

ORDINANCE NO. 3444

**ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS
PROHIBITING ALCOHOL BEVERAGE SPONSORSHIP AND ALCOHOL BEVERAGE
SPONSORSHIP SIGNS AT THE MARIN COUNTY FAIR**

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN HEREBY ORDAINS AS
FOLLOWS:

SECTION I. Chapter 6.09 of the Marin County Code is hereby added to read as
follows:

CHAPTER 6.09

**PROHIBITION OF ALCOHOL BEVERAGE SPONSORSHIP AND SPONSORSHIP
SIGNS OF ALCOHOLIC BEVERAGES AT THE MARIN COUNTY FAIR**

Sections:

6.09.010	Legislative Purpose
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6.09.040	Prohibition of Alcohol Beverage Sponsorship and Sponsorship Signs of Alcoholic Beverages at the Marin County Fair
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6.09.010 Legislative Purpose

The primary purposes of this ordinance are to promote the health, welfare and safety of persons under 21 years of age exposed to certain publicly visible sponsorship and sponsorship signage of alcoholic beverages and to project a wholesome, family-oriented image that does not promote the purchase or consumption of alcoholic beverages at the Marin County Fair by persons less than 21 years of age.

6.09.020 Legislative Findings

The Board of Supervisors of the County of Marin, after completing a legally noticed public hearing, finds the following:

- a) **WHEREAS**, Sections 25658 and 25658.5 of the State of California Business and Professions Code makes it unlawful for a person under the age of 21 years to purchase or attempt to purchase alcoholic beverages and makes it unlawful for any person to sell any alcoholic beverage to any person under the age of 21 years;
- b) **WHEREAS**, according to local, state and federal surveys, alcohol is overwhelmingly and consistently the most widely used drug at all adolescent age levels.¹ A child who begins alcohol use prior to age 14 is four times as likely to experience alcohol dependence than one who refrains from alcohol use until age 20 or older;²
- c) **WHEREAS**, the United States Supreme Court has recognized repeatedly that children deserve special solicitude because they lack the ability to assess and analyze fully the information presented through commercial media. Although much of the case law specifically deals with obscenity, it is clear that children deserve special solicitude on issues including alcohol advertising;³
- d) **WHEREAS**, the federal courts and independent studies have recognized that there is a positive relationship between both alcoholic beverage advertising and consumption of the advertised products;^{4, 5}
- e) **WHEREAS**, an extensive set of research studies supports the federal courts' judicial notice that alcoholic beverage advertising may predispose young people to drinking.⁶ These and other studies have shown that:
1. Male youth with greater exposure to alcohol advertisements in magazines, on television, and at sporting and music events are more aware of the advertising and more likely to remember the advertisements they had seen.⁷
 2. Youth who are more aware of televised beer advertisements hold more favorable views on drinking and express intentions to drink more often as adults than do children who are less aware of these ads;⁸
- f) **WHEREAS**, \$1.9 billion was spent on alcohol advertising in measured media (television, radio, print, outdoor, major newspapers and Sunday supplements) in 2002,⁹ and, working from alcohol company documents submitted to them, the Federal Trade Commission estimated in 1999 that the alcohol industry's total expenditures to promote alcohol (including through sponsorship, Internet advertising, point-of-sale materials, product placement, brand-logoed items and other means) were three or more times its expenditures for measured media advertising,¹⁰ suggesting that the alcohol industry spent a total of \$5.7 billion or more on advertising and promotion in 2002;
- g) **WHEREAS**, outdoor alcohol advertising, alcohol sponsorship, and alcohol sponsorship signs are unique and distinguishable types of product promotion and brand marketing that subject the public to involuntary and unavoidable forms of solicitation;¹¹

