

copies to: Honorable Mayor & Council Members
City Manager
City Attorney
City Clerk

Administrative Services Director

Counter Copy

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AGGB Chamber of Commerce President/CEO

Supplemental Information Received After the Agenda Packet was Copied/Distributed.

- Attachment 1 - Exhibit A:

Proposed Ordinance Amending the Annual Business Tax Certificate Rate

Agenda Item No. 13

**Placement of Business Tax Certificate Measure on the
November 2018 Ballot**

(Special CC Mtg 07/13/2018)

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH, CALIFORNIA, REPEALING CHAPTER 2, ARTICLE X OF THE GROVER BEACH MUNICIPAL CODE AND ADOPTING A NEW CHAPTER 2, ARTICLE X RELATING TO BUSINESS TAX CERTIFICATE

WHEREAS, Chapter 2 of Article X, “Business Tax Certificate Tax” regulations have not been completely reviewed and updated since 1992; and

WHEREAS, the name of the Chapter is being revised to “Business Tax Certificate” in accordance with the customary use of the term; and

WHEREAS, a substantial number of provisions of these regulations are out of date with current standards and protocol; and

WHEREAS, these regulations represent a structural change in the manner in which the tax for Business Tax Certificates are issued; and

WHEREAS, the subject tax will be charged on a flat tiered rate as measured against the gross receipts or amounts of income and revenue generated by a business; and

WHEREAS, every person engaged in business activity in the City of Grover Beach, with limited exceptions, are required to obtain a Business Tax Certificate and to pay the City's Business Tax; and

WHEREAS, the City Council placed Measure _____ on the ballot at the November 6, 2018 General Municipal Election that proposed the City enact a new tax structure for Business Tax Certificates on many businesses established in Grover Beach.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GROVER BEACH does hereby ordain; and **BE IT ORDAINED BY THE VOTERS OF GROVER BEACH** as follows:

PART 1: CHAPTER 2 of Article X of the City of Grover Beach Municipal Code is hereby repealed on the effective date of this ordinance.

PART 2: CHAPTER 2 of Article X of the City of Grover Beach Municipal Code is hereby adopted to read as follows:

CHAPTER 2 – BUSINESS TAX CERTIFICATE

Section 10200. Nature of Certificate.

The term Business Tax Certificate as used in this Chapter shall not be construed to mean a permit. The taxes prescribed by this Chapter constitute a tax for revenue purposes, and are not regulatory permit fees. The payment of a tax required by the provisions of this Chapter and its acceptance by the City, and the issuance of such certificate to any person, shall not entitle the holder thereof to carry on any business unless they have complied with all of the requirements of this Chapter and all other applicable provisions of this Code, or to carry on any business in any building or on any premises designated in such certificate in the event that such building or premises are situated in a zone or locality in which the conduct of such business is in violation of this Code.

Section 10201. Tax Certificate Procurement and Compliance with Regulations.

Except as otherwise expressly provided in this Chapter, no person, whether as principal or agent, clerk or employee either for himself or for any other person or for anybody corporate, or as an officer of any corporation, or otherwise, shall commence or carry on any trade, calling, profession or occupation in the City, in this Chapter specified, without first having procured a tax certificate, and without complying with any and all regulations of such trade, calling, profession or occupation contained in this Chapter. Any person procuring a tax certificate shall pay the tax as defined within this Chapter.

Section 10202. Tax as Debt.

(A) Any person carrying on any trade, calling, profession or occupation without having a tax certificate to do so shall be liable for the amount of the tax imposed by this Chapter on such trade, calling, profession or occupation. The amount of such tax, including any penalty or interest thereon, shall be a debt owed to the City.

(B) The City Attorney may file suit in the name of the City, in any court of competent jurisdiction, for any unpaid Business Tax imposed by this Chapter, within three (3) years from the delinquency date thereof.

(C) The conviction and punishment of any person for transacting any trade, calling, profession or occupation without a tax certificate shall not excuse or exempt such person from the payment of any Business Tax due and unpaid at the time of such violation of the provisions of this Chapter.

Section 10203. Issuance of Tax Certificate.

(A) Each applicant for a certificate shall properly fill in an application in such form as the Administrative Services Director, or his/her designee, may prescribe.

(B) A certificate, in such form as the Administrative Services Director, or his/her designee, may prescribe, shall be issued on payment of the tax prescribed in this Chapter and shall be in full force and effect until:

- (1) Certificate holder fails to make payments as required by this Code;
- (2) Revoked by the Administrative Services Director, or his/her designee;
- (3) Business changes address;
- (4) Business is discontinued;
- (5) Business ownership changes;
- (6) The Business Tax Certificate expires.

