

ORDINANCE NUMBER O-18879 (NEW SERIES)

ADOPTED ON NOVEMBER 14, 2000

AN ORDINANCE AMENDING CHAPTER V, ARTICLE 8, OF
THE SAN DIEGO MUNICIPAL CODE BY ADDING
DIVISION 5, SECTIONS 58.0501, 58.0502, 58.0503, AND
58.0504 ALL PERTAINING TO RESTRICTING THE
ADVERTISING OF ALCOHOLIC BEVERAGES TO YOUTH.

WHEREAS, state and local laws prohibit underage drinking, including the selling, giving, or furnishing of alcoholic beverages to any person under the age of twenty-one years, and the purchasing, receiving, or possessing of alcoholic beverages by any person under the age of twenty-one, and the use of alcoholic beverages by students at public school campuses and events; and

WHEREAS, despite these laws prohibiting the use of alcohol by persons under the age of 21, according to local, state, and national surveys, alcohol is the most widely used drug at all adolescent age levels. In a 1999 nationwide survey, almost one-third of high school students reported that they had their first drink of alcohol (more than a few sips) before the age of 13. Almost one-third of high school students in San Diego also reported having their first drink before the age of 13. Research shows that the earlier a child begins alcohol use, the earlier the child will exhibit problem behavior and the more likely the child will become a heavy alcohol user as an adult; and

WHEREAS, the Youth Risk Behavior Surveillance — United States, 1999, reported that half of all high school students (grades nine through twelve) nationwide had had one or more

drinks on one or more occasions during the thirty days preceding the survey and that 31.5% had had five or more drinks on one or more occasions during that same time period. In San Diego, 75% of high school students have drunk alcohol; 40% currently use alcohol; and almost one quarter participate in heavy drinking; and

WHEREAS, studies indicate that alcohol is involved in at least one-half of all the major causes of death among youth including motor vehicle crashes, suicides, homicides, drowning and other accidents, and that alcohol-related accidents are now the leading cause of death among young people; and

WHEREAS, studies also correlate adolescent alcohol consumption with juvenile crime, risky driving behaviors, and risky sexual behaviors leading to the transmission of HIV and other sexually transmitted diseases and teen pregnancy; and

WHEREAS, researchers have described alcohol as a "gateway drug," finding that adolescent drinkers are more likely than non-drinkers to use illegal drugs such as cocaine and heroin; and

WHEREAS, the United States Supreme Court has repeatedly recognized that children deserve special solicitude because they lack the ability to assess and analyze fully the information presented through commercial media; and

WHEREAS, federal courts have held that there is a positive relationship between alcoholic beverage advertising and consumption of the advertised products; and

WHEREAS, research studies show that alcoholic beverage advertising influences underage drinking by contributing to attitudes and beliefs favorable to alcohol among youth; that young adolescents who are more heavily exposed to alcohol advertising are more likely to report

an intention to drink; and that older adolescents more heavily exposed to alcohol advertising are more likely to drink, drink heavily, and drink in hazardous situations; and

WHEREAS, recent studies have shown that those research reports that have failed to find a causal connection between alcohol advertising and youth consumption are methodologically flawed and do not provide a basis for refuting the evidence that such a connection does exist; and

WHEREAS, alcoholic beverages are heavily advertised in the United States. The alcoholic beverage industry spends more than \$93 million annually for outdoor advertising of its products; and

WHEREAS, in the City of San Diego, more than half of the existing billboards are within one thousand feet of schools, playgrounds, recreation centers or facilities, child care centers, arcades, or libraries, and despite the outdoor advertising industry's efforts at self-regulation, alcohol ads have been observed on billboards within view of these sites; and

WHEREAS, the City of San Diego, the San Diego Police Department, and numerous non-profit groups operating throughout the City and County of San Diego, have strongly supported and continue to support and provide many educational, law enforcement, youth access, and alternative recreation programs designed to reduce youth alcohol use and prevent youth alcohol-related problems; and

WHEREAS, billboard advertising of alcoholic beverages that encourages and glamorizes alcohol use in areas where children play, study, and attend school undercut the effectiveness of these programs and the efforts of parents, and sends a message to children that society wants them to drink; and

WHEREAS, prevention experts and public health groups in the City of San Diego strongly endorse restrictions on outdoor alcohol advertising as a means to promote consistent

educational messages to children and as part of a multi-faceted approach to reduce youth alcohol-related problems in San Diego; and

