

**ORDINANCE No.** \_\_\_\_\_

**AN ORDINANCE OF THE MUNICIPALITY OF** \_\_\_\_\_

**RESTRICTING ALCOHOLIC BEVERAGE SPONSORSHIP AND SPONSORSHIP SIGNS AT CERTAIN MUNICIPALLY SPONSORED EVENTS HELD IN PUBLIC PARKS**

**SECTION 1: 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 advertisements of alcoholic beverages and to project a wholesome, family-oriented municipality image that rejects the purchase or consumption of alcoholic beverages by persons less than 21 years of age.

**SECTION 2: FINDINGS**

The governing body of [name of municipality], after completing a legally noticed public hearing, finds the following:

- a) WHEREAS, Section [XXX] State Alcoholic Beverage Code [insert appropriate citation] makes it unlawful for a person under the age of 21 years to purchase, attempt to purchase, or consume 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 both state and federal surveys, alcohol is overwhelmingly and consistently the most widely used drug at all adolescent age levels. A child who begins alcohol use prior to age 15 is four times more likely to experience alcohol dependence than one who refrains from alcohol use until age 21;<sup>i</sup>
- c) WHEREAS, the National Research Council and Institute of Medicine stated that underage drinking has many serious consequences, including accidental death or injury, violence, risky sexual behavior, poor school performance, suicide and unwanted sexual activity;<sup>ii</sup>
- d) WHEREAS, Monitoring the Future, the annual federal survey of drug use among school children found that nationally in 2002, 47% of eighth-graders, 66.9% of 10<sup>th</sup>-graders and 78.4% of 12<sup>th</sup>-graders reported alcohol use, while 21.3% of eighth-graders, 44% of 10<sup>th</sup>-graders and 61.6% of 12<sup>th</sup>-graders reported that they had experienced drunkenness;<sup>iii</sup>  
[Insert state statistics if available]

- e) 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;<sup>iv</sup>
- f) WHEREAS, the federal courts have held that there is a positive relationship between both alcoholic beverage advertising and consumption of the advertised products;<sup>v</sup>
- g) WHEREAS, an extensive set of research studies supports the federal courts' judicial notice that alcoholic beverage advertising influences underage drinking.<sup>vi</sup> These and other studies have shown that:
1. 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.<sup>vii</sup>
  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;<sup>viii</sup>
  3. Exposure to and liking of alcohol advertisements affects whether young people will drink alcohol.<sup>ix</sup>
  4. 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;<sup>x</sup>
  5. [Local studies or surveys of youth of the city of \_\_\_\_\_ show that \_\_\_\_\_;]
  6. Similar studies of the influence of tobacco advertising show that tobacco advertising and promotional materials influence the likelihood of young teenagers experimenting with tobacco;<sup>xi</sup>
- h) WHEREAS, recent studies have shown that those research reports that have failed to find a causal connection between alcohol advertising and youth consumption are methodologically flawed and do not provide a basis for refuting the evidence that such a connection does exist;<sup>xii</sup>
- i) WHEREAS, \$1.9 billion was spent on alcohol advertising in measured media (television, radio, print, outdoor, major newspapers and Sunday supplements) in 2002,<sup>xiii</sup> 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,<sup>xiv</sup> suggesting that the alcohol industry spent a total of \$5.7 billion or more on advertising and promotion in 2002;

- j) WHEREAS, the municipality of \_\_\_\_\_ has strongly supported classroom education and other youth programs designed to reduce youth alcohol use and prevent youth alcohol-related problems including \_\_\_\_\_; and, outdoor alcohol advertising that encourages and glamorizes alcohol use in areas where children reside, play, recreate, and attend civic events, religious services, and school undercuts these educational efforts;
- l) WHEREAS, [relevant local educational, child protection, and public health groups] strongly endorse a restriction on outdoor alcohol advertising as a means to promote consistent educational messages to children and to reduce youth alcohol-related problems;
- m) WHEREAS, outdoor advertising, sponsorship, and sponsorship signs are unique and distinguishable types of product promotion and brand marketing that subject the public to involuntary and unavoidable forms of solicitation;<sup>xv</sup>
- n) WHEREAS, sponsorship and sponsorship signs are permitted at certain events held in public parks in the municipality of \_\_\_\_\_, including municipally sponsored events such as the Fourth of July, Juneteenth, and Cinco de Mayo; persons under the age of 21 years attend events held in public parks, including municipality-sponsored events; sponsorship and sponsorship signs 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 parks in publicly visible locations, including, but not limited to, outdoor billboards, awnings, electric signs, sides of buildings, screens, benches, barriers, event stages, fences, signs attached to poles, posts or other figures, and freestanding signboards. Sponsorship signs also appear at events in public parks in the form of inflatables, costumed product characters, logo-identified vehicles and staff, stage sponsorship, giveaways, and product sampling, 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,<sup>xvi</sup>

