

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: JOHN PETERS, CHIEF OF POLICE 
SUBJECT: INTRODUCTION AND FIRST READING OF A PROPOSED ORDINANCE TO AMEND GROVER BEACH MUNICIPAL CODE ARTICLE III, CHAPTER 2.21, ARTICLE III, CHAPTER 17 AND ARTICLE X, CHAPTER 4.20 CHANGING REGULATIONS REGARDING TOBACCO SALES AND USE

BACKGROUND

On June 9, 2016, new legislation took effect that amended several tobacco laws within the State of California. The new "Tobacco 21 Law" changed the minimum age of tobacco users from 18 to 21 and modified the definition of a tobacco product to include electronic cigarettes (or "e-cigarettes") and devices. This new legislation has a direct impact on three current chapters in the Grover Beach Municipal Code, thereby requiring an amendment to the Grover Beach Municipal Code.

DISCUSSION

Effective June 9, 2016, California became the second state, behind Hawaii, to increase the lawful age from 18 to 21 to buy, sell, or possess tobacco products. This legislation also tightened restrictions on electronic cigarettes by defining the e-cigarettes and their associated products as tobacco products. This new definition now requires retailers to treat the e-cigarette products as tobacco products and they can no longer be bought, sold or given to anyone under the age of 21.

As a result, there are three sections in the Grover Beach Municipal Code that need amending to bring them in line with the new state laws. The first section is Article III, Chapter 2.21, Section 3221.1 – Self Service Sales of Tobacco. The proposed amendment of this section will add a reference to the proper Grover Beach Municipal Code definition for "tobacco products", it will change the current age limit from 18 to 21, and it will list the age exemption as defined by the state law, which is any United States Armed Forces member that is 18 to 20 and has a valid military identification card will be allowed to purchase tobacco products. (See Attachment 2)

The second Municipal Code amendment is to Article III, Chapter 17, Section 3999.11 – Definitions to Smoking Prohibitions in Public Parks. The amendment to this section is minor and consists of adding the terms "vapors" and "electronic smoking device" to the "Smoke or Smoking" definition. (See Attachment 2)

APPROVED FOR FORWARDING



MATTHEW BRONSON
CITY MANAGER

Please Review for the Possibility of a Potential Conflict of Interest:

- | | |
|--|----------------------------------|
| <input checked="" type="checkbox"/> None Identified by Staff | <input type="checkbox"/> Bright |
| <input type="checkbox"/> Shoals | <input type="checkbox"/> Nicolls |
| <input type="checkbox"/> Lee | <input type="checkbox"/> Shah |

Meeting Date: August 15, 2016

Agenda Item No. 1

The final Municipal Code amendment is to Article X, Chapter 4.20 – Licensing of Tobacco Retailers. In this Chapter, there are two amendments needed. The first amendment is to Section 10420 – Purpose. The term “minors” is being removed since the change in the tobacco laws no longer directly affect minors. The second amendment is to Section 10421(C) – Definitions for “Tobacco product”. The current definition is obsolete and a new definition that mirrors the State definition is being applied. (See Attachment 2)

The impact on local retailers will be a change in their store procedures to ensure sales of tobacco products do not occur unless the person is 21 years of age or qualifies for the state military exception. The other impact for local retailers will be for those businesses that only operate retail sales of electronic cigarettes. Such retailers will have to apply for a Tobacco Retailers License with the City as outlined in Article X, Chapter 4.20. These retailers will also be subject to the same inspections by the Police Department as the current tobacco retailers. According to City records, there are only three electronic cigarette retailers in operation currently.

In preparation of this new state law and Municipal Code change, the Police Department has been working with the San Luis Obispo County Health Department Tobacco Control Program to educate our local retailers. Police Officers and Tobacco Control Officials teamed up and visited the retailers providing information to them so that they can be in compliance with the new laws. This education campaign will continue for a 60-day period after the Grover Beach Municipal Code has been amended.

ALTERNATIVES

The City Council has the following alternatives to consider.

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

RECOMMENDED ACTION

It is recommended that the City Council consider public testimony, introduce and conduct first reading of the Ordinance, by title only, and schedule second reading and adoption for the next regularly scheduled meeting.

