



## CITY OF GLENDALE, CALIFORNIA REPORT TO THE CITY COUNCIL

### AGENDA ITEM

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Report: Consideration of Ordinance to Ban the Sale of Mylar Balloons in the City of Glendale

1. Ordinance Amending Title 8 of the Glendale Municipal Code, 1995, Adding Chapter 8.18 Relating to the Prohibition of the Sale of Mylar Balloons within the City of Glendale.
2. Resolution Amending the Citywide Fee Resolution Regarding Administration Citation Fine Amounts for Sale of Mylar Balloons Violations and Amending the Citywide Fee Schedule to Add Violations Subject to Fines for Sale of Mylar Balloons Violations.

### COUNCIL ACTION

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**Item Type:** Action Item

**Approved for** September 22, 2020 **calendar**

### ADMINISTRATIVE ACTION

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**Approved by:**

Yasmin K. Beers, City Manager

## **RECOMMENDATION**

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Staff respectfully presents an ordinance, and related resolution establishing administrative fines, for the City Council's consideration of a ban on the sale of Mylar Balloons.

## **BACKGROUND/ANALYSIS**

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On July 28, 2020, at Council's request, staff presented a report regarding Mylar Balloon outages including a recap of the legislative history of Mylar balloons and Glendale Water & Power's (GWP) efforts with educational campaigns informing residents of the effects and impacts of electrical outages caused by Mylar Balloons. During the July 28, 2020 discussion, the City Council directed staff to return with a draft ordinance banning the sale of Mylar Balloons for Council's consideration. (The July 28, 2020 Council Report regarding Mylar Balloon outages is attached as Exhibit 1).

### **Background:**

Metallic balloons, also known as Mylar balloons, are a safety hazard when they come in contact with, or come close to, high-voltage power lines. Electricity between two lines can arc when the conductive material from the balloon becomes tangled in the lines, causing power outages, explosions, downed power lines and damaged infrastructure. Tests of Mylar Balloons, performed by the Federal Department of Aviation, found that these balloons do not go higher than about 3,000 to 7,000 feet before they either explode or lose their "lift." This is primarily because of their inability to expand to any great extent. Consequently, often the result is that when the balloons lose this "lift" they become entangled in the overhead electrical lines.

### **Current California State Law:**

Current law only prohibits releasing Mylar Balloons with a metallic finish into the air, California Penal Code, Section 653.1 also known as the Balloon Law, which was last amended in the year 1990 by Senate Bill 1990 (SB 1990) discussed below, provides:

*(a) No person or group shall release, outdoors, balloons made of electrically conductive material and filled with a gas lighter than air, as part of a public or civic event, promotional activity, or product advertisement.*

*(b) Any person who violates this section shall be guilty of an infraction punishable by a fine not exceeding one hundred dollars (\$100). Any person who violates this section who has been previously convicted twice of violating this section shall be guilty of a misdemeanor.*

*(c) This section shall not apply to manned hot air balloons, or to balloons used in governmental or scientific research projects.*

In addition to amending Penal Code Section 653.1, SB 1990 also added Section 22942 to the California Business and Professions Code, requiring the identity of the manufacturer and warnings to be placed on Mylar Balloons, as well as weights affixed to them at the time of sale.

Business and Professions Code, Section 22942, provides:

(a) A person who manufactures a balloon in this state that is constructed of electrically conductive material shall comply with both of the following:

*(1) Permanently mark each balloon with a printed statement, written in a legible font size and located in a conspicuous area on the balloon, that warns the consumer about the dangerous risk of fire if the balloon comes in contact with an electrical power line.*

*(2) Permanently mark each balloon with the identity of the manufacturer.*

(b) A person who sells or distributes a balloon constructed of electrically conductive material that is filled with a gas lighter than air shall comply with both of the following:

*(1) The person shall affix an object of sufficient weight to each balloon or its appurtenance to counter the lift capability of the balloon.*

*(2) The person shall not attach the balloon to an electrically conductive string, tether, or streamer, to a balloon constructed of electrically conductive material, or to any other electrically conductive object.*

*(c) This section shall not apply to manned hot air balloons or to balloons used in governmental or scientific research projects.*

Existing laws regulating Mylar Balloons have had no effect on eliminating or reducing incidents of metallic balloon contact with overhead power lines. Removing Mylar Balloons from the marketplace would eliminate outages and fires that occur when these balloons come into contact with power lines. (I assume this statement is true if you remove the balloons completely from the marketplace?)