- o) WHEREAS, the municipality of \_\_\_\_\_ has conducted an assessment to distinguish public park events frequented by persons under the age of 21 years from adults-only public park events, and the results of that study are incorporated herein;
- p) WHEREAS, the municipality of \_\_\_\_\_ has conducted an assessment showing that restricting sponsorship and sponsorship signs at public park events attended by persons less than 21 years of age directly advances the municipality's effort to send a message opposing drinking by underage youth and to avoid a misimpression that it endorses alcohol consumption by underage youth;
- q) 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 billboards, sponsorship of events on private property, television, radio, magazines, newspapers, and point-of-sale;
- r) WHEREAS, this ordinance only restricts the "time, place and manner" of alcoholic beverage sponsorship and sponsorship signs at municipally-sponsored public park events attended by persons under the age of 21 years; it does not directly regulate the sale of alcohol and does not unduly burden legitimate business activities or persons licensed by the [appropriate licensing body] to sell alcoholic beverages;
- s) WHEREAS, the municipality has made numerous and substantial efforts to enforce underage drinking laws, by [list efforts by the municipality to educate youth with respect to underage drinking and to enforce existing laws to reduce underage drinking or the consequences of underage drinking]. Despite these efforts, alcohol use by the municipality's youth remains a serious problem in the municipality, contributing significantly to the incidence of adolescent crime, suicide, drowning, truancy, and driving under the influence;
- t) WHEREAS, the municipality of \_\_\_\_\_ affirmatively opposes the sale of alcoholic beverages to, and drinking of alcoholic beverages by, its underage youth;

- u) WHEREAS, the municipality of \_\_\_\_\_ affirmatively opposes the acceptance of alcohol sponsorship and sponsorship signs in connection with municipality-sponsored events held in public parks to which persons under the age of 21 years are admitted;
- v) WHEREAS, this municipality council therefore determines that this ordinance regulating outdoor alcohol advertising is a reasonable and necessary means to protect and promote the health, safety, and general welfare of the youth of the municipality of \_\_\_\_\_;

**NOW THEREFORE:**

**BE IT ORDAINED BY THE GOVERNING BODY**

**OF THE MUNICIPALITY OF \_\_\_\_\_, STATE of \_\_\_\_\_:**

**SECTION 3: 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) “Municipality-sponsored event” means an event for which the municipality of \_\_\_\_\_ agrees 1) to contribute funds, goods, or services in return for recognition, acknowledgment or other promotional consideration; or 2) to act as a beneficiary of revenues either directly or indirectly generated from alcohol sponsorship.
- c) “Municipality-sponsored adults-only event” means a municipality-sponsored event at which the attendance by persons under the age of 21 years is prohibited.
- d) “Municipality-sponsored event for families” means a municipality-sponsored event that families with children under 21 years of age may attend, a municipality-sponsored event intended for the entertainment of families with children under 21 years of age, or a municipality-sponsored event featuring activities geared primarily to families with children under 21 years of age.
- e) “Municipality-sponsored event for youth” means a municipality-sponsored event that persons under 21 years of age may attend, a municipality-sponsored event intended for the

entertainment of persons under 21 years of age, or a municipality-sponsored event featuring activities geared primarily to persons under 21 years of age.

