

TO: Tanner Blackman, Planning Director, Office of Jose Huizar
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FROM: Sara Cooley, Coalition to Ban Alcohol Ads in Los Angeles

RE: Council file #13-0285-S2 - LAX sign district

At last week's PLUM meeting, we introduced the request to include language that would ban alcohol ads from the proposed LAX sign district. A question was raised about the violation of the First Amendment. We have addressed this issue before in other forums, and banning alcohol ads from public property DOES NOT raise any issues in this regard.

In this packet are two items that resolve this question:

- A report published by Alcohol Justice looking at the legality of regulating alcohol ads on public property. Please see pages 3 to 10.
- San Francisco's advertising ordinance, which does prohibit alcohol ads on Public Property.

We urge you to take this opportunity to prioritize the health and wellbeing of the many children and families from Los Angeles in this matter. Alcohol advertising has been shown in study after study to have a profound and lasting effect on youth; we do not need it outside at the newly renovated LAX, or on any public property in the City of Los Angeles.



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Out-of-Home Alcohol Advertising

A 21st-Century Guide to Effective Regulation



Marin Institute
March 2009



Los Angeles County bus shelter

Disclaimer: The information contained in this guide is not offered or intended to constitute legal advice. When finalizing any policy related to the strategies described we strongly recommend obtaining legal advice from a licensed attorney or government counsel in your local jurisdiction.

High-Tech Alcohol Marketing

In New York, an advertising campaign for Rémy Martin cognac involved a street-level billboard that resembled a night club, complete with muffled dance music. Pedestrians that knocked on a three-dimensional door were greeted by a video bouncer peering from behind a speakeasy slider who asked for a password.

Rémy Martin has used a host of guerrilla-style out-of-home tactics to advertise, including wild postings (posters in hard-to-reach areas), graffiti gates (spray-painted building entrances), and even holographic street mats resembling an open hatch with a stairway leading down.

Sparks, an alcopop brand, has tested product displays in convenience stores that allow shoppers to download free music to MP3 players after verifying their age. A touch screen and download port sits on top of racks stocked with four-packs of the product touting the "Sparks Power Playlist."

Emerging Advertising Technologies

In the past, advertising was relatively simple to classify. For decades, advertising appeared in print media, such as newspapers and magazines, on television or radio in the form of commercials, and outdoors on billboards and retail signs. However, in recent years, advertisers have looked to new and creative ways to reach their target audience. One of the fastest growing arenas is outdoor advertising, or what it is now called by the advertising industry, "out-of-home" advertising or "OOH."

The term out-of-home advertising has replaced "outdoor advertising" because advertisers are no longer just using billboards and signs to reach consumers; some of the newer techniques, such as video display terminals, are placed indoors. In addition to plastering advertisements on public transit vehicles, buildings, and structures such as transit huts and other "street furniture," advertisers are deploying digital billboards, advertising networks on digital screens, ambient advertising (such as ads on floors or digital screens on buses) and guerilla-style tactics such as wild postings (posters in hard-to-reach areas) and graffiti gates (spray-painted building entrances). Some of these methods go even further by seeking to interact with viewers through text messaging or other technology.

These new methods allow home advertisers to control their message while reaching a somewhat captive audience. Unlike commercials broadcast on television or print ads in magazines, people cannot tune the messages out by changing the channel or flipping the page.³ Nor can people choose to avoid the messages all together by not bringing the media into their home. These out-of-home advertisements reach you while you wait in line at the grocery store, ride the bus to work, or sit in traffic. Transit advertising represents a particularly attractive medium, as evidenced by market research from New York City that describes transit passengers as a captive audience.⁴

Why Focus on Out-of-Home Advertising

The amount of total ad money spent on out-of-home marketing is on the rise,⁵ as is the use of out-of-home advertising technologies.⁶ Additionally, the alcohol industry has historically been one of the biggest purchasers of outdoor advertising⁷ while also increasing its overall advertising spending.⁸ Thus, we will likely see an increase in spending on out-of-home advertisements for alcohol products.

Because out-of-home advertisements can be seen by everyone regardless of age, this translates to more youth exposure to high-tech and interactive advertisements for alcohol. Even the most vigilant of parents cannot protect their children from being exposed to out-of-home alcohol advertisements.

As a result, it is important that restrictions on out-of-home advertising be drafted in such a way that limits exposure, especially among youth. Moreover, regulating out-of-home advertising can be accomplished more easily at the state and local level.

It is with a renewed sense of urgency brought on by emerging advertising technologies and increased demands for finding new revenue streams that Marin Institute offers this guide. Communities need not accept out-of-home advertising for alcoholic products as an inevitable part of the landscape. By following the suggestions outlined in this guide, advocates and policymakers can draft laws to restrict or ban out-of-home alcohol advertising that are both effective and legally sound.

This Guide Contains

- Answers to common questions regarding the First Amendment and the regulation of commercial speech.
- Examples of restrictions on commercial speech that are more likely and less likely to withstand a legal challenge.
- A checklist of the considerations to be made before, during, and after drafting a law restricting alcohol advertisements.
- Models of effective state and city laws that restrict alcohol advertisements.
- Current laws on the books from states, cities, and transit agencies that restrict alcohol ads.

Why is this Guide Needed?

