



CITY COUNCIL STAFF REPORT

TO: Honorable Mayor and City Council **DATE:** January 22, 2019

FROM: Matthew Bronson, City Manager

PREPARED BY: John Peters, Chief of Police

SUBJECT: Introduction and first reading of proposed Ordinance to amend Section 3221.1 of Article III, Chapter 2.21 and Sections 10420 and 10421 of Article X, Chapter 4.20, of the Grover Beach Municipal Code amending regulations incorporating the definitions of Tobacco Paraphernalia.

RECOMMENDATION

Consider public testimony, introduce and conduct first reading of the Ordinance regarding Tobacco Regulations, by title only, and schedule second reading and adoption for the next regularly scheduled meeting.

BACKGROUND

On September 6, 2016, the City Council adopted Ordinance No. 16-03 for amendments to the Grover Beach Municipal Codes covering tobacco regulations. The amendments were necessary as a result of new State legislation that took effect amending several tobacco within California. A recent staff review of the Grover Beach tobacco regulations discovered two ordinances were missing the definition for “tobacco paraphernalia” as defined by state legislation.

The first ordinance is Article III, Chapter 2.21 - Regulation of the Sale and Distribution of Tobacco Products, which will need to have section 3221.1 – Self-Service Sales of Tobacco updated. The update to this section will be adding the word “paraphernalia” to the section. The second ordinance is Article X, Chapter 4.20 – Licensing of Tobacco Retailers, which will need to have the definition of “tobacco paraphernalia” added to Section 10421 – Definitions. The term “tobacco paraphernalia” will also need to be added to the “tobacco retailer” definition covered under the same section.

FISCAL IMPACT

There are no fiscal impacts from this action.

ALTERNATIVES

The City Council has the following alternatives to consider:

1. Consider public testimony, introduce and conduct first reading of the Ordinance regarding Tobacco Regulations, by title only, and schedule second reading and adoption for the next regularly scheduled meeting; or
2. Provide direction to staff.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

ATTACHMENTS

1. Draft Ordinance No. 19-XX
2. Redline (legislative) versions of Article III, Chapter 2.21 and Article X, Chapter 4.20 of the Grover Beach Municipal Code reflecting the amendments to the current Municipal Code for Tobacco Regulations.

ORDINANCE NO. 19-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH, CALIFORNIA AMENDING SECTION 3221.1 OF ARTICLE III, CHAPTER 2.21, AND SECTIONS 10420 AND 10421 OF ARTICLE X, CHAPTER 4.20, OF THE GROVER BEACH MUNICIPAL CODE AMENDING REGULATIONS INCORPORATING DEFINITIONS OF TOBACCO PARAPHERNALIA

WHEREAS, the State of California recognized the dangers to public health from tobacco use when it passed the new “Tobacco 21 Law” which went into effect on June 9, 2016; and

WHEREAS, the City Council encourages healthier lifestyles and the protection of our youth from the use of tobacco products; and

WHEREAS, the City Council adopted Ordinance No. 16-03 on September 6, 2016, adopting amendments to three specific Chapters in the Grover Beach Municipal Code that refer to the use, furnishing, possession, and sales of tobacco products that require amending to be in conformance with the new state law; and

WHEREAS, a recent review of the Grover Beach Municipal Code that refer to tobacco ordinances discovered the definition for “tobacco paraphernalia” was not included in Ordinance No. 16-03.

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

PART 1. Sec. 3221.1 of Article III, Chapter 2.21 of the Grover Beach Municipal Code (GBMC) is hereby amended as follows:

Sec. 3221.1 Self-Service Sales of Tobacco. It shall be unlawful for any person, business, or tobacco retailer within the City to sell, offer for sale, or display for sale any tobacco product, as defined in Article X, Chapter 4.20, Section 10421 GBMC, by means of a self-service display. All tobacco products and paraphernalia shall be offered for sale exclusively by means of vendor/employee assistance. This section shall not apply to any person, business, or tobacco retailer if the sale, offer to sell, or display for sale of any tobacco product or paraphernalia is conducted within a building which is posted with a sign prohibiting entrance into such building of anyone under 21 years old unless the person is (1) active duty military personnel who is 18 years of age or older and (2) the person possesses a United States Armed Forces Identification Card indicating the proof of age and military status.

PART 2. Sections 10420 and 10421 of Article X, Chapter 4.20 of the Grover Beach Municipal Code (GBMC) are hereby amended as follows:

Sec. 10420. Purpose. It is the purpose and intent of this Chapter to discourage violations of laws which prohibit or regulate the sale or distribution of tobacco products and tobacco paraphernalia, but not to expand or reduce the degree to which the acts regulated by state or federal law are criminally proscribed or to alter the penalty provided therefor. (Ord. 05-06)

Sec. 10421. Definitions. The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this Section unless the context clearly requires otherwise:

(A) "Person" means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(B) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

(C) "Tobacco paraphernalia" means any cigarette papers or wrappers, blunt wraps, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products as defined in Business and Professions Code Section 22962 (a) (2) and Penal Code Section 308 (a).

