ITEM NO. 19

STAFF REPORT

CITY OF OCEANSIDE

DATE: May 6, 2015

TO: Honorable Mayor and City Councilmembers
FROM: Oceanside Police Department

SUBJECT: **ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING SUBSECTIONS (E) AND (F) UNDER SECTION 10A.3 TO CHAPTER 10A OF THE OCEANSIDE CITY CODE ESTABLISHING TOBACCO AND SMOKE-FREE ENVIRONMENT IN THE "PIER PLAZA AREA."**

SYNOPSIS

The Oceanside Police Department recommends that the City Council introduce an ordinance amending subsections (e) and (f) under Section 10A.3 to Chapter 10A of the Oceanside City Code ("OCC") establishing a tobacco and smoke-free environment in "Pier Plaza Area."

BACKGROUND

The area from the northern end of the Junior Seau Beach Community Center parking lot to the northern curb line of Mission Avenue between North Pacific Street and the eastern curb line of the Strand, excluding only the Pier and Pier ramps is already designated park land (See attachment A). Notwithstanding, smoking is currently allowed in the Pier Amphitheatre, as well as all portions of the Pier Plaza Area.

Both the Pier Amphitheatre and the Pier Plaza Area are visited on a regular basis by individuals and families going to the Pier or the beach, as well as by groups and individuals who often exercise in these areas. As a result of allowing smoking in the Pier Plaza Area, crowds of people often gather and remain there most of the day loitering and smoking, particularly in the Amphitheatre seating and sidewalks. They generate numerous calls for service based on rude and harassing behavior toward the general public. Tourists, visitors, and citizens of Oceanside, often with their children, have to navigate through these areas of second-hand smoke to visit the Pier Plaza Area and/or beach areas. There is currently no enforcement tool available to the Oceanside Police Department ("OPD") to address these concerns.

Similar to the issues the City previously experienced in the Civic Center Plaza Complex and on the beach, in both in the Pier Amphitheatre, particularly its bleachers, and the Pier Plaza Area, the ground is constantly littered with cigarette butts and tobacco refuse. Further, the allowance of smoking in the Pier Amphitheatre encourages

individuals to camp/sleep on the bleacher seats after park closing hours, which results in more refuse, littering, and human waste. Residents and guests of our City often complain to the OPD about the litter and the accumulation of smoke.

Having a no smoking ordinance for the "Pier Plaza Area" in conformance with the ordinance prohibiting smoking in all other City parks, outdoor dining areas, and the beach would create a cleaner, safer, and more useable environment for all members of the public. There are alternate areas, including the Strand and areas outside the defined Pier Plaza Area, where smoking is still permitted.

As part of a public outreach process, the OPD has conferred with staff at MainStreet Oceanside, Visit Oceanside, and Vista Community Clinic. All three organizations support the introduction of the ordinance.

ANALYSIS

As currently written, the general prohibition for smoking at the public beach in OCC 10A.3(e) contains an exception for the "Band Shell" and does not specifically include the Pier Plaza or adjoining areas. The proposed ordinance would remove this exception from OCC 10A.3(e) and add a specific prohibition against smoking in the "Pier Plaza Area," where large numbers of families and children often congregate to enjoy the beach, exercise, and dine.

The proposed revisions to the ordinance would prohibit smoking in the "Pier Plaza Area." "Pier Plaza Area" has been defined more narrowly than in other Chapters of the City Code, such as section 5.14 and section 20.40(a)(6), in order to make the prohibition as least restrictive as necessary in order to accomplish the stated goals. Specifically, the "Pier Plaza Area" is defined as follows: "That portion of the City of Oceanside bounded to the west by the easterly curb line of the Strand, bounded to the east by the westerly curb line of N. Pacific Street, bounded to the south by the northerly curb line of Mission Avenue, and bounded to the north by the northerly side of the Oceanside Beach Community Center. Unless otherwise stated herein, the "Pier Plaza Area" specifically includes, but is not limited to, the Lifeguard Headquarters parking lot and area beneath the Pier, as well as any sidewalk, stairway, ramp or other way contained within the above-described boundaries, including, but not limited to, the Junior Seau Pier Amphitheater, its seating, stairways, and ramps, and all other ramps and stairs leading to the Oceanside Pier, including the concrete portion of the Pier. The Pier Plaza Area does not include any portion of the Strand."

Enforcement would be handled primarily through self-policing and deterrence created by appropriate signage and, if necessary, issuance of citations pursuant to Chapter 1 of the Oceanside Municipal Code.

FISCAL IMPACT

The Police Department does not anticipate additional costs to enforce the proposed ordinance. It is anticipated that there will be direct costs to creating and installing signage in the Pier Plaza Area. The cost for additional signs to be posted by Public Works is estimated to be $1,500.00 and will be taken from the Public Works beach account, Account Number 600626101.5320.

COMMISSION OR COMMITTEE REPORT

The Harbor and Beaches Advisory Committee will be apprised of this matter at their May 11, 2015 meeting.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

The Oceanside Police Department recommends that the City Council introduce an ordinance amending subsections (e) and (f) under Section 10A.3 to Chapter 10A of the Oceanside City Code establishing a tobacco and smoke-free environment in the "Pier Plaza Area."