- f) “Event” means a social occasion or activity held in a public park.
- g) “Member of the alcoholic beverage industry” includes licensed manufacturers, brewers, distillers, distributors, wholesalers, and sellers of alcoholic beverages.
- h) “Non-municipality-sponsored event” is an event that is not a municipality-sponsored event within the meaning of subsections (b), (c), (d), or (e).
- i) “Public park” means any public park owned, operated, or controlled by the municipality of \_\_\_\_\_.
- j) “Publicly visible locations” include, but are not limited to, outdoor billboards, awnings, electric signs, sides of buildings, screens, benches, barriers, stages, fences, signs attached to poles, posts or other figures, and freestanding signboards, wherever located, whether indoor or outdoor, however manufactured, and comprising whatever materials.
- k) “Sponsorship” means a business arrangement between the municipality of \_\_\_\_\_ or an event organizer under contract with the municipality, 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 in a public park in return for recognition, acknowledgment, or other promotional consideration.
- l) “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 or sponsorship of all or part of an event in a public park, including the

sponsorship or naming of all or part of the event in a public park, wherever located, whether indoor or outdoor.

#### **SECTION 4: ALCOHOLIC BEVERAGE SPONSORSHIP AND SPONSORSHIP SIGNS**

- a) No member of the alcoholic beverage industry may advertise, promote, or sponsor an event unless authorized by a permit for a special event issued by the municipality of \_\_\_\_\_.
- b) Notwithstanding subsection (a) of this section, no member of the alcoholic beverage industry may advertise, promote, or sponsor a municipality-sponsored event for families or a municipality-sponsored event for youth.
- c) This ordinance shall not be construed to permit sponsorship or sponsorship signs that are otherwise restricted or prohibited by law.

#### **SECTION 5: PUBLIC SERVICE ADVERTISING**

This ordinance 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 sponsorship signs or otherwise 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.

#### **SECTION 6: APPLICATION FOR PERMIT FOR SPECIAL EVENT**

- a) Any member of the alcoholic beverage industry desiring a Special Event Permit to engage in sponsorship of or to place sponsorship signs at a municipality-sponsored event shall file an application with the Special Event Permit Administrator of the Special Event Permit Administration Section of the municipality of \_\_\_\_\_ Department.
- b) The application shall be filed on a form to be furnished by the Special Event Permit Administrator or by his or her designee. It shall set forth the following information:
  - 1. The name and address of the applicant;

2. The date(s) and time(s) of the event to be sponsored;
3. A general description of the event for which a permit is sought and the manner in which the applicant shall sponsor the event. Such description shall include information on the following:
  - a. The type of event for which the applicant seeks sponsorship.
  - b. Whether the event is a municipality-sponsored event.
  - c. The size of anticipated attendance at the planned event.
  - d. Whether persons under 21 years of age are permitted to attend the event.
  - e. The anticipated percentage of persons under 21 years of age who are likely to attend the event.
  - f. The types of entertainment and activities that are anticipated to occur at the event, including the type of entertainment and activities intended for families with children under 21 years of age and the type of entertainment and activities intended for persons under 21 years of age.
  - g. The percentage of entertainment or activities intended for families with children under 21 years of age.
  - h. The percentage of entertainment or activities intended for persons under 21 years of age.
  - i. Whether potentially risky activity, including the consumption of alcohol, is anticipated to occur at the event.
  - j. Whether alcoholic beverages are going to be sold or consumed at the event.
  - k. The anticipated location of the sale or consumption of alcoholic beverages at the event.
4. A general description of the proposed sponsorship signs for which a permit is sought, prepared in such a way that the manner, location and size of any proposed sponsorship signs, the proximity of the proposed sponsorship signs to entertainment and activities for persons under 21 years of age, and the visibility of proposed sponsorship signs to persons under 21 years of age may be readily ascertained and identified. Such description shall include information on the following:



