

ORDINANCE NUMBER O- 21174 (NEW SERIES)DATE OF FINAL PASSAGE JAN 30 2020

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 8 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING NEW DIVISION 7, SECTIONS 58.0701, 58.0702, 58.0703, AND 58.0704, RELATING TO RESTRICTING THE BILLBOARD ADVERTISING OF CANNABIS AND CANNABIS PRODUCTS.

WHEREAS, the City of San Diego currently regulates marijuana, also known as cannabis, businesses and activities throughout the San Diego Municipal Code (SDMC); and

WHEREAS, this Ordinance proposes to add new sections to the SDMC restricting the advertising of cannabis or cannabis products on billboards that are within 1,000 feet of a school, playground, public park that contains a playground, day care center, or youth center; and

WHEREAS, the Council of the City of San Diego finds that there is compelling evidence supporting a direct correlation between cannabis advertising and promotion and underage smoking and ingestion of cannabis and cannabis products (also referred to as "marijuana" in the back-up evidence); and

WHEREAS, state and local laws prohibit underage smoking and ingestion of cannabis; selling, giving, or furnishing cannabis and cannabis products to any person under the age of 21 years; and possession or receipt of cannabis and cannabis products by any person under the age of 21 years; and

WHEREAS, state law expressly prohibits advertising of cannabis and cannabis products in a manner intended to encourage persons under 21 years old to consume cannabis; and

WHEREAS, state law relating to cannabis advertisements applies only to licensed and permitted cannabis operations and only imposes administrative consequences for non-

compliance, such as the revocation of state licenses, which does not provide a sufficient deterrent for illegal cannabis operations and prevention of illegal use of cannabis or cannabis products by youth; and

WHEREAS, a local ordinance will allow the City a greater ability to enforce cannabis advertisement restrictions and impose criminal and civil consequences for non-compliance; and

WHEREAS, cannabis advertising promotes cannabis consumption by using images and messages that appeal to all demographics, but youth are particularly susceptible to these images and messages and are more influenced by cannabis advertising than the adult population; and

WHEREAS, according to a 2015 study published in the Psychology of Addictive Behaviors journal titled, "Gateway to Curiosity: Medical Marijuana Ads and Intention and Use during Middle School," researchers found that youth under 18 years old who reported seeing any advertisements for medical marijuana were twice as likely as peers who reported never seeing an advertisement to have used marijuana or reported higher intentions to use the drug in the future; and

WHEREAS, research by the American Academy of Pediatrics has found that cannabis has adverse effects on the adolescent brain and is associated with psychiatric illness and negative social outcomes; and

WHEREAS, numerous non-profit groups operating throughout the City and County of San Diego provide many educational, law enforcement, youth access, and alternative recreation programs designed to reduce youth drug use and prevent youth drug-related problems; and

WHEREAS, billboard advertising of cannabis and cannabis products that encourages and glamorizes cannabis use in areas where children play and attend school undercuts the effectiveness of these programs and the efforts of parents; and

WHEREAS, prevention experts and public health groups in the City of San Diego strongly endorse restrictions on outdoor cannabis advertising as a means to promote consistent educational messages to children and as part of a multi-faceted approach to reduce youth drug-related problems in San Diego; and

WHEREAS, children are often exposed to billboards advertising cannabis and cannabis products 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 within 1,000 feet of schools, playgrounds, public parks that contain playgrounds, day care centers, and youth centers and has determined that out of 644 existing billboards, 352 billboards (fifty-five percent) will remain available for cannabis advertising under the restrictions of this Ordinance; and

WHEREAS, this Ordinance does not intend to enact a complete ban on the advertising of cannabis; and

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

WHEREAS, the City has a substantial government interest in protecting the health, safety, and welfare of youth by preventing the illegal use of cannabis and cannabis products by persons under 21 years of age, and the City's interest outweighs any First Amendment right to exercise commercial speech that may be affected by restricting the advertising of cannabis and cannabis products; and

WHEREAS, the Council of the City of San Diego finds that the regulation of cannabis advertising directly advances that substantial government interest, and is not more extensive than necessary to achieve that interest by: (1) restricting the advertising and promotion of cannabis and cannabis products on billboards that are within 1,000 feet of those areas of the City where minors congregate (i.e., schools, playgrounds, public parks that contain playgrounds, day care centers, or youth centers) and would most likely be exposed to and influenced by such advertising and promotion; and

