

ORDINANCE NUMBER O- 18597 (NEW SERIES)

ADOPTED ON OCT 20 1998

AN ORDINANCE AMENDING CHAPTER V, ARTICLE 8, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 3, SECTIONS 58.0301, 58.0302, 58.0303, 58.0304, 58.0305, 58.0306, 58.0307, 58.0308, 58.0309, 58.0310, 58.0311 AND 58.0312 ALL PERTAINING TO RESTRICTING THE SALE, ADVERTISING AND PROMOTION OF TOBACCO PRODUCTS TO MINORS.

WHEREAS, the Council of the City of San Diego finds that there is compelling evidence supporting a direct correlation between tobacco advertising and promotion and underage smoking; and

WHEREAS, state and local laws prohibit underage smoking, including the selling, giving, or furnishing of cigarettes to any person under the age of eighteen years, and the purchasing, receiving, or possessing of cigarettes by any person under the age of eighteen years, and the use of tobacco products by students at public school campuses and events; and

WHEREAS, tobacco advertising promotes smoking by using images and messages that appeal to youth; youth are particularly susceptible to these images and messages; and youth have greater recall for and are more influenced by tobacco advertising than the adult population; and

WHEREAS, certain tobacco product manufacturers have admitted engaging in strategies designed to advertise and promote tobacco products to minors; and

WHEREAS, tobacco advertising in public places is inimical to the enforcement of laws enacted by the State of California and the City of San Diego that are designed to limit the purchase and use of tobacco products to the adult population; and

WHEREAS, advertising signs promoting the use of tobacco products displayed on or in retail stores below four feet from the floor or next to candy, snack and soda displays target under-aged youth and are inimical to the enforcement of laws enacted by the State of California and the City of San Diego that are designed to limit the purchase and use of tobacco products to the adult population; and

WHEREAS, studies have shown that minors who are aware of tobacco promotions are twice as likely to use tobacco, and minors who participate in tobacco promotions are nine times more likely to use tobacco; and

WHEREAS, tobacco advertising is unavoidable by youth, a threat to the safety and welfare of the young, a strong inducement to violate the laws concerning the purchase and possession of tobacco by minors, and a strong inducement for minors to begin to use tobacco products; and

WHEREAS, it is the intent of the Council of the City of San Diego in the enactment of this ordinance to discourage and reduce illegal sales and furnishing of tobacco products to minors by restricting advertising that encourages and induces minors to buy or steal and use cigarettes and other tobacco products in violation of state and local laws; and

WHEREAS, it is the further intent of the Council to discourage and reduce illegal sales and furnishing of tobacco products to minors by requiring retailers to implement identification and other procedures designed to reduce the likelihood of sales to minors; and

WHEREAS, the Council finds that the City has a substantial interest in reducing illegal sales of tobacco products to persons under eighteen years of age, and that the City's interest outweighs any First Amendment right to exercise commercial speech that may be affected by restricting tobacco advertising and promotion; and

WHEREAS, the Council finds that this regulation directly advances that substantial interest, by narrow and appropriate means, by: (1) restricting tobacco advertising and promotion that, because of its nature and placement, targets minors and encourages minors to violate state law; (2) prohibiting tobacco advertising and promotion in those areas of the City where minors are likely to congregate and be exposed to, and thus be influenced by, such advertising and promotion; and (3) not restricting tobacco advertising in certain designated commercial and industrial zones, with reasonable and appropriate setbacks from adjoining zones; and

WHEREAS, the Council finds that this regulation promotes the public welfare by discouraging commercial exploitation of potential underage smokers; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter V, Article 8, of the San Diego Municipal Code is hereby amended by adding Division 3, and Sections 58.0301, 58.0302, 58.0303, 58.0304, 58.0305, 58.0306, 58.0307, 58.0308, 58.0309, 58.0310, 58.0311 and 58.0312 to read as follows:

DIVISION 3

Restricting the Sale, Advertising and Promotion of Tobacco Products to Minors

SEC. 58.0301 Definitions

For purposes of this Division:

“Advertising” means printed matter that calls the public’s attention to things for sale.

“Advertising display sign” means a sign, sign-board, billboard, poster, or banner that is temporarily or permanently placed on or affixed to the ground, the sidewalk, a pole or post, or

a building, or is displayed in the windows of a commercial establishment, and that is used to advertise or promote products.

“Arcade” has the same meaning as in Municipal Code section 33.1635.