(C) A certificate holder with no permanent business address shall be issued a business tax certificate for each Business Tax Certificate period, with such Business Tax Certificate showing the expiration date.

(D) No Business Tax Certificate granted or issued under any provision of this Chapter shall be in any manner transferred or assigned, or shall authorize any person, other than is thereon mentioned or named, to do business without the express consent of the Administrative Services Director, or his/her designee.

(E) In no case shall any mistake made by the Administrative Services Director, or his/her designee, in stating the amount of the Business Tax Certificate rate prevent or prejudice the collection of what shall be actually due from anyone carrying on any trade, calling, profession or occupation subject to a Business Tax Certificate under this Chapter.

(F) No Business Tax Certificate shall be issued to any holder of a delinquent Business Tax Certificate until both the Business Tax and penalty or interest shall have been paid.

(G) In the event wherein a person establishes a new business, the Business Tax shall be obtained and paid in accordance with the following:

The applicant for a Business Tax Certificate shall at the time of making application, pay a minimum amount of tax that will apply for the first year of operation. This minimum tax cannot be pro-rated and shall be \$60.00. At the end of the Business Tax Certificate period, the taxpayer shall file a written statement as prescribed by the Administrative Services Director, or his/her designee disclosing all the particulars required for defining the gross receipts of that business. At the time of renewal, the taxpayer shall pay the actual tax owed for the first year of operation deducting any minimum tax previously paid for that year. This additional tax is computed at the current rate specified for the business based on gross receipts earned. In all cases, the Business Tax shall be determined and paid in all business tax periods subsequent to the first business tax periods in the manner prescribed in this Chapter.

Section 10204. Payment of Certificate Tax.

(A) All Business Tax Certificates shall be paid in advance at the Administrative Services Department. Where a Business Tax Certificate holder conducts several branches or places of business of the same class, a separate Business Tax Certificate shall be secured covering each branch of such business.

(B) The annual Business Tax Certificates in this Chapter provided shall be due and payable on the first business day of January of each year based upon the actual gross receipts earned for the preceding calendar or fiscal year as reported to any federal or state taxing authority.

(C) No greater or less amount of money shall be charged or received for any Business Tax Certificate than is provided in this Chapter.

(D) The Administrative Services Director, or his/her designee, if he/she deems it necessary in order to ensure payment or facilitate collection of Business Taxes, may require returns and payment of such taxes for other than the time periods specified in this Chapter.

Section 10205. Posting and Exhibition of Business Tax Certificates.

Every person having a Business Tax Certificate under the provisions of this Chapter, and carrying on a trade, calling, profession or occupation at a fixed place of business, shall keep such Business Tax Certificate posted and exhibited while in force in some conspicuous place where such business is being conducted. Every person having such a , and not having a fixed place of

business, shall carry such Business Tax Certificate with him at all times while carrying on the trade, calling, profession or occupation for which the same was granted. Every person having a Business Tax Certificate under the provisions of this Chapter shall produce and exhibit the same whenever requested to do so by any police officer, or by any person authorized to issue, or inspect Business Tax Certificates or certificates for the City, or to collect Business Taxes for the City.

Section 10206. Certificate Inspectors.

A police officer or code compliance officer may enter free of charge, at any time, any place of business for which a Business Tax Certificate is required by this Chapter and demand the exhibition of any such Business Tax Certificate by any person engaged or employed in the transaction of such business. Business Tax Certificate inspectors shall also have the power to collect and receive money in payment of Business Tax.

Section 10207. Information in Business Tax Certificate Application.

(A) Every person required to have a Business Tax Certificate pursuant to the provisions of this Chapter shall make a written application to the Administrative Service Director and submit the following information:

- (1) The nature or kind of business for which the Business Tax Certificate is requested.
- (2) The place where the business is to be conducted and, if the business is not to be conducted at a permanent location, the residence address, identified as such, of the owners of the business.
- (3) If the application is made for the issuance of Business Tax Certificate to a person to do business under a fictitious name, the names, the last four digits of their social security numbers, and residence addresses of the owners of the business.
- (4) If the application is made for the issuance of a Business Tax Certificate to a corporation or partnership, the names, franchise tax number, and residence addresses of the officers or partners thereof.
- (5) Any further information that the Administrative Service Director, or his/her designee, may require to enable the issuance of the Business Tax Certificate including documentation supporting the applicant's Gross Receipts as define in this Chapter.