- a. The type of sponsorship signs and their intended locations, including publicly visible locations.
  - b. The location at the event of sponsorship signs, their proximity to entertainment and activities for persons under 21 years of age, and their visibility to persons under 21 years of age.
  - c. Whether sponsorship signs appear to be targeting families and/or persons less than 21 years of age.
  - d. The proximity of the sale or consumption of alcoholic beverages to entertainment and activities for persons under 21 years of age.
5. A diagram indicating where any proposed sponsorship signs are desired to be placed at the event, prepared in such a way that the manner, location and size of any proposed sponsorship signs, the proximity of the proposed sponsorship signs to entertainment and activities for persons under 21 years of age, and the visibility of proposed sponsorship signs to persons under 21 years of age may be readily ascertained and identified.
- c) Where the municipality of \_\_\_\_\_ is not the organizer of the event, the applicant for any permit shall offer evidence that the person or business entity organizing the event has consented to the applicant's sponsorship of the event and to the applicant's sponsorship signs.
  - d) If the applicant for a permit is engaged in the outdoor advertising business, the application shall contain the number of the state license. *[Optional]*
  - e) If the application meets the requirements of Section 7 following review by the Special Event Permit Administrator, the Special Event Permit Administrator or his or her designee shall, within 10 days after compliance and upon payment by the applicant of a \$\_\_\_ fee, issue a permit for sponsorship and sponsorship signs for the special event for which the permit is issued.
  - f) Each permit provided in this section shall carry an identification number and shall entitle the holder to place sponsorship signs described in the application.
  - g) The revenue from payment of permit fees shall be used exclusively to pay the administrative costs of issuing permits and enforcement of this ordinance.

## **SECTION 7: SPECIAL EVENT PERMITS ADMINISTRATION**

- a) The municipality of \_\_\_\_\_ shall appoint a Special Event Permit Administrator who is directed to administer and enforce the terms and conditions of this ordinance and all other provisions of laws relating to signs. The Special Event Permit Administrator is empowered to delegate the duties and powers granted by this section to other persons under his or her direct supervision. The Special Event Permit Administrator and such other person(s) shall constitute the Special Event Permit Administration Section of the municipality of \_\_\_\_\_ Department.
- b) The Special Event Permit Administrator has authority to issue Special Event Permits as required by this ordinance. In determining whether to grant such a permit for permitting sponsorship and sponsorship signs at an event by a member of the alcoholic beverages industry, the Special Event Permit Administrator or his or her designee may consider the following factors:
1. The type of event for which the applicant seeks sponsorship.
  2. Whether the event is a municipality-sponsored event.
  3. The size of anticipated attendance at the planned event.
  4. Whether persons under 21 years of age are permitted to attend the event.
  5. The anticipated percentage of persons under 21 years of age who are likely to attend the event.
  6. The types of entertainment and activities that are anticipated to occur at the event, including the type of entertainment and activities intended for families with children under 21 years of age and the type of entertainment and activities intended for persons under 21 years of age.
  7. The percentage of entertainment or activities intended for families with children under 21 years of age.
  8. The percentage of entertainment or activities intended for persons under 21 years of age.
  9. The type of sponsorship signs and their intended locations, including publicly visible locations.
  10. The location at the event of sponsorship signs, their proximity to entertainment and activities for persons under 21 years of age, and their visibility to persons under 21 years of age.

11. Whether sponsorship signs appear to be targeting families and/or persons less than 21 years of age.
12. Whether potentially risky activity, including the consumption of alcohol, is anticipated to occur at the event.
13. Whether alcoholic beverages are going to be sold or consumed at the event.
14. The anticipated location of the sale or consumption of alcoholic beverages at the event.
15. The proximity of the sale or consumption of alcoholic beverages to entertainment and activities for persons under 21 years of age.

The above list of factors is not intended to be an exhaustive list, and the Special Event Permit Administrator or his or her designee may consider other factors in his or her determination of whether to grant a permit.