The purpose of this guide is to provide advocates and policymakers with suggestions for effective regulation of alcohol advertising at the state and local levels in the 21st century. In recent years, public health advocates and lawmakers have become reticent to enact or even enforce restrictions on alcohol advertisements in their communities. This hesitancy has stemmed from several court rulings that have invalidated certain restrictions on advertising on free speech grounds.¹ However, with each ruling, courts have continued to clarify their position regarding the regulation of advertising. As a result, through careful drafting, state and local governments can still restrict alcohol advertising. Moreover, governments can move past the “feel good” and overly narrow legislation of the past and look to crafting restrictions that effectively minimize youth exposure while addressing 21st-century advertising tactics.

The scientific evidence is clear that the more ads kids see, the more likely they are to drink, and drink to excess. As a result, restrictions on alcohol advertising that reduce underage exposure to all alcohol advertisements are more effective than only restricting advertisements that may appeal to kids. Additionally, with new and ever-increasing types of advertising exposing people of all ages, now is the perfect time for new restrictions on alcohol advertising.

While researching current laws on the books in states and cities around the nation, we found that many laws are not written very effectively. For example, restrictions making it illegal to advertise alcohol to children, while important and well intentioned, do little to directly address youth exposure to ads.² Similarly, restrictions that are so narrow in scope as to only limit the placement of alcohol advertisements in a single venue have little impact. While such current laws are probably constitutional because they are so narrow, if they are ineffective, they only serve the purpose of feel-good legislation. One of the main goals of this guide is to move beyond such well-intentioned but ultimately limited regulations. The purpose of any restriction on alcohol advertising should be to reduce exposure, especially among youth; if enforced, resulting laws will ultimately reduce underage drinking and other harms from excess alcohol consumption.

Local and state governments can indeed create laws to reduce youth exposure to alcohol advertising on billboards and other out-of-home media. This guide offers policymakers legally-defensible options to protect youth in their communities from messages that can lead to underage drinking. Our youth, families, and communities do not have to be victims of commercial speech.

Advertising Facts

Spending on out-of-home advertising grew to over \$8 billion dollars in 2008.

High-tech out-of-home advertisements such as digital billboards, video networks, and digital ads on buses are expected to grow to over \$2.65 billion in 2009.

Historically, the alcohol industry has been one of the largest purchasers of outdoor advertising.

Since 2006, the alcohol industry increased total advertising spending 4.8 percent to total \$2.2 billion.

Regulating Commercial Speech and the First Amendment

Can speech be regulated?

Yes. While the First Amendment to the United States Constitution does protect speech, this freedom is not absolute. Government is entitled to regulate speech when there is an overriding need to do so. For example, the government can prohibit the yelling of “fire” in a crowded theater to prevent injuries associated with panicked evacuations. Government regulations may limit individual rights if doing so furthers important social interests. In the context of advertising, the government must demonstrate that its interest in limiting exposure to alcohol marketing outweighs the speaker’s right to advertise.

When does the First Amendment protect speech?

Sometimes, media outlets like to claim that “free speech” requires that they accept all advertising, but this is not the case. The First Amendment places limits only on how *government* can regulate speech. Generally, private actors can regulate speech however they like. For example, a privately-owned newspaper can refuse to publish an editorial or advertisement for any reason. Therefore, demands aimed at private property owners or media outlets to remove alcohol advertising do not raise First Amendment barriers and advocates should not be intimidated by claims to the contrary.

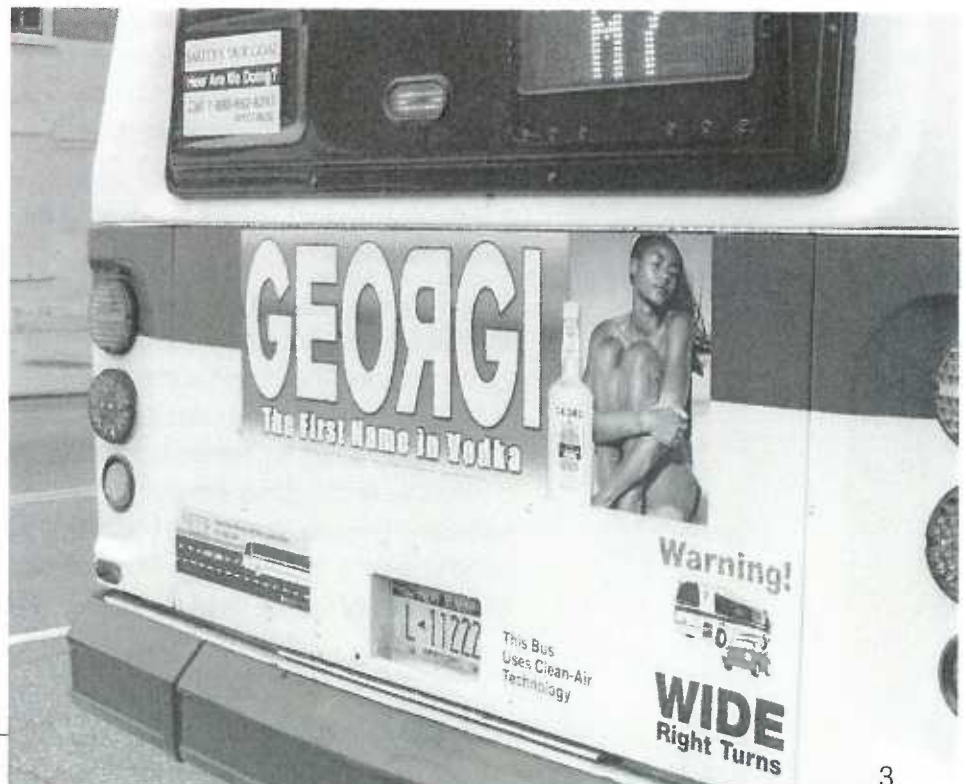
What is speech?