“Child care center” has the same meaning as in Municipal Code section 101.0101.0102 or its successor.

“City” has the same meaning as in Municipal Code section 11.0210.

“Director” has the same meaning as in Municipal Code section 11.0210.

“Library” means any public library operated by the City of San Diego.

“Person” has the same meaning as in Municipal Code section 11.0210.

“Playground” means any outdoor premises or grounds owned or operated by the City, a public or private school, child care center, youth or recreational center, that contains any play or athletic equipment used or intended to be used by minors.

“Promotion” includes a display of any logo, brand name, character, graphics, colors, scenes, or designs that are trademarks of a particular brand of tobacco product, on any door, sign, poster, banner, pamphlet or other paper, clock, display, display rack, ashtray, trash can, t-shirt or other clothing, lighter or other device.

“Publicly visible location” means any location that is open to or visible to the public from any street, sidewalk, or other public thoroughfare, and includes the placement of outdoor signs such as billboards, signs attached to poles, posts or other fixtures, signs attached to the outside of buildings, signs placed in the windows or doors of buildings that are visible to passers-by, and free-standing signs on the sidewalk.

“Recreation center or facility” means any recreation center or facility under the control, direction or management of the City.

“School” means any public or private elementary or secondary school, attendance at which satisfies the compulsory education laws of the State of California.

“Self-service display” means an open display of tobacco products that the public has access to without the intervention of an employee.

“Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and dipping tobacco.

“Vendor-assisted” means that only a store employee has access to the tobacco product and assists a customer by supplying the product, and the customer does not take possession of the product until it is purchased.

SEC. 58.0302 Measure of Distance

The distance between any advertising display sign or any store or business that sells tobacco products and any school, playground, recreation center or facility, child care center, arcade, library, or non-commercial or non-industrial zone shall be measured in a straight line, without regard to intervening structures, from the advertising display sign or store or business to the closest property line of the school, playground, recreation center or facility, child care center, arcade, or library, or to the closest boundary of the zone.

SEC. 58.0303 Advertising Restrictions

(a) Except as expressly set forth in Section 58.0304, it is unlawful for any person, business, or tobacco retailer to place or maintain, or cause to be placed or maintained, any advertising or promotion of tobacco products on an advertising display sign in a publicly visible location.

(b) Except as provided in Section 58.0305, this section does not apply to advertising or promotions for tobacco products located inside commercial establishments.

SEC. 58.0304 Exceptions to Advertising Restrictions

(a) Section 58.0303(a) does not apply to any advertising display sign located:

(1) in an industrial zone (SR, M-IP, M-LI, M-SI, M-1, M-1A, M-1B, M-2, M-2A) or in a commercial zone designated CBD, CA-RR, C, C(PCOZ), C-1, or C-1(PCOZ); and

(2) more than 1000 feet from the premises of any school, playground, recreation center or facility, child care center, arcade, or library; and

(3) more than 1000 feet from the boundary of any zone that is not a designated commercial or industrial zone.

(b) Section 58.0303(a) does not apply to commercial vehicles used for the primary purpose of transporting tobacco products.

(c) Section 58.0303(a) does not apply to any public service message sponsored by a federal, state, or local government entity, or by a non-profit entity, designed to communicate the hazards of smoking or to encourage minors to refrain from smoking or buying tobacco products.

(d) Section 58.0303(a) does not apply to signs that contain a generic description of tobacco products in black and white without logos or graphics.

(e) Section 58.0303(a) does apply to signs at public facilities within the City's jurisdiction unless an existing contract, entered into by the City for a private party's use and occupancy of

the facility, gives the private party control over the advertising rights on the facility premises.

**SEC. 58.0305 Location of Tobacco Products and Advertising
Inside Retail Establishments**

(a) It is unlawful for any person, business, or tobacco retailer to place or maintain, or cause to be placed or maintained, any displays containing tobacco products, within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell tobacco products and are located within 1000 feet of the premises of any school, playground, recreation center or facility, child care center, arcade, or library.

(b) It is unlawful for any person, business, or tobacco retailer to place or maintain, or cause to be placed or maintained, any advertising display sign for tobacco products in any of the locations listed in Section 58.0305(b)(1)-(3) inside stores or businesses that sell tobacco products and are located within 1000 feet of the premises of any school, playground, recreation center or facility, child care center, arcade, or library:

(1) Below four feet from the floor; or

(2) Within two feet of candy, snack, or non-alcoholic beverage displays; or

(3) Posted on the inside or outside of the windows or doors of the business such that the advertising or promotion is visible to the public from outside the establishment.

