



CITY COUNCIL STAFF REPORT

TO: Honorable Mayor and City Council **DATE:** March 28, 2022

FROM: Matthew Bronson, City Manager

PREPARED BY: David Hale, City Attorney
Bruce Buckingham, Community Development Director

SUBJECT: First Reading and Introduction of an Ordinance to Repeal and Replace Chapters 1, 2, and 4 of Article I, Repeal Sections 3102.5 and 3103 of Chapter 1 (Disorderly Conduct and Nuisances) of Article III (Public Welfare, Morals and Conduct) and Sections 1309 through 1325 of Chapter 3 (Rules of Construction) of Article I, and Amend Section 1500 of Chapter 5 (Abatement of Nuisances) of Article I of the Grover Beach Municipal Code

RECOMMENDATION

- 1) Conduct first reading, by title only, and introduce an Ordinance to repeal and replace Chapters 1, 2, and 4 of Article I, repeal Sections 3102.5 and 3103 of Chapter 1 of Article III, and Sections 1309 through 1325 of Chapter 3 of Article I and amend Section 1500 of Chapter 5 of Article I of the Grover Beach Municipal Code; and
 - 2) Schedule second reading and adoption of the Ordinance at the next regularly scheduled City Council meeting.
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BACKGROUND:

Both the current and previous City Council Goals have included continuing to strengthen the City's code compliance program. The 2021-23 City Council Goal for Code Compliance states:

Continue to strengthen the code compliance program and related code sections to be more proactive in inspecting and addressing such issues as, short-term rental violations, illegal advertising/business signage, overgrown landscaping and conflicting right-of-way encroachments; continue monitoring the cannabis industry.

The City Attorney's Office along with staff have been working together in the development of Grover Beach Municipal Code (GBMC) amendments to promote and further this goal through resolving duplications within City codes and developing more comprehensive code enforcement policies and regulations. The City's Code currently defines the principal code enforcement regulations within Chapters 1 through 5 of Article I, (General Provisions) of the GBMC.

Within Article I, the GBMC sets forth four predominate tools for staff and the City Attorney's Office defining the underlining authority of the Municipal Code. Chapter 2 establishes the penal or criminal function of the code allowing the City Attorney's Office to prosecute violations of the Code as a criminal offense either by infraction or in some cases by misdemeanor. Chapter 3 defines the rules of construction for implementation of the Code. Chapter 4 enumerates those options for staff and the City Attorney's Office to enforce the GBMC by administrative notice of violations and

civil citations. Chapter 5 defines what constitutes a public nuisance within the city and the options for both staff and the City Attorney's Office to abate nuisances.

Staff and the City Attorney's Office have reviewed Article I of the Code and concluded that to achieve and accomplish the purposes and objectives of the Council's adopted goal, it is necessary to modify and amend the entire Article I to eliminate internal inconsistencies in the Code. It is also necessary to bring the Code up to date on current enforcement options and tools. The first step was to update Article I Chapter 5 (Public Nuisances) which the Council adopted in July 2019. Staff is proposing the completion of the Article I update by amending the remaining Chapters 1, 2, 3 and 4 with a minor modification of Chapter 5 which will provide the following benefits:

- Elimination of inconsistencies between different chapters of the GBMC related to code compliance.
- Revising the criteria for obtaining attorney's fees for code actions that are consistent with current State law and defining abatement cost recovery that includes both City staff time and City Attorney's Office fees and court costs for civil citations and public nuisance actions.
- Establishing greater specificity to the procedures for enforcement of abandoned vehicles.
- Enhancing the definitions used for code compliance to cover more of the typical terms used within Article 1 and to consolidate most of the definitions into one code section as done elsewhere within the code.
- Establishing clear authority for the City Attorney's Office to prosecute criminal conduct as either an infraction or misdemeanor.
- Expanding the definition of entities subject to citation that include but not limited to individuals who are beneficiaries under a deed of trust related to the property subject to the code compliance action.
- Expands the citing authority of the City to include not only violations of the GBMC but also violations of conditions of development entitlements like subdivision maps, use permits, variances, etc.
- Allows for the immediate imposition of civil fines and penalties without a 30-day cure period for building code violations that exist as a result of illegal cultivation of cannabis.

The City Attorney's Office and staff believe these enhanced regulations will provide greater tools to deal with code compliance issues and strengthen the City's enforcement actions in the future. In addition to Article I amendments, staff is proposing to delete two redundant code sections that are no longer needed as a result of the previous update to Chapter 5 Public Nuisances as follows:

- Article III Chapter 1 Section 3102.5 (Painting, Etc. of Motor Vehicles in Residential Zones). This violation is currently addressed in Article I Chapter 5 Public Nuisances.
- Article III Chapter 1 Section 3103 (Unsuitability of Property). This violation is currently addressed in Article I Chapter 5 Public Nuisances.

The public hearing for the second reading and adoption of this ordinance will be scheduled for the next regularly scheduled Council meeting on April 11.

FISCAL IMPACT

There is no direct fiscal impact to the City from this Code amendment.

ALTERNATIVES

The Council has the following alternatives to consider:

1. Conduct first reading, by title only, and introduce the Ordinance to repeal and replace Chapters 1, 2 and 4 of Article I, repeal Sections 3102.5 and 3103 of Chapter 1 of Article III and Sections 1309 through 1325 of Chapter 3 of Article I and amend Section 1500 of Chapter 5 of Article 1 of the Grover Beach Municipal Code, and schedule a second reading and adoption of the Ordinance at the next regularly scheduled City Council meeting; or
2. Provide alternative direction to staff.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

ATTACHMENTS

1. Draft Ordinance

ORDINANCE NO. 22-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH REPEALING CHAPTER 1 (ADOPTION OF CODE), CHAPTER 2 (PENAL PROVISIONS) AND CHAPTER 4 (ADMINISTRATIVE CITATIONS FOR VIOLATION OF CODE) OF ARTICLE I (GENERAL PROVISIONS) AND ADDING A NEW CHAPTER 1, 2 AND 4 OF ARTICLE I; REPEALING SECTIONS 3102.5 AND 3103 OF CHAPTER 1 (DISORDERLY CONDUCT AND NUISANCES), OF ARTICLE III (PUBLIC WELFARE, MORALS AND CONDUCT) AND SECTIONS 1309 THROUGH 1325 OF CHAPTER 3 (RULES OF CONSTRUCTION) OF ARTICLE 1; AND AMENDING SECTION 1500, OF CHAPTER 5 (ABATEMENT OF NUISANCES) OF ARTICLE 1 OF THE GROVER BEACH MUNICIPAL CODE

