



## CITY COUNCIL STAFF REPORT

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**TO:** Honorable Mayor and City Council **DATE:** February 4, 2019

**FROM:** Matthew Bronson, City Manager

**PREPARED BY:** John Peters, Chief of Police

**SUBJECT:** Second Reading and Adoption of Ordinance No. 19-01 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.

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### **RECOMMENDATION**

Conduct second reading of Ordinance No. 19-01 regarding Tobacco Regulations, by title only, and adopt the Ordinance 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 regarding Tobacco Regulations.

### **BACKGROUND**

On January 22, 2019, the City Council introduced and conducted the first reading, by title only, of Ordinance No. 19-01, at a noticed Public Hearing 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 regarding Tobacco Regulations. Ordinance No. 19-01 is before the City Council for second reading and adoption. The Ordinance will become effective 30 days after adoption. The Public Hearing was concluded at the January 22, 2019 meeting; therefore, no further public testimony is required for second reading and adoption of the Ordinance.

### **FISCAL IMPACT**

There are no fiscal impacts from this action.

### **ALTERNATIVES**

The City Council has the following alternatives to consider:

1. Conduct second reading of Ordinance No. 19-01 regarding Tobacco Regulations, by title only, and adopt the Ordinance 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 regarding Tobacco Regulations; or
2. Provide direction to staff.

### **PUBLIC NOTIFICATION**

The agenda was posted in accordance with the Brown Act.

### **ATTACHMENTS**

1. Ordinance No. 19-01

**ORDINANCE NO. 19-01**

**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 January 22, 2019, and **PASSED, APPROVED,** and **ADOPTED** by the City Council on \_\_\_\_\_, 2019 on the following vote, to wit:

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

**\*\*DRAFT\*\***

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JEFF LEE, MAYOR

ATTEST:

\_\_\_\_\_  
WENDI SIMS, ACTING CITY CLERK

Approved as to form:

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DAVID HALE, CITY ATTORNEY