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February 27, 2003

REPORT TO THE COMMITTEE ON PUBLIC
SAFETY AND NEIGHBORHOOD SERVICES

PROHIBITIONS AGAINST CONSUMPTION OF ALCOHOL BY MINORS AND AGAINST
HOSTING UNDERAGE DRINKING PARTIES

INTRODUCTION

This report addresses a proposal to amend the San Diego Municipal Code: (1) to make it a misdemeanor for a minor to consume alcoholic beverages in any public place, place open to the public, and any place not open to the public (unless supervised by a parent or guardian) and (2) to make it a misdemeanor to permit, host, or allow a party or gathering where three or more minors are gathered and a minor is consuming alcoholic beverages at a private residence (under age drinking party). Proponents of this proposal believe it 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 by minors in general and specifically at parties.

The consumption of alcohol by minors at parties has far ranging dangers and consequences, including illegal activity by the minors at the party (such as vandalism, littering, and urinating in public), violence (including sexual assault), increased risk taking behaviors by minors, and an inordinate amount of diverted police resources. The ordinance, in part, seeks to hold the person hosting the underage drinking party accountable for the impact their parties have upon the minors and communities. In other words, it places upon the host of the party the responsibility of monitoring the use of alcoholic beverages by minors. It is the opinion of the City Attorney that such an ordinance is a lawful exercise of the City's police power.

BACKGROUND

Most people see underage drinking as a youth problem. However, when a minor consumes alcohol, there is an adult involved in some way, whether it is a retail store selling alcohol or older siblings, friends, or parents providing the alcohol. In a recent survey, 57 percent of local high school students reported drinking at friends' homes. *Combating Underage Drinking*, 1999. In another study it was determined that underage drinking "occurs primarily outside commercial establishments and most often in residences and open areas like beaches and parks." *Mayer, Forster, Murray, and Wagenaar*, 1998. The proposed ordinance seeks to address alcohol consumed by minors in these settings.

Parties where minors consume alcoholic beverages and/or consume illegal drugs present a myriad of problems for the minor, the community, and law enforcement. For minors, alcohol abuse can lead to traffic crashes, violent crime, accidental injury, alcohol poisoning, and increased risk taking behaviors. For the community, neighbors are routinely required to deal with the aftermath of underage drinking parties, such as vandalism to cars and homes, littering, urine and feces in their yards, loud noises, and traffic congestion. Finally, law enforcement is faced with having to spend an inordinate amount of resources to respond to party calls. In 2001, the San Diego Police Department responded to 7,519 home party calls, costing in excess of \$298,000. In addition, from January to November 2002, the San Diego Police Department issued 1,577 minor in possession citations (violations of California Business and Professions Code section 25662). This ordinance addresses the problems related to minors consuming alcohol and permitting underage drinking parties.

DISCUSSION

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

The City may, under its police power, make laws which promote the public health, the public morals, and the public safety. In a previous Memorandum of Law dated May 5, 2000, the City Attorney's Office examined several issues pertinent to the instant ordinance, including (1) whether the City is preempted by state law from regulating the consumption of alcohol; (2) whether the City may regulate private property in terms of preventing alcohol consumption; and (3) whether the City may apply the Doctrine of the Nuisance to regulate property in terms of preventing alcohol consumption. See City Att'y MOL No.2000-11 (May 5, 2000). With respect to the proposed ordinance, it is not preempted by state law, the City may regulate private property to prevent persons from hosting parties where minors are consuming alcoholic beverages, and the "Doctrine of the Nuisance" supports the conclusion that the City may regulate private property to prevent persons from hosting parties where minors are consuming alcoholic beverages.

I. PREEMPTION

The proposed ordinance seeks to regulate the consumption of alcohol by minors by prohibiting them from consuming alcohol at all venues (public place, place open to public, and place not open to public) and by prohibiting parties where they may gather and consume alcoholic beverages. The proposed ordinance is not preempted by state law. We have previously opined on the issue of preemption in the instant setting and have stated:

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. This section has been interpreted by the courts to mean the state has preempted the regulation of alcohol only in the specifically enumerated areas. *See People v. Brewer*, 235 Cal. App. 3d 909 (1991); *People v. Butler*, 252 Cal. App. 2d Supp. 1053 (1967). The court in *Butler* relied on its finding “that regulation of consumption of alcoholic beverages as distinguished from possession, transportation, etc., was, almost studiously, omitted, it seems, in article XX, section 22 of the Constitution.” *Butler*, 252 Cal. App. 2d at 1057. Based on its finding, the court went on to say “there is nothing in the state law which indicates an intention fully to occupy the field relating to the consumption of alcoholic beverages in other than licensed premises, and the general rule permitting additional supplementary local regulation is, therefore, applicable.” *Id.* at 1057. The decision allows cities to regulate the consumption of alcoholic beverages without running afoul of state law so long as the regulation does not infringe on those areas already controlled by the state.

City Att’y MOL No. 2000-11, p. 2 (May 5, 2000).

Accordingly, the City may regulate alcohol consumption by minors as stated in the proposed ordinance.

