

ORDINANCE NO. 10-09

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
AMENDING RICHMOND MUNICIPAL CODE SECTION 9.46 TO EXPAND
PROHIBITIONS AGAINST ALCOHOLIC BEVERAGE ADVERTISING**

WHEREAS, the City of Richmond has a special responsibility with respect to the protection of minors; and

WHEREAS, the City Council of the City of Richmond desires to promote the welfare and temperance of persons under 21 years of age by reducing their exposure to certain publicly visible advertisements of alcoholic beverages and to promote wholesome, family-oriented social settings when children are present that reject the purchase, consumption or possession of alcoholic beverages by persons less than 21 years of age; and

WHEREAS, the City's current ordinance regarding Advertisement of Alcoholic Beverages does not shield minors from exposure to most advertisements;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain as follows:

SECTION 1

Chapter 9.46 of the Richmond Municipal Code is hereby repealed in its entirety.

SECTION 2

Chapter 9.46 entitled "**ADVERTISING OF ALCOHOLIC BEVERAGES**" is hereby added to the City of Richmond Municipal Code to read as follows:

CHAPTER 9.46

Sections:

9.46.010	Purpose and findings.
9.46.020	Definitions
9.46.030	Alcoholic Beverage Outdoor Advertisements
9.46.035	Measure Of Distance
9.46.040	Public Service Advertising
9.46.050	Violations, Penalties, Civil Actions
9.46.060	Appeals
9.46.010	Purpose and findings

The Council of the City finds that:

(a) The City of Richmond has a special responsibility with respect to the protection of minors.

(b) Both state and federal surveys have found that alcohol is overwhelmingly and consistently the most widely used drug at all adolescent age levels. A child who begins alcohol use before age 15 is four times more likely to experience alcohol dependence than those who refrain from alcohol use until age 21.

(c) A Congressionally-commissioned study by the National Research Council (NRC) and the Institute of Medicine (IOM) concluded that underage drinking accounts for between 10 and 20 percent of all alcoholic beverages consumed in the United States.

(d) Nearly 85% of all Americans begin drinking before their 21st birthday.

(e) According to a 2004 study by the federal Substance Abuse and Mental Health Services Administration, each day in America, 7,000 children under the age of 16 have their first full alcoholic beverage.

(f) In 2008, the University of Michigan's comprehensive annual survey – Monitoring the Future – found that nearly three-quarters of all high school students had consumed alcohol. The Monitoring the Future survey found that approximately one-fifth of all eighth graders, one quarter of all tenth-graders, and nearly half of all twelfth-graders had consumed alcohol in the thirty days prior to being interviewed for the study.

(g) The 10th Biennial California Student Survey, Alcohol and Tobacco Use, 2003-2004 found that 11.5% of California 9th graders and 23% of 11th graders engaged in binge drinking (consumed five drinks in one session) in the 30 days prior to being interviewed. This constituted nearly half of the 9th grade, and two-third of the 11th grade populations at the time. About half of the binge drinkers in 11th grade binged weekly.

(h) According to the United States Centers for Disease Control and Prevention, in 2007, 26% of high school students reported episodic heavy or binge drinking; 11% of high school students reported driving a car or other vehicle during the 30 days prior to their interview when they had been drinking alcohol, and 29% of students reported riding in a car or other vehicle during the 30 days prior to their interview driven by someone who had been drinking alcohol.

(i) According to the American Medical Association, underage drinking is a factor in nearly one-half of all teen automobile crashes – the leading cause of death among teenagers – and is linked in two-thirds of all sexual assaults and date rape. Consumption of alcohol is also a major factor in unprotected sexual activity among youth, thereby increasing the risk of unplanned pregnancy and sexually transmitted diseases.

(j) Underage use of alcohol and other drugs has also been linked to injuries, physical fights, academic and occupational problems, and illegal behavior.

(k) Research by the National Institute on Alcohol Abuse and Alcoholism, entitled *Effects of the Mass Media on the Use and Abuse of Alcohol* has found that exposure to alcohol advertisements affects young people's beliefs about drinking, intentions to drink, and actual drinking behavior.

(l) In his 2007 report entitled, *Call to Action to Prevent and Reduce Underage Drinking* (2007) the United States Surgeon General recognized a strong link between alcoholic beverage advertisements and underage drinking. The *Call to Action* asks the alcohol industry not to portray alcohol consumption as a rite of passage or glamorize consumption; to avoid advertising in areas where children will be disproportionately exposed; and to not advertise in a way that is intended to appeal to youth.

