

STAFF REPORT*CITY OF OCEANSIDE*

DATE: April 2, 2014

TO: Honorable Mayor and City Councilmembers

FROM: John P. Mullen, City Attorney

SUBJECT: **ADOPTION OF AN ORDINANCE TO REGULATE THE USE OF ELECTRONIC SMOKING DEVICES AND TO PROVIDE DIRECTION TO STAFF CONCERNING POTENTIAL ZONING AMENDMENTS**

SYNOPSIS

Following direction from the City Council on December 18, 2013, the City Attorney has drafted and is proposing introduction of an ordinance amending Chapter 10A of the Oceanside City Code to prohibit the use of electronic smoking devices in areas where smoking is otherwise prohibited. In addition, the proposed ordinance amends Chapter 7, Article XI of the Oceanside City Code to include certain businesses selling electronic smoking devices within the definition of tobacco and drug paraphernalia establishments. If adopted, this amendment will prohibit minors from entering these establishments unless accompanied by a parent or guardian. Finally, the City Attorney seeks direction from the City Council to initiate an amendment to the Zoning Ordinance to treat certain businesses selling electronic smoking devices as a regulated use subject to a conditional use permit.

BACKGROUND

Electronic smoking devices refers to electronic and/or battery operated devices, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. Electronic smoking devices include electronic cigarettes, pipes, cigars, cigarillos, or hookahs. The liquids used in electronic smoking devices may be infused with flavors appealing to youth. The City Council discussed proposals to curb the use of these devices at its meeting on December 18, 2013. Several concerns about electronic smoking devices were expressed in public testimony, including their increased use by minors, the lack of any federal or state regulations, and the absence of scientific data about the health effects of electronic smoking devices or their effectiveness as a smoking cessation tool.

At the conclusion of the meeting on December 18th, the Council directed the City Attorney to draft an ordinance to regulate the use of these devices and return in 90 days to Council. During that time period, the County Board of Supervisors has approved

amendments to include electronic smoking devices within its anti-tobacco policy. The County is also in the process of preparing an ordinance regulating the use of electronic smoking devices. Local ordinances have been adopted in the cities of Solana Beach, Encinitas, Vista, Carlsbad, El Cajon and Poway. San Diego and La Mesa are in the process of adopting similar ordinances. These local ordinances generally ban the use of electronic smoking devices at locations where smoking regular cigarettes is prohibited.

The draft Oceanside ordinance is similar to the ordinances already adopted by other North County cities. The draft ordinance amends the definition of the terms "smoke" or "smoking" in Chapter 10A of the City Code to include the use of an Electronic Smoking Device, including an electronic and/or battery-operated device which can be used to deliver an inhaled dose of nicotine or other substances. The term Electronic Smoking Device includes an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. Electronic Smoking Device does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease. If this revised definition is adopted, the use of an electronic smoking device will be prohibited in all areas where smoking a regular cigarette is banned. This includes beaches, public parks, the Pier, the Civil Center Plaza Complex, and public places and places of employment, as identified in Section 10A.3, except in designated smoking areas as provided by Section 10A.4.

The City Attorney is also recommending the Council consider amending Chapter 7, Article XI of the Oceanside City Code to include certain establishments selling electronic smoking devices within the definition of the term tobacco and drug paraphernalia establishment in Sections 7.96(a)-(b). If the revised definition is adopted, the term tobacco and drug paraphernalia establishment will include businesses that display for sale or offer for sale tobacco and drug paraphernalia and which devotes more than a two (2) foot by four (4) foot (two feet deep maximum) section of shelf space for tobacco and drug paraphernalia, "including but not limited to an electronic smoking devices as defined in Oceanside City Code section 10.A.2(a)."

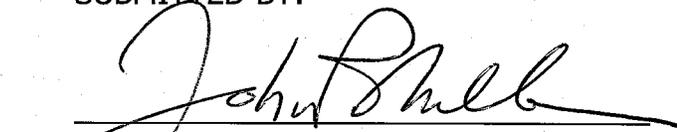
If the amendment to Chapter 7, Article XI is adopted, minors will be prohibited from entering establishments, such as vape shops, without a parent or guardian. This local ordinance will complement Health and Safety Code section 119405 which prohibits the sale of electronic cigarettes to minors.

Finally, the term "tobacco and drug paraphernalia establishment" can also be amended in Chapter 36 of the Zoning Ordinance to be consistent with the proposed definition in Chapter 7, Article XI of the Oceanside City Code. If adopted, new businesses selling e-cigarettes falling within the revised definition would require a conditional use permit and be subject to the locational restrictions in Article 36, Section 3604. However, this amendment, if directed by the Council, must be presented to the Planning Commission for a recommendation.

RECOMMENDATION

The City Attorney recommends the City Council review the proposed City Code amendments; introduce the ordinance amending Chapter 10A and Chapter 7, Article XI of the Oceanside City Code, and direct staff to initiate the amendment to Article 36 of the Zoning Ordinance.