The Administrative Service Director, or his/her designee, will not issue the Business Tax Certificate unless the applicant has submitted the information required within this Section and paid the appropriate tax as required under this Chapter as well as any other unpaid Business Tax amount due.

(B) No Business Tax Certificate shall be issued except on the filing of the application herein provided for; and in the event it shall appear that incorrect information is contained in such application and that the Business Tax Certificate collected was not in the correct amount, the City shall be entitled to collect any unpaid balance of such Business Tax or if any Business Tax Certificate holder has overpaid, to refund the excess amount collected.

(C) No statements in the application shall be conclusive upon the City, or upon any officer thereof, as to the matters therein set forth, and the same shall not prejudice the right of the City to examine

or audit the books or accounts of any person subject to Business Tax Certificate or to recover any amount that may be ascertained to be due, in case such statement should be found to be incorrect. If any person hereby required to make any such statement shall fail to do so, such person shall be required to pay the Business Tax at such rate as the Administrative Services Director may, after investigation, fix as the proper rate to be paid by such person, and shall also be deemed guilty of a violation of this Code. The tax shall be at a rate defined within this Chapter, as amended by Section 10217.

Section 10208. Confidential Character of Information Obtained.

(A) The Administrative Services Director, or his/her designee, or any person having an administrative duty under the provisions of this article to the extent permitted by law, will not make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a Business Tax Certificate, or pay a Business Tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof to be seen or examined by any person. Provided that nothing in this subsection shall be construed to prevent:

- (1) The disclosure to, or the examination of records and equipment by another city official, employee, or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this article; or collecting taxes imposed hereunder;
- (2) The disclosure of information to, or the examination of records by, federal, or state officials, or the tax officials of another city, or county, or city and county, if a reciprocal arrangement exists; or to a grand jury or court of law, upon subpoena;
- (3) The disclosure of information and results of examination of records of particular taxpayers, or relating to particular taxpayers, to a court of law in a proceeding brought to determine the existence or amount of any Business Tax liability of the particular taxpayers to the City;
- (4) The disclosure after the filing of a written request to that effect, to the taxpayer himself, or to his/her successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information as to the items included in the measure of any paid tax, any unpaid tax or amounts of tax required to be collected, interest, and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Administrative Services Director, or his/her designee, may refuse to make any disclosure referred to in this paragraph when in his/her opinion the public interest would suffer thereby;
- (5) The disclosure of the names and addresses of persons to whom registration certificates have been issued, the names of officers of corporations and members of partnerships to whom registration certificates have been issued, and the general type or nature of their business;
- (6) The disclosure to the Council by way of public meeting or otherwise of such information as may be necessary in order to permit it to be fully advised as to the facts when a taxpayer files a claim for refund of Business Taxes, or submits an offer of

compromise with regard to a claim asserted against him/her by the City for Business Taxes, or when acting upon any other matter;

(7) The disclosure of general statistics regarding taxes collected or business done in the City when reported in the aggregate.

Section 10209.

Reserved.

Section 10210. Penalties and Interest.

(A) Penalties on Deficiency Determinations Made Because of Underpayment.

(1) The Administrative Services Director, or his/her designee, shall add the penalty designated in the Master Fee Schedule, computed as a percentage of the amount of the additional assessment, to any additional assessment imposed as a result of a deficiency determination made because of underpayment if any part of the deficiency is due to negligent or intentional disregard of any provision of this Chapter.

(2) The Administrative Services Director shall add the penalty designated in the Master Fee Schedule, computed as a percentage of the amount of the additional assessment, to any additional assessment imposed as a result of a deficiency determination made because of underpayment if any part of the deficiency is due to fraud.

(B) Penalties on Deficiency Determinations Made Because of Failure to File.

(1) The Administrative Services Director, or his/her designee, shall add the penalty designated in the Master Fee Schedule, computed as a percentage of the amount of the unpaid Business Tax, to a deficiency determination made because of failure to file a return if such failure to file is due to negligent disregard of any provision of this Chapter.

(2) The Administrative Services Director, or his/her designee, shall add the penalty designated in the Master Fee Schedule, computed as a percentage of the amount of the unpaid Business Tax, to a deficiency determination made because of failure to file a return if the person against whom the deficiency determination is made has previously held a Business Tax Certificate in the City of Grover Beach, or if such failure is due to intentional disregard of any provision of this Chapter.

