

STAFF REPORT*CITY OF OCEANSIDE*

DATE: February 4, 2015

TO: Honorable Mayor and City Councilmembers

FROM: City Manager's Office

SUBJECT: **INTRODUCTION OF AN ORDINANCE REGULATING THE USE OF PUBLIC RECREATIONAL PROPERTY FOR COMMERCIAL OR PROFESSIONAL INSTRUCTION**

SYNOPSIS

Staff recommends that the City Council introduce an ordinance adding Section 30B to the City Code regulating the use of public recreational property for commercial or professional instruction.

BACKGROUND

On December 10, 2014, the City Council held a public workshop to discuss issues surrounding the growing use of City property for commercial uses. Council directed staff to develop a process that would provide regulations to ensure commercial uses do not impact access to public parks and beaches. The regulations would also address public safety issues such as blocking public streets and sidewalks.

The addition of Section 30B to the City Code will establish a City Business License and a Special Operations Permit requirement for any commercial or professional instruction operator using City property.

ANALYSIS

The City Council supported the recommendation for commercial operators using City property to obtain a City Business License and a permit that would include adequate insurance.

Permit Requirement:

Currently, commercial operators (surf camps, private surf instruction, boot camps, fitness classes, day camps, yoga classes, nature camps, dog training or similar activities) are not required to obtain any type of City permit. Establishing a Special Operations Permit would provide staff an opportunity to review the commercial operators' proposed plan for impacts to the general public's regular use and enjoyment of the property as well as maintenance and operation. Other points for staff to consider when evaluating a permit application include: parking and neighborhood impacts, other

scheduled City programs and/or events, other scheduled field use, size of group, time of day, day of week, number of days and locations.

Permits would be reviewed on a case by case basis. Operators would be required to obtain a permit annually beginning January 1 of each year, register their business with the City, provide liability insurance listing the City as additionally insured, and have the participants sign waivers holding the City harmless. Currently the cost for a Special Operations Permit (Commercial Vendor Permit) is \$175.00, per the City Council adopted permit fee schedule. It is recommended that this be an annual fee. The City shall maintain "bumping rights"; meaning City programs and/or events shall have priority over commercial or professional instruction.

The Permit requirement would be applicable to all commercial instruction and would include organized events operated through nonprofit groups such as the YMCA, Boys and Girls Club, and similar organizations.

Deed Restrictions

Certain portions of Oceanside's beach were privately dedicated for park purposes by deeds containing restrictions against any use for business purposes. The Ordinance contains a provision that prohibits any proposed use that is inconsistent with the deed restrictions.

Surf Camps:

Staff has reviewed the impacts of commercial surf camps in regards to impacts to beach access. Staff is recommending that the number of commercial surf camps be limited on a first-come basis. The total number of surf camps that would be permitted would be five: one at Tyson Park, one at the Pier Amphitheater area, one by the Junior Seau Community Center (City-sponsored) and two on Harbor Beach (one City-sponsored).

Private surf instruction offerings would not be affected by the five location limit unless they establish and reserve specific areas on the beach. Private surf instructors will still be required to obtain a Business License and Special Operations Permit and meet the Permit requirements.

Fitness Instructor Certification:

The Council had expressed an interest in considering the need for certifications for fitness instructors when using City property. Currently, fitness instructors are not required to be certified with the State and the City does not currently require or verify the status of fitness instructors associated with any existing business.

It is staff's opinion that the insurance requirement and individual waiver associated with the Special Operations Permit is adequate to address the City's needs and that specific certifications be left to the business operator.

Implementation

Staff will use summer 2015 as an opportunity to provide education and notification to commercial or professional instructors and the opportunity to assess the effectiveness of the restrictions. Unless there are blatant or recurring violators, citations will not be issued. Staff will assess the effectiveness of the program and provide an update and any additional recommendations to Council in November 2015.

The following is a summary of the provisions of the ordinance as defined in Exhibit A to the ordinance.

1. Purpose – A general statement summarizing the reasons why the ordinance was enacted;
2. Definitions – Defines all City-owned and/or maintained and operated public recreational property to be covered by the ordinance. Also defines “commercial or professional instruction”; and
3. Regulations – A general prohibition is proposed on City-owned and/or maintained and operated public recreational property without obtaining a Special Operations Permit.

FISCAL IMPACT

Approximately 15-20 boot camps, fitness classes, day camps, yoga classes, nature camps, dog training or similar activities currently advertise for instruction on Oceanside public recreational property. Staff estimates that the City could potentially realize \$2,500-\$3,500 annually in permit fees. Fees would be deposited into the City’s General Fund.

Processing and review of Special Operations Permits for commercial or professional instruction would fall under the regular duties of the Business License program in coordination with the Parks and Recreation Department’s Special Events process. No additional funding or staff is required.

INSURANCE REQUIREMENTS

The City’s standard insurance requirements will be met.

COMMISSION OR COMMITTEE REPORT

The Parks and Recreation Commission and the Harbor and Beaches Advisory Committee will be advised of this matter at their next regularly scheduled meetings.

