funding.
- Available refrigeration does not ensure corner stores will necessarily stock healthy food, so it is imperative to use proper licensing and contract practices to ensure these refrigerators are stocked with the appropriate healthy foods.
- Corner stores will probably still carry low-nutritional foods,.

#### Example programs:

##### Bayview Hunter's Point, San Francisco, CA

The Good Neighbor Store program requires corner stores to meet certain requirements in order to receive subsidies for buying more energy efficient appliances, advertising, etc. These stores had to adhere to requirements such as: maximum store size, minimum proportions of fresh produce, participation in government food subsidies, and strict adhesion to local laws such as the sale of tobacco to minors. For more information, see <http://sftfc.globalink.org/lej.pdf>.

##### Pennsylvania Fresh Food Financing Initiative (FFFI)

FFFI provides funding for refrigeration units to corner stores in order to increase the amount of healthy food available to communities. For more information see The Food Trust website, <http://www.thefoodtrust.org/>.

# Zoning Procedure

Zoning is the exercise of legislative power by cities and towns. How each town or city chooses to exercise this power and pass regulations differs from each town and city, therefore zoning is inherently local and difficult to generalize. Each of the zoning solutions included in this kit can be adapted by your community through two key procedures: amending the current zoning codes through adoption of new regulations, or enforcing the existing zoning codes.

## Example:

In Boston, a copy of the Boston Zoning Code is maintained by the Boston Redevelopment Authority. Copies can be obtained through the BRA offices or online at the BRA website.

To determine the appropriate procedure for a particular zoning solution, first determine if the solution has already been enabled by the municipality's current zoning code.

**Check the code to see what regulations are already in place.** Depending on what the local code contains, there are two options:

**1) If the local code contains no existing regulations,** then propose an amendment so that the Code will reflect the proposed solution.

## Example:

In Boston, you may petition the Zoning Commission to adopt a proposed amendment. The proposed amendment must undergo a series of review and public hearings before being approved by a vote. For more details, please see the section on Adopting Proposed Amendments.

**OR**

**2) If the local code contains existing regulations** that implement the solutions, the procedure must instead focus on enforcement of existing regulations so that violations of the current zoning code may be corrected.

## Example:

In Boston, enforcement of the zoning code is within the authority of the Inspectional Services Department (ISD). A concerned citizen may submit a report of a zoning violation to the ISD. Inspectors will review the report to verify a violation, if found, a citation may be issued. For more details, please see the section on Enforcement of Existing Zoning Regulations.

# Permit Types

## Boston, MA.

The Inspectional Services Department is primarily responsible for the enforcement of the Boston Zoning Code through inspections and the issuance of permits. The Building and Zoning Division of the Inspectional Services Department issues permits for:

- New Building Construction
- Alterations and repairs
- Plumbing and Gas
- Sprinkler and Fire Protection
- Use and Occupancy<sup>71</sup>

The permits most likely to be relevant to fast food zoning needs are likely to be Use and Occupancy and New Building Construction. Of these permits, the type most likely to be relevant to fast food zoning needs is the Long Form permit, which allows construction of new buildings, alterations, and changes in use, occupancy, and capacity. An amendment permit allows modifications to an existing Long Form Permit.<sup>72</sup>

### Obtaining a Permit

Paper applications may be obtained directly from the ISD front counter.

Inspectional Services Department  
5<sup>th</sup> Floor (Counter One)  
1010 Massachusetts Avenue  
Boston, MA 02118

Those with internet access can obtain forms one of two ways:

1. PDFs of Building and Housing permit forms may be found and printed online: <http://www.cityofboston.gov/isd/forms.asp>
2. An online form may be filled out and submitted through the ISD website : <http://www.cityofboston.gov/isd/building/bldgpermits.asp>

Costs for obtaining a building permit are based on the estimated cost of construction, including all labor and materials.<sup>73</sup>

### Permits Granted

Permits granted within the Boston Zoning Code within the last 30 days can be accessed on the website of the ISD: <http://www.cityofboston.gov/isd/building/asofright/default.asp>. Historical images of all past permits issued can be viewed here: <http://www.cityofboston.gov/isd/building/docroom/default.asp>

If a permit application is denied for noncompliance with the Boston Zoning Code, the decision may be appealed to the Board of Appeals.