(2) not regulating non-commercial speech or precluding the advertising of cannabis and cannabis products on other billboards throughout the City that are not within 1,000 feet of schools, playgrounds, public parks that contain playgrounds, day care centers, or youth centers; NOW, THEREFORE,

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

Section 1. That Chapter 5, Article 8 of the San Diego Municipal Code is amended by adding new Division 7, sections 58.0701, 58.0702, 58.0703, and 58.0704, to read as follows:

Chapter 5: Public Safety, Morals and Welfare

Article 8: Minors

Division 7: Restricting the Advertising of Cannabis and Cannabis Products

§58.0701 Purpose and Intent

It is the purpose and intent of this Division to promote and protect the health, safety, and welfare of youth in the City of San Diego by regulating the location of *billboards advertising cannabis or cannabis products* in areas where youth play and attend school. It is further the intent of this Division to reduce youth exposure to *billboards advertising cannabis or cannabis products* by establishing additional

regulations beyond those provided in state law to include an expanded list of prohibited locations, and criminal and civil consequences for non-compliance. It is not the intent of this Division to supersede or conflict with state law, but to implement a local ordinance allowing the City of San Diego greater ability to enforce restrictions on *billboards advertising cannabis* or *cannabis products* to youth to help prevent the illegal consumption and purchase of *cannabis* or *cannabis products* by youth.

§58.0702 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division.

Advertising has the same meaning as in San Diego Municipal Code section 58.0501.

Billboard has the same meaning as in San Diego Municipal Code section 58.0501.

Cannabis has the same meaning as in California Business and Professions Code section 26001.

Cannabis products has the same meaning as in California Health and Safety Code section 11018.1.

Day care center has the same meaning as in California Health and Safety Code section 1596.76.

Playground has the same meaning as in San Diego Municipal Code section 58.0501.

Property line has the same meaning as in San Diego Municipal Code section 113.0103.

Public park has the same meaning as in San Diego Municipal Code section 113.0103.

School means any public or licensed private facility providing instruction in kindergarten or any grades one to 12, inclusive.

Youth center has the same meaning as in California Health and Safety Code section 11353.1.

§58.0703 Measure of Distance

The distance between any *billboard* and any *school, playground, public park* that contains a *playground, day care center, or youth center* shall be measured in a straight line, without regard to intervening structures, from the *billboard* to the closest *property line* of the *school, playground, public park* that contains a *playground, day care center, or youth center*.

§58.0704 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 cannabis or cannabis products* on a *billboard* that is within 1,000 feet of a *school, playground, public park* that contains a *playground, day care center, or youth center*. This section does not apply to any non-commercial message.

Section 2. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this Ordinance shall take effect and be in force on the 180th day from
and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By *Lindsey H. Sebastian*
Lindsey H. Sebastian
Deputy City Attorney

LJS:als
12/19/2019
01/14/2020 Rev. Copy
Or.Dept:Planning Dept.
Doc. No.: 2267859_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of
San Diego, at this meeting of JAN 28 2020.

ELIZABETH S. MALAND
City Clerk

By *EM*
Deputy City Clerk

Approved: 1/30/2020
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck-Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

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Article 8: Minors

Division 7: Restricting the Advertising of Cannabis and Cannabis Products

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youth to help prevent the illegal consumption and purchase of *cannabis* or *cannabis products* by youth.

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LJS:ais
12/19/2019
01/14/2020 Rev. Copy
Or.Dept: Planning Dept.
Doc. No.: 2267600_2

Passed by the Council of The City of San Diego on JAN 28 2020, by the following vote:

| Councilmembers | Yeas | Nays | Not Present | Recused |
|-------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Barbara Bry | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Jennifer Campbell | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Chris Ward | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Monica Montgomery | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mark Kersey | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Chris Cate | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Scott Sherman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Vivian Moreno | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Georgette Gómez | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage JAN 30 2020

AUTHENTICATED BY: KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on JAN 13 2020, and on JAN 30 2020.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California
21174
Ordinance Number O-_____