WHEREAS, the City of Grover Beach ("City") has the police power to protect the health, safety and welfare of the community, including the ability to protect and enhance the natural environment consistent with Article XI, section 7 of the California Constitution; and

WHEREAS, the City wishes to encourage the compliance with its municipal codes; and

WHEREAS, the enforcement of its codes encourages the compliance with its laws, regulations, and permits over which the City has authority; and

WHEREAS, whereas the adoption of a municipal code establishes measurable goals based on identified community needs which allows for the monitoring of plans, permits, and zoning regulations for their effectiveness after adoption, and

WHEREAS, the adoption of code regulations and defined code enforcement provisions allows for the effective coordination and appropriate enforcement of both state and local regulations; and

WHEREAS, it is in the public interest to establish a procedure so that the abatement of violations of the code is at the expense of the person(s) creating, causing, committing or maintaining the violations.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Grover Beach as follows:

PART 1: The above recitals and findings are true and correct and incorporated herein by this reference.

PART 2: Chapter 1, (Adoption of Code), of Article I, (General Provisions), is hereby repealed in total and a new Chapter 1, Adoption of Code, of Article I, is added to the Grover Beach Municipal Code as follows:

CHAPTER 1 –ADOPTION OF CODE

Section 1100. Adoption. This code shall be known as the Grover Beach Municipal Code, as compiled, edited and published, a copy of which is on file in the office of the city clerk, for public inspection.

Section 1101. Title – Citation and Reference. This Code is and shall be known as the city of Grover Beach Municipal Code, and it shall be sufficient to refer to such code as the city of Grover Beach Municipal Code or (GBMC) in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting, or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of the city of Grover Beach Municipal Code. References may be made to the titles, chapters, sections, and subsections of the city of Grover Beach Municipal Code, and such references shall apply to those titles, chapters, sections, subsections, divisions or subdivisions as they appear in the code.

Section 1102. Maintenance of code. At least three (3) copies of this Code, duly certified by the city clerk, shall be maintained on file in the office of the city clerk as official copies of this code.

Duly certified copies of each ordinance making a change in this Code shall be filed in the office of the city clerk in books for such purpose, duly indexed for ready reference.

Section 1103. Interpretation of code and other ordinances. The provisions of this Code and all proceedings under it are to be construed to affect its objects and to promote justice. All the provisions of this code and all other city ordinances shall be interpreted to refer to the appropriate or designated officer or office of the city, and whether an ordinance, uniform code, statute or other matter which is adopted by reference refers to any department, officer, employee, inspection, police or other function, unless the context requires otherwise, all references shall be to the appropriate or designated office, officer, department, agency, employee or function of the city, or to the person or agency performing the function for the city.

Section 1104. Effect of code on past actions and obligations. Neither the adoption of this Code nor the repeal or amendment by this Code of any ordinance or part or portion of any ordinance previously in effect in the city or within the territory currently comprising the city, shall in any manner affect the prosecution for the violation of any ordinance, which violation was committed prior to the effective date of this code, nor be construed as a waiver of any license, fee or penalty on such effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty or the

penal provisions applicable to any violation of such ordinances, nor to affect the validity of any bond or cash deposit required to be posted, filed or deposited pursuant to any ordinance, and all vested rights and obligations pertaining to such ordinances shall continue in full force and effect. The repeal of an ordinance shall not repeal the repealing clause of such ordinance or revive any ordinance which has been repealed thereby.

Section 1105. Constitutionality. If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The City Council hereby declares that it would have adopted this Code and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 1106. Territorial limitation. This Code shall refer only to the omission or commission of acts within the territorial limits of the city of Grover Beach and that territory outside of the city over which the city has jurisdiction or control by virtue of the Constitution, or any law, or by reason of ownership or proprietary control of property.

Section 1107. Local Signification. All references in this Code to places, acts, persons or things and all else in relation to this Code shall be construed to mean that the same are applicable to this city, whether the city is mentioned in each particular section or not.

Section 1108. Section and Subsection defined. "Section" means a section of this Code dividing a Chapter, unless some other source is specifically set forth. "Subsection" means a subsection dividing a section, unless some other source is expressly set forth.

Section 1109. References to prior code. References in city forms, documents and regulations to the chapters and sections of any former city codes shall be construed to apply to the corresponding provisions within this Code.

Section 1110. Definitions. As used in this Code, unless a different meaning is apparent from the context or is specified elsewhere in the Code:

"Calendar year" means from January 1st through December 31st of any given year.

"City" means the City of Grover Beach.

"City Attorney" means the official of the city appointed by Council who occupies the position of the attorney representing the City on all legal matters consistent with Government Code sections 36505 and 41801.

"City Manager" means the appointed official of the city who occupies the position as chief administrative officer of the city.

"Council" means the city council of the City of Grover Beach.

“Councilmember” means a person duly elected to the council.

“County” means the county of San Luis Obispo, California, or the area within the limits of San Luis Obispo County, and such territory outside of San Luis Obispo County over which the county has jurisdiction or control by virtue of any constitutional or statutory provisions.

“Fiscal year” means from July 1st of any given year through June 30th of the following year.

“Gender.” The masculine gender shall include the feminine and neuter genders.

“Goods” include wares and merchandise.

“May” shall be permissive.

“Month” means a calendar month, unless otherwise expressed.

“Number”. The singular number shall include the plural, and the plural number shall include the singular.

“Oath” includes affirmation.

“Official Time Standard”. Wherever certain hours are named in this code, they mean standard time or daylight-saving time as may be in current use in the city.

“Operate” means and includes carrying on, keeping, conducting or maintaining.

