

4-22

Agenda 10

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Ordered: That the City Manager provide ~~an~~ ^{the City Council} with a
a report and recommendations from
the Commission on Persons with Disabilities
regarding A-frame signs on sidewalks

4-22

Agenda 10

K B

Ordered: That the City M be + Lb is
requested to provide a report from
the City Solicitor regarding the status
of the ~~City of Boston~~ law suit
challenging Boston's regulation of news
paper boxes on sidewalks



City of Cambridge

Consent Agenda #10A

IN CITY COUNCIL

April 22, 1996

COUNCILLOR DAVIS

ORDERED: That the City Manager be and hereby is requested to provide the City Council with a report and recommendations from the Commission on Persons with Disabilities regarding A-frame signs on sidewalks.

In City Council April 22, 1996

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in cursive script, reading "D. Margaret Drury".

D. Margaret Drury
City Clerk



City of Cambridge

Consent Agenda #10B

IN CITY COUNCIL

April 22, 1996

COUNCILLOR BORN

ORDERED: That the City Manager be and hereby is requested to provide a report from the City Solicitor regarding the status of the law suit challenging Boston's regulation of newspaper boxes on sidewalks.

In City Council April 22, 1996

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

D. Margaret Drury

D. Margaret Drury
City Clerk



CITY OF CAMBRIDGE

Office of the City Solicitor
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April 11, 1996

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Limiting Alcohol and Cigarette Advertising;
Council Order #016 dated 4/1/96 and
Council Communication #013 dated 3/18/96

Dear Mr. Healy:

In the above-referenced Council Order and Communication (copies attached), the City Council asked for a report concerning what power it has to limit cigarette and alcohol advertising on signs and banners.

As a general principle, advertising is commercial speech entitled to First Amendment protection. Commercial speech may be regulated consistently with the First Amendment however, according to the four part test created by the U.S. Supreme Court in Central Hudson Gas & Electric Corp. v. Public Serv. Comm., 447 U.S. 557 (1980). See also, Maurice Callahan & Sons, Inc. v. Outdoor Advertising Board, 12 Mass.App.Ct. 536, 543-4 (1981). As stated in Central Hudson:

At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful

activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest." Id. at 566.

The federal Fourth Circuit Court of Appeals recently employed the Central Hudson analysis in Anheuser-Busch Inc. v. Schmoke, 63 F.3d 1305 (4th Cir. 1995) to uphold a City of Baltimore ordinance that bans outdoor advertising of alcoholic beverages, except in certain commercial and industrial zones, in liquor stores, on vehicles transporting alcoholic beverages, and on buses and cabs. First, there was no dispute that the first two parts of the test were met. Buying and drinking alcoholic beverages is lawful and the ordinance did not target misleading ads. Second, the City's interest in promoting the welfare and temperance of its minors was substantial.

Third, the Circuit Court found that it was reasonable for the city council to have concluded: that the ordinance directly and materially advances the City's interests because outdoor advertising is a unique medium that subjects the public to involuntary and unavoidable solicitation; that children are exposed daily to this advertising; and that it was reasonable for the city council to rely on research (even though the results of the research were not undisputed) showing a correlation between alcoholic beverage ads and underage drinking.

Fourth, although explaining that it was a close question, the Circuit Court found that given the City's effort to narrow the ordinance by exempting commercial and industrial zones, the

ordinance was not more extensive than necessary to serve the governmental interest at issue. What made it a close question was the breadth of the prohibition and the fact the advertising would be unavailable to the adult population to which advertisers should be able to direct their speech.

In Penn Advertising of Baltimore, Inc. v. Mayor and City Council of Baltimore, 63 F.3d 1318 (4th Cir. 1995), the Fourth Circuit upheld a similar ordinance enacted by the Baltimore City Council that restricted cigarette advertising. The Court first ruled that the ordinance did not conflict with federal and state laws that relate to cigarette advertising. It then again employed the Central Hudson test for commercial speech regulation to uphold the ordinance from a First Amendment challenge. The Court ruled that the ordinance directly advanced the City's stated public interest in reducing smoking by minors and was not more extensive than necessary to serve that interest.

The Court in both cases noted that the burden of justifying an ordinance that restricts speech falls on the City, but that the burden may be carried by citing studies, history or common sense. Anheuser-Busch at 1311-1312 and Penn Advertising at 1323. Before enacting its ordinances, Baltimore had conducted public hearings, received testimony and several studies supporting the factual findings on which the ordinances were based.

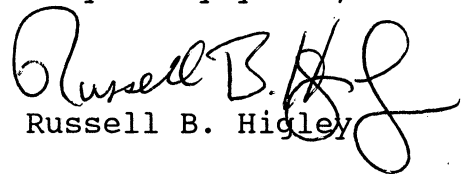
It appears, therefore, that if the First Circuit were to adopt the reasoning of the Fourth Circuit in Anheuser-Busch and in Penn Advertising, a limited regulation of alcoholic beverage and

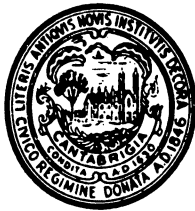
cigarette advertising by Cambridge could be found to be consistent with the First Amendment.

The Council also inquired generally about local procedures for deciding on the placement of advertising in public sidewalks or ways. Cambridge City Code Chapter 12.08 applies. Section 12.08.010 provides: "No sign, [or] advertising device...shall be placed or maintained in any public way until a permit therefor has been granted by the City Council. The permit shall be issued by the Superintendent of Streets and the fee shall be one dollar." Section 12.08.050 provides: "No advertising sign or banner shall be extended across any highway in the City except those of religious, fraternal or charitable organizations." Section 12.08.060 requires anyone granted a permit to post a bond in an amount fixed by the City Council. Section 12.08.070 provides a penalty for violations of the Chapter.

Please contact me if I can be of further assistance.

Very truly yours,


Russell B. Higley



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

April 22, 1996

To The Honorable, The City Council:

With reference to Awaiting Report Item No. 25, regarding a report on the power the City has to limit cigarette and alcohol advertising signs, please find attached a response from Russell Higley, City Solicitor.

Very truly yours,

Robert W. Healy
City Manager

RWH/dls

Consent Agenda #10

S-204

Relative to Awaiting Report Item
Number Twenty Five, regarding the
power the city has to limit cigarette
and alcohol advertising on signs.

In City Council April 22, 1996

*Referred to Ordinance
Committee.*

Orders Adopted.