ITEM NO. 18

STAFF REPORT

CITY OF OCEANSIDE

DATE: May 14, 2008

TO: Honorable Mayor and City Councilmembers

FROM: City Attorney's Office

SUBJECT: **AMENDMENTS TO SECTION 20.40 OF THE OCEANSIDE CITY CODE RELATING TO THE CONSUMPTION OF ALCOHOL IN PUBLIC**

SYNOPSIS

Staff recommends that the City Council introduce an ordinance amending Oceanside City Code section 20.40 to prohibit consumption of alcohol in specified public places in accordance with State law.

BACKGROUND

Oceanside City Code section 20.40, subsection (a) currently prohibits simple possession of alcohol in specified public places. Subsection (b) prohibits consumption and/or possession of an open container of alcohol in other specified public places. Under State law, cities may regulate consumption of alcohol, and State law provides penalties for open containers where consumption is prohibited. Other cities within the county properly ban consumption of alcohol in specified public places, including beaches. See, e.g., San Diego Municipal Code § 56.94.

ANALYSIS

The proposed amendments will make it illegal to consume alcohol in all of the areas where simple possession, possession of an open container, and consumption is currently prohibited under subsections (a) and (b) of section 20.40. The current misdemeanor penalties for violations of section 20.40 will not change. In addition, Business & Professions Code section 25620 makes it an infraction for any person to possess an open container in a place where consumption of alcohol is banned by a local ordinance. Therefore, if section 20.40 is amended, persons would effectively be banned from both consuming alcohol or from possessing an open container of alcohol in any of the specified places. Non-substantive changes include deleting the language in current subsection (c) relating to possession, and redesignating current subsection (d) as (b), and current subsection (e) as (c).

FISCAL IMPACT

Neither the City Attorney nor the Oceanside Police Department anticipates any additional financial impact by amending section 20.40.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The City Attorney's Office is bringing this item forward to the City Council for consideration and as such the analysis contained herein is that of the City Attorney.

RECOMMENDATION

Staff recommends that the City Council introduce an ordinance amending Oceanside City Code section 20.40 to prohibit consumption of alcohol in specified public places in accordance with State law.

PREPARED BY:

Tarquin Preziosi
Senior Deputy City Attorney

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

John P. Mullen, City Attorney

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING SECTION 20.40 OF THE OCEANSIDE CITY CODE TO PROHIBIT CONSUMPTION OF ALCOHOL IN SPECIFIED AREAS.

WHEREAS, The City Council of the City of Oceanside desires to prohibit the consumption of alcohol in specified areas within the City of Oceanside; and

WHEREAS, The City Council of the City of Oceanside desires to amend Section 20.40 of the Oceanside City Code to reflect those areas within the City where consumption of alcohol is prohibited.

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

SECTION 1. Section 20.40 of the Oceanside City Code is amended to read as follows: Sec. 20.40. Consumption of alcohol in public prohibited.

(a) Except as provided in subsection (c), no person shall consume any beer, wine or other alcoholic beverage in any of the following areas:

(1) Any sidewalk, alley, street or highway within the City of Oceanside

(2) Any lot designated for public parking within the City of Oceanside.

(3) The Municipal Pier as defined in Chapter 18 except for the restaurant and lounge located at the pier's western end.

(4) Oceanside Beach as defined in Chapter 19.

(5) The Strand and those walkways and sidewalks immediately adjacent thereto.

(6) Pier Plaza Area hereby defined and declared to be that portion of the City of Oceanside bounded to the west by the Oceanside Beach, bounded to the east by the westerly curb line of Pacific Street, bounded to the south by the northerly curb line of Seagaze Drive, and bounded to the north by a line extended east and west from the northern edge of the Beach Community Center Parking Lot.

(7) Tyson Street Park located immediately east of The Strand and west of Pacific Street at the Tyson Street intersection.

(8) Strand Beach Park located at the southeast corner of The Strand and Seagaze Drive.

(9) Rotary Park located at Pierview Way and Myers Street in the City of Oceanside.

(10) Santa Fe Park located at Pierview Way and Cleveland Street in the City of Oceanside.

(11) Buddy Todd Park located on Mission Drive between Barnwell and Todd Streets in the City of Oceanside.

(12) Libby Lake Park located at Calle Montecito and Calle Las Positas Drive in the City of Oceanside.

(13) Any outdoor area within Balderrama Park located at San Diego Street and Bush Street in the City of Oceanside.

(14) Buccaneer Park located at 1506 South Pacific Street in the City of Oceanside.

(15) John Landes Park located at 2855 Cedar Road in the City of Oceanside.

(16) Cesar Chavez Park located at 1200 Division Street in the City of Oceanside.

(17) Fireside Park located at Fireside Street and Parkside Drive in the City of Oceanside.

(18) Any property owned by the Oceanside Community Development Commission unless the commission has formally consented to the consumption of alcoholic beverages on the property.

(b) Alcoholic beverages as used in this section includes alcohol, spirits, wine or beer and which contains one-half of one (0.5) percent or more of alcohol by volume, and which is fit for beverage purposes, either alone or when distilled, mixed or combined with other substance.

(c) Any of the prohibitions set forth in this section may be waived by the city's special events committee or city council as provided in Chapter 30A.

///

SECTION 2. 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 3. 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 4. 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,

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this _____day of _____, 2008, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

APPROVED AS TO FORM:

SNCA

City Clerk

City Attorney