**Balloons Bans in Other States & Cities:**

There are number of Cities and Counties throughout United States that have implemented mass balloon releases, meaning the release of balloons in the air is prohibited and said prohibition is enforceable by a fine. For example, California implemented this law in 1990 (per SB 1990) as previously stated in this report. However, some Cities, such as Chatham, Massachusetts have banned the sale and distribution of balloons. This ban is not limited to the sale of a particular type or kind of balloon; rather it extends to the sale of all balloons due to environmental reasons (e.g. the balloons ending up in oceans). (Attached as Exhibit 2, is Chatham's bylaws banning the sale of balloons). Additionally, State of Massachusetts proposed a bill (H.2136) to ban the sale and distribution of balloons statewide, this bill is pending in legislature (Bill H.2136 is attached as Exhibit 3).

Additionally, listed below, are states, cities, and countries which have laws regulating or banning balloons:

**U.S. States with laws on mass balloon releases:** California, Connecticut, Florida, Tennessee, Virginia, and Maryland.

**U.S Cities that have Laws relating to the sale and release of balloons:**

<b>Prohibit Mass Releases of Balloons</b>	<b>Prohibit Mass Releases and Sale of Balloons</b>
Huntsville, Alabama Toledo, Ohio Wrightsville Beach, North Carolina Ventnor, New Jersey Atlantic City, New Jersey Wicomico County, Maryland Fairfax County, California Louisville, Kentucky Everett, Massachusetts Atlantic City, New Jersey Bradley Beach, New Jersey Brigantine, New Jersey Cape May City, New Jersey Egg Harbor, New Jersey Long Beach Township, New Jersey Longport, New Jersey Margate, New Jersey Sea Isle City, New Jersey Somers Point, New Jersey Ventnor, New Jersey Bainbridge Island, Washington	Provincetown, Massachusetts Nantucket, Massachusetts Chatham, Massachusetts Block Island, Rhode Island

**State Laws Pending:**

State of Massachusetts – Bill pending to prohibit sale and distribution of all balloons filled with gas lighter than air. (H.2136)

State of New York – Bill pending to prohibit the release of all balloons filled with gas lighter than air. (Bill # S06777)

State of New Jersey - Bill pending to prohibit the release of all balloons filled with gas lighter than air. (Assembly, No. 4322)

**Other Countries that have laws on mass balloons releases:**

Plymouth, United Kingdom: gas filled balloon releases are banned from Plymouth City Council owned land.

New South Wales, Australia: Prohibits the release of twenty or more gas-filled balloons.

Sunshine Coast, Queensland, Australia: Releasing of helium balloons into the atmosphere is prohibited under local law.

### **Proposed City of Glendale Ordinance:**

#### **Prohibiting the Sale of Mylar Balloons within City Limits:**

The proposed ordinance, if adopted by Council, will prohibit the sale of Mylar Balloons within City limits. Violations of the ordinance (e.g. the sale of Mylar Balloons within the City) may be punishable by either Administrative Citations, punishable by a fine of \$100 for the first offense and by fines of \$200 and \$500, for the second and third offenses within one year of the first offense, respectively, or a misdemeanor which is punishable by a fine of up to \$1,000, up to 180 days in county jail, or both.

Per Council's discussion, at the July 28, 2020 consideration of the Report relating to Mylar Balloon caused outages, the possession of Mylar Balloons within City limits will not be a violation. Rather, the goal is to reduce the negative impacts of Mylar Balloons by prohibiting their sale within City limits. Staff will be working with the neighboring cities in an effort to encourage said cities to also implement a ban of the sale of Mylar Balloons. This will greatly minimize the possession and release of Mylar Balloons, within the City that are purchased from outside of the City.