“Owner,” applied to a building or land, includes any part owner, joint owner, tenant, tenant in common, or joint tenant of the whole or a part of such building or land.

“Person” includes any natural person, firm, company, corporation, club, trust or similar organization, partnership, association, public corporation, political subdivision, city (except the city of Grover Beach), the county of San Luis Obispo, any district in the county of San Luis Obispo, the state of California, or the United States of America, or any department or agency or any employee, manager, officer, agent, lessee or servant of any thereof, unless this code expressly provides otherwise.

“Personal property” includes money, goods, chattels, things in action, and evidence of debt.

“Police,” “police chief” or “chief of police” means the agency which performs the appropriate law enforcement function for the city, and the head of the agency or division thereof which at the time involved has responsibility for performing the police function for, or within, the city.

“**Property**” includes real and personal property.

“**Real property**” includes land, tenements, and hereditaments.

“**Sale**” includes any sale, exchange, barter or offer for sale.

“**Shall and Must**” means mandatory.

“**State**” means the state of California.

“**Street**” includes all streets, highways, avenues, boulevards, alleys, courts, places, squares, sidewalks and curbs or other public ways in the city which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of the state.

“**Tenant or occupant,**” applied to a building or land, includes any person who occupies the whole or a part of such building or land, whether alone or with others.

“**Tense.**” The present tense shall include the past and future tense, and the future tense shall include the present tense.

Words and phrases not defined in this code are construed according to the approved usage of the language, or, when appropriate, by reference to definitions contained in state or federal law.

Section 1111. General Enforcement Authority. The City Manager or any of his/her designated Enforcement Officers as set forth in this Code have the authority and powers necessary to gain compliance with the provisions of the Municipal Code and applicable state codes. These powers include the power to inspect public and private property and use whatever judicial and administrative remedies are available under the Municipal Code or applicable state codes.

Section 1112. Code Violations.

(A) No person shall violate any provision or fail to comply with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the requirements of this Code shall be guilty of an infraction unless otherwise designated as follows:

- . (1) Such Code provision makes violation thereof a misdemeanor.
- . (2) The City, at its discretion, may issue an administrative citation and civil penalty in lieu of charging any violation of the Code as a misdemeanor or an infraction. The enforcement of those civil penalties shall be governed by the civil administrative citation procedures set forth in this Article I. A misdemeanor may also at the discretion of the City Attorney be prosecuted as an infraction.

(B) Each violation of this Code shall be a separate offense for each and every day during any portion of which any violation of any provision of this Code is committed, continued, or permitted by such person and shall be charged accordingly.

(C) In all cases where the same violation is made actionable or is created by different clauses or sections of this Code, the City Attorney or Enforcement Officers may elect under which to proceed; but not more than one recovery shall be had against the same person for the same violation.

(D) The City Attorney has discretion to institute the appropriate civil action to ensure compliance with the Grover Beach Municipal Code, including an action for a temporary restraining order, a preliminary or permanent injunction or an action to recover any damages incurred because of any Code violation.

PART 3: Chapter 2, (Penal Provisions), of Article I, (General Provisions), is hereby repealed in total and a new Chapter 2, (Penal Provisions), of Article I, is added to the Grover Beach Municipal Code as follows:

Penal Provisions

Sec. 1201. Citation of Violators. The pertinent provisions of Part 2, Title 3, of the Penal Code, or its successor, shall govern the procedures required for criminal enforcement of the Grover Beach Municipal Code.

Sec. 1202. Failure to Appear as Misdemeanor. Any person willfully violating his written promise to appear in court is guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested.

Sec. 1203. Enforcing Officers Generally. The Police Chief and all peace officers employed by the Police Department are hereby empowered to enforce, and are charged with the duty of enforcing, any and all provisions of this Code or of any other ordinance of the City, including the power to arrest for such violations in accordance with the laws of the State of California, together with such other powers as are conferred upon them by the City. The Police Chief may authorize employees of the Police Department, excepting clerks, stenographers and others whose duties do not fall within the scope of law enforcement services, to enforce any and all provisions of the statutes of the State of California, of this Code, or of any other ordinance of the City where the violation of such provision or provisions would constitute a misdemeanor or an infraction, including the power to cite for such violations in accordance with the laws of the State of California.

Sec. 1204. Enforcement Officers.

(A) Training Requirements. Before any such officer or employee may exercise criminal citation authority pursuant to this section, that officer or employee must complete an enforcement-training program established at the discretion of the Chief of

the Grover Beach Police Department. The training program shall be designed to instruct officers and employees regarding:

- . (1) The provisions of this Code to be enforced;
- . (2) The evidentiary prerequisites to proper prosecution for violations thereof;
- . (3) The procedural requirements of citations, including completion of the forms, processing and amendment of citation forms; and
- . (4) The limitations attendant thereto.

(B) Citation Authority. The City Manager may appoint employees of the City of Grover Beach from Departments other than the Police Department as Enforcement Officers who shall have the same powers to enforce and duty to enforce the provisions of the Grover Beach Municipal Code as people designated in Section 1203.

(C) Delegation. An officer or employee designated in subsection (B) of this section has the authority to appoint employees to assist in the enforcement responsibilities. Such employees shall likewise have the authority to issue criminal citations following the written confirmation by the City Manager of the appointment of such employees by the officers and employees designated in subsection (B) and completion of the training required by subsection (A).

(D) Notice to Appear. Citation officers vested with criminal citation authority pursuant to this section, may, pursuant to Sections 836.5, 853.5 and 853.6 of the California Penal Code, issue a citation in the form of a NOTICE TO APPEAR to a person where any such citation officer has probable cause to believe that the person to be issued the citation has violated a provision of this Code in the citation officer's presence, which the citation officer had the discretionary duty to enforce, and therefore, has committed a misdemeanor or infraction.

(E) Release on Written Promise to Appear. A citation officer exercising the authority pursuant to this section may release the person to be issued a citation on his or her written promise to appear in court. The citation officer shall under no circumstances take the person to be issued a citation into custody.