# Enforcement of Existing Zoning Regulations

## Boston, MA.

The Inspectional Services Department is primarily responsible for the enforcement of the Boston Zoning Code through inspections and the issuance of permits. Once a violation of the Code is found, an ISD inspector may issue a citation.

### Reporting a Violation

Reporting a violation may be done online, over the phone, or in person. The only reporting requirement is an address or a specific street location. Submissions may be done anonymously, or name withheld.

#### In person:

Inspectional Services Department  
5<sup>th</sup> Floor  
1010 Massachusetts Avenue  
Boston, MA 02118

#### Phone:

ISD Constituent Services handles intake for any inspectional needs. A report or general inspection questions may be submitted by dialing: 617-635-5300.

The ISD Code Enforcement department may also be reached directly by dialing: 617-635-4896

#### Online:

Users may submit an online request to the Code Enforcement Division through the following link: <http://cobonlineservices.cityofboston.gov/customerservice/ServiceRequestInformation.aspx?catkey=1004>

Submitters are assigned a service request number, which they can use to follow up on the status of the violation online, in person, or over the phone.

### Review of Violation

After a report is submitted the request is entered into ISD records and an ISD inspector is sent out to verify the violation. If a violation is found, the inspector can issue a citation fining the offender \$200 for every occurrence.

The offender may appeal the ticket through a hearing with the housing court.

#### Example: Violations of the Boston Sign Regulation

In the course of our field research, we interviewed Sociedad Latina, an organization based in Mission Hill. Sociedad Latina has recently initiated public health projects in Mission Hill, including one examining advertisements for unhealthy products such as tobacco, alcohol and junk food. They found many convenience stores that serve high-calorie, low energy foods such as pizza and hot dogs, post advertisements that are in direct violation of the Boston regulations regarding signs (Article 11).

Often, zoning regulations are violated simply because many people aren't aware of what all the regulations are. Sometimes however, businesses with larger budgets plan around the City's violation penalties. Sociedad Latina found that many convenience store owners were paid by vendors to put their advertisements up. Because citations are the extent of the penalty, violators with large budgets do not necessarily see the citation fee as a deterrent to violating Boston Sign Codes. Many large advertisers can work the citation fee into their budgets and still consider it an economical form of advertising media.

# Adoption and Amendment of Zoning Ordinances

## Boston, MA.

### Amending the Boston Zoning Code.<sup>74</sup>

The process of amending the Boston Zoning Code requires the support of the community, as well as adherence to proper legal procedure. The Enabling Act sets out zoning regulations that may be adopted to promote public health, safety, convenience, morals, and welfare.

The Zoning Commission has the authority to adopt and amend zoning regulations. Section 3 of the Enabling Act lays out the procedural requirements for the Zoning Commission's. These include standing to petition the commission, recommendation by the Boston Redevelopment Authority (BRA), public notice, a public hearing, and vote of the Zoning Commission, and approval by the mayor.

### Petitioning the Zoning Commission

A resident or property owner may submit petition to the Zoning Commission to adopt an amendment to the Zoning Code. There is a fee paid to the city, estimated average cost is \$275.

### The BRA's Recommendation

No zoning regulation or amendment may be adopted until the BRA has submitted a report with its recommendations on the regulation or amendment, or allows twenty-one days to elapse without making a report after a request by the commission.

All proposals for zoning amendments are reviewed by the BRA's zoning staff. The BRA provides copies of the proposal to city planners and to other staff related to the matter. After receiving feedback, BRA drafts an initial recommendation that outlines the proposed amendment and the policy considerations on which the proposal is based. Once the director approves the recommendation, the BRA board votes on the petition. If there is an affirmative vote the BRA will recommend petition to the Zoning Commission. An affirmative vote by the BRA board constitutes the BRA recommendation to the Zoning Commission.