(3) The Administrative Services Director, or his/her designee, shall add the penalty designated in the Master Fee Schedule, computed as a percentage of the amount of the unpaid Business Tax, to a deficiency determination made because of failure to file a return if such failure is due to fraud.

(C) Penalties for Delinquent Payment of Business Tax and Deficiency Determinations.

(1) The Administrative Services Director, or his/her designee, shall, immediately after one (1) calendar month from the date that Business Tax, including deficiency determinations, are payable, add to all Business Taxes remaining unpaid the delinquency penalty designated in the Master Fee Schedule, computed as a percentage of the amount of such delinquent Business Tax, excluding penalties and interest.

(2) The Administrative Services Director, or his/her designee, shall immediately after two (2) calendar months from the date that Business Tax, including deficiency determinations, are payable, add to all Business Tax still remaining unpaid the additional delinquency penalty designated in the Master Fee Schedule, computed as a percentage of the amount of such delinquent Business Tax, excluding penalties and interest.

(D) Interest on Deficiency Determinations. In addition to the penalty or penalties imposed, interest at the rate of three-quarters of one per cent per month, or fraction thereof, shall be paid on the amount of the Business Tax, exclusive of penalties, from the last day of the first month of the Business Tax Certificate period or periods for which a deficiency determination is imposed until the date of payment.

(E) Extensions of Time to Make Payment. Prior to the due date, the Administrative Services Director, or his/her designee, may extend, for good cause, for a period not to exceed one (1) calendar month, the time to make any return or payment of taxes. No further extension shall be granted. Any person to whom an extension is granted who makes a return and pays the taxes within the period of extension shall not pay any penalty or interest on the amount of the taxes.

(F) Holidays. In the event the last day of the calendar month falls on a Saturday, Sunday or legal holiday, Business Tax may be paid without penalty on the first succeeding business day. Thereafter, the penalty, penalties or interest provided in this section shall be added.

Section 10211. Deficiency Determinations.

(A) If the Administrative Services Director, or his/her designee, is not satisfied with the return or returns of Business Tax, or the amount of the Taxes paid to the City by any person, he/she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his/her possession or that may come into his/her possession. One or more deficiency determinations may be made of the amount due for one or more than one annual period. The amount of each deficiency determination is immediately due and payable. Each determination shall become final and delinquent one (1) calendar month after notice thereof as herein provided.

(B) In making a determination, the Administrative Services Director, or his/her designee, shall offset overpayments previously made, if any, together with interest on the overpayments, against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments and overpayments shall be computed in the manner set forth in this Chapter.

(C) The Administrative Services Director, or his/her designee, shall give written notice of a deficiency determination to each person against whom a determination is made. The notice may be served personally or by mail. In case of service by mail of any notice required by this Chapter, the service is complete at the time of deposit in the United States Post Office.

(D) Except in the case of fraud, intent to evade this Chapter or authorized rules and regulations, or failure to make a return, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the Business Tax Certificate period for which the amount is determined or within three (3) years after the return is filed, whichever period expires the later.

(E) If any person fails or refuses to make, within the time provided in this Chapter, any return and payment of said Taxes or any portion thereof required by this Chapter or makes a fraudulent return or otherwise willfully attempts to evade this Chapter, the Administrative Services Director, or his/her designee, shall proceed in such manner as he/she may deem best to obtain facts and information on which to base his/her estimate of the Taxes due. As soon as the Administrative Services Director, or his/her designee procures facts and information upon which to base the assessment of any tax imposed by this Chapter, he/she shall determine and assess against such person the Taxes, interest and penalties provided for by this Chapter. When such a determination is made, the Administrative Services Director, or his/her designee, shall give written notice of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Administrative Services Director, or his/her designee, of any fraud, intent to evade or failure to file return. The amount of each deficiency determination is immediately due and payable. Any determination shall become final and delinquent one (1) calendar month after notice thereof as herein provided.

(F) If the Administrative Services Director, or his/her designee, believes that the collection of any Business Tax will be jeopardized by delay, or if any determination will be jeopardized by delay, he/she shall thereupon make a determination of the Taxes due. The amount determined is immediately due and payable. If the amount specified in the determination is not paid within ten (10) days after service of notice thereof upon the person against whom the determination is made, the amount becomes final and delinquent, and the delinquency penalty or penalties and the interest provided in Section 10210 shall attach to the amount of the Taxes, unless a petition for redetermination is filed within the ten days.

Section 10212. Redeterminations.