FISCAL IMPACT

None. The current ordinance, in conjunction with the Master Fee Schedule, incorporates a fee which recovers the Police Department’s direct costs for processing applications and inspecting retailer establishments.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act. A Public Hearing Notice was published in *The Tribune* on Friday, August 5, 2016 and posted as required by City Code. This staff report and a copy of the meeting agenda were provided to the Arroyo Grande & Grover

Beach Chamber of Commerce and the San Luis Obispo County Health Department Tobacco Control Program.

Attachments

1. Draft Ordinance No. 16-XX
2. Redline (legislative) versions of Article III, Chapter 2.21, Article III, Chapter 17 and Article X, Chapter 4.20 of the Grover Beach Municipal Code reflecting the amendments to the current Municipal Code for Tobacco Ordinances.
3. Letter from the State of California Department of Public Health to Tobacco Retailers dated June 6, 2016.
4. Powerpoint Presentation.

ORDINANCE NO. 16-XX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH
AMENDING ARTICLE III, CHAPTER 2.21, ARTICLE III, CHAPTER 17 AND
ARTICLE X, CHAPTER 4.20 AMENDING REGULATIONS INCORPORATING
DEFINITIONS AND NEW MINIMUM AGE REQUIREMENTS FOR TOBACCO USES**

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 new state law requires all users, retailers and providers to be a minimum age of 21 in order to purchase, possess or consume tobacco products unless the user is an Active Duty member of the United States Armed Forces and is between the ages of 18 and 20; and

WHEREAS, the City currently has 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.

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

PART 1. Article III, Chapter 2.21 is hereby amended as follows:

**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 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 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. Article III, Chapter 17 is hereby amended as follows:

CHAPTER 17 SMOKING PROHIBITION IN PUBLIC PARKS

Sec. 3999.11. **DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(A) **PUBLIC PARKS.** All dedicated City parks, beaches, sporting facilities, City parks on leased property including all of their amenities, off street parking areas, trails, walkways and contiguous sidewalks.

(B) **SMOKE OR SMOKING.** The carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant or any other combustible substance. Smoking includes inhaling and emitting or exhaling the fumes or vapors of any pipe, cigar, cigarette, electronic smoking device, or any other lighted smoking product or equipment used for burning any tobacco products, weed, plant or any other combustible substance.

PART 3. Article X, Chapter 4.20 is hereby amended as follows:

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, 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 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.

Part 4 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 5 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 August 15, 2016 and **PASSED, APPROVE, and ADOPTED** by the City Council on _____, 2016 on the following roll call, to wit:

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

**ARTICLE III, 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 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 is conducted within a building which is posted with a sign prohibiting entrance into such building of anyone under ~~18~~ 21 years old unless ~~accompanied by a person at least 21 years old. (Ord. 00-08)~~ 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.

ARTICLE III, CHAPTER 17 - SMOKING PROHIBITION IN PUBLIC PARKS

Section 3999.11. Definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(A) "Public parks" means all dedicated City parks, beaches, sporting facilities, City parks on leased property including all of their amenities, off-street parking areas, trails, walkways and contiguous sidewalks.

(B) "Smoke or smoking" means the carrying or holding of a lighted pipe, cigar, cigarette, or any other lighted smoking product or equipment used to burn any tobacco products, weed, plant or any other combustible substance. Smoking includes inhaling and emitting or exhaling the fumes or vapors of any pipe, cigar, cigarette, electronic smoking device, or any other lighted smoking product or equipment used for burning any tobacco products, weed, plant or any other combustible substance. (Ord. 12-04)

ARTICLE X, 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 ~~to minors~~, 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 product" means any of the following: (1) any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or another preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body but does not include any product specifically approved by the Federal Food and Drug Administration for use in treating nicotine or tobacco product dependence. (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.

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

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

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

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



KAREN L. SMITH, MD, MPH
 Director and State Public Health Officer

State of California—Health and Human Services Agency
 California Department of Public Health

Attachment 3



EDMUND G. BROWN JR.
 Governor

June 6, 2016

Dear Retailer:

NEW CALIFORNIA STATE TOBACCO LAWS

The State of California recently updated several laws that govern the sale of tobacco products, and also broadened the definition of tobacco products. Many of these changes take effect beginning June 9, 2016. This letter contains information, materials, and online resources to help you learn about and comply with the new laws.