### Notices of Zoning Commission Hearing

The Zoning Commission provides notices of its hearings on proposed zoning amendments by publication in one or more newspapers (usually the Boston Herald). If the proposed amendment or regulation affects a specific district the notice will be posted in a newspaper that is circulated in that area. Notices are also sent out by mail to any person who has filed a written request with the commission for regular notice of hearings.

### Process Overview

1. Proposed adoption or amendment is crafted.
2. A resident or property owner submits petition to the Zoning Commission.
3. The Zoning Commission's planning board (a division of the BRA) reviews the petition within 65 days of receipt.
4. If the petition is recommended (private residents and landowners input is taken into consideration), a notice for a public hearing (notice and hearing fees approx. \$275) will be issued at least 21 days prior to the hearing.
5. Public hearings are held at the BRA office located in City Hall.
6. After the hearing proceedings the city may pass an amendment or adoption with a two-thirds majority vote.
7. The mayor then approves or veto's amendment.
8. The amendment is enacted.



### **Zoning Commission Hearing**

The Zoning Commission meets generally once a month at the BRA in Boston City Hall. Scheduling arrangements are made by the Commission's secretary.

The chairman of the Commission opens each hearing by explaining the required procedures. Next, the petitioner presents his or her case and answers questions from members of the Commission. Thereafter, others who wish to speak in favor of the petition may do so. Opponents of the proposed amendment are then heard, and the petitioner is allowed a period for rebuttal.

After closing the hearing on the last item, the Commission will generally, open a public business meeting to discuss and vote on each of the petitions heard that day. At times the Commission will table consideration of a petition if further information is needed or if the Commission feels that issues raised at the hearing require further discussion among the parties concerned. The Commission's business meetings are open to the public, and notices of the meetings are posted on the city hall bulletin board. During the business meeting, the Commission may question members of the public, otherwise the public is only heard during public hearing.

### **Zoning Commission Vote**

The Enabling Act requires that a proposed amendment receives at least seven votes in order to be adopted.

The Commission must make a detailed record of its proceedings, including the vote of each member participating in the decision and the absence of any member or failure to vote.

### **Mayoral Approval**

After the Zoning Commission approves the amendment of the zoning law it is sent to the mayor for final approval. If the mayor fails to approve an amendment within fifteen days after it was presented to him or her, the amendment becomes effective on the sixteenth day after such presentation. If the mayor veto's an amendment, the Zoning Commission can override the veto by the concurrent vote of nine commissioners.

If a petition for an amendment is adopted, the amendment will show the date of the Commission's vote and the signature of each commissioner voting in favor, as well as the date of the mayor's approval and the mayor's signature. The date of the amendment's approval establishes the effective date of the Zoning Commission's decision for purposes of appeals and is shown in the Zoning Code for each section that has been amended.

After the amendment has been approved, copies of the amendment are available from the office the secretary to the Zoning Commission.

# Opposing a Variance Boston, MA.

A variance is a permission to deviate from a specific requirement of the Zoning Code. Fast food and formula restaurants often need a variance to build their establishment or make other changes to the property that are contrary to the established Boston Zoning Code, such as operating a drive thru window.

Before the Zoning Commission grants a variance, they must provide public notice and hold a public hearing. Notice of a public hearing will often appear in local community newspapers and be posted on signs around the lot for which the variance is sought. Community members can sign up to have notices about public meetings sent to them via email.

Attending these public meetings allows the community to express its views on the changing fabric of their community. Voicing opinions at these meetings is vital to preventing fast food establishments from building in a community.

## Pros

- One can oppose a variance simply by attending a public meeting and voicing concerns about a proposal. There are no filing costs or other procedural steps that needed.
- Public officials and representatives value the opinions of the community and will often give great weight to the desires of the community.

## Cons/Defenses

- Although community displeasure with a proposed variance is very important, the Zoning Commission might grant a variance regardless of the community response.
- Other community members and public officials may be proponents of bringing in fast food establishments because such establishments will create jobs
- Fast food and formula restaurants often have considerable financial resources to support their development plans.