- c) Based on the factors listed in subsection (b), the Special Event Permit Administrator or his or her designee shall determine whether the event for which a permit is sought is one of the following:
  1. A municipality-sponsored event.
  2. A municipality-sponsored adults-only event.
  3. A municipality-sponsored event for families.
  4. A municipality-sponsored event for youth.
  5. A non-municipality-sponsored event.
- d) After making the determination required in (c) and based on the factors listed in subsection (b), the Special Event Permit Administrator or his or her designee shall determine whether to grant the permit to the applicant and what, if any, conditions shall be placed on the permit, if granted:
  1. If the Special Event Permit Administrator or his or her designee determines that an event for which a permit is sought is a municipality-sponsored event for families or is a municipality-sponsored event for youth, the Special Event Permit Administrator or his or her designee shall deny the application for a Special Event Permit.
  2. If the Special Event Permit Administrator or his or her designee determines that an event for which a permit is sought is a municipality-sponsored adults-only event and that the granting of the application is in the public interest, the Special Event Permit

Administrator or his or her designee may grant the application, but shall impose such conditions on the permit concerning time, place, manner, and other conditions as may be appropriate and in the public interest. In granting the permit, the Special Event Permit Administrator or his or her designee shall not impose conditions that ensure minimal exposure of alcohol sponsorship and alcohol sponsorship signage to underage youth.

3. If the Special Event Permit Administrator or his or her designee determine that the event for which a permit is sought is a non-municipality-sponsored event and that the granting of the application is in the public interest, the Special Event Permit Administrator or his or her designee may grant the application, but shall impose such conditions on the permit concerning time, place, manner, and other conditions as may be appropriate and in the public interest. In granting the permit, the Special Event Permit Administrator or his or her designee shall not impose conditions that ensure minimal exposure of alcohol sponsorship and alcohol sponsorship signage to underage youth.

- e) The Special Event Permit Administrator shall make such inspections as may be necessary and initiate appropriate action to bring about compliance with this ordinance and other applicable law if such inspection discloses any instance of noncompliance. The Special Event Permit Administrator shall investigate thoroughly any complaints of alleged violations of this ordinance.

## **SECTION 8: APPEALS**

Any person aggrieved by the action of the Special Event Permit Administrator or his/her designee in denying an application for issuance of a special event permit, or in granting an application for issuance of a special event permit with specified conditions shall have the right to appeal said decision to the municipality council pursuant to the provisions of \_\_\_\_\_ of the Municipality of \_\_\_\_\_ Municipal Code.

## **SECTION 9: VIOLATIONS, PENALTIES, CIVIL ACTIONS**

- 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 [relevant municipality administrative officer], 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 municipality of \_\_\_\_\_. In such action, the municipality of \_\_\_\_\_ 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 municipality of \_\_\_\_\_ Zoning Code shall also apply to this ordinance.
- g) A party found in violation has a right to appeal the finding of violation to [relevant municipality official, municipality council, and/or judicial court].

#### **SECTION 10: EFFECTIVE DATE**

The effective date of this ordinance shall be thirty (30) days from the date of its enactment.

- a) Sponsorship signs regulated by this ordinance and in place on the effective date of this ordinance may remain in place for no more than 30 additional days unless a waiver is granted pursuant to subsection (b) of this section.

b) Persons whose sponsorships and sponsorship signs are regulated by this ordinance may apply, within \_\_\_ days of the effective date of this ordinance, for an exemption based on written documentation to the Special Event Permit Administrator that demonstrates that this ordinance unreasonably interferes with any contracts executed before the date of the ordinance's enactment. Failure of the affected person to provide timely written documentation for an exemption shall be grounds for denial of the exemption. Upon receipt of proper documentation, the Special Event Permit Administrator may grant an exemption for the period of the pre-existing contract or for one year, whichever is shorter. The right to renew a pre-existing contract shall not affect the calculation of the effective period of a pre-existing contract.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 200\_

/s/ \_\_\_\_\_

**Mayor**

**ATTEST:**

/s/ \_\_\_\_\_

**Municipality Secretary/Clerk**

**APPROVED AS TO FORM:**

/s/ \_\_\_\_\_

**Municipality Attorney**

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<sup>i</sup> Grant, B.F. and D.A. Dawson. Age at onset of alcohol use and its association with DSM-IV alcohol abuse and dependence: Results from the National Longitudinal Alcohol Epidemiologic Survey *Journal of Substance Abuse* 9:103-110, 1997.

<sup>ii</sup> National Research Council and Institute of Medicine. *Reducing Underage Drinking: A Collective Responsibility*. Committee on Developing a Strategy to Reduce and Prevent Underage Drinking, Richard J. Bonnie and Mary Ellen O'Connell, Editors. Board on Children, Youth and Families, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press, 2003, p. 60.