- h) **WHEREAS**, alcohol sponsorship and signage are permitted at certain events held in public places in the County of Marin including municipally sponsored events such as the Marin County Fair; persons under the age of 21 years attend events held in public areas, including municipality-sponsored events; sponsorship and signage at these events subject children attending these events to a high degree of involuntary and unavoidable forms of solicitation; sponsorship signs appear at events in public places in publicly visible locations, including, but not limited to, sides of tents, event stages, signs attached to poles, posts or other figures, and freestanding signboards. Sponsorship signs also appear at events in the form of logo-identified staff, stage sponsorship, and giveaways, and there is no practical way for parents to monitor or limit the exposure of their children to the **sponsorship** signs at these events; and, accordingly, children attending these events are inundated with sponsorship signs simply by attending the events;¹²
- i) **WHEREAS**, this ordinance *does not* attempt to enact such a blanket ban on advertising of alcohol as was prohibited in the U.S. Supreme Court case *44 Liquormart v. Rhode Island* and thus leaves advertisers with numerous alternative venues available to them, including but not limited to sponsorship of events on private property, television, radio, magazines, newspapers, and point-of-sale;
- j) **WHEREAS**, this ordinance only restricts the “time, place and manner” of alcoholic beverage sponsorship and sponsorship signs at the municipally-sponsored Marin County Fair, which is attended by a significant number of persons under the age of 21 years (estimated to be over 25,000 annually); it does not directly regulate the sale of alcohol and does not unduly burden legitimate business activities or persons licensed by the California Department of Alcoholic Beverage Control to sell alcoholic beverages;¹³
- k) **WHEREAS**, the County of Marin has made numerous and substantial efforts to enforce underage drinking laws; yet, despite these efforts, alcohol use by Marin County’s youth remains a serious problem in the County, contributing significantly to the incidence of adolescent crime, addiction, sexual assault, and driving after drinking;¹⁴
- l) **WHEREAS**, the County of Marin affirmatively opposes the acceptance of alcohol sponsorship and sponsorship signs in connection with the municipality-sponsored Marin County Fair, where persons under the age of 21 years are admitted;
- m) **WHEREAS**, Healthy Marin Partnership, Marin County Office of Education, Bay Area Community Resources, Marin County Drinking Driver Program and Communities Mobilizing for Change on Alcohol Program Youth Coalitions strongly endorse a restriction on alcohol industry sponsorship and alcohol industry sponsorship signs at the Marin County Fair as a means to promote consistent educational messages to children and to reduce youth alcohol-related problems;¹⁵ and

n) **WHEREAS**, the County of Marin Board of Supervisors therefore determines that this ordinance regulating alcohol beverage sponsorship and alcohol beverage sponsorship signs at the Marin County Fair is a reasonable and necessary means to protect and promote the health, safety, and general welfare of the youth of the County of Marin.

6.09.030 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. "Marin County Fair" means the annual Marin County Fair traditionally held over the 4th of July at the publicly-owned Marin County Fairgrounds located adjacent to the Marin County Civic Center in San Rafael, CA.
- c. "Member of the alcoholic beverage industry" includes licensed manufacturers, brewers, distillers, distributors, wholesalers, and sellers of alcoholic beverages.
- d. "Sponsorship" means a business arrangement between the County of Marin or an event organizer under contract with the County, on the one hand, and a member of the alcoholic beverage industry, on the other, whereby the member of the alcoholic beverage industry contributes funds, goods, or services to an event to be held at the Marin County Fair in return for recognition, acknowledgement, or other promotional consideration.
- e. "Sponsorship signs" means any manner of advertising, promotional, or sponsorship signage, or any representation, image, artwork, photograph, logo, graphic, device, display, regalia, insignia, indicia, design, slogan, trade name, brand name, product name, permittee or licensee name, advertising specialties, marketing services, or other materials of a member of the alcoholic beverage industry, indicating the participation of the member of the alcoholic beverage industry in the sponsorship of all or part of the Marin County Fair, including the sponsorship or naming of all or part of the event at the Marin County Fair, wherever located, whether indoor or outdoor.

6.09.040 Prohibition of Alcohol Beverage Sponsorship and Sponsorship Signs of Alcoholic Beverages at the Marin County Fair

- a. No member of the alcoholic beverage industry may sponsor the Marin County Fair, erect or cause to be erected any type of alcohol beverage sponsorship signs at the Marin County Fair.

