ITEM NO. 27

STAFF REPORT

CITY OF OCEANSIDE

DATE: April 2, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Oceanside Police Department

SUBJECT: **INTRODUCTION OF AN ORDINANCE PROHIBITING DAYTIME LOITERING OF MINORS IN PUBLIC PLACES DURING SCHOOL HOURS**

SYNOPSIS

Staff and the Police and Fire Commission recommend that the City Council introduce an ordinance amending Chapter 16 of the Oceanside City Code by the addition of Sections 16.7 through 16.10 relating to daytime loitering of minors in public places on school days, and the amendment of Section 16.2 relating to definitions of words used in Chapter 16. The ordinance prohibits minors who are subject to compulsory education from being in public places during the hours of 8:30 a.m. to 1:30 p.m. on days that school is in session. The ordinance contains specific exceptions for legitimate activities. If enacted, a violation of the ordinance would constitute an infraction with a fine not to exceed two hundred and fifty dollars ($250) plus court costs, or by requirement that the minor perform county, city, school-approved work projects, community service, or both, in the discretion of the court.

BACKGROUND

In 2003 a study conducted by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) discovered that truancy, or unexcused absences from school, have been linked to serious delinquent activity in youth and is an indicator of significant future negative behavior in adults. The study cited truancy to be a contributing factor to substance abuse, gang activity, and involvement in daytime criminal activities such as burglary, auto theft and vandalism. More specifically within San Diego County, in 2002 the Grand Jury conducted a study of truancy and curfew practices with an emphasis on law enforcement, school, parental and community program coordination. The Grand Jury found that poor self-esteem, lack of confidence, lack of respect for authority and domestic family issues are among the key indicators of developing truants. Further review of statistical data found that since January 2007 the Oceanside Police Department has investigated eleven crime series involving robbery, residential burglary, graffiti and auto theft. Of the 47 cases closed as a result of arrest, 45.4 percent of those arrested were juveniles. This figure represents a 90 percent increase from the

previous year. Based on all of the case studies of cities that have implemented a daytime loitering and truancy ordinance, OPD feels strongly that daytime crime statistics will drop significantly. Milwaukee, Wisconsin, has experienced a 33 percent decrease in daytime burglary and a 29 percent decrease in daytime aggravated batteries since the implementation of their truancy initiative. Rohnert Park, California, saw a 75 percent lower daytime burglary rate after they began their truancy program titled "Stop, Cite and Return." Peoria, Arizona, implemented "Operation Save Kids" which targets truancy and has seen a 65 percent decrease in their daytime burglary.

Current state law allows police officers to stop and detain individuals who appear to be minors truant from school. The Education Code and the Welfare and Institutions Code violations do not provide criminal penalties. See Education Code section 48264. As a result, police officers currently have the authority to stop and detain minors to determine their truancy status and return to school those students determined to be truant; however, because there is no criminal penalty imposed, there is no intervention in the form of diversion, social services, required judicial appearance or criminal penalties when appropriate.

The Student Attendance Review Board (SARB) is currently utilized to identify chronic truants. SARB consists of representatives from the school district, the police department, the juvenile justice system, and social services to work with the truant and his/her family to get the student back in school. Unfortunately this happens after the student is identified as a chronic truant. Enactment of the proposed Daytime Loitering Ordinance would change this and allow for early identification and intervention. In addition, Oceanside Unified School District has been briefed on the intent to enact a Daytime Loitering Ordinance. The District strongly supports this measure and sees it as a measure to help keep students in school and to show the parents and students the partnership between the District and the City of Oceanside.

ANALYSIS

The proposed revisions to the ordinance would give officers who identify a student as a truant the authority to:

- Issue the student a citation for an infraction.
- Contact the student's parent(s) and educate them about their responsibilities as outlined in the ordinance.
- Refer the minor to the Police Department's diversion program. The diversion program has an extensive list of community outreach programs and social services available to address family-related concerns and challenges.

This ordinance is necessary to:

- Protect minors from becoming crime victims
- Prevent minors from taking part in criminal activity
- Identify and deter minors from becoming chronic truants

- Ensure early truancy intervention to provide education and social services to the minor and his/her family
- Support current state statutory mandates with a City ordinance for enforcement
- Ensure enforcement assistance is provided by the Juvenile Probation Department

The following jurisdictions have daytime loitering ordinances:

- Chula Vista
- City of San Diego
- City of Coronado
- County of San Diego
- El Cajon
- Escondido
- Imperial Beach
- Poway
- San Marcos
- Santee

FISCAL IMPACT

The Police Department does not anticipate additional costs to enforce the proposed ordinance. Because the District Attorney's Office has jurisdiction over all offenses involving minors, the City Attorney's Office does not anticipate incurring any costs in connection with the proposed ordinance.

COMMISSION OR COMMITTEE REPORT

The Police and Fire Commission reviewed this matter on February 23, 2008, and recommended adoption of the Daytime Loitering Ordinance. In addition, the Oceanside Community Safety Partnership, a collaborative created by the Council that has representation from various community groups, neighborhoods and local service providers, was also updated regarding the ordinance.