(A) Any person against whom a determination is made under Section 10211 or any person directly interested may petition for a redetermination within one (1) calendar month after service of notice thereof; provided, however, that a petition for redetermination of a determination made under subsection (F) of Section 10211 shall be filed within ten (10) days after service of notice thereof. If a petition for redetermination is not filed within the applicable period, the determination becomes final and delinquent at the expiration of the period.

(B) If a petition for redetermination is filed within the applicable period, the Administrative Services Director shall reconsider the determination, and, if the person has so requested in his/her petition, shall grant the person an oral hearing and shall give him ten (10) days notice of the time and place of the hearing. The Administrative Services Director may continue the hearing from time to time as may be necessary.

(C) The Administrative Services Director, or his/her designee may decrease or increase the amount of the determination before it becomes final but the amount may be increased only if a claim for the increase is asserted by the Administrative Services Director, or his/her designee, at or before the hearing.

(D) The decision of the Administrative Services Director, or his/her designee, upon a petition for redetermination becomes final and delinquent fifteen days after service upon the petitioner of notice thereof.

(E) No petition for redetermination shall be effective for any purpose unless at or before the filing thereof the amount found due in the original determination is paid, or a bond or other security

satisfactory to the Administrative Services Director, or his/her designee, is filed with him guaranteeing payment of any amount finally determined to be due.

Section 10213. Records for Determination by Department of Administrative Services.

All sellers, consumers and holders of City of Grover Beach Business Tax Certificates shall keep complete records of all business transactions, including sales, receipts, purchases and other expenditures, and shall retain all such records for examination by the Department of Administrative Services of the City of Grover Beach. Such records shall be maintained for a period of at least three (3) years.

Section 10214. Refunds.

(A) Whenever a Business Tax has been paid to the City under a mistake of law or a mistake of fact, the tax shall be refunded when a demand for refund has been made on a form prescribed by the Administrative Services Director. No refund shall be approved after three (3) years from the date of receipt by the City of the money to be refunded. For purposes of this Chapter, a mistake of law or fact shall be defined as follows:

(1) Mistake of Law. When the money was either paid by the demandant or received by the City through mistake as to the legal necessity for making the payment, refund thereof may be made upon a demand for refund. The demand shall be promptly transmitted to the head of the department involved for his/her recommendation and his/her statement of the facts upon which the recommendation is based. The demand and recommendation shall be presented to the City Attorney for his/her decision thereon.

(2) Mistake of Fact. When the money was either paid by the demandant or received by the City because of a mistake of fact when such payment or receipt would not have been made if such mistake had not been made, then refund thereof may be made upon a demand for refund, provided that if the mistake was wholly or partly the City's and the mistake was induced by an act or statement of the demandant, or if the mistake was wholly the demandant's and the City has made an investigation, inspection or examination, or done any similar work or rendered services, the head of the department, division or bureau may ascertain the value or cost of such and order it deducted from the amount to be refunded. His/her determination shall be final when approved by the Administrative Services Director, or his/her designee, but there shall be added thereto the amount designated for handling charges in the Master Fee Schedule.

(B) If the Administrative Services Director, or his/her designee, determines that any overpayment has been made intentionally or by reason of carelessness, he/she shall not allow any interest thereon.

Section 10215. Exemptions.

(A) Exempt business and Entities:

(1) Nothing in this Chapter shall be construed as applying to any person conducting any business or occupation exempt from taxation or Business Tax by virtue of Sec. 14 of Art. XIII of the Constitution of the State of California, or the Constitution of the United States, nor shall it be construed to authorize any act prohibited by any law of California or by the

provisions of this Code, or to authorize the conduct of any business for which a permit from the Council is required, until such permit is obtained.

(2) The provisions of this Chapter shall not apply to commercial travelers or selling agents selling their goods to dealers for future deliveries.

(3) The provisions of this Chapter shall not apply to the renting, letting or subletting of property by an individual to himself or to an entity wholly owned by him.

(4) The provisions of this Chapter shall not be deemed or construed to require the payment of a Business Tax to conduct, manage or carry on any business, occupation or activity, or require the payment of any Business Tax from any institution or organization, which is conducted, managed or carried on wholly for the benefit of charitable purposes, or from which profit is not derived either directly or indirectly by any person; nor shall any Business Tax Certificate be required for the conducting of any entertainment, concert, exhibition or lecture on scientific, historical, literary, religious or moral subjects, whenever the receipts of any such entertainment, concert, exhibition or lecture are to be appropriated to any church or school, or to any charitable, religious or benevolent purpose within the City; nor shall any Business Tax Certificate be required for the conducting of any entertainment, dance, concert, exhibition or lecture by any religious, charitable, fraternal, educational, military, state, county or municipal organization or association whenever the receipts of any such entertainment, dance, concert, exhibition or lecture are to be appropriated for the purposes and objects for which such association or organizations was formed, and from which profit is not derived, either directly or indirectly, by any person; provided, however, that nothing in this section contained shall be deemed to exempt any such institution or organization from complying with the provisions of this Code requiring such institution or organization to obtain a permit from the proper board or officer to conduct, manage or carry on any profession, trade, calling or occupation.