6.09.050 Penalty for Violation

- a. Any person or business entity that violates any provision of this ordinance shall be guilty of an infraction and, upon a finding of such a violation by the County Administrative Officer or his/her designee, 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.
- e. In addition to the other remedies provided in this Section, any violation of this ordinance may be enforced by a civil action brought by the County of Marin. In such action, County 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 ordinance involving the same sponsorship sign, that the sponsorship sign constitutes a public nuisance.
- f. Other remedies as set forth in the County of Marin Zoning Code (Title 22) shall also apply to this ordinance, if applicable.
- g. A party found in violation has a right to seek a Writ of Mandamus and/or Prohibition to the Marin Superior Court in order to obtain review of a finding of violation.

6.09.060 Severability

If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this section, which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

ORDINANCE END NOTES

¹ California Healthy Kids Survey (2003/04); California Student Survey (2003/04); Youth Risk Behavior Survey (2003/04).

² Grant, B.F. "The Impact of a Family History of Alcoholism on the Relationship Between Age at Onset of Alcohol Use and DSM-IV Alcohol Dependence: Results from the National Longitudinal Alcohol Epidemiologic Survey," *NIAAA's Epidemiologic Bulletin No. 39. Volume 22, No. 2, 1998.*

³ *Denver Area Educ. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 746, 116 S.Ct. 2374, 2386, (1996) (plurality opinion) (upholding restrictions on programming imposed by the Cable Television Consumer Protection and Competition Act as a means of protecting children from indecent programming). In the context of the radio medium, the Court has approved extra restrictions on indecent speech because of the pervasiveness of the medium and the presence of children in the audience. See *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 685, 106 S.Ct. 3159, 3165, (1986) (cited for the proposition that "[a] high school assembly or classroom is no place for a sexually explicit monologue directed towards an unsuspecting audience of teenage students"); *FCC v. Pacifica Foundation*, 438 U.S. 726, 750-51, 98 S.Ct. 3026, 3040-41 (1978) (comparing indecent speech during hours when children are listening to the proverbial pig in the parlor); see also *Action for Children's Television v. FCC*, 58 F.3d 654, 657 (D.C.Cir.1995) (upholding the Public Telecommunications Act against a First Amendment challenge based on the state's compelling interest in protecting minors), cert. denied, --- U.S. ---, 116 S.Ct. 701 (1996). Similarly, the Supreme Court has sustained a law that protected children from non-obscene literature. See *Ginsberg v. New York*, 390 U.S. 629, 639-40, 88 S.Ct. 1274, 1280-81 (1968). And, while it has acknowledged a right to private possession of adult pornography in the home, see *Stanley v. Georgia*, 394 U.S. 557, 566, 89 S.Ct. 1243, 1248-49 (1969), the Court has clearly distinguished child pornography and allowed a stronger legislative response "to destroy a market for the exploitative use of children." *Osborne v. Ohio*, 495 U.S. 103, 109, 110 S.Ct. 1691, 1696 (1990); see also *New York v. Ferber*, 458 U.S. 747, 759, 102 S.Ct. 3348, 3355-56 (1982). The underlying reason for the special solicitude of children was articulated long ago: "A democratic society rests, for its continuance, upon the healthy, well- rounded growth of young people into full maturity as citizens." *Prince v. Massachusetts*, 321 U.S. 158, 168, 64 S.Ct. 438, 443 (1944). See also, Memorandum to Board of Supervisors from Jack F. Govi, Assistant County Counsel, January 11, 2006 – "Legal Cases Referenced in Sponsorship Ordinance."

⁴ See, e.g., *Central Hudson Gas & Elec. v. Pub. Serv. Comm'n*, 447 U.S. 557, 569 (1980) regarding advertising and demand for electricity); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984) (regarding alcohol advertising and consumption); *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4th Cir. 1996), cert. denied 117 S.Ct. 1569 (1997). See also, Memorandum to Board of Supervisors from Jack F. Govi, Assistant County Counsel, January 11, 2006 – "Legal Cases Referenced in Sponsorship Ordinance."