In daily life, “speech” is considered to be spoken word, but in the realm of the First Amendment, speech has much broader meaning. Courts have interpreted “speech” as any acts that impart, receive, and seek information or ideas. Generally accepted types of expression covered by “speech” include writings, printed images, symbolic actions, and other art forms.

What is commercial speech?

Commercial speech is speech by a company or individual that proposes an economic transaction. The most common examples of commercial speech are television commercials and advertisements in newspapers or magazines. The Supreme Court has determined that commercial speech deserves a lower degree of protection than private speech. This is important because advertisers often like to invoke their “right to free speech,” but in reality, commercial speech does not rise to the level of political speech, and the two should not be equated.

New York City transit bus



Supreme Court test for regulating advertising

Unlawful or Misleading? Speech regarding an economic transaction that is either unlawful or misleading receives no protection under the First Amendment and can be banned outright. An example would be marketing to underage youth.

Substantial Interest? The government must articulate a substantial interest in restricting commercial speech. This is a relatively easy test to meet.

Directly Advance? The government must demonstrate that the restriction directly advances the substantial government interest. For this, scientific evidence helps.

Narrowly Tailored? The government must demonstrate that the restriction goes no further than limiting the undesired commercial speech in the undesired location. This is where some laws may fail the test and caution is advised.



What is the test for the valid regulation of commercial speech?

In its 1980 decision *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of N.Y.* (aka *Central Hudson*), the U.S. Supreme Court outlined a four-part test for determining if a regulation of commercial speech is valid under the First Amendment.

1. Does the speech concern lawful activity and is it not misleading?

If the speech is regarding an unlawful activity then it is not protected by the First Amendment. For example, a bar does not have a right to advertise alcohol to underage youth. Similarly, commercial speech that misleads consumers is not protected. For example, an alcohol company does not have the right to advertise that its products can keep you alert. If the commercial speech is regarding lawful activity then the government must pass the remaining three tests for the regulation to be valid.

2. Is the government's interest in regulating the speech substantial?

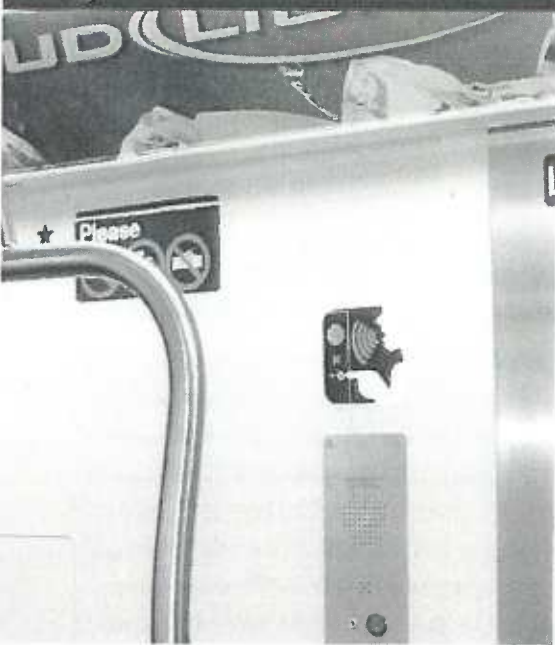
The government must demonstrate that it has a substantial interest in regulating the commercial speech at issue. When it comes to reducing underage drinking, the government clearly has a substantial interest in promoting the welfare of minors by reducing their exposure to alcohol advertising. However, courts have been less willing to make a similar finding with regard to adults. Generally this test is easy to meet.

3. Does the regulation directly advance the asserted government interest?

The government must demonstrate that the regulation directly advances the interest asserted in test #2. Unfortunately, courts have not fully articulated the government's burden with regard to this test. However, the government must have strong evidence demonstrating a direct correlation between the regulation and the governmental interest; the more scientific backing, the better. For example, limiting advertisements near schools must be accompanied by evidence that reducing the number of alcohol ads that youth see will reduce underage drinking.

4. Is the regulation narrowly tailored to serve the government's interest?

Finally, the government must demonstrate that the regulation is drafted such that it does not limit the commercial speech beyond the intended purpose. If the limit is overly broad and prevents an otherwise valid message from reaching an appropriate audience, then it is invalid. For example, a city would not be able to ban all alcohol advertisements anywhere as this would limit the advertisers' ability to reach adults.



New York City subway

What types of commercial speech can be regulated at the local level?

Billboards are the most common example of commercial speech that can be regulated at the local or state level. Additionally, many of the newer out-of-home advertising methods, such as video displays, are also within a city or state's jurisdiction. However, there may be some areas that cannot be regulated locally. For example, a city or state will not be able to restrict alcohol advertisements on national broadcast television because these rules are established at the federal level. Regulating cable television presents complicated legal questions that require consultation with counsel.

Can more than just alcohol or tobacco advertisements be limited?

Yes. In fact, often prohibiting all speech in a given venue may be more likely to withstand a legal challenge than prohibiting a specific type of commercial speech. For example, prohibiting all billboards for aesthetic purposes, regardless of the product being advertised, may be more likely to withstand a legal challenge than a regulation limiting billboards with alcohol advertisements.

Where can commercial speech be regulated?

The government can regulate commercial speech that appears on both public and private property. However, the government will need to be able to demonstrate a greater interest in regulating commercial speech that appears on private property than that which appears on public property.

What is the difference between public and private property?