BRIEF SUMMARY OF CHANGES TO TOBACCO RETAIL LAWS

Below is a brief summary of changes to California's tobacco laws for retailers. Visit the California Department of Public Health, Stop Tobacco Access to Kids Enforcement (STAKE) Act website for more detailed information:

<https://www.cdph.ca.gov/programs/Pages/STAKEProgram.aspx>

Topic	Summary of Major Changes	Effective Date
Definition of Tobacco Products	<ul style="list-style-type: none"> The definition of "tobacco product" is expanded to include any electronic smoking device or any component, part, or accessory, including cartridges and solutions, whether or not they contain nicotine, or whether sold separately. For example, electronic smoking devices, atomizers, vaping tanks or mods, and e-liquids are tobacco products. [Business and Professions (B&P) Code Section 22950.5(d)] 	June 9, 2016
Minimum Sale Age for Tobacco Products	<ul style="list-style-type: none"> Retailers can sell tobacco products and paraphernalia only to individuals who are at least 21 years old. There is one exception: the minimum sale age remains 18 for active duty military personnel with an identification card (ID) issued by the United States Armed Forces. [B&P Code Section 22958 and Penal Code (PC) Section 308(a)] 	June 9, 2016



Topic	Summary of Major Changes	Effective Date
Age-of-Sale Warning Sign	<ul style="list-style-type: none"> A sign stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties must be posted at each cash register. The sign must include the "1-800-5 ASK-4-ID" phone number. [B&P Code Section 22952(b) and PC Section 308(b)] 	June 9, 2016
Check ID	<ul style="list-style-type: none"> Retailers must check the ID of anyone who looks younger than 21 years of age. [B&P Code Section 22956]. <i>Note: Federal law requires retailers to check ID for anyone who looks younger than 27 years of age. [21 United States Code Sections 333, 372, 387a-1, 387f(d)]</i> 	June 9, 2016
Self-Service Displays	<ul style="list-style-type: none"> Retailers cannot have self-service displays of tobacco products or paraphernalia (including electronic smoking devices, e-liquids, and components, parts, or accessories). A self-service display is any display that allows customers to access items without help from the retailer. [B&P Code Section 22962] A tobacco store may have self-service displays of cigars in packages of six or more in the original wrapping, pipe tobacco, snuff, chewing tobacco, and dipping tobacco. This exception does not apply to electronic smoking devices or e-liquids, or their components, parts, or accessories. [B&P Code Section 22962(c)] A tobacco store is a store that (1) generates more than 60% of its gross annual revenue from the sale of tobacco products and paraphernalia; (2) does not sell alcohol or food for consumption on the premises; and (3) prohibits minors from entering unless that person is accompanied by his or her parent or legal guardian. [B&P Code Section 22962(a)(4)] 	June 9, 2016

Topic	Summary of Major Changes	Effective Date
Enforcement: STAKE Act	<ul style="list-style-type: none"> The California Department of Public Health, Food and Drug Branch has primary responsibility for enforcing the STAKE Act. This law prohibits tobacco sales to persons under the age of 21 and makes such sales punishable by civil penalties against the store owner, not the clerk. Penalties range from \$400-\$600 for a first violation to \$6,000 and/or license suspension or revocation for repeated violations. [B&P Code Section 22958(a)] 	Pending Update of STAKE Act Regulations
Enforcement: Penal Code (PC) Section 308	<ul style="list-style-type: none"> Local law enforcement agencies have primary responsibility for enforcing PC 308. Storeowners and/or clerks who sell a tobacco product to a person under the age of 21 may be charged with a misdemeanor or be subject to the following civil fines: \$200 for the first violation, \$500 for the second violation, and \$1,000 for the third violation. [PC Section 308(a)] 	June 9, 2016
Tobacco Retailer License	<ul style="list-style-type: none"> By January 1, 2017, any retailer that sells electronic smoking devices must apply to the State Board of Equalization (BOE) for a license (\$265 fee). The new licensing requirement applies only to retail locations that do not already have a state retailer license to sell tobacco products. Beginning January 1, 2017, existing tobacco retailers are subject to a \$265 fee for annual license renewals. For questions regarding licensing requirements, please contact BOE Customer Service at 1-800-400-7115. 	January 1, 2017
Child-Resistant Packaging	<ul style="list-style-type: none"> All electronic smoking device cartridges and solutions used for filling or refilling devices must be sold in child-resistant packaging that meets federal poison prevention standards. [Health and Safety Code Section 119406] 	October 1, 2016 A similar Federal law goes into effect July 26, 2016