SEC. 58.0306 Exceptions to Location of Tobacco Products and Advertising Inside Retail Establishments

(a) Section 58.0305(a) and Section 58.0305(b)(1) and (2)

do not apply to commercial establishments where access to the premises by persons under eighteen years of age is prohibited by law;

(b) Section 58.0305(a) does not apply to displays in any establishment that are located behind a counter and not accessible patrons;

(c) Section 58.0305(b) does not apply to any public service message sponsored by a federal, state, or local government entity, or by a non-profit entity, designed to communicate the hazards of smoking or to encourage minors to refrain from smoking or buying tobacco products.

SEC. 58.0307 Identification Required for Purchase of Tobacco Products

It is unlawful for any person, business, or tobacco retailer to sell any tobacco product to an individual who appears to be less than twenty-seven years of age, without first verifying by means of photographic identification containing the bearer's date of birth, that the purchaser is not younger than eighteen years of age, unless the seller has some other reliable basis for determining the purchaser's age.

SEC. 58.0308 Sale and Distribution of Tobacco Products

It is unlawful for any person, business, or tobacco retailer to sell, permit to be sold, offer for sale, or display for purposes of sale, by means of self-service displays or by any means other than vendor-assisted sales, any tobacco products.

SEC. 58.0309 Distribution of Tobacco Samples or Promotional Items

It is unlawful for any person, business, or tobacco retailer to distribute free tobacco products or promotional items, except in enclosed areas where minors are not permitted.

SEC. 58.0310 Posting of Signs Regarding Sales to Minors

(a) Every person who sells or deals in tobacco products shall post conspicuously in their place of business at each point of purchase a notice stating that the sale of tobacco products to persons under eighteen years of age is prohibited by law and subject to penalties. The notice shall also state that photo identification is required to purchase tobacco products. The letters of the sign shall be at least one-half inch in height.

(b) Any sign meeting the content requirements of California Business and Professions Code section 22952(b) and regulations promulgated thereunder, and the posting requirements of California Penal Code section 308(c), satisfies Section 58.0310(a).

(c) It is unlawful for any person who sells or deals in tobacco products to fail to post a sign in accordance with Section 58.0310(a) or (b).

SEC. 58.0311 Extensions for Compliance

(a) Any business that needs to make modifications to its business premises in order to comply with Sections 58.0303, 58.0305, or 58.0308 of this Division, must comply within sixty calendar days after NOV 19 1998.

(b) Any business owner may apply to the City for a reasonable extension of time within which to comply with Sections 58.0303, 58.0305, or 58.0308 of this Division, provided that the application for extension is submitted on or before the last day of the sixty day compliance period.

(c) An extension may be granted only for good cause for a maximum of one year from the effective date. "Good cause" means the extension is necessary to prevent the business from suffering unreasonable financial hardship, or to prevent unreasonable disruption in business operations.

SEC. 58.0312 Enforcement

(a) Violations of this Division shall be prosecuted as infractions for the first offense, and may be prosecuted as misdemeanors for subsequent offenses, subject to the fines and custody provided in Municipal Code Section 12.0201. Any

Director may also seek injunctive relief and civil penalties pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy as provided in Chapter 1 of this Code.

(b) Any person who commits or proposes to commit an act in violation of this division may be enjoined therefrom by a court of competent jurisdiction. An action for injunction may be brought by any aggrieved person, or any person or entity which will fairly and adequately represent the interests of the protected class.

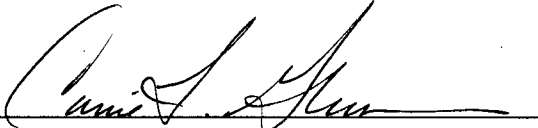
(c) Any plaintiffs who prevail in a civil action brought under this section shall be entitled to recover reasonable damages, costs, and attorneys' fees as determined by the court. In addition to all other damages, the court may award the plaintiffs a civil penalty of up to one thousand dollars (\$1,000.00) for each violation.

(d) The remedies provided by this section are in addition to any other legal or equitable remedies the aggrieved person may have and are not intended to be exclusive.

Section 2. The City Clerk is hereby instructed to insert the effective date, once known, in the blank spaces provided in Municipal Code section 58.0311(a).

Section 3. This Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Carrie L. Gleeson
Deputy City Attorney

CLG:jrl
10/07/98: (Rev.)
Or.Dept: PS&NS
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Rev.1