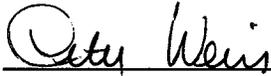
CITY ATTORNEY’S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council introduce an Ordinance adding Section 30B to the City Code regulating the use of public recreational property for commercial or professional instruction.

PREPARED BY:



Peter Weiss
Consulting Assistant

SUBMITTED BY:

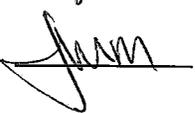


Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant City Manager

Jane M. McPherson, Interim Financial Services Director

ATTACHMENTS:

- 1) Ordinance
- 2) Permit Application

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE ADDING CHAPTER 30B OF THE OCEANSIDE CITY CODE TO REGULATE THE USE OF PUBLIC RECREATIONAL PROPERTY FOR COMMERCIAL OR PROFESSIONAL INSTRUCTION

WHEREAS, the City hereby finds and determines that the unlimited and unregulated use of public recreational property in the City by commercial or professional instruction establishments interferes with the use and enjoyment of such facilities by the general public and burdens the City's related maintenance and safety services,

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

SECTION 1. Chapter 30B is hereby added to read as shown in Exhibit A.

SECTION 2. 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 San Diego Union Tribune, a newspaper of general circulation published in the City of Oceanside.

SECTION 3. 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 _____, 2015, and, thereafter,

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Oceanside California, held on the ___ day of _____, 2015, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

ATTEST:

MAYOR OF THE CITY OF OCEANSIDE

APPROVED AS TO FORM:

John P. Mull
CITY ATTORNEY

CITY CLERK

Chapter 30B
SPECIAL OPERATIONS PERMIT: USE OF PUBLIC RECREATIONAL PROPERTY
FOR COMMERCIAL OR PROFESSIONAL INSTRUCTION

Sections:

<u>30B.1</u>	Purpose
<u>30B.2</u>	Definitions
<u>30B.3</u>	Regulations – Permit Required
<u>30B.4</u>	Contents of the Application
<u>30B.5</u>	Issuing Authority
<u>30B.6</u>	Conditions for Issuance of Permit
<u>30B.7</u>	Grounds for Denial
<u>30B.8</u>	Termination or Restriction of Permit
<u>30B.9</u>	Police Powers of Lifeguard, Etc.

30B.1 **Purpose**

The City hereby finds and determines that the unlimited and unregulated use of public recreational property in the City by commercial or professional instruction establishments interferes with the use and enjoyment of such facilities by the general public and burdens the City's related maintenance and safety services. The purpose of this Chapter is to establish a Special Operations Permit requirement for such establishments to maximize their compatibility with the use of the public recreational property by the general public and minimize the burden on the City's related maintenance and safety services.

30B.2 **Definitions**

- A. "Public Recreational Property" shall mean all City-owned and operated beaches, parks, trails, and open space located within the City of Oceanside including all land, water, road improvements, facilities therein and their appurtenances such as access roads, stairs, parking lots, and shore facilities. The Oceanside Pier ramp and public access stairs shall be considered "Public Recreation Property" for purposes of this ordinance.
- B. "Commercial Instruction" shall mean prepared, done, or acting with the sole or chief emphasis on salability, profit or success.
- C. "Professional Instruction" shall mean any formal instruction of any nature including, but not limited to, instruction provided for commercial purposes by any commercial and/or nonprofit entity for commercial purposes or any form of consideration such as time or money/donations.

30B.3 Regulations – Permit Required

No person shall operate any commercial or professional instruction for the purpose of operating surf camps, private surf instruction, boot camps, fitness classes, day camps, yoga classes, nature camps, dog training or similar commercial activities on public recreational property without first obtaining a Special Operations Permit pursuant to the provisions of this Chapter. The issuance of said Permit shall be limited based on an evaluation of site availability, suitability, and compatibility by the Issuing Authority.

30B.4 Contents of the Application

- A. An application for a Special Operations Permit shall be on forms as prescribed by the Issuing Authority. The application shall include:
 1. The name and address of the applicant, and if the applicant is a corporation, the names of its principal officers, or if the applicant is a partnership, association, organization or fictitious company, the names of the partners or persons comprising the association, organization or company with the address and telephone number of each;
 2. The proposed dates, hours, and precise location where the event is to be held;
 3. The number of participants anticipated to participate in the activity; and
 4. Proof of liability and property damage insurance from an insurance company with minimum amounts to the satisfaction of the City Attorney and Risk Manager.

- B. The application shall be signed by the applicant under penalty of perjury and shall contain an agreement whereby the applicant agrees to defend, indemnify and hold harmless the City and its employees from and against any claims arising from the actions or omissions of the applicant. The agreement shall also require the applicant to fully compensate the City for any damage to public as well as to clean and otherwise restore any public event site or other impacted public property to the condition in which it was found prior to the conduct of the event.

30B.5 Issuing Authority

The City Manager, or designee, is the issuing authority for the Special Operations Permit: Use of Public Recreational Property for Commercial or Professional Instruction.

