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REPORT TO THE COMMITTEE ON PUBLIC  
SAFETY AND NEIGHBORHOOD SERVICES

POSSESSION OF OPEN KEGS CONTAINING ALCOHOLIC BEVERAGES DURING THE  
FOURTH OF JULY HOLIDAY PERIOD AT DESIGNATED PUBLIC PLACES

**INTRODUCTION**

This report addresses a proposal to amend the San Diego Municipal Code to make it an infraction to possess an opened keg containing alcoholic beverages (beer kegs) in designated public places, generally beach areas, on the Fourth of July and related weekend (hereinafter referred to as the Fourth of July holiday period).

Adoption of this proposal will provide law enforcement with a powerful tool and prosecutors with a strong law to combat the dangers and problems associated with consumption of alcohol held in kegs during the Fourth of July holiday period. During the Fourth of July holiday period there is an increase in crimes related to alcohol use by adults and minors, including littering, urinating in public, public intoxication, illegal possession and consumption of alcohol by minors, and crimes of violence. This problem is exacerbated by the possession of kegs containing alcoholic beverages because they provide large and uncontrolled quantities of alcoholic beverages. It is the opinion of the City Attorney that such an ordinance is a lawful exercise of the City's police power to protect the public health, public morals, and safety of citizens.

**BACKGROUND**

The Fourth of July holiday period is a time of celebration. It is a time when families and friends gather at beaches and parks to barbeque, play games, and watch fireworks. It is also time when people consume alcoholic beverages. However, often times people consume an excessive amount of alcoholic beverages, leading to an increase in crime. The crimes associated with the increase in alcohol consumption include littering, vandalism, fighting, drunk in public, public urination, and illegal possession of alcohol by minors. The increased crimes require a

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greater expenditure of police and public resources. The problems associated with the excessive consumption of alcoholic beverages are exacerbated when the alcoholic beverages are served in kegs.

According to proponents of the proposed ordinance, beer kegs are problematic for a variety of reasons. First, they provide a large amount of alcohol. Thus, they encourage greater amounts of alcohol consumption. *See South Carolina Coalition for Alcohol-Safe Communities. Keg policy: still a front line campus issue. Take Charge*, 1 (3):2, 1991. A typical beer keg possessed during the Fourth of July holiday period contains fifteen and one-half gallons of beer. Second, beer kegs do not permit a consistent measure of how much alcohol is being consumed at any given time. In contrast, consumption from beer cans provides the alcohol user with a fixed container from which they can measure the amount of alcohol that has been consumed. Fourth, beer kegs provide uncontrolled access to alcohol by minors. Indeed, beer kegs are often a main source of alcohol at parties or gatherings where underage drinking occurs. *See Wagenaar, A.C., Ginnegan, J.R., Wolfson, M., Anstine, P.S., Williams, C.L., Perry, C.L. Where and How Adolescents Obtain Alcoholic Beverages. Public Health Rep.* 109(4):459-464, 1993. Finally, beer kegs encourage larger parties to gather in public places and consume large amounts of alcoholic beverages. *See Cassady, D., Flora, J., Foote, D. Alcohol Use at Community Events: Creating Policies to Prevent Problems. San Diego County Alcohol Program and Applied Communication Technology*, 1987. It is not uncommon to find parties where multiple kegs are possessed. This ordinance seeks to address the problems related to consumption of alcoholic beverages from kegs during the Fourth of July holiday period at designated public areas, generally beaches.

### DISCUSSION

#### **THE PROPOSED ORDINANCE IS A LAWFUL EXERCISE OF THE CITY'S POLICE POWER TO PROMOTE THE PUBLIC HEALTH, PUBLIC MORALS, AND PUBLIC SAFETY**

There is an increase in criminal activity during the Fourth of July holiday period related to the excessive consumption of alcoholic beverages. This problem is exacerbated when alcoholic beverages are served in kegs. The proposed ordinance seeks to curb the problems associated with the excessive consumption of alcoholic beverages by prohibiting the possession of beer kegs during the Fourth of July holiday period in designated areas (generally beach areas). The proposed ordinance is a lawful exercise of the City's police power: (1) because the ordinance is

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not preempted by state law and (2) because the prohibition is rationally related to the public safety objective it seeks to address.