(F) Refusal to Sign. In the event that the person to be issued a citation refuses to provide his or her written promise to appear in court, a citation officer may summon a Grover Beach Police Officer and request that such police officer take the person into custody. If the person demands to be taken before a magistrate, the citation officer may summon a Grover Beach Police Officer and request that such Police Officer take the person into custody or seek assistance of the City Attorney and request that a complaint be prepared and filed against that person.

(G) Filing and Maintenance Files. Citation officers having a duty to enforce the provisions of this Code, and who exercise the authority to issue a citation pursuant to

this section, shall maintain a file of executed citations issued under subsection (D) any citations for misdemeanors shall be forwarded to the City Attorney's office for issuance of a complaint and filing with the appropriate magistrate.

(H) Additional Authority. Nothing in this section shall be considered to limit any authority otherwise vested in the named officers and employees, provided elsewhere in this Code, or by State law.

Sec. 1205. Infractions. Any person violating any of the provisions or failing to comply with any of the requirements of this Code shall be guilty of an infraction if the Code provision under which the person is charged makes violation thereof an infraction, is silent as to whether it is an infraction or misdemeanor or if the Code designates a violation as a misdemeanor and the City Attorney elects to treat such violation as an infraction in accordance with subsection 1112 (A)(2). Any person convicted of an infraction under the provisions of this Code herein shall be punishable by a fine or fines consistent with Government Code Section 36900, or its successor. Except as otherwise provided by law, all provisions of law or ordinance relating to misdemeanors shall apply to infractions.

Sec. 1206. Misdemeanors. Except as otherwise provided in this Code, any person convicted of a misdemeanor under the provisions of this Code shall be punishable by a fine or imprisonment consistent with Government Code Section 36901, or its successor.

PART 4: Chapter 4, (Administrative Citations for Violations of Code), of Article I, (General Provisions), is hereby repealed in total and a new Chapter 4, (Administrative Citations for Violations of Code), of Article I, is added to the Grover Beach Municipal Code as follows:

Section 1400. Findings and Purpose. The City Council finds and declares as follows:

(A). There is a need for an alternative method of enforcement for minor violations of this Code and applicable state codes. The City Council further finds that an appropriate method of enforcement for minor violations is through a civil citation and administrative hearing program.

(B). This chapter makes any violation of the provisions of this Code and applicable state codes subject to civil citation and civil fines.

(C). This chapter establishes the administrative procedures for the imposition, enforcement, collection, review, and appeal of civil citations and civil fines pursuant to Government Code Section 53069.4 and the city's general police power.

(D). The issuance of a civil citation under this chapter is solely at the city's discretion and is one option the city has to address violations of this Code and applicable state codes. By adopting this chapter, the city does not intend to limit its discretion to utilize any other remedy, civil or criminal, for such violations that the city may select in a particular case. The procedures established in this chapter shall be in

addition to criminal, civil or any other legal remedies established by law that may be pursued to address violations of this Code and applicable state codes.

(E). Because of the serious blighting conditions that can occur affecting health and safety, this chapter is intended to impose strict civil liability for all public nuisance that occur upon the subject premises.

(F). The city adopts this civil citation and administrative hearing program in order to achieve the following goals:

1). To protect the public health, safety and welfare of the citizens of the city of Grover Beach.

(2). To gain compliance with this Code and applicable state codes, as well as other ordinances and regulations in a timely and efficient manner.

(3). To encourage voluntary and complete compliance with the provisions of this Code and applicable state codes and to eliminate public nuisances for the protection and benefit of the entire community.

(4). To provide for an administrative hearing process to appeal the imposition of civil citations and civil fines.

(5). To provide a method to hold persons responsible when they fail or refuse to comply with the provisions of the Grover Beach Municipal Code or applicable provisions of state codes, other ordinances or regulations, or terms and conditions imposed on licenses, permits, or entitlements issued or approved by the city of Grover Beach; and

(6). To minimize the expense and delay where the sole remedy is to pursue responsible parties in the civil or criminal justice system.

Section 1401.

(A). Any person violating any provision of this Code or applicable state codes may be issued a civil citation by an Enforcement Officer as provided in this chapter. A violation of this Code includes, but is not limited to, all violations of the municipal code and the uniform codes adopted by the City Council or failing to comply with any condition imposed on any license, permit, or entitlement issued or approved under the provisions of this Code.

(B). An enforcement officer may issue a citation for a violation not committed in his or her presence if it is determined through investigation that the responsible person cited did commit the violation.

Section 1402. Definitions. The following definitions apply to the use of these terms for the purposes of this chapter:

“Administrative hearing” means an oral proceeding before a hearing officer regarding the civil citation(s).

“Building violation” means any violation of this Code pertaining to building, housing, plumbing, electrical, mechanical or other similar structural or zoning regulations, including regulations set forth in Article VIII or Article IX of this code, that does not create an immediate danger to health or safety.

“City” means the City of Grover Beach.

“Civil citation” means any citation issued pursuant to this chapter stating there has been a violation of this Code.

“Code” means the city of Grover Beach Municipal Code or any law, rule, regulation, or code that is adopted by reference.

“Correction period” means the period of time allowed for a responsible person cited to correct a violation shown on a civil citation.

“Director” means the community development director of the city, or his or her designee.

“Enforcement officer” means any person duly authorized to enforce the provisions of this Code.

“Hearing officer” means any person appointed by the city manager to serve as the hearing officer for the administrative hearing of civil citations. Prior to conducting any hearings the hearing officer must first be approved by the city attorney as qualified to provide a fair and impartial hearing based on appropriate education, training and experience.

“Issue” or **“Issued”** means service of a citation to the responsible person.

“Notice of Violation” means any notice advising there has been a violation of the Grover Beach Municipal Code or Building Codes or notice of a failure to correct a prior noticed violation.

“Reinspection fee” means a fee charged pursuant to this chapter against a responsible person who has become the subject of city enforcement of state or local law, and for which there is a need to recover the city’s actual cost of a second or any subsequent inspection of the property caused by the responsible party’s failure to comply with a lawful order from an enforcement officer. The amount of this fee shall be set by resolution of the city council and shall become collectible in the same manner as civil fines.

