

ORDINANCE NO. .

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

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ORDINANCE ADDING CHAPTER 4.120 TO TITLE 4 OF THE SAN MATEO COUNTY ORDINANCE CODE TO RESTRICT THE ADVERTISING OF ALCOHOLIC BEVERAGES AND CANNABIS TO YOUTH

The Board of Supervisors of the County of San Mateo, State of California,

ORDAINS as follows:

SECTION 1. FINDINGS.

- a) Both state and federal surveys have found that alcohol and cannabis are overwhelmingly and consistently the most widely used drugs at all adolescent age levels.
- b) The 2015-16 California Healthy Kids Survey (CHKS) showed that 23% of 11th graders in San Mateo County were current alcohol users and that 14% were cannabis users.
- c) The risk for developing a substance use disorder is higher for those who start use at a younger age. The 2015-16 CHKS survey showed that 62% of 11th graders in San Mateo County who use alcohol-initiated use by age 12, and 36% of 11th graders who use cannabis-initiated use by age 12.
- d) The use of alcohol and other drugs (AOD) impacts academic outcomes. Of the 4,841 suspensions of students in San Mateo County during the 2017-18 academic year, 941 were related to illicit drugs. Of the 27 expulsions, 14 were related to illicit drugs. Suspensions and expulsions negatively impact students' academic outcomes, thereby potentially compromising their ability to pursue advanced education and training, their employment opportunities, and ultimately their access to health care and health-promoting services.
- e) The Office of Statewide Health Planning and Development (OSHPD) reports that alcohol-related emergency room (ER) visits make up 76% of AOD-related ER visits. Between 2008 and 2014, OSHPD reported an upward trend in the rate of AOD-related ER visits for 18-24-year-olds in San Mateo County.
- f) According to the Office of Traffic Safety, in 2016 there were 26 accidents in San Mateo County that resulted in deaths or injuries in which a driver under 21 years old had been drinking.
- g) Research by the National Institute on Alcohol Abuse and Alcoholism: The Effects of the Mass Media on the Use and Abuse of Alcohol (Research Monograph 28,

NIH Publication 95-3743), has shown that exposure to alcohol advertising increases alcohol consumption and that, conversely, alcohol counter-advertising (use of mass media to promote healthy behaviors) reduces alcohol consumption. This research also showed that the imposition of an alcohol advertising ban reduces alcohol consumption.

- h) A meta-analysis of 12 longitudinal studies (Jernigan et.al, 2016) showed a correlation between youth exposure to alcohol marketing and subsequent consumption behavior and/or other negative consequences of consumption.
- i) Another recent study showed that middle school student exposure to medical cannabis advertising was related to both increased intention to use cannabis and cannabis use one year later (D'Amico, Miles, & Tucker). A related study (D'Amico, Rodriguez, Tucker, Pederson, & Shih, 2018) showed that youth who reported an increase in exposure to cannabis ads over a seven-year period reported an increase in their cannabis use.
- j) A recent survey of youth and parents in the San Francisco Bay Area (Youth Cannabis Education Campaign Baseline Survey, San Mateo County, 2019) showed that youth who have tried cannabis were more aware of cannabis-related ads in comparison to those who have not tried cannabis (64% vs 35%). Similarly, youth who have tried cannabis were more likely to see ads selling cannabis in their community (65% vs. 36%) or a store selling cannabis than youth who have not tried cannabis (44% vs. 9%).

SECTION 2. Chapter 4.120 is hereby added to Title 4 of the San Mateo County Ordinance Code to be numbered and entitled and to read in its entirety as follows:

CHAPTER 4.120 RESTRICTIONS ON THE ADVERTISING OF ALCOHOLIC BEVERAGES AND CANNABIS TO YOUTH

4.120.010 - Purpose.

- (a) Regulating commercial advertising of alcoholic beverages, cannabis, cannabis products, and cannabis activity is a reasonable and necessary means to protect and promote the general welfare of the children and minors of San Mateo County exposed to various media advertising alcoholic beverages, cannabis, cannabis products, and cannabis activity.
- (b) Judicial precedent has repeatedly recognized that children and minors deserve special consideration because they lack the ability to assess and fully analyze the information presented through advertising.
- (c) These regulations promote the general welfare and temperance of children and minors and are intended to help reduce the illegal consumption and purchase of alcoholic beverages, cannabis, and cannabis products by children and minors by

limiting their exposure to the advertising of alcoholic beverages, cannabis, and cannabis products on certain billboard structures.

4.120.020 - Definitions.