Retailer
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ENCLOSED MATERIALS TO HELP YOU COMPLY WITH THE LAW

- New California Tobacco Laws: Minimum Sale Age (21) and Electronic Smoking Devices: A Summary for Retailers
- Two (2) updated STAKE Act age-of-sale warning signs which meet signage requirements under state law
- One (1) "We check ID" window cling
- ID Verification for Tobacco Sales in California
- What is a 'tobacco product' under California law?

RESOURCES AVAILABLE FOR DOWNLOAD

The following resources are available for download at:

<http://www.cdph.ca.gov/programs/tobacco/Pages/Tobacco21.aspx>

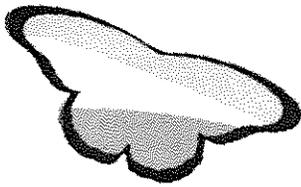
- Frequently Asked Questions (FAQ) for Retailers
- Tips for Retailers: How to Comply with California Law and Avoid Fines and Penalties
- Order Form for age-of-sale warning signs

Tobacco retailers are responsible for knowing and complying with all federal, state, and local laws regarding the sale and distribution of tobacco products. Please refer to the FAQ for Retailers to find out more about local retail laws. Thank you for complying with California tobacco sales laws. If you should have any questions regarding this matter, please feel free to contact the California Tobacco Control Program at (916) 449-5500.

Sincerely,



Karen L. Smith, MD, MPH
Director and State Public Health Officer



City of Grover Beach

Ordinance to Amend Grover Beach Municipal Code Tobacco Regulations

John Peters, Police Chief
August 15, 2016



Amending Tobacco Regulations "Tobacco 21 Law"

- **Enacted on June 9, 2016**
- **Changes Age Limit from 18 to 21 Years Old**
- **Includes Electronic Cigarettes and Devices**
- **Directly Impacts 3 Chapters in the GBMC**



Amending Tobacco Regulations Article III, Chapter 2.21

- **Amends Section 3221.1 to add a reference to Article X, Chapter 4.20, Section 10421 – which defines a Tobacco Product per the state law definition.**
- **Amends the age limit from 18 to 21**
- **Adds the state law military exemption to the age requirement**



Amending Tobacco Regulations Article III, Chapter 17

- **Amends Section 3999.11 to include “vapors” and “electronic smoking device” to the Smoke or Smoking definition.**



Amending Tobacco Regulations Article X, Chapter 4.20

- **Amends two sections.**
- **Section 10420 – Eliminates the term “minors” since the new laws no longer directly apply to minors.**
- **Section 10421(c) – Amends current “Tobacco Product” definition to the new state law definition**



Amending Tobacco Regulations Local Retailer Impacts

- **Must change store procedures to be compliant with age requirements.**
- **All Electronic Cigarette (Vape) stores will need to apply for a Tobacco License with the State and a Tobacco Retailers Permit with the City. They will become a part of the tobacco inspections conducted by the Police Department during each year.**



Amending Tobacco Regulations Local Retailer Education

- **Police Department and SLO County Tobacco Control Officials have visited the local retailers and educated them on the new laws.**
- **Education campaign will continue for 60 days after the GBMC is amended and before enforcement inspections occur.**



Amending Tobacco Regulations Fiscal Impact to the City

- **None. The current ordinance in conjunction with the Master Fee Schedule incorporates a fee which recovers the Police Department's direct costs for processing applications and inspecting retailer establishments.**



Amending Tobacco Regulations Staff Recommendation

It is recommended that the City Council consider public testimony, introduce and conduct first reading of the Ordinance, by title only, and schedule second reading and adoption for the next regularly scheduled meeting.



City of Grover Beach Ordinance to Amend Grover Beach Municipal Code Tobacco Regulations

Questions?