“Responsible person” means any of the following:

- (1). A person who causes a code violation to occur or continue.
- (2). A person who maintains or allows a code violation to occur or continue by his or her action or failure to act.
- (3). A person whose agent, employee, or independent contractor causes a code violation to occur or continue by his or her action or failure to act.
- (4). A person who is the owner, lessee, sublessee, or current possessor of real property where a property-related code violation occurs or continues.
- (5). A person who is the on-site manager of a business where a code violation occurs or continues.
- (6). A person who is the beneficiary under a deed of trust for the property where a property-related violation occurs or continues, and that person has not corrected the violation within thirty (30) calendar days after being notified by the director in writing of the violation and the fact that the trustee under the deed of trust is no longer living on the property and his or her whereabouts is unknown.

Section 1403. Civil Citation – General.

- (A). Each and every day a violation exists shall be a separate and distinct violation and is subject to a separate and distinct civil fine.
- (B). A civil citation may charge a violation for one or more days on which a violation exists, and for violation of one or more code sections.
- (C). Every person who applies for and receives a license or permit, or any type of land use approval (e.g., subdivision maps, use permits, variances, etc.) or other entitlement, shall comply with all conditions imposed upon the issuance of the license or permit, or any type of land use approval or other entitlement. If a person violates any condition of such license or permit, or land use approval or other entitlement, he or she may be issued a civil citation and be liable for civil fines under the provisions of this chapter.
- (D). The city may take into consideration the fact that a person has been issued civil citations when the city is determining whether to grant, modify, suspend, revoke, or deny any license or permit, or any type of land use approval or other entitlement regarding that person or property, and such civil citations are evidence that the person has committed acts that are not compatible with the health, safety and general welfare of other persons or businesses in the vicinity.

Section 1404. Civil Citation – Building Violations.

- (A). When a Notice of Violation is issued for a building violation, a thirty (30) calendar day correction period shall be allowed for the correction of the violation and the

responsible person shall correct the violation within that period. Notwithstanding the provisions of Section 1403 of this chapter, no responsible person for a building violation shall be liable for a civil fine unless the violation continues after the thirty (30) calendar days allowed for its correction, plus any extension, and a civil citation is issued containing a notice of failure to correct. The thirty (30) calendar day correction period shall not apply to a building code violation if the violation exists as a result of, or to facilitate, the illegal cultivation of cannabis.

(B). The responsible person receives a Notice of Violation for a building violation may request an extension of the correction period, provided that a request is filed with the director before the thirty (30) calendar day correction period ends. The director may, in his or her discretion, grant a reasonable extension of the time period to correct the violation if the responsible person has supplied substantial evidence showing that the correction cannot reasonably be made within the thirty (30) calendar day period. The filing for such an extension does not, unless granted, extend the thirty (30) calendar day correction period or any other time periods set by this chapter.

(C). If a building violation has not been corrected by the end of the correction period, the enforcement officer has authority to issue to the responsible person a civil citation containing a notice of failure to correct. The responsible person to whom the notice of failure to correct is issued shall be liable for and shall pay to the city the civil fine or fines described in the civil citation, which civil fine or fines shall be due on the date of issuance of the civil citation. Additional civil citations may be issued and additional civil fines imposed for every day the violation continues uncorrected from the date of issuance of the civil citation.

Section 1405. Civil Citation – Contents.

- (A). Each civil citation issued shall contain the following information:
- (1). Name of the responsible person cited for the violation of this Code.
 - (2). The date and approximate time when the violation(s) occurred.
 - (3). The address or definite description of the location where the violation(s) occurred.
 - (4). The date on which the citation was issued.
 - (5). The code section(s) or condition(s) violated and a description of the violation(s).
 - (6). The amount of the civil fine for each violation cited.
 - (7). A description of the civil fine payment process, including a statement advising that the civil fine shall be received by the city within thirty (30) calendar days

from the date of issuance of the civil citation, the procedure for payment of the civil fine, and the consequences for failing to timely pay the civil fine.

(8). If a building violation, the civil citation shall also contain the date the thirty (30) calendar day correction period expires. The civil citation shall also state the amount of the civil fine(s) and a description of the civil fine payment process.

(9). A notice that each day thereafter that a violation(s) remains uncorrected shall be a separate violation(s) subject to separate civil fine(s) until corrected.

(10). An order prohibiting the continuation or repeated occurrence of each violation described in the civil citation.

(11). A notice that the responsible person cited has the right to appeal the issuance of the civil citation by requesting an administrative hearing, including the time period within which the administrative hearing must be requested, and a description of the procedure to be used in requesting an administrative hearing.

(12). A description of the procedure for requesting a waiver of the civil fine deposit.

(13). An assignment of a hearing date, time and location if the responsible person cited files a request for administrative hearing and/or a waiver of the civil fine deposit.

(14). A notice that the code violation is deemed to be a public nuisance.

(15). A notice of the process for the collection of unpaid civil fines and/or nuisance abatement costs as provided for in this chapter.

(16). The name and signature of the enforcement officer issuing the civil citation;
and

(17). Any other information deemed necessary by the director for enforcement or collection purposes.

(B). Each civil citation issued shall include a self-addressed envelope in which the responsible person can send the civil fine or request for administrative hearing or civil fine deposit waiver to the city.

(C). Failure of the civil citation to contain all of the information required in subsection (A) above shall not be a defense to the civil citation and shall not constitute grounds for dismissal of the civil citation.

Section 1406. Civil Citation – Service. A civil citation may be served by any one of the following methods:

(A). Personal Service. An enforcement officer shall attempt to locate and personally serve the responsible person and obtain the signature of the responsible person on the civil citation. If the responsible person served refuses or fails to sign the civil citation, the failure or refusal to sign shall not affect the validity of the civil citation or of the subsequent proceedings.

(B). Service by Mail. If the enforcement officer is unable to locate or personally serve the responsible person, the civil citation shall be served by first-class mail, postage prepaid, with a declaration under penalty of perjury of service by mail executed by the person mailing the civil citation. The civil citation shall be addressed to the responsible person at the address shown on the last equalized property tax assessment rolls for San Luis Obispo County for a building or property related violation, or to any address known for the responsible person for all other violations. Service by mail shall be deemed to be effective service on the date it is mailed and shall not affect the validity of the civil citation or of the subsequent proceedings.