For the purposes of this chapter, the following definitions shall govern unless the context clearly requires otherwise:

- (a) "Advertising" means printed or electronic matter that calls the public's attention to things for sale.
- (b) "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.
- (c) "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.
- (d) "Cannabis" means Cannabis as defined in Section 26001 of the California Business and Professions Code, included in the Medicinal and Adult Use Cannabis Regulation and Safety Act, and includes, without limitation, any substance or transportation device containing Cannabis, including, but not limited to, cigarettes, pipes, edible products, vaping or e-cigarette devices , or any other instrument or paraphernalia that is designed for the smoking or ingestion of Cannabis.
- (e) "Cannabis Activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation device, delivery or sale of Cannabis and Cannabis Products.
- (f) "Cannabis Products" means Cannabis Products as defined in Section 26001 of the California Business and Professions Code, and includes without limitation any substance or transportation device containing Cannabis, including, but not limited to, cigarettes, pipes, edible products, vaping or e-cigarette devices, or any other instrument or paraphernalia that is designed for the smoking or ingestion of Cannabis.
- (g) "Child Care Center" means a child care center licensed by the State of California.
- (h) "Library" means any public library operated by the County or a city.
- (i) "Playground" means any outdoor premises or grounds owned or operated by the

County, a city, or another public agency that contains any play or athletic equipment used or intended to be used by minors.

- (j) "Public Park" means an open space or park which is owned or operated by the County, a city, or another public agency.
- (k) "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.

4.120.030 - Measure of Distance.

The distance between any Billboard and any Child Care Center, Library, Playground, Public Park, or School shall be measured in a straight line, without regard to intervening structures, from the Billboard to the closest property line of the parcel on which a Child Care Center, Library, Playground, Public Park, or School is located.

4.120.040 - Restriction on Commercial Advertising of Alcoholic Beverages and Cannabis on Billboards.

- (a) 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 or Cannabis, Cannabis Products, or Cannabis Activity on a Billboard that is within 1,000 feet of a Child Care Center, Library, Playground, Public Park, or School.
- (b) This Section does not apply to the display of public service messages or similar messages cautioning against the use of Alcoholic Beverages, Cannabis, Cannabis Products, or Cannabis Activity, or that are designed to encourage minors to refrain from using or purchasing such substances. However, this subsection shall not be construed to permit an advertisement that purports to caution against the use of Alcoholic Beverages, Cannabis, or Cannabis Products when that message is conveyed in conjunction with the display of a logo, trademark, or name used by any person or entity engaged in any marketing or promotion of Alcoholic Beverages, Cannabis, or Cannabis Products.

4.120.050 - Enforcement.

- (a) Violations of this chapter may be subject to the imposition of administrative penalties and remedies set forth in Chapter 1.40 of this Ordinance Code.
- (b) Violations of this chapter may be criminally prosecuted as infraction(s) or misdemeanor(s) at the discretion of the prosecuting attorney as the interests of justice require.
- (c) This Section shall not be interpreted to limit the applicable civil or administrative

remedies available under law.

- (d) This Chapter shall not be enforced, and Advertising shall be exempted from the scope of this Chapter, in the event a Billboard owner or operator provides satisfactory evidence that certain Advertising of Alcoholic Beverages or Cannabis, Cannabis Products, or Cannabis Activity is pursuant to the terms of a valid contract, and such contract was executed prior to the date of introduction of the Ordinance adding this Chapter to the County Ordinance Code by the Board of Supervisors (i.e., October 22, 2019). Amendments to a contract for Billboard Advertising executed subsequent to introduction of the Ordinance by the Board of Supervisors shall not be subject to such exemption.

4.120.060 - Petition for Review.

The owner or operator of a Child Care Center, Library, Playground, Public Park, or School, or the owner or lessee of a Billboard, may submit a written petition to the County Planning and Building Department requesting a review to determine whether a specified Billboard is permitted to display Advertising of Alcoholic Beverages or Cannabis, Cannabis Products, or Cannabis Activity. Upon receipt, the Community Development Director or his designee will consider the following factors: (1) whether changes in business operations have removed a protected use such that a Billboard is no longer within the area proscribed in Section 4.120.040; (2) whether a new protected use has been established within the area proscribed in Section 4.120.040; (3) whether such new protected use is subject to direct views of Billboard(s) Advertising Alcoholic Beverages or Cannabis, Cannabis Products, or Cannabis Activity; and (4) the number of Billboards available to display such Advertising. In no event shall granting of a petition pursuant to this Section result in fewer than fifteen (15) Billboards available throughout the unincorporated area of San Mateo County for Advertising Alcoholic Beverages or Cannabis, Cannabis Products, or Cannabis Activity.

4.120.070 - Public Nuisance.

Any violation of this Ordinance is hereby declared a public nuisance.

4.120.080 - No Conflict with Federal or State Law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or State law.

4.120.090 - Severability.

If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 4.120, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the chapter. The Board of

Supervisors hereby declares that it would have passed this chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any other portion of this chapter or application thereof would be subsequently declared invalid or unconstitutional.

SECTION 4. This Ordinance shall be in effect thirty (30) days after adoption.

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