(5) The provisions of this Chapter shall not apply to credit union corporations.

(6) Any grower or producer of any articles of ranch products who grows or produces said products in the City shall be entitled to a Business Tax Certificate without tax unless the grower or producer sells said products from a produce stand on property located within the City. Any grower or producer qualified by the terms of this ordinance to claim a Business Tax Certificate exemption provided herein shall first file with the Administrative Services Director an affidavit setting forth his/her name and address, the amount and variety of produce he/she proposes to sell, the place where said produce was grown or produced, and that such produce was grown or produced by him.

(7) The provisions of this Chapter shall not apply to any Commercial Cannabis Businesses as defined within Grover Beach Municipal Code, Section 4000.20, as amended, that are licensed by the City of Grover Beach as a Commercial Cannabis Businesses and have physical facilities or real property (owned or leased) by the business within the City limits.

Section 10216. Establishment of Tax.

Business Tax shall be paid by every person conducting, carrying on or managing any business or profession within the City of Grover Beach not otherwise exempted by Section 10215.

Section 10217. Business Tax Certificates Based Upon Sales.

(A) Every person conducting, carrying on or managing any business or profession, not otherwise specifically licensed by or exempted by other sections of this Chapter, shall pay an annual Business Tax based on the applicable gross receipts schedule(s) consistent with this section, whether retail, wholesale or both. Business Tax Certificates shall be based upon the total gross receipts and service from business transactions within the City as recorded on the records of the business. The following tax amounts in Table 1 below are the amounts imposed by the City for the first fiscal year after adoption of this ordinance:

Table 1 – Proposed Business Tax Certificate (BTC) Rates

<u>Gross Receipts</u>	<u>BTC Rate</u>
\$0-\$24,999	\$60.00
\$25,000-\$49,999	\$120.00
\$50,000-\$149,999	\$240.00
\$150,000-\$999,999	\$360.00
\$1,000,000 and up	\$600.00

(B) The Business Tax Certificate rates listed in Table 1 in subsection (A) shall escalate annually, on January 1 of each year commencing on January 1, of the calendar year, automatically without further action by this Council, by the percentage increase in the Consumer Price Index (Los Angeles-Long Beach-Anaheim, as amended, City Average for urban wage earners and clerical workers—all items, as published by the Bureau of Labor Statistics of the United States of America) between December of said year and December of the preceding year, whichever is greater, unless the Council shall determine prior to January 1 of any year that all or part of the increase shall be deferred. Any Council deferral shall be adopted by resolution at a regularly held Council meeting.

Section 10218. Definition of Gross Receipts.

(A) "Gross receipts" shall include the total of amounts actually received from sales and the total of amounts actually received for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares, or merchandise. Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses, or other expense whatsoever. Excluded from "gross receipts" shall be the following:

- (1) Cash discounts allowed and taken on sales.
- (2) Any tax collected from the consumer or purchaser and which is separately stated at time of sale.
- (3) Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit.
- (4) Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or

trustee has furnished the Administrative Services Director with the names and addresses of the others and the amounts paid to them.

(5) Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded.

(6) As to a retail gasoline dealer, a portion of his/her receipts from the sale of motor vehicle fuels equal to the motor vehicle fuel license tax imposed by and previously paid under the provisions of Division 2, (Other Taxes) of the Revenue and Taxation Code of the State of California.

(7) As to a retail gasoline dealer, the special motor fuel tax imposed by Section 4041 of Title 26 of the United States Code if paid by the dealer or collected by him from the consumer or purchaser.