Public property is any property that is owned or controlled by the government. In addition to public land and government buildings, public property includes public transit (such as buses, trains, and stations), street furniture, government publications, and public venues (such as public fair grounds and sports stadiums). Private property is any property owned by a private actor, including land, buildings, billboards, publications, and other venues and media.

Content-Based Regulation vs. Content-Neutral Regulation

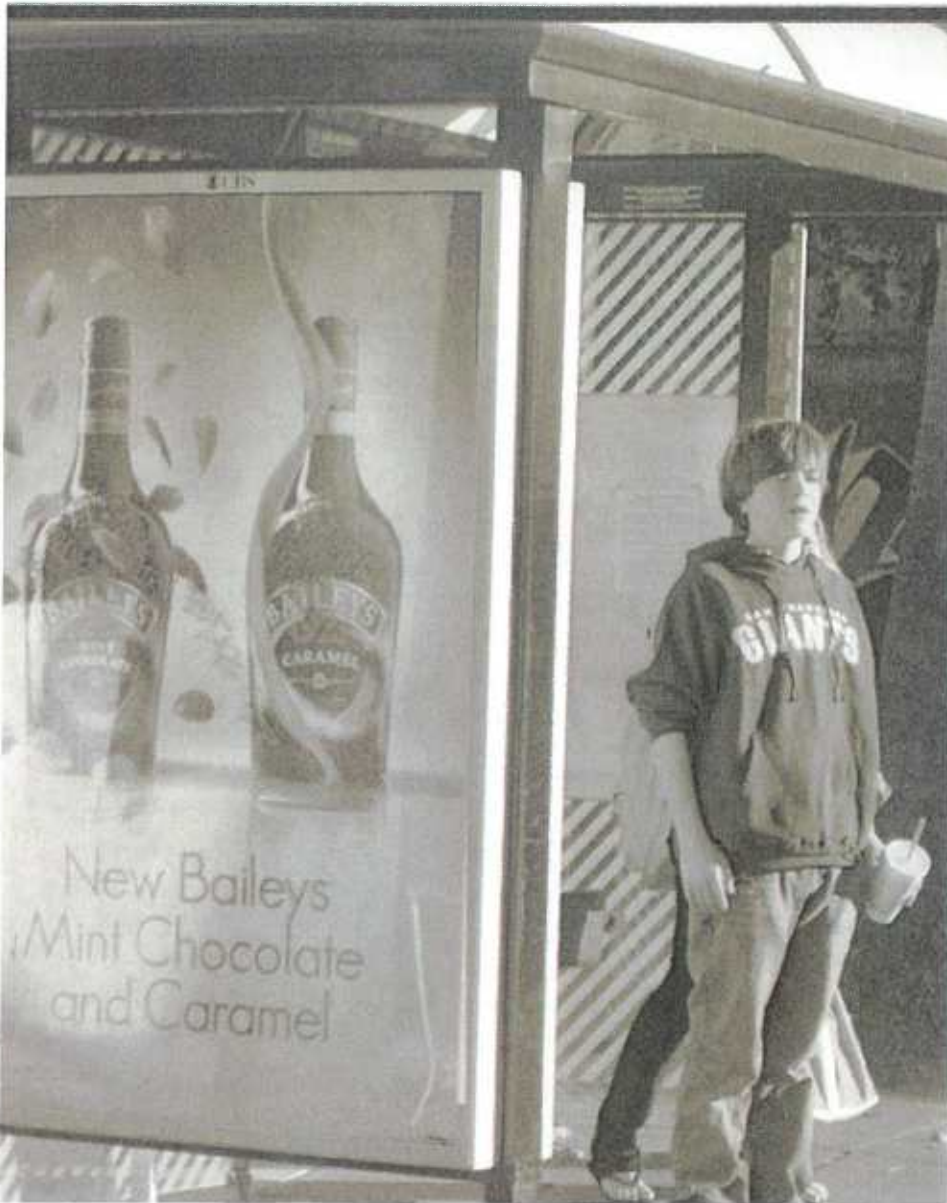
Content-based regulations specifically restrict a certain type of speech, such as a ban that only applies to billboards advertising alcohol.

Content-neutral regulations do not specify a type of speech; rather they restrict all speech regardless of content, such as a ban on all billboards. Sometimes, such restrictions are easier to justify; thus, courts are more likely to uphold content-neutral restrictions that do not single out one particular type of speech.

Wasn't there a Supreme Court case saying that all bans on outdoor advertisements are unconstitutional?

No. In the 2001 case of *Lorillard Tobacco v. Reilly*, the Supreme Court did not find that all bans on outdoor advertising are unconstitutional. Rather, the Court decided that a prohibition on outdoor advertising for tobacco products within 1,000 feet of schools or playgrounds in Boston was unconstitutional. This was because the concentrated number of schools in Boston meant the prohibition effectively amounted to a complete ban on outdoor advertising for a legal product. Too many advocates have misinterpreted this case to mean they can no longer attempt to regulate advertising, but this is not true. Careful attention to following the Supreme Court's guidelines can result in constitutionally-valid restrictions on advertising.

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San Francisco bus shelter

Look Out for Long Government Contracts

It's common for local governments or agencies to have numerous contracts with media companies allowing advertising on public property. This is especially common with transit agencies contracting with billboard companies. It is nearly impossible to monitor or participate in the contracting process. Often, such contracts last for many years or even decades and are negotiated and signed before the public is aware. As a result, you may be able to get a new policy passed that does not allow alcohol advertising on public property, but may have to wait many years for the policy to apply to new government contracts.

