



DATE: March 18, 2015

TO: Honorable Mayor and City Councilmembers

FROM: John P. Mullen, City Attorney

SUBJECT: **INTRODUCTION OF AN ORDINANCE TO AMEND OCEANSIDE CITY CODE CHAPTER 10A TO PROHIBIT SMOKING IN OUTDOOR DINING AREAS**

SYNOPSIS

Consistent with direction provided by the City Council on February 18, 2015, the City Attorney has drafted the proposed ordinance to prohibit smoking in outdoor dining and drinking establishments. Following introduction, the ordinance will be scheduled for adoption on April 1, 2015. Assuming it is adopted on that date, the smoking prohibition will become effective on May 1, 2015.

ANALYSIS

The City Council has debated the proposed ban on several occasions. The City Council initially provided direction to the City Attorney on May 1, 2013 to draft an ordinance banning smoking at outdoor dining areas, including bars. That ordinance was presented on June 5, 2013 for introduction but failed to receive three affirmative votes. The City Council thereafter approved a motion to modify the ordinance, prior to introduction, to make the smoking ban applicable only in unenclosed dining areas in the public right of way. However, the modified ordinance failed to receive any support at the second reading on June 26, 2013. The item failed due to lack of a motion and no further direction was provided.

On February 18, 2015, the City Council provided direction to City Attorney to draft an ordinance prohibiting smoking in outdoor dining and drinking areas. The Council clarified that the proposed ordinance should apply in all outdoor establishments whether on private property or located on sidewalks.

The draft ordinance now before the City Council is modeled after similar ordinances enacted in several cities throughout San Diego County, including Carlsbad, Encinitas, Solana Beach, Del Mar, National City, Chula Vista and El Cajon. The ordinance includes multiple findings documenting the adverse health effects caused by secondhand smoke. The ordinance prohibits smoking in "unenclosed dining areas" defined to include "any area, including streets and sidewalks, available to or

customarily used by the general public or an employee, for consuming food and/or drink and not enclosed by a roof and walls.”

The ordinance also prohibits smoking within twenty feet of an unenclosed dining area located on a public sidewalk. This provision is designed to prevent smoking directly adjacent to an outdoor dining area on a public sidewalk. This ban does not apply to someone actively passing on the way to another destination.

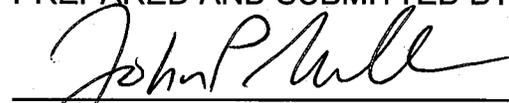
The Oceanside City Code currently prohibits the use of electronic cigarettes in locations where smoking is banned. Therefore, following adoption the proposed ordinance, the use of electronic cigarettes will be prohibited in unenclosed dining areas.

The ordinance requires the owner of the unenclosed dining area to post a no smoking sign at each point of ingress to the outdoor dining area. Finally, the draft ordinance eliminates outdated language in City Code section 10A.7.3 that permits smoking in restaurants with a seating capacity of less than twenty customers. State law prohibits smoking in the enclosed space in a restaurant.

CONCLUSION

The draft ordinance is consistent with the direction provided on February 18, 2015 and is ready for introduction.

PREPARED AND SUBMITTED BY:



John P. Mullen
City Attorney

REVIEWED BY:

Michelle Skaggs Lawrence, Interim City Manager



Attachments: Ordinance

- 1 • The California Environmental Protection Agency included secondhand smoke on the
2 Proposition 65 list of chemicals known to the state of California to cause cancer, birth
3 defects, and other reproductive harm;⁵ and

4 WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by
5 the following:

- 6 • Secondhand smoke is responsible for as many as 3,000 deaths from lung cancer
7 and 46,000 deaths from heart disease among nonsmokers each year in the United
8 States;⁶ and
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10 • Exposure to secondhand smoke increases the risk of coronary heart disease by
11 approximately thirty percent;⁷ and
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13 • Secondhand smoke exposure causes lower respiratory tract infections, such as
14 pneumonia and bronchitis in as many as 300,000 children in the United States under
15 the age of 18 months each year;⁸ and exacerbates childhood asthma;⁹ and

16 WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and
17 exposure to secondhand smoke does occur at significant levels outdoors, as evidenced by the
18 following:

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22 _____
23 ⁵ California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. *Chemicals Known to the State to Cause Cancer or*
24 *Reproductive Toxicity*. 2006, p. 8 & 17. Available at: www.oehha.ca.gov/prop65/prop65_list/files/P65single081106.pdf.