(B) When the gross receipts are derived from or attributable to activities engaged in within and without the City, gross receipts shall be allocated in a manner that is fairly calculated to determine the amount of gross receipts derived from or attributable to engaging in business in the City. This allocation shall be made on the basis of payroll, value and situs of tangible property, general expense, number of deliveries performed within the City or income derived or amounts received based on a percentage of sales or services performed within the City compared to the overall sales or services performed by a Business Tax Certificate holder, or by reference to any of these or other factors, or by another method of allocation that will fairly determine the amount of gross receipts derived from or attributable to engaging in business in the City. Gross receipts derived from isolated or occasional transactions at places outside the City but within the State of California, where the Business Tax Certificate holder is not regularly engaged in a course of business transactions shall be deemed to be gross receipts derived from engaging in business in the City. Gross receipts derived from or attributable to sources within this City include: (a) gross receipts from tangible or intangible property located or having situs in this City; and (b), when not contrary to law, gross receipts from any activities carried on in this City regardless of whether carried on in interstate, intrastate or foreign commerce.

Section 10219. Rooming Houses.

(A) For every person conducting, carrying on or managing the business of a lodging or rooming house consisting of any rooms available for rent, the Business Tax Certificate rate shall be determined by the gross receipts schedule designated in this Chapter. Rooming house shall be defined for purposes of this section as any house where lodging is provided for rent.

(B) If any person conducting, carrying on or managing a lodging or rooming house shall use or permit to be used such lodging or rooming house for the purpose of lewdness, assignation or prostitution, and shall be convicted for such offenses or any of them in any court of the State of California, then and in either event the Business Tax Certificate, as provided herein, for such lodging or rooming house shall be revoked and shall not hereafter be renewed for a period of one (1) year from and after the date of the final judgment of such conviction.

Section 10220. Apartments, Flats and Courts.

(A) For every person conducting, carrying on or managing the business of apartments, flats or courts consisting of four or more individual living units available for rent or lease at one (1)

location, the Business Tax Certificate rate shall be determined by the gross receipts schedule designated in this Chapter as amended.

(B) For the purpose of this section, "one location" is defined to mean one (1) or more lots that are contiguous.

Section 10221. Contractors.

(A) For the purpose of this section, the term "contractor" shall include contractor, subcontractor, specialty contractor and builder, and the term "sales and service" shall include only receipts from jobs or projects located within the City.

(B) Every person who is required to have a state contractor's license and who is conducting, carrying on or managing the business of a contractor in the City shall be required to have a City Business Tax Certificate.

(C) The contractor's Business Tax Certificate rate shall be paid annually. At the beginning of each Business Tax Certificate period, the applicant shall pay the minimum amount designated in this Chapter. At the expiration of each Business Tax Certificate period, before obtaining a Business Tax Certificate from any subsequent Business Tax Certificate period, the Business Tax Certificate holder shall file a statement setting forth the particulars required by the application referred to in Section 10207. At such time, the Business Tax Certificate holder shall pay any additional sums found to be due based on gross sales and service during the Business Tax Certificate period then expiring, according to the contractor's Business Tax Certificate schedule designated in this Chapter.

(D) For the purpose of this section, that portion of the receipts of a general contractor which represents payments to other state licensed contractors shall be excluded from his/her gross sales and service, provided that the other state licensed contractor has or is required to have a contractor's Business Tax Certificate and the contractor has furnished the Director with an acceptable listing of the names and addresses of the other contractor(s), the contractor number of each and the total amount(s) paid to each. An acceptable listing is defined as one which is typed, complete and which contains only exclusions allowed by this subsection.

Section 10222. Specific Businesses and Professions.

(A) Every person primarily conducting, carrying on or engaged in a profession in the private sector shall pay the annual Business Tax Certificate rate designated in this Chapter, except that where the professional is an employee in an employment relationship then the employer shall pay the employee's designated annual Business Tax Certificate rate unless the employer pays a Business Tax Certificate rate under Section 10217. For purposes of this subsection the term "employee" means an employee whose wages are reported by the employer on a Form W-2 Wage and Tax Statement.

(B) The term "profession" is defined to mean a calling requiring specialized knowledge, training or academic preparation, and certification or licensing, and shall include, but shall not be limited to, the following: accountant, actuary, analyst, archaeologist, attorney at law, audiologist, bacteriologist, certified shorthand reporter, chiropractor, consultant, counselor, dentist, dental hygienist, insurance adjuster, insurance broker, landscape architect, mortician, metallurgist, nurse, oculist, optometrist, osteopath, osteopathist, pharmacist, physical therapist, physician, podiatrist, psychologist, psychiatrist, real estate licensee, speech pathologist, surgeon, surveyor,

veterinarian, X-ray technician, or other professions determined by the Administrative Service Director, or his/her designee, to be similar thereto.

(C) Said Business Tax Certificate shall be established as defined within this Chapter.