30B.6 Conditions for Issuance of the Permit

The Issuing Authority may impose reasonable terms and conditions concerning the activities authorized by the Special Operations Permit, including the time and location of the activity, the maximum number of participants, the duration of the activity, and proof of liability and property damage insurance from an insurance company with minimum amounts to the satisfaction of the City Attorney and Risk Manager.

30B.7 Grounds for Denial

An application for a Special Operations Permit may be denied by the Issuing Authority for any of the following grounds:

1. The applicant fails to include all of the information required by section 30B.4.
2. The Issuing Authority determines that the activity proposed by the application will unreasonably interfere with the public's use of the public recreational property.
3. The actions proposed in the application are prohibited by other provisions of this Code and/or any applicable deed restrictions.
4. The proposed activity will unreasonably interfere with the activities authorized by another proposed Special Operations Permit.

30B.8 Termination or Restriction of Permit

The City Manager, or designee, may immediately terminate or modify the term of the Special Operations Permit if it is determined that the public health or safety is in imminent danger or the operations of permittee are inconsistent with the Special Operations Permit provisions.

30B.9 Police Powers of Lifeguard etc.

Any lifeguard or other City employee designated by the City Manager is hereby given all the powers of a police officer for the purpose of enforcing the provisions of this Chapter.



City of Oceanside

Commercial Use of Public Recreational Property

Dear Commercial Operator:

Section 30.B of the Oceanside Municipal Code regulates commercial use or professional instruction on public recreational property. All Commercial Operators using public recreational property must obtain an annual permit, issued through the City's Business License process. Commercial Operators include but are not limited to: boot camps, surf camps, private surf instruction, fitness classes, day camps, yoga classes, nature camps or other similar activities. The annual permit is \$175 and good for the calendar year in which the permit is issued.

The purpose of the permit application process is to provide City staff an opportunity to review the Commercial Operator's proposed plan for its impacts to the general public's regular use and enjoyment of the facility as well as maintenance and operations. The proposed activities potential impacts to parking, other scheduled City programs and/or events, other scheduled field use, size of group, time of day, day of week, number of days and location will also be evaluated on a case-by-case basis.

In addition to the application, Commercial Operators must submit a copy of the following: current Oceanside business application, a \$1 million certificate of liability insurance listing the City as additionally insured and a participant waiver that indemnifies and holds harmless the City of Oceanside.

Application submittal does not guarantee that you will be awarded a permit. Please contact Oceanside Business License at (760) 435-3905 should you have questions or need additional information regarding this program.



**City of Oceanside
Commercial Use of Public
Recreational Property
Permit Application**

OFFICE USE ONLY
DATE REC'D _____
REC'D BY _____
NO. _____

APPLICANT'S NAME: _____

ADDRESS: _____

EMAIL: _____ **PHONE:** _____

**FACILITIES ARE AVAILABLE FROM 5 AM to 10 PM.
CITY MAINTAINS FIRST RIGHT OF USAGE AND MAY ALTER TERMS AND/OR
CONDITIONS OF THE PERMIT AT ANYTIME.**

SITE LOCATION: _____

USE TYPE _____
DAY(S) & TIMES _____
& CLASS SIZE _____

ACTIVITY DESCRIPTION _____

THE FOLLOWING ITEMS MUST ACCOMPANY YOUR APPLICATION:

1. Current Oceanside Business Application
2. Certificate of Insurance and Additional Insured Endorsement Page listing the City of Oceanside as Additional Insured (General Liability Insurance- \$1 million, Each Occurrence-\$1 million)
3. Participant Waiver to include Applicant and City
4. \$175 Application Fee

THE APPLICANT DECLARES THAT HE/SHE IS A DESIGNATED REPRESENTATIVE OF THE ORGANIZATION AND HAS THE AUTHORIZATION TO APPLY FOR THIS PERMIT ON BEHALF OF THE ORGANIZATION. THE APPLICANT UNDERSTANDS THAT SUBMISSION OF THIS APPLICATION AUTHORIZES THE CITY TO CONDUCT A POLICE BACKGROUND INVESTIGATION OF THE APPLICANT AND INDIVIDUALS INVOLVED IN THE EVENT. THE UNDERSIGNED DECLARES UNDER THE PENALTY OF PERJURY THAT THE INFORMATION PRESENTED ABOVE, INCLUDING ATTACHMENTS, IS TRUE AND CORRECT. SUBMITTAL OF APPLICATION DOES NOT CONSTITUTE OR GUARANTEE APPROVAL.

APPLICANT AGREES THESE ARE PUBLIC FACILITIES AND A SPECIAL PERMIT DOES NOT GUARANTEE THE EXCLUSIVE USE OF A PARTICULAR AREA OR CONDITION OF THE FACILITY. PERMIT ONLY AUTHORIZES A LEGAL GATHERING AT THE FACILITY.

Printed Name

Signature

Date

PLEASE CHECK THIS BOX IF YOU ARE INTERESTED IN INCLUDING YOUR CLASS AS A CITY RECREATIONAL PROGRAM.