To sign up for email notification of BRA community meetings go to: <http://www.cityofboston.gov/bra/neighborhoods/neighemail.asp>

Section 9 of the Boston Zoning Enabling Act permits the granting of a variance where, "owing to conditions especially affecting such parcel or such building, but not affecting generally the zoning district in which it is located a literal enforcement of the provisions of such zoning regulation would involve substantial hardship to the appellant, and where desirable relief may be granted without substantial detriment to the public good ..." Chapter 665 of the Acts of 1956 §9.

Boston City Councilor John Tobin encouraged community participation in public hearings. "If the community is strongly opposed and they voice their concern to the neighborhood council, the Zoning board will rarely vote differently from the neighborhood council, and this can be an effective way for keeping out unhealthy food. This community support can work because many people are already looking for healthier options." Councilor Tobin has successfully used this method of zoning to combat fast food establishments in his community by opposing variances, which would permit a drive thru windows.

# References

<sup>1</sup> For more information in support of these claims and additional information regarding the use of zoning to combat obesity, see Law Office 7, *The Zoning Diet: Using Zoning to Combat the Local Obesity Epidemic* (On file with Northeastern University School of Law).

<sup>2</sup> E-Mail from Brian Roseth, Planning Services Manager, Carmel-by-the-Sea, (Feb. 20, 2008)

<sup>3</sup> SANIBEL, FLA., ORDINANCES No. 96-10 (Land Development Code) (available online at <http://www.mysanibel.com/Planning/>).

<sup>4</sup> CARMEL-BY-THE-SEA, CAL., MUNICIPAL CODE § 17.06.036 (available online at <http://www.codepublishing.com/CA/carmel.html>).

<sup>5</sup> PAC. GROVE, CAL., CODE § 23.64.115(a) (available online at [http://nt2.scbbs.com/cgi-bin/om\\_isapi.dll?clientID=112810225&infobase=procode-4&softpage=Browse\\_Frame\\_Pg](http://nt2.scbbs.com/cgi-bin/om_isapi.dll?clientID=112810225&infobase=procode-4&softpage=Browse_Frame_Pg)).

<sup>6</sup> Institute for Local Self-Reliance, *Formula Business Restrictions – York, ME, I*, available at <http://www.newrules.org/retail/york.html> (last visited Mar. 22, 2008).

<sup>7</sup> See *supra* note 3.

<sup>8</sup> CONCORD, MASS., ZONING BYLAWS § 4.7.1 (available online at [http://www.concordnet.org/Pages/ConcordMA\\_BOA/zone/sec4.pdf](http://www.concordnet.org/Pages/ConcordMA_BOA/zone/sec4.pdf)).

<sup>9</sup> WINSLOW, WASH., MUNICIPAL CODE ch. 18.12 § 1 (available online at [http://www.ci.bainbridge-isl.wa.us/municipal\\_code.aspx](http://www.ci.bainbridge-isl.wa.us/municipal_code.aspx) hyperlink labeled "Municipal Research Services Center").

<sup>10</sup> Roseth, *supra* note 2. "One word of caution: if you want to use zoning to advance the cause of public health, singling out formula food establishments is a risky approach. All restaurants (formula or not) can serve unhealthy food. Singling out formula businesses as a separate class would have little or no rational basis. What if there was a chain of restaurants specializing in healthy food? Wouldn't they be prohibited as well?"

<sup>11</sup> SAUSALITO, CAL., ORDINANCES § 10.44.240(D)(2) (Zoning Ordinance and General Plan) (available online at <http://www.ci.sausalito.ca.us/Index.aspx?page=287>).

<sup>12</sup> L.A., CAL., VILL. OF WESTWOOD SPECIFIC PLAN §5(B)(4) (available online at <http://cityplanning.lacity.org>).

<sup>13</sup> See *supra* note 6.

<sup>14</sup> WARNER, N.H., ZONING ORDINANCES art. 11 (Commercial District C-1, Town of Warner Zoning Ordinance) (available online at <http://www.newrules.org/retail/portland.html>).