CITY ATTORNEY'S ANALYSIS

The City Attorney's Office has worked with the Police Department to draft this ordinance, and accordingly approves it as to form. The proposed ordinance adds new sections 16.7, 16.8, 16.9 and 16.10 to Chapter 16. The ordinance also amends existing section 16.2, Definitions, to add definitions of "emergency" and "establishment", and amends the definition of "parent", in order to provide clarity in interpreting the ordinance. A violation of the Daytime Loitering Ordinance is an infraction, punishable by a fine not to exceed $250 and/or the requirement to perform court approved work projects or community service. As with other infraction violations of the Oceanside City

Code, the fourth violation within a year is punishable as a misdemeanor pursuant to section 1.7(b)(3).

The language of the proposed additions to Chapter 16 is similar to the daytime truancy ordinance that was approved by the Second District Court of Appeal in Harrahill v. City of Monrovia (2003) 104 Cal.App.4th 761. Of the 18 cities in the County of San Diego, 9 (plus the County) have daytime loitering ordinances that provide for criminal penalties for minors. The language of most of these ordinances is similar in scope and intent to the proposed additions to Chapter 16. However, the penalties imposed against minors differ by jurisdiction. Seven, like the proposed ordinance, provide for infraction penalties, in most cases not to exceed $250, and/or the requirement to perform work mandated by the court. Two provide for misdemeanor or infraction penalties, and one provides for misdemeanor penalties only. Most of the ordinances in the County also provide for misdemeanor penalties for parents or guardians who knowingly, or by insufficient control, allow children to violate those ordinances. However, because parents could also be charged with a misdemeanor under Penal Code section 272(a) for this conduct, the proposed ordinance does not include separate parental liability provisions.

RECOMMENDATION

Staff and the Police and Fire Commission recommend that the City Council introduce an ordinance amending Chapter 16 of the Oceanside City Code by the addition of Sections 16.7 through 16.10 relating to daytime loitering of minors in public places on school days, and the amendment of Section 16.2 relating to definitions of words used in Chapter 16.

PREPARED BY:

Frank S. McCoy
Police Chief

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager _____

Attachment: Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING CHAPTER 16 OF THE OCEANSIDE CITY CODE BY THE ADDITION OF SECTIONS 16.7 THROUGH 16.10 RELATING TO DAYTIME LOITERING OF MINORS IN PUBLIC PLACES ON SCHOOL DAYS, AND THE AMENDMENT OF SECTION 16.2 RELATING TO DEFINITIONS OF WORDS USED IN CHAPTER 16.

WHEREAS, truancy has been linked to serious delinquent activity in minors and is an indictor of signifigant future negative behavior in adults;

WHEREAS, truancy is a contributing factor to substance abuse, gang activity, and involvement in daytime criminal activities such as burglary, auto theft and vandalism;

WHEREAS, poor self-esteem, lack of confidence, lack of respect for authority and domestic family issues are among the key indicators of developing truants;

WHEREAS, students who are absent from school are denied an education and unexcused absences result in a loss of state and federal funding to the detriment of all students;

WHEREAS, unsupervised students may involve themselves in unsafe activities by loitering in residential neighborhoods, business districts, or industrial centers;

WHEREAS, some unsupervised students may engage in criminal activity to the detriment of the community;

WHEREAS, jurisdictions that have adopted ordinances prohibiting daytime loitering and truancy have seen signifigant decrease in daytime burglary;

WHEREAS, some unsupervised students may become a burden on police who must return them to school, wait for parents to pick them up, and investigate any and all criminal activity related to the students' truancy;

WHEREAS, a special need exists for the adoption of a City ordinance to prohibit truancy of any minor person under the age of 18 who is subject to compulsory education or compulsory continuation education.

NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

SECTION 1. Sec. 16.2 of Chapter 16 of the Oceanside City Code is amended to read as follows:

Adult means any person eighteen (18) years of age and older.

Curfew hours means the hours between 10:00 p.m. and 5:30 a.m. of the following day.

Emergency includes but is not limited to fire, natural disaster, automobile accident, or requirement for immediate medical care for another person.

Establishment means any privately owned place of business operated for a profit to which the public is invited, including but not limited to, any place of amusement or entertainment.

Guardian means (1) a person who, under court order, is the guardian of the minor; or (2) a public or private agency with which the court has placed a minor.

Minor means any person under the age of eighteen (18).

Parent means a person who is the natural, adoptive or step parent of a person. "Parent" includes a court appointed guardian or other person eighteen (18) years of age or older, authorized by the parent, by a court order, or by a court appointed guardian to have the care and custody of the person.

Public place means a public place or any place open to the public or to which any member of the public has access, including, but not limited to, any public right-of-way, public grounds, dedicated open or trail space, or any privately owned land that is unsupervised and from which the public is not expressly excluded under applicable trespass laws, including but not limited to vacant lots, the parking lots and the common areas of schools, hospitals, apartment houses, office buildings, housing complexes, shopping centers, and malls.