#### **State Preemption:**

Local ordinances cannot regulate areas which are intended to be fully regulated by state law. Courts have explained that an area of the law is intended to be fully regulated by the state, when the legislature has either 1) *expressly* manifested its intent to fully occupy the area, or, 2) when it has *impliedly* done so by covering the subject matter so fully as to indicate that it is exclusively a matter of state concern, or that the legislature will not tolerate further or additional local action, or that general/state law partially covers the subject matter and the and the subject is of such a nature that the adverse effect of a local ordinance on transient/outside citizens of the state outweighs the possible benefit to the locality.<sup>1</sup>

Applying the above analysis to the existing Mylar Balloon Laws, there is no express or implied preemption, because the only – very limited – areas regulated by state law are: Penal Code Section 653.1 prohibiting the outdoors release of Mylar Balloons , and Business and Professions Code Section 22942 requiring an object of sufficient weight to be affixed to each balloon at the time of sale or distribution to counter the lift capability of the balloon, and requiring manufacturers of Mylar Balloons to permanently place a warning on each balloon regarding the dangers of the balloon coming into contact with electrical power lines, as well as marking the identity of the manufacturer. Therefore, a local ordinance prohibiting the sale of Mylar Balloons within city limits is not contradictory, duplicative or inimical to the state statutes governing Mylar Balloons.

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Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal.4th 893.

Prohibition of the sale of Mylar Balloons is ancillary and complimentary to the applicable state statutes cited above.<sup>2</sup>

**Enforcement Measures:**

The proposed Ordinance provides two methods for the enforcement of the ban on the sale of Mylar Balloons within City limits:

1. Criminal penalties – similar to other violations of the GMC, the City Attorney can file a misdemeanor criminal complaint for the violation(s). A conviction could result in penalties including a fine of up to \$1,000 plus assessments, and/or imprisonment in county jail up to 180 days.
2. Administrative enforcement – this will be pursuant to the City’s Administrative Citation Process set forth in GMC Chapter 1.24. Under this process, City enforcement officers are authorized to issue administrative citation for the violation of certain GMC provisions. The violations which can be enforced by Administrative Citations are established by Resolution. The administrative citations impose fines for violators of the GMC. The fines escalate depending on the number of violations; the issuing officer can also, in his or her discretion issue a warning for the offense. The Administrative Citation process allows a speedy and efficient manner to address code violations. For repeat violators, the City can utilize its authority to pursue the violations under its code enforcement process through criminal enforcement. The schedule of the fines for the violations to be added to the City’s existing Administrative Citation Process is attached as Exhibit 4.

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<sup>2</sup> Bravo Vending v. City of Rancho Mirage (1993) 16 Cal. App.4th 383; Sherwin-Williams Co. v. City of Los Angeles (1993) 4 Cal.4th 893

**FISCAL IMPACT**

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There will be minor fiscal impact due to a potential loss of sales tax revenue from the sale of Mylar Balloons.

The fiscal impact of the proposed ordinance will be associated with the potential loss of sales tax revenue from the lack of sales of Mylar Balloons, as well as the implementation of proposed Chapter 8.18 prohibiting the sale of Mylar Balloons. The use of Administrative Citations for violations of Mylar Balloon sales within City limits (\$100 for the first offense and \$200 and \$500 respectively for the subsequent offenses cited within one year) will recover a portion of the costs associated with enforcement of the ordinance; however, revenues and cost recovery cannot be predicted accurately, as it is not possible to predict the number of fines and penalties imposed and out of those, the dollar amounts collected. Also, pursuant to GMC 1.24.030 in addition to Administrative Fines the City may recover Administrative Costs, which include but are not limited to: staff time in investigating the violation and preparing the investigation

report, sending notices, preparing for and attending any appeal hearing, attorneys' fees, and fees paid to the administrative hearing officer. Any fines and/or penalties collected would be paid into the general fund, from which the costs of enforcement would be paid.

## **ALTERNATIVES**

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Alternative 1: The City Council may introduce the proposed ordinance to ban the sale of Mylar Balloons and the related Resolution establishing administrative fines for such violations.

Alternative 2: The City Council may elect to not introduce the proposed ordinance and related resolution at this time.

Alternative 3: The City Council may consider any other alternative not proposed by staff.

## **CAMPAIGN DISCLOSURE**

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Not applicable.

## **EXHIBIT(S)**

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Exhibit 1: July 28, 2020 City Council Report on Mylar Balloons

Exhibit 2: Chatham, Massachusetts bylaws banning the sale and distribution of Balloons

Exhibit 3: State of Massachusetts Bill H.2136 relating to the ban of the sale and distribution of Balloons

Exhibit 4: Schedule of Chapter 8.18 code violations to be added to the City's existing Administrative Citation Process