II. RESTRICTIONS ON USE OF PRIVATE PROPERTY

The proposed ordinance is a lawful and proper restriction of private property because, as explained above, the City may regulate the consumption of alcohol by minors, and because the proposed ordinance bears a reasonable and substantial relationship to the City's effort to curb consumption of alcoholic beverages by minors (thereby protecting the minors, the public, and limited police resources). We have previously opined on the issue of restrictions of private property in the context of curbing alcohol use and have stated:

[W]hile property owners' rights regarding the use of their property are broad and well-protected, cities are granted equally broad police powers to enact ordinances to ensure the public good. “[T]he police power extends to everything expedient for the preservation of the public safety, health, comfort or good morals.” *Ex parte Weisberg*, 215 Cal. 624, 627 (1932). The courts have said “[i]t is within the legislative discretion in the exercise of such power to place such restrictions upon

the use of any property or the conduct of any business as may be reasonably necessary for the public safety, comfort or health.” *Id.* at 627-28. The competing rights of the property owner and the public must be carefully weighed before restrictions on the use of private property may be imposed. The courts have set forth a two-part test to determine whether a particular restriction on the use of private property constitutes a proper exercise of a city's police power. First, the City must determine “whether the object of the ordinance is one for which the police power may be properly invoked” *Thain v. City of Palo Alto*, 207 Cal. App. 2d 173, 186 (1962). If it is, the City must then determine “whether the ordinance bears a reasonable and substantial relation to the object sought to be attained.” *Id.* at 186. If the answer to both questions is yes, the City may make a finding that consumption of alcohol on private property creates a nuisance, then exercise its police powers to impose reasonable means to abate the nuisance even if the necessary means entail a restriction on the use of private property.

ML-2000-11, pp. 3-4 (May 5, 2000).

First, as explained above, the City may lawfully regulate alcohol consumption. Thus, the object of the ordinance is one for which the police power may be properly invoked. Second, the purpose of the ordinance is to reduce alcohol consumption by minors because such consumption harms the minor, the public, and impacts police resources. The proposed ordinance squarely meets its purpose because it prohibits minors from consuming alcohol and it takes away a venue where minors consume alcoholic beverages. Thus, it can be fairly said that the ordinance bears a reasonable and substantial relationship to the object sought to be attained. Therefore, the ordinance is a lawful restriction on the use and enjoyment of private property.

III. DOCTRINE OF THE NUISANCE

A city may identify a public nuisance and use its police power to remedy the public nuisance. We have previously opined on the issue of how the “Doctrine of the Nuisance” may support a City ordinance seeking to address a public harm and have stated:

Cities are granted the authority to make determinations regarding public nuisances generally through the exercise of its police power and specifically by California Government Code section 38771. The statute says that “[b]y ordinance the city legislative body may declare what constitutes a nuisance.” Statutory definitions of nuisance assist cities in making this determination. Nuisance is defined as “[a]nything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property” Cal. Civ. Code § 3479. *See also* Cal. Penal Code § 370. California Civil Code section 3480, and California Penal Code section 370 add to the definition of nuisance the caveat that interference with the enjoyment of property must affect “an entire community or neighborhood,” or “any considerable number of persons.”

Cities are not limited to the statutory definitions in all instances. In *People v. Johnson*, 129 Cal. App. 2d 1, 6 (1954) the court said, "A city has the power to pass general police regulations to prevent nuisances, and such power is not limited to the suppression of those things which are nuisances *per se* within the meaning of section 370 of the Penal Code and sections 3479 and 3480 of the Civil Code." See *City of Bakersfield v. Miller*, 64 Cal. 2d 93 (1966). A public nuisance may be summarized as "an act or omission which interferes with the interests of the community or the comfort and convenience of the general public and includes interference with the public health, comfort, and convenience." *Venuto v. Owens-Corning Fiberglas Corp.*, 22 Cal. App. 3d 116, 123 (1971). In its simplest terms, a public nuisance is "an unreasonable interference with a right common to the general public." *Restatement (Second) of Torts* § 821 B(1).

City Att'y MOL No. 2000-11, pp. 4-5 (May 5, 2000).

The proposed ordinance seeks to remedy, within the meaning of the "Doctrine of the Nuisance", the harms to the community caused by underage drinking parties, such as vandalism to cars and homes, littering, urine and feces in yards, loud noises, and traffic congestion. In 2001, the San Diego Police Department responded to 7,519 home party calls, costing in excess of \$298,000. In addition, from January to November 2002, the San Diego Police Department issued 1,577 minor in possession citations (violations of California Business and Professions Code section 25662). While there are laws which address the symptoms of the underage drinking parties, none of the laws address the root cause of the problem—the parties themselves. The proposed ordinance prohibits such parties. As a result, the "Doctrine of the Nuisance" supports the City's actions in addressing the public harm caused by underage drinking parties.

IV. OTHER CITIES HAVE ENACTED SIMILAR ORDINANCES

Other jurisdictions have passed similar ordinances, including the City of Poway, City of Santa Rosa, City of Healdsburg, City of Rio Vista, and City of Vallejo. In regard to local ordinances, the San Diego County College Presidents' forum II on underage and binge drinking has supported the use of local ordinances to control underage drinking parties. *San Diego County College Presidents' Forum II on Underage and Binge Drinking Report and Recommendations*, 2002.

CONCLUSION

Consumption of alcoholic beverages by minors and hosting parties wherein minors gather to consume alcoholic beverages threaten the public peace, property, health, and safety of citizens. By passing the proposed ordinance, the consumption of alcohol by minors is curbed and persons who provide a venue for minors to consume alcohol are held accountable for their actions. For these reasons, the proposed ordinance is a proper and lawful exercise of the City's police power.

Respectfully submitted,

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City Attorney

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Attachment
RC-2003-8