<sup>iii</sup> Johnston, L.D., P.M. O'Malley, and J.G. Bachman. *Monitoring the Future National Results on Adolescent Drug Use: Overview of Key Findings, 2002*. Bethesda, MD: National Institute on Drug Abuse, 2003.

<sup>iv</sup> *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).

<sup>v</sup> See, e.g., *Central Hudson Gas & Elec. v. Pub. Serv. Comm'n*, 447 U.S. 557, 569 (1980) (regarding advertising and demand for electricity); *Capitol Broadcasting Co. v. Mitchell*, 33 F.Supp. 582, 586 (D.D.C. 1971) (regarding cigarette commercials broadcast on the electronic media and potential influence on young people); *Dunagin v. City of Oxford*, 718 F.2d 738, 747-51 (1983) (regarding alcohol advertising and consumption); *Oklahoma Telecasters Ass'n v. Crisp*, 669 F.2d 490 (10<sup>th</sup> Cir. 1983), rev'd on other grounds sub nom. *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984) (regarding alcohol advertising and consumption); *Anheuser-Busch v. Schmoke*, 101 F.3d 325 (4<sup>th</sup> Cir. 1996), cert. denied 117 S.Ct. 1569 (1997).

<sup>vi</sup> See, e.g., Aiken, P. et al. Television advertisements for alcoholic drinks do reinforce under-age drinking. *British Journal of Addiction* 83:1399-1419, 1988; Atkin, C. and Block, M. *Content and Effects of Alcohol Advertising*. Washington, DC: Bureau of Tobacco, Alcohol and Firearms, Report PB-82-12314, 1981; 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

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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; Martin, S.E. et al. Alcohol Advertising and Youth. *Alcoholism-Clinical and Experimental Research* 26:900-906, June 2002; 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.

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

<sup>viii</sup> 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.

<sup>ix</sup> Grube, J. *Alcohol Advertising—A Study of Children and Adolescents*, available at [http://www.prev.org/prc/prc\\_videopresentations\\_grube\\_aasca.html](http://www.prev.org/prc/prc_videopresentations_grube_aasca.html) (last accessed December 9, 2003).

<sup>x</sup> Center on Alcohol Marketing and Youth, *Exposure of African-American Youth to Alcohol Advertising* (Washington, D.C.: Center on Alcohol Marketing and Youth, 2003), available at <http://camy.org/research/> (last accessed November 5, 2003); Center on Alcohol Marketing and Youth, *Exposure of Hispanic Youth to Alcohol Advertising* (Washington, D.C.: Center on Alcohol Marketing and Youth, 2003), available at <http://camy.org/research/> (last accessed November 5, 2003).

<sup>xi</sup> Campaign for Tobacco-Free Kids, *Tobacco Marketing That Reaches Kids Point-of-Purchase Advertising and Promotions* (August 20, 2003), available at <http://www.tobaccofreekids.org/research/factsheets/pdf/0075.pdf> (last accessed November 5, 2003); see, e.g., John P. Pierce, PhD et al, *Tobacco Industry Promotion of Cigarette and Adolescent Smoking*, 279(7) *J. Am. Med. Assoc.* 511 (1998) (finding “tobacco promotional activities are causally related to the onset of smoking”); U.S. Dep’t of Health & Human Servs. et al, *Preventing Tobacco Use Among Young People: A Report of the Surgeon General* 163 (1994).

<sup>xii</sup> Saffer, H. Studying the effects of alcohol advertising on consumption. *Alcohol Health & Research World* 20:266-72, 1996; Thorson, E. Studies of the effects of alcohol advertising: Two underexplored aspects. 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. 159-96.

<sup>xiii</sup> TNS Media Intelligence/CMR; Spending on radio from Miller-Kaplan Associates.

<sup>xiv</sup> 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, 1999, p. iii.

<sup>xv</sup> *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).

<sup>xvi</sup> See *Anheuser-Busch v. Schmoke*, *supra*, 101 F.3d at 328 (outdoor advertising).