<sup>15</sup> ARCATA, CAL., ORDINANCES No. 1333 § 2 (Municipal Code) (available online at [http://www.cityofarcata.org/index.php?option=com\\_content&task=category&sectionid=11&id=39&Itemid=240](http://www.cityofarcata.org/index.php?option=com_content&task=category&sectionid=11&id=39&Itemid=240)).

<sup>16</sup> BERKELEY, CAL., ZONING CODE § 23E.44.040 (available online at [http://www.ci.berkeley.ca.us/bmc/Berkeley\\_Zoning\\_Code/Sub-Title\\_23E/44/040.html](http://www.ci.berkeley.ca.us/bmc/Berkeley_Zoning_Code/Sub-Title_23E/44/040.html)).

<sup>17</sup> CORONADO, CAL., MUNICIPAL CODE § 86.55.360(A) (available online at [http://nt5.scbbs.com/cgi-bin/om\\_isapi.dll?clientID=112810320&infobase=coronado.nfo&jump=86.55&softpage=PL\\_frame#JUMPDEST\\_86.55](http://nt5.scbbs.com/cgi-bin/om_isapi.dll?clientID=112810320&infobase=coronado.nfo&jump=86.55&softpage=PL_frame#JUMPDEST_86.55)).

<sup>18</sup> *Tahoe-Sierra Preservation Council Inc. v. Tahoe Regional Planning Agency*, 55 U.S. 302, (2002).

<sup>19</sup> *Id.*

<sup>20</sup> *Schafer v. City of New Orleans*, 743 F.2d 1086, 1090 (C.A.La., 1984).

<sup>21</sup> Christina D. Economos & Sonya Irish-Hauser, *Community Interventions: A Brief Overview and their Application to the Obesity Epidemic*, 35 J.L. MED. & ETHICS 131, 132 (2007).

<sup>22</sup> Jerold S. Kayden, *Zoning for Dollars: New Rules for an Old Game? Comments on the Municipal Art Society and Nollan Cases*, 39 WASH. U.J. URB. & CONTEMP. L. 3., 5 (1991).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> SANTA CRUZ, CAL., DOWNTOWN RECOVERY PLAN ch. 4(A)(1)(a) (available online at <http://www.ci.santa-cruz.ca.us/cc/archives/00/10-10/10-10rpt/2000-20.html>).

<sup>28</sup> See *supra* note 8.

<sup>29</sup> BRISTOL, R.I., ORDINANCES § 28-150(h)(1)(d)(3) (Municipal Code) (available online at <http://www.municode.com/Resources/gateway.asp?pid=10105&sid=39>).

<sup>30</sup> NEWPORT, R.I., MUNICIPAL CODE ch. 17.100.090(B) (available online at <http://municipalcodes.lexisnexis.com/codes/newportri/>).

<sup>31</sup> PORT TOWNSEND, WASH. MUNICIPAL CODE § 17.05(6)(D)(3) (available online at <http://www.codepublishing.com/wa/porttownsend.html>).

<sup>32</sup> See *supra* note 15.

<sup>33</sup> See *supra* note 4.