(D) "Tobacco product" means any of the following:

(1) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

(2) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.

(3) Any component, part, or accessory of a tobacco product, whether or not sold separately.

(4) "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

(E) "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco paraphernalia, or tobacco products; "tobacco retailing" shall mean engaging in any of these activities.

(F) "Licensing Agent" means a City employee designated by the City Manager to serve in this capacity.

(G) "Enforcement Agency" means the Grover Beach Police Department.

(H) "Hearing Officer" means the City employee designated by the City Manager to serve in that capacity. (Ord. 05-06)

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 on _____ and **PASSED, APPROVE,** and **ADOPTED** by the City Council on _____, on the following vote, to wit:

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

****DRAFT****

JEFF LEE, MAYOR

ATTEST:

WENDI SIMMS, ACTING CITY CLERK

Approved as to form:

DAVID HALE, CITY ATTORNEY

CHAPTER 2.21 - REGULATION OF THE SALE AND DISTRIBUTION
OF TOBACCO PRODUCTS

Sec. 3221.1. Self-Service Sales of Tobacco.

It shall be unlawful for any person, business, or tobacco retailer within the City to sell, offer for sale, or display for sale any tobacco product, as defined in Article X, Chapter 4.20, Section 10421 GBMC, by means of a self-service display. All tobacco products and paraphernalia shall be offered for sale exclusively by means of vendor/employee assistance. This section shall not apply to any person, business, or tobacco retailer if the sale, offer to sell, or display for sale of any tobacco product or paraphernalia is conducted within a building which is posted with a sign prohibiting entrance into such building of anyone under 21 years old unless the person is (1) active duty military personnel who is 18 years of age or older and (2) the person possesses a United States Armed Forces Identification Card indicating the proof of age and military status.

Sec. 3221.2. Out of Package Sales.

No person, business, tobacco retailer, or other establishment shall sell or offer for sale cigarettes, or other tobacco or smoking products, not in the original packaging provided by the manufacturer and with all required health warnings. (Ord. 00-08)

Sec. 3221.3. Violation - Penalty.

Any person, business owner, or proprietor, or employee of any business or establishment subject to the requirements of this Chapter who violates any mandatory provision of this Chapter shall be guilty of an infraction and subject to punishment as provided for in Article 1, Chapter 2, Section 1200 of this Code. (Ord. 00-08)

CHAPTER 4.20 - LICENSING OF TOBACCO RETAILERS

Sec. 10420. Purpose. It is the purpose and intent of this Chapter to discourage violations of laws which prohibit or regulate the sale or distribution of tobacco products and tobacco paraphernalia, but not to expand or reduce the degree to which the acts regulated by state or federal law are criminally proscribed or to alter the penalty provided therefor. (Ord. 05-06)

Sec. 10421. Definitions. The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this Section unless the context clearly requires otherwise:

(A) "Person" means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(B) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

(C) "Tobacco paraphernalia" means any cigarette papers or wrappers, blunt wraps, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products as defined in Business and Professions Code Section 22962 (a) (2) and Penal Code Section 308 (a).

(D) "Tobacco product" means any of the following:

(1) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.

(2) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.

(3) Any component, part, or accessory of a tobacco product, whether or not sold separately.

(4) "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation

product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

(E) "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco paraphernalia, or tobacco products; "tobacco retailing" shall mean engaging in any of these activities.

(F) "Licensing Agent" means a City employee designated by the City Manager to serve in this capacity.

(G) "Enforcement Agency" means the Grover Beach Police Department.

(H) "Hearing Officer" means the City employee designated by the City Manager to serve in that capacity. (Ord. 05-06)

Sec. 10422. Requirement for Tobacco Retailer License. (A) It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's license issued pursuant to this Chapter for each location at which that activity is to occur.

(B) No license will be issued to authorize tobacco retailing at other than a fixed location; itinerant tobacco retailing and tobacco retailing from vehicles are prohibited.

(C) No license will be issued to authorize tobacco retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control); tobacco retailing in bars and restaurants serving alcoholic beverages is prohibited.

(D) No person shall sell a tobacco product without first examining the identification of the purchaser and confirming that the proposed sale is to a purchaser who is at least the minimum age in state law for being sold the tobacco product.

(E) Licenses issued hereunder are valid for one (1) year and each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license prior to its expiration. A tobacco retailer license does not confer any new rights under any other law and does not exempt any business that otherwise would be subject to the smoke-free work place provisions of Labor Code Section 6404.5.