SUBMITTED BY:



John P. Mullen
City Attorney

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Steve Jepsen, City Manager



Attachment: Proposed Ordinance

1 carcinogens, including nitrosamines, as well as toxic chemicals such as diethylene glycol, an
2 ingredient used in antifreeze;

3 (<http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>); and

4 WHEREAS, no scientific evidence establishes that electronic smoking devices are a safe
5 substitute to traditional cigarettes or an effective smoking cessation tool; and

6 WHEREAS, the Oceanside City Code currently bans the smoking of cigarettes, lighted
7 pipes and cigars in a public parks, beaches, playgrounds, tot lot sandbox, the Civic Center Plaza
8 Complex, and the Oceanside Pier; and

9 WHEREAS, the use of electronic smoking devices in locations where smoking is
10 prohibited creates confusion and impairs the city's ability to enforce the ban on smoking; and

11 WHEREAS, the City Council of the City of Oceanside desires to promote a smoke-free
12 environment for youth in the City.

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

14 SECTION 1. Chapter 10A of the City of Oceanside Code is amended to add a revised
15 definition of the terms smoke or smoking as follows:

16 "10A.2(a) *Smoke* or *smoking* shall mean and include: (1) the carry of a
17 lighted cigarette of any kind, lighted pipe or lighted cigar; or the lighting
18 of a cigarette of any kind, pipe or cigar; or (2) the use of an 'Electronic
19 Smoking Device' which for purposes of this section includes an
20 electronic and/or battery-operated device which can be used to deliver an
21 inhaled dose of nicotine or other substances. Electronic Smoking Device
22 includes any such electronic smoking device, whether manufactured,
23 distributed, marketed, or sold as an electronic cigarette, an electronic
24 cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or
25 any other product name or descriptor. Electronic Smoking Device does
26 not include any product specifically approved by the United States Food
27 and Drug Administration for use in the mitigation, treatment, or
28 prevention of disease."

1 SECTION 2. Chapter 7, Article XI, Section 7.96(a) is amended as follows:

2 “*Tobacco and drug paraphernalia establishment* means any
3 premises where tobacco and drug paraphernalia, including an
4 Electronic Smoking Device as defined in Section 10.A.2(a), is
5 displayed for sale, offered for sale or sold, and which devotes more
6 than a two (2) foot by four (4) foot (two (2) feet in depth maximum)
7 section of shelf space for tobacco and drug paraphernalia. The two
8 (2) foot by four (4) foot shelf space calculation shall include all
9 products related to the use of Electronic Smoking Devices.”

10 SECTION 3. Chapter 7, Article XI, Section 7.96(b)(2) of the Oceanside City Code is
11 amended as follows:

12 “A device ‘designed primarily for’ the smoking or ingestion set forth
13 in subdivision (a) above, is a device which has been fabricated,
14 constructed, altered, adjusted, or marked especially for use in the
15 smoking or ingestion of tobacco, nicotine or other substances, and is
16 peculiarly adapted to that purposes by virtue of a distinctive feature
17 or combination of features associated with tobacco or drug
18 paraphernalia, notwithstanding that the devise may also be used for
19 the smoking or ingestion of marijuana, hashish, hashish oil, cocaine,
20 or any other ‘controlled substance,’ or for some other purpose.”

21 SECTION 4. Chapter 7, Article XI, Section 7.96(b)(3)(d) of the Oceanside City Code is
22 amended as follows:

23 “A smokable pipe which contains a heating unit, whether the device
24 is known as an ‘electric pipe,’ or otherwise, including but not limited
25 to an Electronic Smoking Device as defined in Oceanside City Code
26 Section 10.A.2(a).”

27 SECTION 5. The City Clerk shall certify to the passage of this Ordinance and is hereby
28 directed to publish this ordinance, or the title hereof as a summary, pursuant to state statute, once

1 within fifteen (15) days after its passage in the San Diego Union-Tribune, a newspaper of
2 general circulation published in the City of Oceanside.

3 SECTION 6. This ordinance shall take effect and be in force on the thirtieth (30th) day
4 from and after its final passage.

5 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,
6 California, held on the ___ day of _____, 2014, and, thereafter,

7 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
8 Oceanside California, held on the ___ day of _____, 2014, by the following vote:

9 AYES:

10 NAYS:

11 ABSENT:

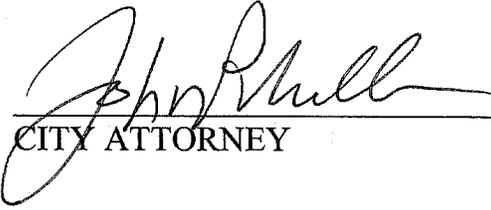
12 ABSTAIN:

13 _____
14 MAYOR OF THE CITY OF OCEANSIDE

15
16 ATTEST:

17 APPROVED AS TO FORM:

18 _____
19 CITY CLERK

20 
21 _____
22 CITY ATTORNEY

23
24 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE
25 AMENDING SECTION 10A.2(a) OF CHAPTER 10A OF THE OCEANSIDE CITY
26 CODE TO PROHIBIT THE USE OF ELECTRONIC CIGARRETTES WHEREVER
27 SMOKING IS PROHIBITED AND AMENDING CHAPTER 7, ARTICLE XI, OF THE
28 OCEANSIDE CITY CODE TO MODIFY THE DEFINITION OF DRUG AND
TOBACCO ESTABLISHMENTS TO PROHIBIT UNACCOMPANIED MINORS
FROM ENTERING SAID ESTABLISHMENTS