

MEMORANDUM OF LAW

DATE: June 4, 1986

TO: Councilwoman Judy McCarty via Citizens
Assistance
FROM: City Attorney
SUBJECT: Drinking Bottles in San Diego State University
Area

The Clean Environment Sub-Committee of the College Area Community Council feels that broken glass is "an ongoing problem which could largely be corrected by requiring people to drink from only aluminum or plastic." The Sub-Committee asked if it would be possible to limit the drinking from bottles in the San Diego State University area as it is around the City's beaches.

The prohibition of glass containers on the City's beaches and adjacent sidewalks is found in San Diego Municipal Code section 63.20.5(e) which provides as follows: "(e) It shall be unlawful for any person to have, possess or use any cup, tumbler, jar or container made of glass and used for carrying or containing any liquid for drinking purposes upon any beach or adjacent sidewalk area in the City of San Diego."

A municipality has broad powers to enact all local police, sanitary, and other ordinances and regulations not in conflict with general laws. Such an ordinance is ordinarily upheld if it is reasonably related to promoting the public health, safety, comfort, and welfare, and if the means adopted to accomplish that promotion are reasonably appropriate to the purpose. *Barry v. City of Oceanside*, 107 Cal.App.3d 257, 261 (1980).

The Supreme Court requires only that the ordinance be "rationally related" to a legitimate state interest in order to meet constitutional standards. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

An ordinance prohibiting the possession or use of glass containers for drinking purposes in the San Diego State area might be challenged on constitutional due process grounds for

being unreasonable, arbitrary or oppressive. Such a challenge was not successful where a city showed that its open container

law was a reasonable means of promoting city objectives of public safety and beautification. In upholding the City ordinance, the Court stated the following:

5 The open container law promotes
aesthetic considerations and the appearance of

the City of Lake Charles. Though the ordinance only prohibits certain public consumption out of metal or glass containers, it is clear that total public consumption will decrease, and the likelihood of discarded containers on the city's streets, sidewalks, parks and other public places will be diminished. The City of Lake Charles might reasonably determine that the conduct prohibited would be unnecessarily offensive to the visual sensibilities and general welfare of its populace and would materially and economically detract from the community. These objectives are a proper subject of legislative concern and the wisdom of this reasonable legislative enactment is not subject to judicial review. Citations omitted.

6 We also note that the elimination of open metal or glass containers at certain public places is a legitimate mode of ensuring the health and safety of the community. Besides creating an eyesore, metal and glass containers pose a threat of injury to property as well as to the citizens of Lake Charles. Thus, elimination of certain public use of these potentially dangerous containers promotes the health and safety of the population. Accordingly, we conclude that there is a substantial relationship between the police power invoked and the problems sought to be addressed. *City of Lake Charles v. Henning, La.*, 414 So.2d 331, 333 (1982).

The reasonableness of prohibiting the use or possession of glass containers for drinking purposes in the San Diego State University area is the threshold issue to be decided. An ordinance prohibiting the use or possession of glass containers

for drinking purposes in the San Diego State University area may provide a reasonable means of promoting valid objectives of public safety and community beautification. The reasonableness of such an ordinance may depend on whether there is a factual basis for treating the San Diego State University area differently from other areas of the City and similarly to the City's beaches and their adjacent sidewalks.

In addition to the requirement of reasonableness, an ordinance must clearly define the kind of conduct and the place of occurrence which are prohibited in order to meet the standard of definiteness announced in *United States v. Harriss* which is as follows:

The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.

United States v. Harriss, 347 U.S. 612, 617-618 (1954); *Park & Shop Markets, Inc. v. City of Berkeley*, 116 Cal.App.3d 78, 87 (1981).

The definiteness requirement can be met if the nature of the prohibited conduct and the place, San Diego State University area, are clearly defined in the ordinance.

In summary, an ordinance prohibiting the possession or use of glass containers for drinking purposes in the San Diego State University area would be a proper exercise of legislative power if rationally related to a legitimate City interest and clearly defined in terms of conduct and place of occurrence which are prohibited.

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