Can the government restrict advertisements on public property?

Yes. When the government agrees to place advertising on public property, it can place restrictions on the type of content it will allow. In fact, when evaluating whether the regulation is valid the government will be held to a lower level of scrutiny than it would be if it were seeking to restrict the placement of similar commercial speech on private property. When the government limits the type of advertisements placed on public property, it is acting as a "market participant" rather than as a regulator. Similar to private actors, the government can choose the messages with which it wishes to be associated. Remember the First Amendment only protects speech from regulation by the government. If the government is acting as a market participant with regards to placing advertisements on its own property then it is not a regulator and will therefore be held to a lower standard than if it is seeking to regulate commercial speech on private property.

How can the government restrict advertisement on its property?

The most direct and powerful way that government can restrict advertising that appears on its property is to pass a law or an ordinance stating what content is prohibited. For example, a locality could pass an ordinance prohibiting the placement of any alcohol-related advertising on public property. In turn, this would prevent the municipal transit agency from being able to accept money to place beer advertisements on buses or trains. Additionally, the government can pass laws or ordinances that require agencies to include terms prohibiting the undesired content in any contract with a private entity to place advertising on public property. While informal policies such as placing restrictions in contracts may have a similar outcome, such informal policies lack the permanence and force that is associated in a law or ordinance.

Checklist for Drafting Laws

Considerations Before Drafting

- Are there currently any laws or regulations restricting out-of-home advertising of alcohol on the books in your city, county, or state? If so, are they effective?
- Are there any nearby cities or counties currently restricting out-of-home advertising of alcohol? If they are effective, they could be a useful model.
- Have any surveys been conducted to determine the extent of the problem facing your community with regard to out-of-home advertisements of alcohol? If not, conducting such a survey can help provide the evidence base needed to enact a law.

Considerations When Drafting

- Are the definitions for advertisement mediums technology-neutral? The restriction should be written to apply to future technology changes, where possible.
- Have findings (for example, evidence of the problem and scientific basis for the restriction) been included in the preamble?
- Does the proposed restriction specifically limit alcohol advertisements or does it limit all advertisements? (There are pros and cons to each approach.)
- Who owns the space where the display of out-of-home advertising will be restricted? Is it public or privately-owned property?
- Is the purpose of the proposed restriction clearly stated?
- Do you have sufficient evidence that the proposed restriction will directly advance the stated governmental purpose; in other words, that it will be effective?
- Is the restriction narrowly tailored so that it does not limit otherwise valid speech?
- Does the restriction include penalties and identify who will conduct the enforcement of the restriction and adjudicate any violations?
- Has the restriction been reviewed by the office of the attorney who represents that jurisdiction? (Local: City or County attorney; State: Attorney General)

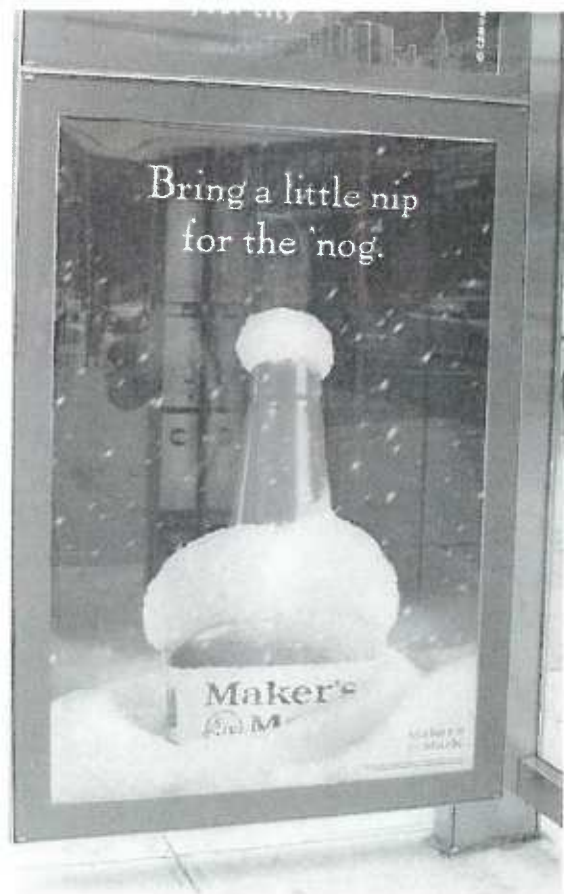
Technology Neutral Definition

When drafting a law or ordinance, the definition section sets the breadth of the regulation. Overly specific definitions may limit the effectiveness of a restriction. When drafting a definition that aims to encompass new advertising methods, use language that does not apply to a single type of technology. For example:

A "sign" means any outdoor advertising sign, display, device, notice, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended or used to advertise or inform (preferable).

Versus

A "billboard" means any outdoor advertising sign that is painted or printed upon that is designed, intended, or used to advertise or inform (less effective).



New York City bus shelter

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Examples of Restrictions

Make Friends with Lawyers

Be sure to consult legal counsel in your area when drafting advertising restrictions.