Responsible adult means a parent, guardian, or adult person at least twenty-one (21) years old having the responsibility for the care, custody, and control of the subject minor.

SECTION 2. Chapter 16 of the Oceanside City Code is amended by adding SECTIONS 16.7, 16.8. 16.9 and 16.10 to read as follows:

SEC. 16.7. DECLARATION OF INTENT. The purpose of this Ordinance prohibiting daytime loitering of minors in public places on school days is to reduce the incidence of

juvenile truancy that plagues our schools and creates a burden upon the health, safety and welfare of the community. Students who are absent from school are denied an education; unexcused absences result in a loss of state and federal funding to the detriment of all students; unsupervised students may involve themselves in unsafe activities by loitering in residential neighborhoods, business districts, or industrial centers; some unsupervised students may engage in criminal activity to the detriment of the community; further some unsupervised students may become a burden on police who must return them to school, wait for parents to pick them up, and investigate any and all criminal activity related to the students' truancy. As a result, therefore, the City Council of the City of Oceanside finds and determines that a special need exists for the adoption of a City ordinance to prohibit truancy of any minor person under the age of 18, who is subject to compulsory education or compulsory continuation education, with certain specific exceptions set forth herein. It is further the intent of the City Council of the City of Oceanside to provide appropriate criminal sanctions against any minor who violates the provisions of this chapter.

SEC. 16.8. DAYTIME LOITERING OF MINORS IN PUBLIC PLACES ON SCHOOL DAYS.

(a) It is unlawful for any minor who is subject to compulsory education or to compulsory continuation education to loiter, idle, wander, or be in or upon the public streets, highways, roads, alleys, parks, playgrounds, or other public grounds, public places, public buildings, or the premises of any establishment, vacant lots or any unsupervised place between the hours of 8:30 a.m. and 1:30 p.m. on any day when school is in session for that minor.

(b) It is a defense to prosecution under Section 16.8(a):

(1) When the minor is accompanied by his or her parent or other adult having the care or custody of the minor;

(2) When the minor is on an emergency errand directed by his or her parent or other adult having care or custody of the minor;

(3) When the minor is going directly to, or coming directly from, his or her place of school-approved employment;

(4) When the minor is going to, or coming directly from, a medical appointment;

(5) When the minor has permission to leave the school campus for lunch and has in his or her possession a valid, school-issued, off-campus permit;

(6) When the minor is going directly to, or coming from, a compulsory alternative education program activity;

(7) When the minor is attending or, without any detour or stop, going to or returning from an official school, religious, or government-sponsored activity, or other recreational activity supervised by adults;

(8) When the minor is attending or, without detour or stop, going to or returning from an event or activity directly related to the medical condition of a parent;

(9) When the minor is officially enrolled in home schooling;

(10) When the minor has passed a general educational development test and received a California high school equivalency certificate;

(11) When the minor is exempt by law from compulsory education or compulsory continuation education; or

(12) When the minor is authorized to be absent from his or her school pursuant to the provisions of California Education Code section 48205, or any other applicable State or Federal law.

SEC. 16.9. ENFORCEMENT PROCEDURE.

Upon any violation of section 16.8, a peace officer may issue a citation to the minor and may detain the minor until he or she can be placed in the care and custody of his or her parent or may transport the minor to his or her home or to the school from which the minor is absent. If cited, the minor and a parent shall appear in court as directed in the citation. The parents may be advised of the fact that the minor was cited for a violation of Oceanside City Code section 16.8.

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SEC. 16.10. PENALTIES.

A violation of section 16.8 is an infraction subject to the provisions of section 1.7(b)(3). An infraction violation of section 16.8 may be punished by a fine not exceeding two hundred fifty dollars ($250.00) or by a requirement to perform county, city, or school-approved work projects or community service or both. If required to perform a project, the total time for performance shall not exceed twenty (20) hours over a period not to exceed sixty (60) days, during times other than a minor's hours of school attendance or a minor's hours of employment.

SECTION 3. Severability.

If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 4. The City Clerk of the City of Oceanside is hereby directed to publish this ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15) days after its passage in the North County Times, a newspaper of general circulation published in the City of Oceanside.

SECTION 5. This ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

INTRODUCED at a regular meeting of the City Council of the City of Oceanside, California, held on the ___ day of _____, 2008, and, thereafter,

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Oceanside, California, held on the ____ day of _____, 2008, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____
MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

SMCA FOR
_____
CITY ATTORNEY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING CHAPTER 16 OF THE OCEANSIDE CITY CODE BY THE ADDITION OF SECTIONS 16.7 THROUGH 16.10 RELATING TO DAYTIME LOITERING OF MINORS IN PUBLIC PLACES ON SCHOOL DAYS, AND THE AMENDMENT OF SECTION 16.2 RELATING TO DEFINITIONS OF WORDS USED IN CHAPTER 16