(C). Service by Posting. If the Enforcement Officer is unsuccessful in either personal service or service by mail, the civil citation shall be posted in a conspicuous place on the real property where the violation occurs for a building or property related violation. Such posting shall be deemed to be effective service on the date of posting and shall not affect the validity of the civil citation or of the subsequent proceedings.

Section 1407. Civil Fines – Amount and Penalties. (A). The maximum amount of a civil fine for violating particular provisions of this Code shall be set forth in a schedule of civil fines in the city's Master Fee Schedule adopted by resolution of the City Council. The schedule may include escalating civil fine amounts for repeat code violations occurring within specified periods of time. A fine amount, not to exceed those set forth by resolution, may be imposed or reduced at the discretion of the citing officer or the City Attorney.

(B). Where no civil fine amount is specified by resolution of the City Council, civil fines shall be in accordance with those specified in Government Code 36900.

(C). A late payment penalty shall be imposed for civil fines not paid within thirty (30) calendar days of their due date. The amount of the late payment penalty shall be one hundred (100) percent of the total amount of the civil fine owed.

(D). In addition to any civil fine and/or late payment penalty, a hearing officer shall also assess administrative costs against the responsible person when it finds that a violation has occurred or that compliance has not been achieved within the time specified in the civil citation and any granted extensions thereof. Administrative costs may include any and all costs incurred by the city in connection with the matter including, but not limited to, costs of investigation, staffing costs incurred in preparation for an administrative hearing and for the administrative hearing itself, and costs for all reinspection's of the property related to the violation(s).

(E). Unless otherwise prohibited by law or regulation, all civil fines and administrative costs imposed pursuant to the provisions of this chapter shall accrue simple interest at the rate of eight percent annually until the civil fine or administrative costs, including interest thereon, is paid in full. Interest shall begin to accrue thirty (30) calendar days after the due date for the civil fine or administrative costs and continue until the civil fine or administrative costs, including interest thereon, is paid in full.

Section 1408. Civil Fines – Due Date.

(A). Civil fines are due on the date the civil citation is issued, except civil fines for building violations shall be due on the date the second civil citation is issued containing the notice of failure to correct.

(B). A civil fine shall be late if not received by the city within thirty (30) calendar days of the date the civil citation was issued.

(C). If a responsible person requests an administrative hearing and has received a waiver of civil fine deposit and the hearing officer upholds the civil citation, the civil fine shall be due on the date the notice of decision is personally delivered or mailed to the responsible person.

Section 1409. Civil Fines – Payment.

(A). A civil fine shall be received by the city Administrative Services department within thirty (30) calendar days of its due date.

(B). Payment of a civil fine shall not excuse the responsible person from correcting the code violation(s). The issuance of a civil citation and/or payment of a civil fine does not bar the city from taking any other enforcement action regarding a code violation that is not corrected, including issuing additional civil citations, and/or filing civil or criminal complaints.

Section 1410. Civil Fines – Collection.

(A). Civil fines, interest, penalties, reinspection fees, and/or administrative costs shall become a debt owing to the city and a personal obligation of the responsible person cited.

(B). The city, at its discretion, may pursue any and all legal and equitable remedies for the collection of unpaid civil fines, administrative charges, interest and penalties. Pursuit of one remedy does not preclude the pursuit of any other remedies until the total amount of the civil fines, interest and penalties owed by a person under this chapter have been collected.

(C). The city may refuse to issue, extend, or renew any city permit, license, or other city approval to any person, who has unpaid delinquent civil fines, interest,

penalties, liens or assessments due under this chapter related to the permit, license, or approval.

(D). The city may suspend any permit, license, or land use approval issued to a person who has unpaid civil fines related to the permit, license, or approval totaling five hundred dollars (\$500.00) or more that have been delinquent for over thirty (30) calendar days. The suspension shall become effective twenty (20) calendar days after notice of the suspension is placed by the director in the U.S. mail, postage prepaid, addressed to the person and shall continue until the delinquency is paid in full. The person may request an administrative hearing pursuant to the provisions of this chapter on the issue of civil fine delinquency only, if the request is filed with the director before the twenty (20) calendar day period ends. Continuing to operate under a suspended permit, license or land use approval shall be grounds for revocation of the permit, license or land use approval. Revocation may be made by the same city department, or commission issuing or granting the permit, license or land use approval upon the same notice and hearing requirements for the initial issue or grant, or upon such other procedures and notice requirements if controlled by another provision of this Code. In no event shall revocation occur upon less than ten (10) calendar days' written notice.

(E). It shall be unlawful for a responsible person to fail to pay any civil fine, interest, penalty, reinspection fee, or administrative charges imposed pursuant to this chapter. The City Attorney, at his or her discretion, may issue a criminal citation or complaint for an infraction to any responsible person who fails to make such a payment. The criminal fine for this violation shall be a mandatory minimum of one hundred dollars (\$100.00).

(F). Any violation of this Code shall constitute a public nuisance. To compel compliance, the city may seek to abate the nuisance and collect the costs incurred by means of a nuisance abatement lien and/or special assessment against the property where a property-related violation occurred. Any unpaid delinquent civil fines, interest, penalties, reinspection fees, or administrative charges may be recovered as part of any such lien or special assessment against the property of the responsible person who is the owner of the property where the violation occurred pursuant to Government Code Sections 38773.1 and 38773.5. In any judicial action, administrative proceeding, or special proceeding or action of any kind to abate a nuisance, the prevailing party shall be entitled to recovery of attorney's fees and court costs. The recovery of attorney's fees is limited solely to causes of action directly associated with the abatement of a public nuisance. In no action, administrative hearing, or special proceeding shall an award of attorney's fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the City in the action or proceeding. Such attorney's fees shall be recoverable as costs of abatement.