More likely to withstand a legal challenge	Less likely to withstand a legal challenge
Banning <i>all</i> out-of-home advertisements regardless of product or service type	Banning <i>only</i> out-of-home advertisements for alcohol beverage products
Restricting out-of-home advertising for alcohol <i>directly</i> adjacent to youth-oriented facilities	Restricting out-of-home advertising for alcohol such that it amounts to a full ban
Restricting the number of doors or windows bearing ads or signs of any sort at stores, and requiring that all advertisements and signage be placed in a manner that ensures police have a clear view of the store interior	Restricting only ads or signs for alcohol on the exterior of stores or restaurants while still allowing the placement of ads or signs for other products
Requiring <i>public agencies</i> to include terms banning/restricting advertisements for alcohol in all contracts allowing for the placement of advertisements on <i>public property</i>	Banning/restricting advertisements for alcohol products on <i>private property</i> entirely
Restricting giveaways and distribution of promotional material for alcohol at commercial or civic events held on <i>public property</i>	Restricting giveaways and distribution of promotional material for alcohol at events attended by adults on <i>private property</i>
Restricting advertisements for alcohol in local print media that have a predominantly <i>under-age</i> audience	Banning advertisements for alcohol in local print media that have a predominantly <i>adult</i> audience
Purpose of regulation is directly tied to reducing underage drinking; i.e., a restriction that limits youth exposure	Purpose of regulation is tied to a general desire to increase adult temperance; i.e., restriction limits everyone's exposure

San Francisco news rack



Model Language From Current Laws

San Diego, California (§58.0501)

Type of law: City level/content-based regulation of alcohol ads aimed at reducing underage drinking

Relevant language: 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 on a billboard that is within 500 feet of a school, playground, recreation center or facility, child care center, or library or that is more than 500 feet and the billboard face and its advertisement are clearly visible from a school, playground, recreation center or facility, child care center, or library. This section does not apply to any noncommercial message.

San Jose, California (Ord. 27626)

Type of law: City level/content-based regulation of alcohol ads aimed at reducing drinking and driving

Relevant language: No beer and wine advertising shall be located on motor fuel islands and no self-illuminated advertising of beer or wine shall be located on buildings or windows.

San Francisco, California

Type of law: Ban of alcohol advertisements on public transit

Note: this language can be quite simple. Most transit advertising policies already include a list of prohibited content, so just add alcohol to that list. You may also consider excluding other potentially harmful products, as this policy does.

Relevant language: Policy governing advertising on Municipal Transportation Agency (MTA) property. No advertisement posted on MTA property shall:

- Be false, misleading, or deceptive
- Appear to promote the use of firearms
- Be clearly defamatory
- Be obscene or pornographic
- Advocate imminent lawlessness or violent action
- Promote alcoholic beverages or tobacco products

California (Cal Bus & Prof Code §25612.5)

Type of law: State level/content-neutral regulation

Relevant language: The Legislature finds and declares that it is in the interest of the public health, safety, and welfare to adopt operating standards as set forth in this section for specified retail premises licensed by the department. The standards set forth in this section are state standards that do not preclude the adoption and implementation of more stringent local regulations that are otherwise authorized by law. *(This is important to avoid preemption, which could preclude localities from going further than state law.)*

No more than 33 percent of the square footage of the windows and clear doors of an off-sale premises shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises.

Philadelphia, PA (Bill No. 030713)

Type of law: City level/content-based, government property/contracts

Relevant language: Every contract which permits any person to place advertising on City owned or controlled property shall include a provision prohibiting the placement on such property of advertisements for alcohol. For purposes of this section, City owned or controlled property does not include property used to hold professional sporting events.

Good example of legislative findings (i.e., the evidence needed)

The City Council finds that.

(a) A September 10, 2003 report entitled, *Underage Drinking: A Collective Responsibility*, released by the National Academy of Sciences stated that more youth drink alcohol than smoke tobacco or use other illegal drugs;

Keep Up to Date

Research current laws and legal challenges to be sure statutes are still valid.



San Francisco news rack

Enforcement is Key

Even if your city or state already has a law on the books, be sure it is being enforced.

(b) In the most recent national survey on drug use, the 2002 Monitoring the Future report, almost half or 48.6% of twelfth graders reported recent alcohol use;

(c) Underage drinking plays a substantial role in the three leading causes of death among youth –motor vehicle fatalities, suicide and homicide;

(d) 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;

(e) Alcohol abuse among young people is also linked to two-thirds of all sexual assaults and date rape, and is a major factor in unprotected sex among youth, thereby increasing their risk of sexually transmitted diseases;

(f) The National Academy of Sciences estimates that the social cost of underage drinking is \$53 billion;

(g) In the Philadelphia Safe and Sound Report Card 2003, substance abuse among high school youth was rated “challenging, with major obstacles;”

(h) The most recent Youth Risk Behavior Survey compiled in 2001, which is based on self-reports by Philadelphia public high school students, found that 31.6% of high school youth report having had one drink in the most recent 30-day period

(i) 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;

(j) A substantial proportion of alcohol advertising reaches an underage audience and is presented in a style that is attractive to youth;

(k) A 1996 study of children ages 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;

(l) In a survey conducted for the Center on Alcohol Marketing and Youth in June of 2003, two-thirds of parents say that seeing and hearing alcohol advertisements makes teens more likely to drink alcohol and 82% of the parents surveyed said that the risky behavior teens engage in while under the influence of alcohol is a problem in society today;

(m) Children and youth utilize city owned and controlled property on a daily basis, such as school buildings, recreation centers, libraries and bus shelters;

(n) To the extent that commercial advertising is allowed in these public facilities, the City of Philadelphia can play a positive role in reducing exposure of youth to alcohol advertisements by prohibiting the placement of such advertisements on publicly owned or controlled property.

Current Laws Regarding Alcohol Advertising

Note: The information collected below does not represent an exhaustive list of all states, cities, and transit agencies that have advertising regulations restricting alcohol advertising. Please review the laws in your area to determine the most up-to-date information regarding these and other restrictions. (This list was generated in late 2008.)