(m) Evidence that exposure to alcohol advertising and marketing increases the likelihood of underage drinking has grown substantially. Since 2001, at least seven peer-reviewed longitudinal studies have found that young people with greater exposure to alcohol marketing are more likely to start drinking than their peers.

(n) A national longitudinal study published in 2006 found that for each additional alcohol ad a young person saw (above the monthly youth average of 23), he or she drank 1% more. Further, for every additional dollar per capita spent on alcohol advertising in a local market, underage drinkers consumed 3% more alcohol.

(o) A study published in 2007 of 1,786 children found that exposure to alcohol marketing in sixth grade increased by 50% the likelihood that those children would be drinking alcoholic beverages by the time they reached seventh grade.

(p) Other studies have found that youth exposure to alcohol signage near schools is associated with greater likelihood of underage drinking.

(q) The United States Supreme Court has recognized repeatedly that children need extra protection with respect to advertisements because they cannot assess and analyze fully the information presented through commercial media.

(r) An extensive set of research studies supports the conclusion that alcoholic beverage advertising promotes underage drinking:

- Youth with greater exposure to alcohol advertisements in magazines, on television, and through outdoor advertising are more aware of the advertising and more likely to remember the advertisements they have seen;
- Exposure to and liking of alcohol advertisements affects whether young people will drink alcohol;

- As a minor's exposure to beer advertisements increases, so do favorable views on drinking and expressed intentions to drink more often as adults;
- African-American youth are exposed to more alcohol advertising per capita than youth who are not African-American, and Hispanic youth are exposed to more alcohol advertising per capita than youth who are not Hispanic.

(s) A substantial proportion of alcohol advertising reaches an underage audience and is presented in a style that is attractive to youth. A 1996 study of children aged nine to eleven found that children were more familiar with Budweiser's television frogs than with Kellogg's Tony the Tiger or Smokey the Bear.

(t) Children often are exposed to billboards simply by walking to school, going to parks and recreation centers, or playing in their neighborhoods, and there is no practical way for parents to monitor or limit the exposure of their children to these public advertisements.

(u) The City of Richmond has strongly supported classroom education concerning the dangers of the abuse of all illegal drugs, but this message is undercut if there are advertisements near schools which encourage the consumption of alcoholic beverages.

(v) The Richmond Unified School District has endorsed restricting the advertising of alcoholic beverages near schools in order to avoid sending mixed messages to the students.

(w) The City of Richmond Anti-Drug Task Force endorses a restriction on the advertising of alcoholic beverages near schools as a means to curb the illegal use of drugs by minors.

Accordingly, the City Council finds that the health, safety, and general welfare of the minors of the City will benefit from the regulation of advertising alcoholic beverages in areas frequented by minors.

9.46.020 DEFINITIONS

(a) "Alcoholic beverage" means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

(b) "Alcoholic beverage outdoor advertisement" means any billboard bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of a person who manufactures, sells, or distributes an alcoholic beverage in publicly visible locations.

(c) "Alcoholic beverage outdoor advertisement" does not include:

(1) advertisements inside licensed premises as defined by the Alcoholic Beverage Control Act (Cal. Bus. & Prof. Code §§ 23000 *et seq.*);

(2) any advertisement that contains the name or slogan of the licensed premises that has been placed for the purpose of identifying the licensed premises,

(3) any neon or electronically charged sign, if otherwise allowed by the Richmond Zoning Code, on licensed premises that is provided as part of promotion of a particular brand of alcoholic beverage;

(4) any advertisement on property adjacent to and facing an interstate highway;

(5) advertisements appearing on radio or television;

(6) advertisements on commercial vehicles used for transporting alcoholic beverages;

(7) in conjunction with a temporary or 1-day alcoholic beverage license issued by the California Department of Alcoholic Beverage Control; or

(8) advertisements on a race car while participating at a professional racing event or at a permanent motorized racetrack facility, on a boat participating in a racing event or a boat show, on an aircraft, on a bicycle or on the clothing of a member of a bicycle team participating in an organized bicycle race, or in a newspaper, magazine, or other literary publication published periodically.

For the purpose of this definition, the word “advertisement,” does not include an identifying label affixed to a container as authorized by law.

(d) “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 therein, 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.

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

(f) “Library” means any library owned or operated by the City of Richmond.

(g) “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.

(h) “Public park” means any public park owned, operated, located within, or controlled by the City of Richmond.

(i) “Recreational center or facility” means and structure or other property within the control of the City of Richmond’s Recreation Department.

(j) “School” means any public or licensed private elementary, middle, or high school that is clearly identified on the outside as a school, attendance at which satisfies the compulsory education laws of the State of California.