PREPARED BY:

Frank S. McCoy
Chief of Police

SUBMITTED BY:

Michelle Skaggs Lawrence
Interim City Manager

REVIEWED BY:

Peter Weiss, Assistant City Manager

Paul Lawrence, Harbor Manager

Jane McPherson, Interim Financial Services Director

Attachments: Map of "Pier Plaza Area"
Ordinance

Map of Designated Park Lands and Non-smoking Areas

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING SUBSECTIONS (E) AND (F) UNDER SECTION 10A.3 TO CHAPTER 10A OF THE OCEANSIDE CITY CODE ESTABLISHING TOBACCO AND SMOKE-FREE ENVIRONMENT IN THE "PIER PLAZA AREA."

The City Council of the City of Oceanside finds as follows:

SECTION 1. Findings.

WHEREAS, studies have shown breathing environmental tobacco smoke to be a significant health hazard for several populations, including elderly people and children, individuals with cardiovascular disease, individuals with impaired respiratory function, asthmatics, and those with obstructive airway disease; and

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the fact that tobacco-related illness is the leading cause of preventable death in the United States,[1] accounting for about 443,000 deaths each year;[2] and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke;[3]
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure;[4] and

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

[2] 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.

[3] US Department of Health and Human Services, Office of the Surgeon General. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*. 2010, p. 9. Report highlights available at: www.surgeongeneral.gov/library/tobaccosmoke/factsheet.html.

[4] Resolution 06-01, Cal. Air Resources Bd. (2006) at 5. Available at: www.arb.ca.gov/regact/ets2006/res0601.pdf; *see also* California Environmental Protection Agency, Air Resources Board. *News Release, California Identifies Secondhand Smoke as a "Toxic Air Contaminant."* Jan. 26, 2006. Available at: www.arb.ca.gov/newsrel/nr012606.htm.

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

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

a) Secondhand smoke also known as environmental tobacco smoke is responsible for as many as 3,000 lung cancer deaths and 46,000 heart disease deaths each year among nonsmoking adults;[6]

b) Secondhand smoke exposure increases the risk of lower respiratory tract infections, including bronchitis and pneumonia, which occur in infants and young children up to 18 months of age;

c) Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year;[7] and exacerbates childhood asthma;[8] and

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

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and number and proximity of smokers;[9]

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

[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.

[7] 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.

[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.

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

WHEREAS, creating smoke-free areas helps protect the health of the 86.9% of Californians who are nonsmokers;[10] and

WHEREAS, cigarette and cigar butts as well as tobacco waste are a source of litter/pollution on public property; and a potential cause of fires; and

WHEREAS, there is no Constitutional right to smoke;[11] and

WHEREAS, Sections 118910 and 118940 of the Health and Safety Code of the State of California permit the City to regulate smoking in any manner not inconsistent with the California Indoor Clean Air Act of 1976; and

WHEREAS, the Oceanside City Code currently bans the smoking of cigarettes, lighted pipes, cigars, and e-cigarettes in public parks, beaches, playgrounds, the Civic Center Plaza Complex, the Oceanside Pier; unenclosed dining areas,

WHEREAS, the area from the southern curb-line of Seagaze Avenue to the northern curb-line of Mission Avenue between the eastern curb line of the Strand and the western curb line of N. Pacific Street, which includes the Junior Seau Beach Community Center and Pier Amphitheatre and all steps, stairs, and ramps leading thereto, is already designated public park land; and

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

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

SECTION 2. Chapter 10A of the City of Oceanside Code, entitled Smoking is hereby amended to revise subsections (e) and (f) under Section 10A.3 Prohibitions as follows:

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[10] 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.

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

"(e) *Smoking prohibited—Public beaches.* Smoking is prohibited and is unlawful within the boundaries of any public beach, including the picnic areas and tot lots. Except where otherwise prohibited, smoking is permitted in the public parking lots adjacent to the beach, ~~the band shell~~, on sidewalks and stairways, and along public streets adjacent to the beach.

"(f) *Smoking prohibited—Oceanside Pier and Pier Plaza Area.*

(i) Smoking is prohibited and is unlawful on all ~~wooden~~ portions of the Oceanside Pier, as well as below and on the ramps leading to the Pier. ~~Smoking is permitted only at the entrance of the pier which is primarily cement~~.

(ii) Smoking is prohibited and is unlawful in the Pier Plaza Area.

a. For purposes of this Chapter, "Pier Plaza Area" is hereby defined and declared as follows:

i. That portion of the City of Oceanside bounded to the west by the easterly curb line of the Strand, bounded to the east by the westerly curb line of N. Pacific Street, bounded to the south by the northerly curb line of Mission Ave, and bounded to the north by the northerly side of the Oceanside Beach Community Center;

ii. Unless otherwise stated herein, the Pier Plaza Area specifically includes, but is not limited to, the Lifeguard Headquarters parking lot and area beneath the Pier, as well as any sidewalk, stairway, ramp or other way contained within the above-described boundaries, including, but not limited to, the Junior Seau Pier Amphitheater, its seating, stairways, and ramps, and other all ramps and stairs leading to the Oceanside Pier, including the concrete portion of the Pier.

iii. The Pier Plaza Area does not include any portion of the Strand.

SECTION 3. The city clerk of the City of Oceanside is hereby directed to publish this ordinance 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 4. This ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

SECTION 5. Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a 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 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.

INTRODUCED at a regular meeting of the City Council of the City of Oceanside, California, held on the _____ 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:

_____
MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

[AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING SUBSECTIONS (E) AND (F) UNDER SECTION 10A.3 TO CHAPTER 10A OF THE OCEANSIDE CITY CODE ESTABLISHING TOBACCO AND SMOKE-FREE ENVIRONMENT IN THE "PIER PLAZA AREA."]

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