

Agenda Report

THROUGH: LEGISLATIVE POLICY COMMITTEE

TO: CITY COUNCIL

DATE: October 23, 2000

FROM: CYNTHIA J. KURTZ, CITY MANAGER

SUBJECT: AMENDMENT OF TITLE 9 TO ADD CHAPTERS 9.71 AND 9.72 TO THE PASADENA MUNICIPAL CODE TO RESTRICT THE ADVERTISEMENT OF TOBACCO AND ALCOHOL PRODUCTS TO MINORS

RECOMMENDATION: It is recommended that the City Council direct the City Attorney to amend Title 9 to add Chapters 9.71 and 9.72 as follows:

1. Prohibit any advertising or promotion of tobacco and alcohol products on any off-site advertising display in a publicly visible location within 1,000 feet of a sensitive-use location (i.e., schools, day care centers, community youth centers, hospitals and community health centers, public libraries, public parks and playgrounds, and places of worship).
2. Prohibit any advertising or promotion of tobacco and alcohol products on any on-site advertising display in a publicly visible location within 300-feet of a sensitive-use area as defined in Recommendation 1.

EXECUTIVE SUMMARY: In 1997, staff initiated development of proposed restrictions on tobacco and alcohol advertising. By restricting placement of tobacco and alcohol ads, the City of Pasadena will protect and promote the general welfare of children, youth, and adolescents who are unavoidably exposed to publicly visible advertising of tobacco and alcohol products. Additionally, these advertising restrictions would reduce the likelihood of a youth to engage in unlawful purchase and use of tobacco and alcohol products. The proposed Tobacco and Alcohol Advertising Restriction Ordinances offer greater protection and supercede any existing state or federal agreements or regulations that may be challenged, changed or reversed.

Staff is recommending two advertising restrictions. These regulations are intended to: (1) Prohibit any advertising or promotion of tobacco products on any billboard advertising display in a publicly visible location within a 1,000 feet of sensitive-use locations and (2)

Prohibit any advertising or promotion of tobacco products on any storefront window advertising display in a publicly visible location within 300-feet of a sensitive-use location. These sensitive-use locations are schools, day care centers, community youth centers, hospitals and community health centers, public libraries, public parks and playgrounds, and places of worship. These sensitive-use areas are defined in Attachment A.

Implementing these local ordinances will not impose a total ban of tobacco and alcohol advertising. In fact, based on the sensitive-use locations map, only 63% of outdoor billboards will be impacted by these local regulations. The designated enforcement agent for the proposed tobacco and alcohol advertising regulations is the Planning and Permitting Department's Neighborhood Services Division.

BACKGROUND

In 1996, the United States Supreme Court ruled in favor of the landmark ordinances developed in Baltimore, Maryland that restrict alcohol and tobacco advertising. This case set a precedent for other municipalities to adopt similar ordinances. The Baltimore Ordinances are unique because they include restrictions on advertising within designated distances from residences, in addition to typical sensitive locations. According to the Nation's Cities Weekly (May 5, 1997), the Appeals Court, a lower court ruling, said that the Baltimore Ordinances were adopted to protect children, a permissible category of "special solicitude," which was permitted and upheld by the Supreme Court ruling. More importantly, the Supreme Court ruled that the Baltimore Ordinances did not violate the advertisers' First Amendment rights to free speech.

On September 30, 1997, the staff from the Pasadena Public Health Department, along with its community partners, requested that the City of Pasadena Planning Commission consider approving an amendment to the Zoning Code to restrict outdoor billboard advertising of tobacco and alcohol products within a defined distance from public and/or private schools, places of worship, public playgrounds, and places where youth congregate. The Planning Commission approved the intent of the advertising restrictions; however, after several meetings with the Planning and Permitting Department, it was agreed that the location of these Ordinances would be best outside the Zoning Code to reduce the likelihood of any applications for variances.

In 1998, the Tobacco Master Settlement Agreement advanced sanctions against the tobacco industry to mitigate the harmful effects of tobacco use. As a result of the Settlement, California and 45 other states dismissed their pending lawsuits against the tobacco industry; the tobacco industry dismissed the suits it had filed against several states. Key provisions of the Agreement impose a variety of restrictions on the participating tobacco companies, including banning cartoon characters; prohibiting most tobacco billboards and transit advertising; limiting tobacco brand sponsorship; and limiting distribution of tobacco gear and free samples. [Please see Attachment B excerpted from the Technical Assistance Legal Center's (TALC) "Overview of Key Public Health Restrictions"].

Community Support

There is considerable support for local Ordinances to restrict tobacco and alcohol billboard advertising in the Pasadena community. Local support includes: Pasadena Tobacco Prevention Coalition, a community coalition comprised of 20 local residents, business representatives, and community leaders; Pasadena Cigarette Stompers, an anti-tobacco youth coalition based at the Boys and Girls Club of Pasadena consisting of 15-20 ethnically diverse youth between the ages of 8-20; Pasadena Health Promotion Coalition; Pasadena/Altadena Health Partnership; Day One Coordinating Council, consisting of 29 local institutions and agency representatives; and Pasadena Unified School District.