- <sup>34</sup> DAVIS, CAL., MUNICIPAL CODE ch. 40 § 40.14.030 (Permitted Uses) (available online at <http://www.city/davis/ca/u/cmo/citycode/detail.cfm?p=40&q=1762>).
- <sup>35</sup> S.F., CAL., PLANNING CODE § 703.3 (available online at <http://www.municode.com/Resources/gateway.asp?pid=14139&sid=5>).
- <sup>36</sup> SOLVANG, CAL., MUNICIPAL CODE § 14.07.280 (available online at <http://66.113.195.234/CA/Solvang/index.htm>).
- <sup>37</sup> VILL. OF PORT JEFFERSON, N.Y., ORDINANCES § 250-22(H) (available online at <http://www.newrules.org/retail/portjef.html>).
- <sup>38</sup> JULIE S. MAIR ET AL., THE USE OF ZONING TO RESTRICT ACCESS TO FAST FOOD OUTLETS: A POTENTIAL STRATEGY TO COMBAT OBESITY, 40 (2005), <http://www.publichealthlaw.net/Zoning%20Fast%20Food%20Outlets.pdf> (last visited Mar. 23, 2008).
- <sup>39</sup> As cited in *Id.* (Unable to locate the original source of this ordinance as of February 29, 2008).
- <sup>40</sup> *Id.*
- <sup>41</sup> *Hobbs v. Albanese*, 70 A.D.2d 1049, (N.Y.A.D. 1979).
- <sup>42</sup> See *supra* note 6.
- <sup>43</sup> CORONADO, CAL., MUNICIPAL CODE § 86.55.360(A) (available online at [http://nt5.scbbs.com/cgi-bin/om\\_isapi.dll?clientID=112810320&infobase=coronado.nfo&jump=86.55&softpage=PL\\_frame#JUMPDEST\\_86.55](http://nt5.scbbs.com/cgi-bin/om_isapi.dll?clientID=112810320&infobase=coronado.nfo&jump=86.55&softpage=PL_frame#JUMPDEST_86.55)).
- <sup>44</sup> See *supra* note 34.
- <sup>45</sup> S.F., CAL., PLANNING CODE § 703.3(a)(2), 703.3(a)(8) (available online at <http://www.municode.com/Resources/gateway.asp?pid=14139&sid=5>).
- <sup>46</sup> SANTA CRUZ, CAL., DOWNTOWN RECOVERY PLAN ch. 4(A)(1)(a) (available online at <http://www.ci.santa-cruz.ca.us/cc/archives/00/10-10/10-10rpt/2000-20.html>).
- <sup>47</sup> SAUSALITO, CAL., ORDINANCES § 10.44.240(A) (Zoning Ordinance and General Plan) (available online at <http://www.ci.sausalito.ca.us/Index.aspx?page=287>).
- <sup>48</sup> SOLVANG, CAL., ORDINANCES No. 94-151 § 1 (Municipal Code) (available online at <http://66.113.195.234/CA/Solvang/index.htm>).
- <sup>49</sup> SANIBEL, FLA., ORDINANCES No. 96-10 (Land Development Code) (available online at <http://www.mysanibel.com/Planning/>).
- <sup>50</sup> CONCORD, MASS., BYLAWS § 1.2 (Zoning) (available online at [http://www.concordnet.org/Pages/ConcordMA\\_BOA/zone/sec4.pdf](http://www.concordnet.org/Pages/ConcordMA_BOA/zone/sec4.pdf)).
- <sup>51</sup> See *supra* note 6.
- <sup>52</sup> WARNER, N.H., ZONING ORDINANCES art. 11 (Commercial District C-1, Town of Warner Zoning Ordinance) (available online at <http://www.newrules.org/retail/portland.html>).
- <sup>53</sup> BRISTOL, R.I., ORDINANCES No. 2004-11 (available online at <http://www.municode.com/Resources/gateway.asp?pid=10105&sid=39>).
- <sup>54</sup> PORT TOWNSEND, WASH., ORDINANCES No. 2896 (Municipal Code)
- <sup>55</sup> WINSLOW, WASH., ORDINANCES No. 89-28 (Comprehensive Plan and Zoning) (available online at [http://www.ci.bainbridge-isl.wa.us/municipal\\_code.aspx](http://www.ci.bainbridge-isl.wa.us/municipal_code.aspx) hyperlink labeled "Municipal Research Services Center").
- <sup>56</sup> *Franchise Developers, Inc. v. City of Cincinnati*, 30 Ohio St.3d 28, 32 (1987); see also *Vill. of Hudson v. Albrecht, Inc.*, 9 Ohio St. 3d 69, 69 (1984).