(F) A tobacco retailer operating legally on the date that the ordinance enacting this Chapter was first introduced and that would otherwise be entitled to receive a license may receive a license and may continue to operate so long as (1) the license is renewed continually without lapse; (2) the tobacco retailer is not closed for business for more than sixty (60) consecutive days; (3) the tobacco retailer does not substantially change the business premises or business operation; and (4) the tobacco retailer maintains the right to operate under the terms of other applicable laws, including without limitation, the zoning ordinance, building codes, and business tax certificate ordinance. (Ord. 05-06)

Sec. 10423. Application Procedure. An application for a tobacco retailer's license shall be submitted to the Licensing Agent in the name of each Proprietor/Person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the Licensing Agent and shall contain the following information:

(A) The name, address, and telephone number of the applicant;

(B) The business name, address, and telephone number of each location for which a tobacco retailer's license is sought;

(C) Such other information as the Licensing Agent deems necessary for enforcement of this Chapter;

(D) Whether or not any Proprietor has previously been issued a license pursuant to this Chapter that is, or was at any time, revoked and, if so, the dates of the revocation and the period of revocation. (Ord. 05-06)

Sec. 10424. Issuance of License. The Licensing Agent shall issue a tobacco retailer's license unless substantial record evidence demonstrates one of the following bases for denial:

(A) The application is incomplete or inaccurate; or

(B) The application seeks authorization for tobacco retailing by a person or at a location for which a revocation is in effect pursuant to Section 10430 of this Chapter; or

(C) The application seeks authorization for tobacco retailing in an area that is in violation of City zoning pursuant to Article IX, Chapter 1 of this Code or that is unlawful pursuant to any other local, State, or Federal law. (Ord. 05-06)

Sec. 10425. Display of License. Each licensee shall prominently display the license in a public place at each location where tobacco retailing occurs. (Ord. 05-06)

Sec. 10426. Fees for License. The fee for a tobacco retailer's license shall be established by Resolution of the City Council amending the Master Fee Schedule. The fee shall be calculated so as to recover the total cost, but no more than the total cost, of license administration and enforcement, including, for example, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violation, and prosecution of violators. The fee for tobacco retailer's license shall be paid to the Licensing Agent. (Ord. 05-06)

Sec. 10427. Licenses Nontransferable. A tobacco retailer's license is nontransferable to a different person or a different location. For example, if a Proprietor to whom a license has been issued changes business location, that Proprietor must apply for a new license prior to acting as a tobacco retailer at the new location. Or if the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer. (Ord. 05-06)

Sec. 10428. License Violation. It shall be a violation of a license for a licensee or his or her agents or employees to violate any local, State, or Federal tobacco-related law. (Ord. 05-06)

Sec. 10429. License Compliance Monitoring. Compliance with this Chapter shall be monitored by the Grover Beach Police Department. At least four compliance checks of each tobacco retailer shall be conducted during each twelve-month period. The cost of compliance monitoring shall be incorporated into the license fee. (Ord. 05-06)

Sec. 10430. Revocation of a License. In addition to any other penalty authorized by law, a tobacco retailer's license may be revoked if the City finds, after notice to the licensee and opportunity to be heard, that the licensee or his or her agents or employees has violated the conditions of the license imposed pursuant to this Chapter.

(A) After revocation for a first violation of this Chapter at a location within any five-year period, no new license may be issued for the location until thirty (30) days have passed from the date of revocation.

(B) After revocation for a second violation of this Chapter at a location within any five-year period, no new license may be issued for the location until ninety (90) days.

(C) After revocation for a third violation of this Chapter at a location within any five-year period, no new license may be issued for the location until one (1) year.

(D) After revocation for four or more violations of this Chapter at a location within any five-year period, no new license may be issued for the location until five (5) years have passed from the date of revocation. (Ord. 05-06)

Sec. 10430.1. Revocation of License Issued In Error. A tobacco retailer's license shall be revoked if the City finds, after the licensee is afforded reasonable notice and opportunity to be heard, that one or more of the bases for denial of a license under Section 10424 existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the City. The revocation shall be without prejudice to the filing of a new application for a license. (Ord. 05-06)

Sec. 10431. Appeal of Suspension and/or Revocation. (A) A decision of the City to revoke a license is appealable to a Hearing Officer and must be filed with the Hearing Officer at least ten (10) working days prior to the commencement date of the license revocation. An appeal shall stay all proceedings in furtherance of the appealed action. Following appeal, the decision of the Hearing Officer may be appealed to the City Manager or his/her designee. A decision of the City Manager or his/her designee shall be the final decision of the City.

(B) During a period of license revocation, the tobacco retailer must remove from public view all tobacco products and shall not display any advertisement relating to tobacco products that promotes the sale or distribution of such products from the tobacco retailer's

location or that would lead a reasonable consumer to believe that such products can be obtained at the tobacco retailer's location. (Ord. 05-06)

Sec. 10432. Penalties, Enforcement. (A) Any violation of the provisions of this Chapter by any person is a misdemeanor and is punishable as provided in Chapter 1200 of this Code.

(B) Each day that an unlicensed person offers tobacco products or tobacco for sale or exchange shall constitute a separate violation.

(C) Violations of this Chapter are hereby declared to be a public nuisance.

(D) In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the City Attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity. (Ord. 05-06)