(D) The term "private sector" as used in subsection (a) is defined to mean (i) anyone who is not an employee of a public entity as defined in Government Code Section 811.2 receiving a salary and benefits directly from said agency, or (ii) anyone not working exclusively for a public entity.

Section 10223. Two or More Businesses.

Any person conducting two (2) or more such businesses, occupations, or professions mentioned in Section 10222 at the same location shall be required to procure but one (1) Business Tax Certificate, provided that the highest Business Tax Certificate rate applicable to any of the included businesses shall apply. The Business Tax Certificate shall specify the several businesses, professions, or occupations for which the Business Tax Certificate is issued.

Section 10224. Two or More Businesses – Same Location and Managements.

If any person is conducting, carrying on or managing two (2) or more businesses licensed by this Chapter at the same location and under the same management, the Business Tax Certificate rate to be paid as provided by Section 10217 shall be determined by and be based upon the gross sales and service received or derived from only such businesses as are not otherwise specifically Business Tax Certificated by any other section or sections of this Chapter.

Section 10225. Two or More Businesses – Same Location Different Management.

If two (2) or more businesses which would be subject to the provisions of this Chapter are conducted, carried on or managed at the same location, but under different management, ownership or control, the Administrative Services Director may elect to avoid the multiplicity of licensing each and every individual business by entering into a written agreement with the owner of the property upon which such businesses are located, or with one (1) or more of the persons operating any one (1) or more of such businesses, whereby such owner or other person or persons shall be responsible for the collection and payment of the Business Tax Certificates rate applicable to all such businesses, in an amount to be determined by the Administrative Services Director, or his/her designee, pursuant to this Chapter.

Section 10226. Evidence of Doing Business.

When any person shall by use of signs, circulars, cards, internet websites, or newspapers advertise, hold out, or represent that he/she is in business in the City, or when any person holds an active Business Tax Certificate or permit issued by a governmental agency indicating that he/she is in business in the City, and such person fails to deny by a sworn statement given to the Administrative Services Director, or his/her designee, that he/she is not conducting a business in the City, after being requested to do so by the Administrative Services Director, or his/her designee, then these facts shall be considered prima facie evidence that he/she is conducting a business in the City.

Section 10227. Severability.

Should any provision of this Chapter, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 10228. Violation deemed misdemeanor - Penalty.

Any person violating any of the provisions of this Chapter or any regulation or rule passed in accordance herewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment for a period of not more than six (6) months, or by both such fine and imprisonment.

Section 10229. Conviction for Chapter violation -Taxes not waived.

The conviction and punishment of any person for failure to pay the required tax in accordance with this Chapter shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

Section 10230. Remedies cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of law or equity, including but not limited to the California False Claims Act (Government Code Section 12650 et seq.) and the California Unfair Practices Act (Business and Professions Code Section 17070 et seq.), are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

Section 10231. Amendment or repeal.

Chapter 2 of Article X of the City of Grover Beach Municipal Code may be repealed or amended by the City Council without a vote of the people. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment provision that would increase the rate of any tax levied pursuant to this Chapter or change the methodology of how the tax is levied if such action would increase the amount of the tax approved by the voters. The people of the City of Grover Beach affirm that the following actions shall not constitute an increase of the rate of a tax:

(A) The restoration of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax;

(B) An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter;

The establishment of a class of person that is exempt or excepted from the tax or the discontinuation of any such exemption or exception (other than the discontinuation of an exemption or exception specifically set forth in this Chapter); or

The collection of the tax imposed by this Chapter, even if the City had, for some period of time, failed to collect the tax.

PART 3. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be in violation of the law, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared in violation of the law.

PART 4. This Ordinance shall become effective thirty (30) days after the date of its adoption, and within fifteen (15) days after its adoption, it shall be published once, together with the names of the Council Members voting thereon, in a newspaper of general circulation within the City.

INTRODUCED at a regular meeting of the City Council held _____, 2018 and **PASSED, APPROVED, and ADOPTED** by the City Council on _____, 2018 on the following roll call vote, to wit:

AYES: Council Members -
NOES Council Members -
ABSENT: Council Members -
ABSTAIN: Council Members -

PASSED, APPROVED, and ADOPTED by _____ percent of the Voters of the City of Grover Beach on Tuesday, November 6, 2018.

**** D R A F T ****

JOHN P. SHOALS, MAYOR

ATTEST:

DONNA L. MCMAHON, CITY CLERK

APPROVED AS TO FORM:

DAVID P. HALE, CITY ATTORNEY