Community Assessment

The following activities have been undertaken in Pasadena to document the amount of tobacco and alcohol billboard advertising:

1. Tobacco Advertising and Promotions Community Intercept Survey of 709 community residents, merchants, and community leaders conducted by staff in 1995-1996 indicated that 71% of Pasadenans felt that the amount of tobacco advertising and promotions should be decreased in our community;
2. A video produced by Day One staff in 1997-98 documented 16 instances of alcohol and tobacco billboard advertisements within 1,000 feet of areas where youth congregate (e.g., parks, community centers, etc.);
3. Forty (40) photographs taken by staff between 1998-1999 reflect how often alcohol and tobacco ads on billboards are placed near public and private schools, public playgrounds, and places of worship;
4. Due to the lack of information, staff developed a citywide map in June 1999 to identify and map the location of 67 outdoor billboard structures within the city limits of Pasadena; and
5. In July 2000, staff developed a map of sensitive-use locations and identified 42 outdoor billboard structures within 1,000 feet of sensitive-use sites.

Outdoor Advertisements and Its Impact on Adolescents

Outdoor advertisements are a unique and distinguishable medium of advertising which subjects the general public to involuntary and unavoidable forms of solicitation. It is illegal for minors to consume tobacco and alcohol products; therefore, tobacco and alcohol should not be advertised in a place or manner where children are likely to be influenced by such advertising. Several research studies show a direct correlation between tobacco and alcohol advertising and consumption of these products. For example, a 1995 report by R.K. Goel and M. Morey, "*The Interdependence of Cigarette and Liquor Demand*," cites evidence that alcohol and cigarette advertising had positive and significant effects on consumption. A 1991 study published in the Journal of the American Medical Association (JAMA) found that exposure to advertising (1) contributes to higher levels of alcohol and tobacco use among youth, and (2) increases the intention among youth under the age of

18 to use these products.

The Pasadena Tobacco Control Program has prepared a reference notebook entitled "Tobacco & Alcohol Advertising, Research and Documentation on Legal Issues and It's Impact on Adolescents." This document contains over 22 research articles that show a correlation between tobacco and alcohol outdoor advertising and an increase in consumption of these products by minors.

To date, more than 37 California communities have adopted tobacco and/or alcohol advertising restrictions.

Storefront Advertising and Its Impact on Adolescents

This recommendation enhances the City's existing Local Sign Ordinance by further reducing the amount of storefront advertising on merchant windows. On-site signs that are within 300-feet of locations that minors frequent subject minors to an involuntary and unavoidable form of solicitation to engage in an unlawful activity. Tobacco and alcohol product advertising and promotion that appeals to minors undermines state and local laws that prohibit the sale or distribution of these products to minors.

Economic Impact of Proposed Recommendations

The economic impact of the proposed off-site tobacco advertising restrictions on local business is expected to be minimal. The economic impact of the on-site tobacco and alcohol advertising restrictions would be minimal as tobacco retailer establishments offer multiple methods and locations to advertise tobacco and alcohol products. According to the Marketing and Trade Decisions and Outdoor Advertising Association of America, alcohol and tobacco industry shares of the outdoor ad business have been gradually diminishing. In 1997, only 10% of outdoor advertising revenues were from tobacco billboards and 9.9% were from alcohol billboards.

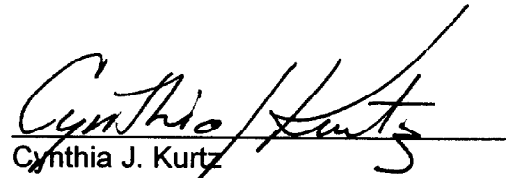
CHILDREN, YOUTH AND FAMILIES IMPACT

Alcohol and tobacco advertising on billboards and storefront windows creates particular hazards for children and youth because they subject them to an involuntary and unavoidable form of solicitation. Parents cannot turn off billboards or monitor their children's viewing of these ads. These proposed tobacco and alcohol advertising restrictions will promote and protect the general welfare of youth by restricting the location of where these commercial messages are advertised to minors who cannot legally purchase these products as minors.

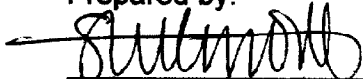
FISCAL IMPACT

The cost of educating and notifying businesses will be absorbed by the Public Health Department. These education activities are funded through Proposition 99 funds. The Planning and Permitting Department's Neighborhood Services Division will be the designated enforcement agent and will include enforcement of the proposed ordinances in their existing enforcement strategies. All costs associated with the implementation and enforcement of these ordinances are covered in the FY 2001 budget.

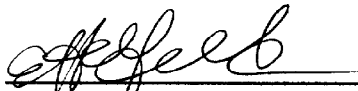
Respectfully submitted,


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