State Laws

State	Type of Restriction	Citation
Alabama	Outdoor	Code of Ala. § 28-3-16
Alabama	General Advertising	Ala. Admin. Code r. 20-X-7-.01
Arizona	School Bus	A.R.S. § 15-342 (27)(a)
California	Entertainment Venues	Cal Bus & Prof Code § 25503.8
California	Window Advertising	Cal Bus & Prof Code § 25612.5
Idaho	General Advertising	Idaho Code § 23-607
Kentucky	Giveaways	KRS § 244.500
Kentucky	Near Church/School	KRS § 244.540
Mississippi	Outdoor	Miss. Code Ann. § 67-1-85(2)
Mississippi	Animated Children's Television	Miss. Code Ann. § 67-1-85(3)
Montana	In-Store	Mont. Code Anno. § 16-3-244
New Hampshire	Billboard	RSA 179:31 (XI)
New Hampshire	Store Signage	RSA 179:25
New York	In-Store	NY CLS Al Bev § 104-a(1)
Ohio	Near Church/School/Playground	OAC Ann. 4301:1-1-44
Oklahoma	General Advertising	37 Okl. St. § 516
Oregon	In-Store	ORS § 471.750(2)
Oregon	Sports Center	ORS § 471.401
South Carolina	Billboard	S.C. Code Ann. § 61-6-4170
Texas	Outdoor	Tex. Alco. Bev. Code § 108.52
Utah	General Advertising	Utah Code Annotated § 32A-12-401
Vermont	Outdoor	7 V.S.A. § 666(a)
West Virginia	In-Store	W. Va. Code § 60-3-13



San Francisco news stand

Municipal Laws

City	Type of Restriction	Citation
Baltimore, MD	Outdoor	Baltimore City Code (Md.) § 11-207
Denver, CO	Tastings	Revised Mun. Code of the City and of Denver (Colo.) §6-101
Detroit, MI	Outdoor	Detroit City Code (Mich.) § 3-6-1 – 3-6-10
Jacksonville, FL	Youth Athletic Fields	Jacksonville Ord. Code (Fla.) § 656.1303(k)
Philadelphia, PA	Youth & Outdoor	Philadelphia Code (Pa.) § 9-628
San Jose, CA	Ads at Gas Stations	San Jose Mun. Code (Cal.) §6.86.240
San Diego, CA	Youth & Outdoor	San Diego Mun. Code (Cal.) §58.0501 – 58.0504

Transit Agency Policies Not Allowing Alcohol Ads (as of 2007)

- Alameda Contra Costa Transit District (CA)
- Bay Area Rapid Transit District (CA)
- Chicago Transit Authority (IL)
- City & County of Honolulu Department of Transportation Services (HI)
- Golden Gate Transportation District (CA)
- King County Seattle Metro Transit Division (WA)
- Los Angeles County, Metropolitan Transport Authority (CA)
- Metropolitan Transit Authority of Harris County (TX)
- Miami-Dade Transit (FL)
- Orange County Transportation Authority (CA)
- San Francisco Municipal Transportation Agency (CA)
- Santa Cruz Metropolitan Transit District (CA)
- Southeastern Pennsylvania Transportation Authority (PA)
- Tri-County Metropolitan Transportation District of Oregon (OR)
- Washington Metropolitan Area Transportation Authority (DC)

References

1. The Supreme Court case of *Lorillard Tobacco v. Reilly*, 533 U.S. 525 (2001) invalidated certain tobacco advertising regulations in Massachusetts. This case has been misinterpreted as banning all regulations.
2. "Alcohol Advertising and Youth," The Center on Alcohol Marketing and Youth, <http://camy.org/factsheets/index.php?FactsheetID=1> (accessed December 29, 2008).
3. Stephen Freitas, the Chief Marketing Officer of the Outdoor Advertising Association of America, describes out-of-home this way: "It's a medium that isn't controlled by consumers. You can't zap it or TiVo it." Out-of-Home But Not Out-of-Place: Millward Brown's POV, October 2007.
4. Michele Simon, Journal of Urban Health: Bulletin of the New York Academy of Medicine, Reducing Youth Exposure to Alcohol Ads: Targeting Public Transit, 2008, p.508-509.
5. "OOH [Out of Home] spending will rise 7 percent to \$8.21 billion, PricewaterhouseCoopers projects. ZenithOptimedia paints an even rosier scenario, projecting 11.3 percent growth to \$8.71 billion, Richard Zitrin, Adweek: A Knockout, September 29, 2008, p.SR16.
6. "Digital Out-of-home is [an]... emerging medium, which includes video advertising networks (the largest segment), digital billboards and ambient advertising (ads on floors or digital screens on buses), is expected to grow 9.1% next year to \$2.65 billion according to PQ Media, Stamford, Conn." Katy Bachman, Brandweek: No Longer Experimental, Digital Out-of-Home Comes of Age, October 27, 2008, p.9.
7. Molly M. Scott, Deborah A. Cohen, Matthias Schonlau, Thomas A. Farley, Ricky N. Bluthenthal, American Journal of Preventive Medicine: Alcohol and Tobacco Marketing: Evaluating Compliance with Outdoor Advertising Guidelines, September 2008, p. 203-209.
8. Advertising Age DataCenter 2007: U.S. Ad Spending By Category.