25 ⁶ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011,
p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

26 ⁷ Bamoya J and Glantz S. "Cardiovascular Effects of Secondhand Smoke: Nearly as Large as Smoking." *Circulation*, 111: 2684-2698, 2005. Available at:
www.circ.ahajournals.org/cgi/content/full/111/20/2684.

27 ⁸ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011,
p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

28 ⁹ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Tobacco Use: Targeting the Nation's Leading Killer*. 2011,
p. 2. Available at: www.cdc.gov/chronicdisease/resources/publications/aag/pdf/2011/Tobacco_AAG_2011_508.pdf.

- 1 • Levels of secondhand smoke exposure outdoors can reach levels attained indoors
2 depending on direction and amount of wind and number and proximity of smokers;¹⁰
3 and

4 WHEREAS, the U.S. Food and Drug Administration conducted laboratory analysis of
5 electronic cigarette samples and found they contained carcinogens and toxic chemicals to which
6 users and bystanders could potentially be exposed;¹¹ and

7 WHEREAS, creating smokefree areas helps protect the health of the 86.9% of
8 Californians who are nonsmokers;¹² and

9 WHEREAS, there is no Constitutional right to smoke;¹³

10 WHEREAS, it is the intent of the City Council, in enacting this ordinance, to provide for
11 the public health, safety, and welfare by discouraging the inherently dangerous behavior of
12 smoking around non-tobacco users, especially children; by protecting the public from exposure
13 to secondhand smoke where they work and dine; by reducing the potential for children to
14 wrongly associate smoking with a healthy lifestyle; and by affirming and promoting a healthy
15 environment in the City.

16 NOW THEREFORE, the City Council does ordain as follows:

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23 ¹⁰ Klepeis NE, Ott WR, and Switzer P. *Real-Time Monitoring of Outdoor Environmental Tobacco Smoke Concentrations: A Pilot Study*. San Francisco:
University of California, San Francisco and Stanford University, 2004, p. 80, 87. Available at:

24 http://exposurescience.org/pub/reports/Outdoor_ETS_Final.pdf; see also Klepeis NE, Ott WR and Switzer P. "Real-Time Measurement of Outdoor
25 Tobacco Smoke Particles." *Journal of the Air & Waste Management Association*, 57: 522-534, 2007. Available at:
www.ashaust.org.au/pdfs/OutdoorSHS0705.pdf.

26 ¹¹ US Food and Drug Administration. *News Release, FDA and Public Health Experts Warn About Electronic Cigarettes*. July 22, 2009. Available at:
www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm173222.htm.

27 ¹² California Department of Public Health, *News Release, State's Latest Tobacco Ads Debut*. December 20, 2010. Available at:
www.cdph.ca.gov/Pages/NR10-099.aspx.

28 ¹³ Public Health Law & Policy, Technical Assistance Legal Center. *There Is No Constitutional Right to Smoke*. 2005. Available at
www.phpnet.org/tobacco-control/products/there-no-constitutional-right-smoke.

1 SECTION 2. Section 10A.2 of the Oceanside City Code is amended to add subsections
2 (g) and (h) as follows:

3 **Sec. 10A.2. - Definitions.**

4 (g) *Unenclosed Dining Area* shall mean any area, including streets and sidewalks,
5 available to or customarily used by the general public or an employee for consuming food
6 and/or drink and not enclosed by a roof and walls.

7 (h) *Reasonable Distance* shall mean a distance of twenty (20) feet in any direction from
8 an area in which Smoking is prohibited

9 SECTION 3. Section 10A.3 of the Oceanside City Code is amended to add subsections
10 (g) through (i) as follows:

11 **Sec. 10A.3. - Prohibitions.**

12 (g) *Smoking prohibited-Unenclosed Dining Areas.* Smoking is prohibited in Unenclosed
13 Dining Areas within the City of Oceanside, except places where Smoking is already prohibited
14 by state or federal law, in which case those laws apply.

15 (h) *Reasonable Distance Required-Unenclosed Dining Areas.* Smoking is prohibited
16 within a Reasonable Distance, as defined in this Chapter, from any Unenclosed Dining Area in
17 a public right-of-way or public sidewalk except while actively passing on the way to another
18 destination.

19 (i) *[Enforcement]*. The provisions of this Chapter may be enforced pursuant to Section
20 1.12 of the Municipal Code.

21 SECTION 4: Section 10A.6 of the Oceanside City Code is amended to add subsection
22 (d) as follows:

23 **Sec. 10A.6 Posting of signs.**

24 (d) *Posting of Signs in Unenclosed Dining Areas.* A person, business, or other entity that
25 has legal or de facto control of an Unenclosed Dining Area shall post a “No Smoking” sign at
26 each point of ingress to the Unenclosed Dining Area.

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