WHEREAS, outdoor advertisements are a unique and distinguishable medium of advertising that subjects the public to involuntary and unavoidable forms of solicitation, as the Supreme Court recognized in *Packer Corporation v. Utah* (1932); and

WHEREAS, children are often exposed to billboards advertising alcohol simply by walking to school or playing in their neighborhoods, and there is no practical way for parents to monitor or limit their exposure to these public advertisements; and

WHEREAS, the City has conducted a survey of the locations of billboards located near sites frequented by children and has determined that less than ten percent of the billboards in the City displayed alcohol advertising at the time of the survey and forty-five percent of the existing billboards will remain available for alcohol advertising under the restrictions of this ordinance; and

WHEREAS, ample locations will remain available under this ordinance for the display of alcohol advertising and this ordinance does not make any attempt to enact a ban on the advertising of alcohol; and

WHEREAS, this ordinance only restricts the place of display of alcohol advertising in areas where children frequent, does not regulate the sale of alcohol, and does not unduly burden legitimate business activities or persons licensed by the State of California to sell alcoholic beverages; and

WHEREAS, the Council finds that the City has a substantial interest in reducing the illegal use of alcoholic beverages by persons under twenty-one years of age, and that the City's

interest outweighs any First Amendment right to exercise commercial speech that may be affected by restricting the advertising of alcoholic beverages; and

WHEREAS, the Council finds that this regulation directly advances that substantial interest, by narrow and appropriate means, by: (1) restricting the advertising and promotion of alcoholic beverages on billboards that are within 1000 feet of those areas of the City where minors congregate (i.e., schools, playgrounds, recreation centers or facilities, child care centers, arcades, or libraries) and would be exposed to and influenced by such advertising and promotion; and (2) not precluding the advertising of alcoholic beverages on other billboards throughout the City that are not within 1000 feet of a school, playground, recreation center or facility, child care center, arcade, or library; and

WHEREAS, the Council finds that this regulation promotes the public welfare by promoting the safety and welfare of youth; 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 5, and Sections 58.0501, 58.0402, 58.0503, and 58.0504 to read as follows:

DIVISION 5

Restricting the Advertising of Alcoholic Beverages to Youth

SEC. 58.0501 Definitions

All terms defined in this Division appear in italics.

For purposes of this Division:

Advertising means printed matter that calls the public's attention to things for sale.

Alcoholic beverages means any substance containing one-half of one percent or more alcohol by volume and which is fit for consumption as a beverage either alone or when combined with other substances.

Arcade has the same meaning as in Municipal Code section 33.1635, but does not include establishments to which minors are not permitted admittance.

Billboard means any sign space that is permanently placed on or affixed to the ground, the sidewalk, a pole or post, or a building, and is not appurtenant to the use of the property, a product sold, or the sale or lease of the property on which displayed and which does not identify the place of business as purveyor of the merchandise or services advertised upon the sign. *Billboard* also means any sign space that is permanently placed on a vehicle that is used primarily for the purpose of displaying outdoor advertising.

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.

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, *recreation center or facility*, that contains any play or
athletic equipment used or intended to be used by minors.

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.

SEC. 58.0502 Measure of Distance

The distance between any *billboard* and any *school*,
playground, *recreation center or facility*, *child care center*, *arcade*,
or *library* shall be measured in a straight line, without regard to
intervening structures, from the *billboard* to the closest property
line of the *school*, *playground*, *recreation center or facility*, *child*
care center, *arcade*, or *library*.

SEC. 58.0503 Advertising Restrictions

It is unlawful for any *person*, business, or retailer to place
or maintain, or cause to be placed or maintained, any *advertising* of

alcoholic beverages on a *billboard* that is within 1000 feet of a *school, playground, recreation center or facility, child care center, arcade, or library*. This section does not apply to any noncommercial message.

SEC. 58.0504 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.

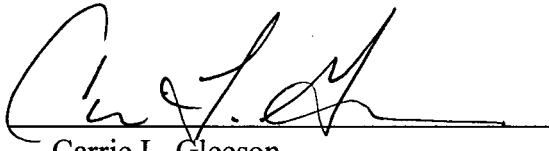
(b) Any *person* who commits or proposes to commit an act in violation of this Division may be enjoined therefrom by a court of competent jurisdiction. An action for injunction may be brought by any aggrieved *person*, or any *person* or entity which will fairly and adequately represent the interests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

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