- <sup>57</sup> BERKELEY, CAL., ZONING CODE § 23E.44.020(B)(3) (available online at [http://www.ci.berkeley.ca.us/bmc/Berkeley\\_Zoning\\_Code/Sub-Title\\_23E/44/040.html](http://www.ci.berkeley.ca.us/bmc/Berkeley_Zoning_Code/Sub-Title_23E/44/040.html)).
- <sup>58</sup> CORONADO, CAL., MUNICIPAL CODE § 86.55.360(C)(4) and (D)(3) (available online at [http://nt5.scbbs.com/cgi-bin/om\\_isapi.dll?clientID=112810320&infobase=coronado.nfo&jump=86.55&softpage=PL\\_frame#JUMPDEST\\_86.55](http://nt5.scbbs.com/cgi-bin/om_isapi.dll?clientID=112810320&infobase=coronado.nfo&jump=86.55&softpage=PL_frame#JUMPDEST_86.55)).
- <sup>59</sup> DAVIS, CAL., MUNICIPAL CODE § 40.14.010 (available online at <http://www.city/davis/ca/u/cmo/citycode/detail.cfm?p=40&q=1762>).
- <sup>60</sup> SANIBEL, FLA., ORDINANCES No. 96-10 (Land Development Code) (available online at <http://www.mysanibel.com/Planning/>).
- <sup>61</sup> See *supra* note 6.
- <sup>62</sup> CONCORD, MASS., BYLAWS § 1.2 (Zoning) (available online at [http://www.concordnet.org/Pages/ConcordMA\\_BOA/zone/sec4.pdf](http://www.concordnet.org/Pages/ConcordMA_BOA/zone/sec4.pdf)).
- <sup>63</sup> WARNER, N.H., ZONING ORDINANCES art. 11 (Commercial District C-1, Town of Warner Zoning Ordinance) (available online at <http://www.newrules.org/retail/portland.html>).
- <sup>64</sup> BRISTOL, R.I., ORDINANCES § 28-150(h)(1)(5) (Municipal Code) (available online at <http://www.municode.com/Resources/gateway.asp?pid=10105&sid=39>).
- <sup>65</sup> WINSLOW, WASH., ORDINANCES No. 89-28 (Comprehensive Plan and Zoning) (available online at [http://www.ci.bainbridge-isl.wa.us/municipal\\_code.aspx](http://www.ci.bainbridge-isl.wa.us/municipal_code.aspx) hyperlink labeled "Municipal Research Services Center").
- <sup>66</sup> *Bess Eaton Donut Flour Co, Inc. v. Zoning Bd. of Review of the Town of Westerly*, Not Reported in A.2d, 2000 WL 976659 (R.I. Super). (*Unpublished Opinion*); see also *Bellas v. Planning Bd. of Weymouth*, 56 Mass. App. CT 1106 (2002). (*Unpublished Opinion*); see also *McDonald's Corp. v. Bd of Tr., Vill. of Elmsford*, 203 A.D.2d 773, 773 (1994); see also *Franchise Realty Interstate Corp. v. Cohalan*, 78 A.D.2d 552, (N.Y.A.D. 1980).
- <sup>67</sup> *Hobbs v. Albanese*, 70 A.D.2d 1049, 1050 (N.Y.A.D. 1979).
- <sup>68</sup> *Ellen J. Fried, Bas Foods: Changing Attitudes About What We Eat*, 30 J. HEALTH POL. POL'Y & L. 965, 973 (2005).

<sup>69</sup>[http://www.associatedcontent.com/article/377285/fast\\_food\\_menu\\_labeling\\_law\\_passed.html](http://www.associatedcontent.com/article/377285/fast_food_menu_labeling_law_passed.html).

<sup>70</sup> [http://www.associatedcontent.com/article/377285/fast\\_food\\_menu\\_labeling\\_law\\_passed.html](http://www.associatedcontent.com/article/377285/fast_food_menu_labeling_law_passed.html)

<sup>71</sup> <http://www.cityofboston.gov/isd/building/boa/bldgdefault.asp>

<sup>72</sup> <http://www.cityofboston.gov/isd/building/boa/permittypes.asp>

<sup>73</sup> <http://www.cityofboston.gov/isd/building/boa/permitcost.asp>

<sup>74</sup> See generally CYNTHIA M. BARR, MASSACHUSETTS ZONING MANUAL (Massachusetts Continuing Legal Education, Inc. 1999).