Out-of-Home Alcohol Advertising

A 21st- Century Guide to Effective Regulation

This guide was prepared by Ryan Treffers and Michele Simon, with assistance from Kimberlee Parkins and Bruce Livingston.



The Marin Institute fights to protect the public from the impact of the alcohol industry's negative practices. We monitor and expose

the alcohol industry's harmful actions related to products, promotions and social influence, and support communities in their efforts to reject these damaging activities.

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**HELP END GLOBAL WARMING
ADD MORE ICE**

- SVEDKA_GRL

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VOTED #1 VODKA OF 2023



Boston subway

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FILE NO. 081124

ORDINANCE NO.

13-09

1 [Prohibiting advertisements for alcoholic beverages on City property.]
2

3 **Ordinance amending the San Francisco Administrative Code by amending**
4 **Section 4.20, to prohibit advertisements for alcoholic beverages on City property.**

5 Note: Additions are single-underline italics Times New Roman;
6 deletions are ~~strikethrough italics Times New Roman~~.
7 Board amendment additions are double underlined.
8 Board amendment deletions are ~~strikethrough-normal~~.

8 Be it ordained by the People of the City and County of San Francisco:

9 Section 1. The San Francisco Administrative Code is hereby amended by amending

10 Section 4.20, to read as follows:

11 **SEC. 4.20. TOBACCO PRODUCT AND ALCOHOLIC BEVERAGE ADVERTISING**
12 **PROHIBITION.**

13 (a) No advertising of cigarettes or tobacco products or alcoholic beverages shall be
14 allowed on any property owned by or under the control of the City and County of
15 San Francisco, except as exempted in subsections (c) and (d) below. For purposes of this
16 Section 4.20, "alcoholic beverage" shall be as defined in California Business and Professional Code
17 section 23004 and shall not include cleaning solutions, medical supplies, and other products and
18 substances not intended for drinking.

19 (b) This prohibition shall include the placement of the name of a company producing,
20 selling or distributing cigarettes or tobacco products or alcoholic beverages, or the name of any
21 cigarette or tobacco product or alcoholic beverages, in any promotion of any event or promotion
22 of any product or beverage on property owned by or under the control of the City and County of
23 San Francisco. This prohibition shall not apply to any advertisement sponsored by a state,
24 local, ~~or~~ nonprofit or other entity designed to (i) communicate the health hazards of cigarettes
25 and tobacco products ~~or to~~ alcoholic beverages, (ii) encourage people not to smoke or to stop

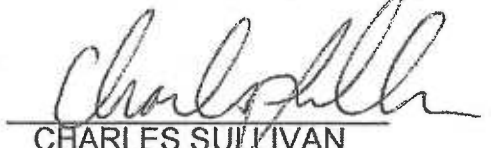
1 smoking, or encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or
2 publicize drug or alcohol treatment or rehabilitation services.

3 (c) All leases, permits or agreements awarded by the City and County of
4 San Francisco allowing any person to use City property shall specifically provide that there
5 shall be no advertising of cigarettes or tobacco products or alcoholic beverages as set forth in this
6 Section 4.20. This prohibition on advertising shall only not apply to those leases, permits or
7 agreements except where its application would impair obligations of contract entered into,
8 renewed, or materially amended from and after the effective date of this ordinance.

9 (d) City property used for operation of a restaurant, concert or sports venue, or other
10 facility or event where the sale, production or consumption of alcoholic beverages is permitted,
11 shall be exempt from the alcoholic beverage advertising prohibition in subsections (a) and (b) through
12 (c) above, but this prohibition may be made applicable by lease, permit or agreement.

13
14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

16
17 By:


18 CHARLES SULLIVAN
19 Deputy City Attorney
20
21
22
23
24
25



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 081124

Date Passed:

Ordinance amending the San Francisco Administrative Code by amending Section 4.20, to prohibit advertisements for alcoholic beverages on City property.

December 16, 2008 Board of Supervisors — PASSED ON FIRST READING

Ayes: 11 - Alioto-Pier, Campos, Chu, Daly, Dufty, Elsbernd, Maxwell,
McGoldrick, Mirkarimi, Peskin, Sandoval

January 6, 2009 Board of Supervisors — FINALLY PASSED

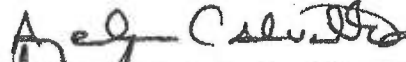
Ayes: 10 - Alioto-Pier, Campos, Chu, Daly, Dufty, Elsbernd, Maxwell,
McGoldrick, Mirkarimi, Peskin

File No. 081124

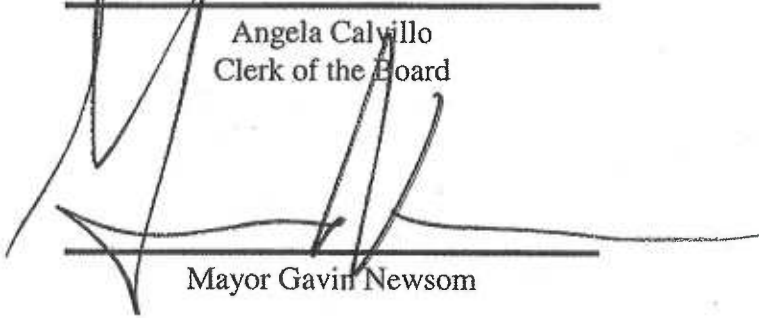
I hereby certify that the foregoing Ordinance
was FINALLY PASSED on January 6, 2009
by the Board of Supervisors of the City and
County of San Francisco.

1/16/09

Date Approved



Angela Calvillo
Clerk of the Board


Mayor Gavin Newsom