## **I. Preemption**

The proposed ordinance seeks to regulate the possession of opened kegs containing alcoholic beverages in designated public places, generally beach areas, on the Fourth of July holiday period. The proposed ordinance is not preempted by state law.

“A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. art XI, § 7. In terms of the regulation of alcoholic beverages, the California Constitution states “[t]he State of California . . . shall have the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State . . . .” Cal. Const. art. XX, § 22. Thus, any regulation dealing with the possession of alcoholic beverages would generally be preempted by the State. However, there is no preemption when a state legislative scheme either permits or recognizes local regulation. *Candid Enterprises Inc. v. Grossmont Union High School District*, 39 Cal.3d 878, 888 (1985); *People v. ex. rel. Deukemejian v. County of Medocino*, 36 Cal.3d 476, 486 (1984). The State, pursuant to California Business and Professions Code section 25620, has permitted local regulation of possession of opened containers of alcoholic beverages in City-owned public places.

California Business and Professions Code section 25620(a), states, in pertinent part:

Any person possessing any can, bottle, or other receptacle containing any alcoholic beverage that has been opened, or a seal broken, or the contents of which have been partially removed, in any city, county, or city and county owned park or other city, county, or city and county owned public place, or any recreation and park district, or any regional park or open-space district shall be guilty of an infraction if the city, county, or city and county has enacted an ordinance that prohibits the possession of those containers in those areas or the consumption of alcoholic beverages in those areas.

Accordingly, the City of San Diego may regulate the possession of opened containers of alcoholic beverages in city owned public places by creating an offense punishable as an infraction.<sup>1</sup> The proposed ordinance does not use the full power given to the City under the section. Instead, it applies to a limited type of container, for a limited period, and at limited locations. As a result, in light of the above, the proposed ordinance is not preempted by state law.

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<sup>1</sup> An infraction is an offense punishable by a fine of up to \$250.

## **II. Due Process and Equal Protection**

During the Fourth of July holiday period there is an increase in criminal activity related to the excessive consumption of alcoholic beverages. The increase of criminal activity is compounded when large amounts of uncontrolled alcoholic beverages are served in kegs. The proposed ordinance seeks to curb excessive alcohol consumption and attendant crime by prohibiting beer kegs during the Fourth of July holiday period. Accordingly, the proposed ordinance is a proper use of the City's police power because it is rationally connected with the promotion and protection of public safety.

A police power regulation will be upheld as reasonable if the requirements of the law have a rational connection with the promotion and protection of public safety. *Kelley v. Johnson*, 425 U.S. 238, 247 (1976); *Nebbia v. New York*, 291 U.S. 502, 537 (1934). Thus, laws which do not affect any fundamental rights such as voting or the freedom of speech and do not make a "suspect classification" such as a law based on race or nationality, are tested by determining whether it has a rational relationship to a legitimate state interest. *Ohio Bureau of Employment Services v. Hodory*, 431 U.S. 471, 489 (1977). The rational basis analysis is used under either the guarantee of the due process or equal protection clauses because no fundamental right or suspect classification is involved. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307 (1976); *see also, Dandridge v. Williams*, 397 U.S. 471 (1970). Finally, laws which do not impact a fundamental right are entitled to a strong presumption of constitutionality. *McGowan v. Maryland*, 366 U.S. 420 (1961).

Here, crime such as littering, vandalism, fighting, drunk in public, public urination, and the illegal possession and consumption of alcohol by minors substantially increases during the Fourth of July holiday period. The increase in crime is associated with the excessive consumption of alcoholic beverages, including the consumption of alcoholic beverages from kegs. Moreover, large amounts of police and public resources are dedicated to combat the problem. The proposed ordinance seeks to reduce the crimes associated with alcohol consumption and exacerbated by consumption from kegs by prohibiting the possession of kegs during the Fourth of July holiday period at designated areas, generally beach areas. As a result, because the ordinance is narrowly tailored to address the problems posed by alcohol consumption, including its attendant crime, it is a lawful and rational exercise of the City's police power.

**CONCLUSION**

Consumption of alcoholic beverages from kegs and attendant crimes are significant problems in the City of San Diego and threaten the public health, welfare, and safety. By passing the proposed ordinance, the consumption of alcohol and attendant crime is curbed. The proposed ordinance is a valuable tool for law enforcement and prosecutors to tackle this problem. As a result, it is recommended that the ordinance be adopted.

Respectfully submitted,

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