9.46.030 Alcoholic Beverage Outdoor Advertisements

Notwithstanding any other provision of the Richmond Municipal Code:

(a) No person or business entity may erect or maintain an alcoholic beverage outdoor advertisement on any property owned by the City of Richmond or display any alcoholic beverage outdoor advertising during any event for which the City of Richmond has provided 50% or more of the funding used to develop and hold the event.

(b) Except as set forth in Section 9.46.020(c), no person or business entity may erect or maintain an alcoholic beverage outdoor advertisement within 500 feet of any elementary, middle, or high school, playground, recreational center or facility, child care center, or library. No person or business entity may erect or maintain an alcoholic beverage outdoor advertisement beyond 500 feet of any school, playground, recreational center or facility, child care center, or library if the billboard and its content are clearly visible and legible from one of those locations. This section does not apply to any non-commercial message.

(c) Any person or entity seeking to place an alcoholic beverage outdoor advertisement within the 500-foot limit established in subsection (b) may apply for an exemption with the Planning & Building Department. The applicant must demonstrate through clear and convincing evidence that the 500-foot limit denies the applicant a reasonable opportunity to communicate truthful information regarding alcoholic beverages to adult consumers who reside and work in the City of Richmond. If the Planning & Building Department determines that the applicant has been denied such opportunity, it may grant the application in the exercise of its discretion. In determining whether the applicant has been denied such an opportunity, the Planning & Building Department may consider:

(1) potential locations for outdoor advertising that are outside the 500 foot limit and the percentage of the adult population that resides or works in these areas;

(2) the availability of other forms of advertising to reach adult audiences and their relative cost;

(3) any advertising practices codes with which the applicant voluntarily has agreed to comply;

(4) any other relevant evidence.

9.46.035 Measure Of Distance

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

9.46.040 Public Service Advertising

This Chapter shall not be construed to prohibit the display of public service messages designed to communicate the hazards of alcoholic beverages or to encourage minors to refrain from consuming or purchasing alcoholic beverages. However, this section shall not be construed to permit such a message when it is made in conjunction with the positive display of a representation, image, artwork, photograph, logo, graphic, device, display, regalia, insignia, indicia, design, slogan, trade name, brand name, product name, permittee or licensee name used for marketing or promotion of alcoholic beverages.

9.46.050 Violations, Penalties, Civil Actions

(a) Any person or business entity that violates any provision of this Chapter shall be guilty of an infraction and, upon a finding of such a violation, shall be subject to administrative assessment of civil penalties.

(b) Causing, permitting, aiding, abetting or concealing a violation of any provision of this Ordinance shall constitute a violation of such provision.

(c) Each day of violation is a separate offense.

(d) Penalties for violations are as follows. First violation: \$500, with an additional \$50 per day for each day that the violation continues. Second violation: \$1,000, with an additional \$100 per day for each day the violation continues. Third and subsequent violations: \$2,000, with an additional \$200 per day for each day the violation continues. All revenues collected under this Ordinance shall be placed in a special fund to be administered by the City for purposes of enforcing this Ordinance.

(e) In addition to the other remedies provided in this Section, any violation of this Chapter may be enforced by a civil action brought by the City of Richmond. In such action, the City of Richmond may seek, and the court shall grant, as appropriate, any or all of the following remedies:

- (1) A temporary and/or permanent injunction;
 - (2) Assessment of the violator for costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, including but not limited to reasonable costs of preparing and bringing legal action under this subsection, and attorney fees;
 - (3) Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation;
 - (4) A finding, after two or more violations of this Chapter involving the same outdoor advertisement, that the outdoor advertisement constitutes a public nuisance.
- (g) Other remedies as set forth in the Zoning Code in which the affected outdoor advertisement is located shall also apply to this Chapter.
- (h) A party found in violation has a right to appeal the finding of violation pursuant to the procedures established in Section 9.46.060.

9.46.060 Appeals

Any applicant aggrieved by the action of the Planning & Building Department with respect to an application for placement of an Alcoholic Beverage Outdoor Advertisement may appeal said decision using the procedures for appeal set forth in Zoning Ordinance sections 15.04.980 *et seq.*

SECTION 3

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 4

This Ordinance shall become effective 30 days from final adoption and shall remain in effect until repeal.

First introduced at a regular meeting of the City Council of the City of Richmond held on **April 7, 2009**, and finally passed and adopted at a regular meeting held on **May 5, 2009**, by the following vote:

AYES: Councilmembers Bates, Butt, Ritterman, Rogers, Viramontes, Vice Mayor Lopez, and Mayor McLaughlin.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 10-09, finally passed and adopted by the Council of the City of Richmond at a meeting held on May 5, 2009.