

ORDINANCE NUMBER O- 19173 (NEW SERIES)

ADOPTED ON MAY 06 2003

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

WHEREAS, on November 14, 2000, the Council for the City of San Diego adopted Ordinance Number 18879 adding section 58.0501 through 58.0504 to the San Diego Municipal Code restricting the advertising of alcoholic beverages to youth by prohibiting advertising of alcoholic beverages on billboards within 1000 feet of schools, playgrounds, recreation centers or facilities, child care centers, arcades, or libraries [the Ordinance];

WHEREAS, the Council adopted the Ordinance specifically finding 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 further found that the regulation directly advanced 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, on September 18, 2001, the City of San Diego charged Clear Channel Outdoor, Inc. [Clear Channel], and Viacom Outdoor Advertising, Inc. [Viacom], with violations of the Ordinance in cases before the California Superior Court; and

WHEREAS, Clear Channel and Viacom filed an action in the United States District Court for the Southern District of California alleging that the Ordinance violated the First Amendment to the United States Constitution; and

WHEREAS, the City, Clear Channel, and Viacom stipulated to a Consent Judgment in the federal court case that resolves the issues between the parties and includes, as part of the Consent Judgment, a ban on the advertising of alcoholic beverages on billboards that are within 500 feet of a school, playground, recreation center or facility, child care center, or library or are beyond 500 feet but have a billboard face that is clearly visible from such sites; and

WHEREAS, the amendments contained in this ordinance will conform the Ordinance to the Consent Judgment; NOW, THEREFORE,

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

Section 1. That Chapter V, Article 8, Division 5 of the San Diego Municipal Code is amended by amending Sections 58.0501, 58.0502, 58.0503, and 58.0504 to read as follows:

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.

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 means a public or licensed private child care that has a continuous enrollment of no fewer than twenty-five (25) children and is clearly identified on the outside of the facility as a childcare center;

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* and clearly identified on the outside of the facility as a library.

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* 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 owned or operated by the *City*, and clearly identified on the outside of the facility as a *City* recreation center or facility.

School means any public or licensed private elementary or secondary school, that is clearly identified on the outside of the facility as a 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*, 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, or library.*

SEC. 58.0403 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 500 feet of a *school, playground, recreation center or facility, child care center, or library* or that is more than 500 feet and the billboard face and its advertisement are clearly visible from a *school, playground, recreation center or facility, child care center, or library.* This section does not apply to any noncommercial message.

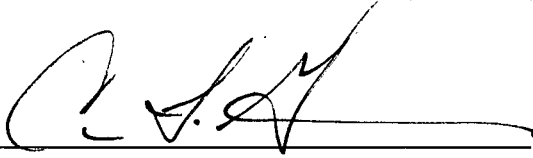
SEC. 58.0504 Enforcement

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.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

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:mm
03/17/03
Or.Dept: Neighborhood Code
O-2003-80