⁵ Hastings, G., Anderson, S., Cooke, E., Gordon, R. "Alcohol marketing and young people's drinking: A review of the research." *Journal of Public Health Policy*. 2005; 26: 296-311. Snyder, L.B., Milici, F., Slater, M., Sun, H., and Strizhakova, Y. "Effects of Alcohol Advertising on Drinking Among Youth." *Archive of Pediatrics & Adolescent Medicine-Volume 160 No.1, January 3, 2006.*

⁶ See, e.g., Grube, J., and Wallack, L. "Television beer advertising and drinking knowledge, beliefs, and intentions among schoolchildren." *American Journal of Public Health* 84:254-0, 1994; Grube, J. "Television Alcohol Portrayals, Alcohol Advertising, and Alcohol Expectancies Among Children and Adolescents." In Martin, S., ed., *The Effects of the Mass Media on the Use and Abuse of Alcohol*, Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, Research Monograph No. 28, 1995,

pp. 105-21; Kusserow, R. "Youth and Alcohol: Controlling Alcohol Advertising That Appeals to Youth," *Washington, DC: Department of Health and Human Services, Office of Inspector General, OEI-09-01-00654, November 1991*; Slater, M., et al., "Male adolescents' reactions to TV beer advertisements: the effects of sports content and programming context," *Journal of Studies on Alcohol* 57: 425-33, 1996.

⁷ Collins, R.L., T. Schell, P.L. Ellickson, and D. McCaffrey, "Predictors of beer advertising awareness among eighth graders." *Addiction* 98: 1297-1306, 2003.

⁸ Grube, J., "Television Alcohol Portrayals, Alcohol Advertising, and Alcohol Expectancies Among Children and Adolescents." In Martin, S., ed., *The Effects of the Mass Media on the Use and Abuse of Alcohol*. Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, Research Monograph No. 28, 1995, pp. 105-21.

⁹ Center on Alcohol Marketing and Youth – camy.org, "Youth Exposure to Alcohol Advertising," – Source: TNS Media Intelligence/CMR (Miller-Kaplan Associates).

¹⁰ Federal Trade Commission, Appendix B: "Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers." *Washington, DC: Federal Trade Commission, Appendix B, September, 1999*.

¹¹ *Packer Corp. v. Utah*, 285 U.S. 105, 110-111, 52 S.Ct. 273 (1931) (outdoor advertising); *Anheuser-Busch v. Schmoke*, *supra*, 101 F.3d at 328 (outdoor advertising).). See also, Memorandum to Board of Supervisors from Jack F. Govi, Assistant County Counsel, January 11, 2006 – "Legal Cases Referenced in Sponsorship Ordinance."

¹² See *Anheuser-Busch v. Schmoke*, *supra*, 101 F.3d at 328 (outdoor advertising). See also, Memorandum to Board of Supervisors from Jack F. Govi, Assistant County Counsel, January 11, 2006 – "Legal Cases Referenced in Sponsorship Ordinance."

¹³ Farley, Jim, Letter to Marin County Counsel, December 20, 2005.

¹⁴ Condon, Catherine, Memorandum to Marin County Board of Supervisors, December 28, 2005; "Efforts to Enforce Youth Access to Alcohol; Community Indicators of Alcohol and Drug Abuse Risk: Marin County (2004);" Marin County Division of Alcohol, Drug and Tobacco Programs. Prevention Plan for the Reduction of Binge Drinking and Related Community Problems Among Youth (2005)."

¹⁵ Letters of Support to Marin County Board of Supervisors: Healthy Marin Partnership - February 2, 2005; Marin County Office of Education - February 8, 2005; Bay Area Community Resources - February 8, 2005; Marin County Drinking Driver Program - February 23, 2005; Communities Mobilizing for Change on Alcohol Program Youth Coalitions - Three letters of support – all dated February 6, 2005.