(G). To recover any delinquent civil fines, interest, penalties, reinspection fees, or administrative charges as a nuisance abatement lien and/or special assessment against the property where a property-related violation occurred, the city's Administrative Service Director of , at his or her discretion, take the following steps:

(1). Submit to and receive from the City Council a resolution certifying the amounts of the liens and special assessments sought to be collected from each property owner.

(2). Request the San Luis Obispo County recorder to record a notice of any liens, or special assessments, and send the recorder the resolution certifying the amounts.

(3). Request the San Luis Obispo County tax collector to collect any special assessments certified by the City Council; and

(4). Take all other necessary action to enforce collection of any liens or special assessments provided for in this chapter.

(H). The Administrative Service Director may pursue the lien and special assessment remedies whether or not the city is pursuing any other action to terminate an ongoing code violation that was the basis for the civil fine.

(I). All civil citations shall contain a notice that unpaid civil fines, interest, penalties, reinspection fees, and administrative charges are subject to the assessment and lien collection procedures of this section. The lien or assessment shall be imposed on the date the civil citation for the code violation is issued to the responsible person and becomes effective upon the recording of a notice of lien or assessment by the San Luis Obispo County recorder. This notice shall satisfy the notice requirements of Government Code Sections 38773.1 and 38773.5, when a civil citation is personally served on the responsible person. In addition, the city Administrative Service Director shall send notice by first class mail stating the date, time and location of the meeting to each property owner listed in the proposed resolution at least ten (10) calendar days before the city council considers the resolution and certifies the amounts of the liens and special assessments.

(J). A responsible person may contest the amount and/or validity of any lien or assessment for a civil fine at the public hearing to certify the amount of the lien or assessment by the City Council pursuant to the provisions of this chapter. Such contests shall be limited to the issue of the amount and/or validity of the lien or assessment and may not consider whether the underlying code violation occurred. Pursuit of such a contest by a responsible person is necessary to exhaust the administrative remedies concerning a legal challenge to the validity of any such lien or assessment.

(K). The parent or legal guardian of a responsible person who is a minor shall be liable for any civil fines imposed upon the minor pursuant to the provisions of this chapter. Any such civil fines may be collected from the minor, parent or guardian.

Section 1411. Preliminary Civil Citation Review.

(A). A responsible person may request a preliminary civil citation review. The request for a preliminary civil citation review shall be actually received by the Community Development Department within ten (10) calendar days of the date of issuance of the civil citation.

(B). To obtain a preliminary civil citation review, the responsible person shall submit to the Community Development Department a copy of the civil citation along with a signed written request for a preliminary civil citation review stating the reasons why no violation occurred or why the responsible person cited is not a responsible person for the violation. Attached to the signed written request for a preliminary civil citation review shall be copies of any evidence that the responsible person would like considered during the preliminary civil citation review. All requests for a preliminary civil citation review shall be date stamped upon receipt by the city.

(C). A city employee designated by the director shall conduct the preliminary civil citation review. The reviewer shall not be the enforcement officer who issued the civil citation. The purpose of the preliminary civil citation review is to uncover and cancel any mistakenly issued civil citations due to errors that are easily verifiable, and not to resolve factual disputes concerning the violation that is the subject of the civil citation.

(D). The preliminary civil citation review shall consist of a review of the citation, the written statement and any other evidence submitted at the time of the request by the responsible person and, at the discretion of the reviewer, any other related information. The review shall be decided within three business days of receipt of the request.

(E). The responsible person shall be notified of the results of the preliminary civil citation review by a written notice of decision. The notice of decision shall be forwarded to the responsible person by mail, email, or in person.

(F). A request for preliminary civil citation review does not extend any time periods for compliance, including the civil fine due date, the time any correction period ends, or the time to request an administrative hearing.

(G). If the conclusion of the preliminary civil citation review is that the civil citation was mistakenly issued or that the responsible person was not responsible for the violation, the citation shall be canceled.

Section 1412. Waiver of Civil Fine Payment.

(A). A responsible person requesting an administrative hearing may also request at the same time a hardship waiver of the civil fine payment. To seek such a waiver and obtain an administrative hearing on the request, the responsible person shall file with the City the signed written request form contained on the reverse side of the civil citation, check the box indicating this request, and attach a statement of the grounds for the request. The procedure governing the filing of such requests shall be the same, as provided in Section 1413 (B) of this chapter.

(B). The person requesting the waiver bears the burden of establishing by substantial evidence that he or she does not have the financial ability to pay the deposit of the civil fine. The responsible person shall personally appear at the administrative hearing on the request and a nonappearance shall constitute an abandonment of the request.

(C). The request shall be heard at the administrative hearing on the contest of the civil citation. At the conclusion of the administrative hearing on the waiver request, the hearing officer shall issue a notice of decision that the fine deposit is or is not waived. The hearing officer shall then proceed with the hearing on the contest of the civil citation. If the civil citation is upheld by the hearing officer, the fine payment shall be paid within thirty (30) days after the decision is made by the hearing officer.

(D). A hearing officer decision on the waiver request is final and not subject to an appeal pursuant to Section 1416 of this chapter.

Section 1413. Administrative Hearing – Request.

(A). A responsible person may contest a civil citation by filing a request for an administrative hearing, except that an administrative hearing of a building violation may not be requested unless and until a second civil citation is issued containing a notice of failure to correct. To obtain an administrative hearing, the responsible person shall fill out and file a signed written request form obtained from the city's Department of Community Development and indicate the grounds for contesting the civil citation and/or civil fine. A responsible person may contest the civil citation by denying that a violation occurred, by denying that it was not corrected within the correction period, if applicable, or by denying that the responsible person cited is a responsible person for the violation.

(B). To be effective and complete, the city must actually receive the request within thirty (30) calendar days of the date the citation was issued. Where the responsible person mails a request, the request shall be deemed filed on the date actually received by the city.

(C). The responsible person shall appear at the administrative hearing on the date and at the time and place specified in writing by the City by the Director of Community Development. Failure to personally attend the administrative hearing shall be considered a nonappearance. Nonappearance by the responsible person shall constitute an abandonment of the request unless the administrative hearing was continued pursuant to the provisions of this chapter.

Section 1414. Administrative Hearing – Procedure.

(A). A hearing officer shall conduct administrative hearings in accordance with the provisions of this chapter.

(B). Hearings shall be conducted by a hearing officer either:

- (1). On the date and at the time and place specified in writing by the City;
- (2). On the date designated as a continued hearing date, as specified hereinbelow; or
- (3). On a date set by the director at least ten (10) calendar days, but not more than thirty (30) calendar days, after the responsible person requests an administrative hearing pursuant to Section 1412 of this chapter. At least ten (10) calendar days written notice thereof shall be given to the responsible person.

(C). The Director shall ensure that the pertinent civil citation records are delivered to the hearing officer, including information showing all civil fine deposits or waivers granted.

(D). At the administrative hearing, the director shall make available to the responsible person copies of any additional reports concerning the civil citation that are provided to the hearing officer.

(E). The responsible person shall be given the opportunity to testify and to present evidence relevant to financial hardship, the code violation specified in the citation, or the fact that all fines have been paid. A parent or legal guardian of a responsible person who is a juvenile under eighteen (18) years of age shall accompany the responsible person at the administrative hearing or the contest of the civil citation or request for waiver of the civil fine deposit shall be deemed abandoned.

(F). The civil citation, and any other reports prepared by the enforcement officer, or prepared at his or her request concerning the code violation, any attempted correction of the code violation, or civil fine payments that are provided to the hearing officer shall be accepted by the hearing officer as prima facie evidence of the code violation and the facts stated in such documents.

(G). The hearing officer, Director, or City Attorney may continue an administrative hearing if a request is made by the responsible person, or the responsible person's representative, or the representative of the city, upon a showing of good cause. All continuance requests shall either be made in person at the administrative hearing or by written request received by the department at least twenty-four (24) hours before the administrative hearing date. If the continuance is granted, a new administrative hearing date shall be set within forty-five (45) calendar days and noted on the notice of decision. If the continuance is denied, the administrative hearing shall proceed as scheduled, and, if the responsible person is not present, the contest of the civil citation or request for civil fine payment waiver shall be deemed abandoned in accordance with the provisions of this chapter. The decision on the continuance request is final and the notice of decision shall either be delivered personally to the responsible person or the representative if present or be mailed or emailed to the responsible person by the department.

(H). The administrative hearing shall be conducted informally, and the legal rules of evidence need not be followed. The hearing officer does not have the authority to issue a subpoena.

(I). The failure of the responsible person to appear at the administrative hearing, unless continued in accordance with the provisions of this chapter, shall constitute an abandonment of the request for waiver of the civil fine payment and/or contest of the civil citation, and a failure to exhaust administrative remedies concerning the code violation(s) as set forth in the civil citation. The responsible person's failure to appear shall be noted on the notice of decision by the hearing officer and delivered to the responsible person either in person or by mail.

Section 1415. Administrative Hearing – Decision.

(A). After consideration of all the evidence and testimony submitted at the administrative hearing, the hearing officer shall issue a written decision to either waive the civil fine payment, not waive the civil fine payment, uphold the civil citation, or cancel the civil citation. The hearing officer has no discretion or authority to reduce or modify a civil fine. The decision will be made on a notice of decision form and designate the reasons and evidence considered for the decision. The decision of the hearing officer shall be made within ten business days of the hearing and shall be final. The notice of decision shall be mailed or emailed to the responsible person by the department.

Section 1416. Right to Judicial Review.

(A). Any person aggrieved by an administrative decision of a hearing officer may seek judicial review of the administrative hearing decision by filing an appeal with the superior court of San Luis Obispo County in accordance with the timelines and provisions set forth in California Government Code Section 53069.4. The aggrieved person filing the appeal shall be responsible for paying the statutory filing fee to the superior court when the appeal is filed.

(B). No appeal is permitted from an administrative decision regarding:

(1). A request for preliminary civil citation review.

(2). An extension of the thirty (30) calendar day correction period for building violations.

(3). A request for waiver of the civil fine payment; or

(4). A decision that the responsible person is deemed to have abandoned the contest of the civil citation or civil fine due to her or his failure to appear at the administrative hearing or failure to deposit the civil fine.

PART 5: Sections 3102.5 and 3103 of Chapter 1 (Disorderly Conduct and Nuisance) of Article III (Public Welfare, Morals and Conduct) of the Grover Beach Municipal Code are hereby repealed.

PART 6: Section 1309 through 1325 of Chapter 3 of Article 1 (Rules of Construction) of the Grover Beach Municipal Code are hereby repealed.

PART 7: Section 1500 of Chapter 5 of Article 1 of the Grover Beach Municipal Code is hereby amended as follows:

Sec. 1500. Intent and Purpose. This Chapter is adopted to declare what constitute a public nuisance and to establish procedures to abate nuisances and to recover costs of such abatement. It is declared to be in the best public interest to promote the health, safety and welfare of the residents of the City by providing a summary procedure for the abatement of nuisances, which abatement procedures shall be not replace but be supplemental and in addition to all other proceedings by this Code of otherwise by law. [Any abandoned vehicles declared to be a public nuisance shall be abated in accordance with the procedures of Chapter 7, (Abandoned Vehicles) of Article III of this Code to the extent those procedures are inconsistent with the procedures of this Chapter.]

PART 8. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this chapter, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the determination of any court of competent jurisdiction, such determination shall not affect the validity of the remaining portions of this chapter or its application to other persons. The city council hereby declares that it would have adopted this chapter and each section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional.

PART 9: Effective Date. This Ordinance shall not become effective and in full force and effect until 12:01 a.m. on the thirty first day after its final passage. However, within fifteen (15) days after adoption by the City Council, the Ordinance 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 March 28, 2022 and **PASSED, APPROVED, and ADOPTED** by the City Council on April 11, 2022, on the following roll call vote, to wit:

AYES: Council Members –
NOES: Council Members –
ABSENT: Council Members –
ABSTAIN: Council Members –

APPROVED:

Mayor Jeff Lee

ATTEST:

Wendi Sims, City Clerk

APPROVED AS TO FORM:

David P. Hale, City Attorney