



**CITY OF ELK GROVE
CITY COUNCIL STAFF REPORT**

AGENDA TITLE: A Public Hearing to consider consider 1) an Ordinance amending Elk Grove Municipal Code Chapter 4.27 Tobacco Retailers, Chapter 6.22 Secondhand Smoke, Chapter 9.24 Distribution of Tobacco Products to Minors, and Table 23.27-1 Allowed Uses regulating the sale and distribution of tobacco and electronic vapor products; and 2) an Ordinance extending an Urgency Ordinance Imposing a Moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove (CEQA Exempt)

MEETING DATE: February 10, 2021

PREPARED BY: Shane Diller, Assistant Development Services Director

DEPARTMENT HEAD: Darren Wilson, P.E., Development Services Director

RECOMMENDED ACTION:

Staff recommends that the City Council conduct a public hearing to receive information from staff and comments from the public and take the following actions:

- 1) Introduce and waive the full reading, by substitution of title only, an ordinance amending Elk Grove Municipal Code Chapter 4.27 Tobacco Retailers, Chapter 6.22 Secondhand Smoke, Chapter 9.24 Distribution of Tobacco Products to Minors, and Table 23.27-1 Allowed Uses, regulating the sale and distribution of tobacco and electronic vapor products; and

- 2) Introduce and waive the full reading, by substitution of title only, an ordinance extending the moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove.

BACKGROUND INFORMATION:

California Business and Professions Code Section 22971.3 reserves to cities the ability to enact local tobacco control laws, with the exception of laws related to the collection of state taxes. Section 22971.3 also authorizes cities to implement local tobacco licensing laws.

Consistent with state law, the City of Elk Grove (City) regulates the sale of tobacco products and tobacco paraphernalia through the issuance of a special business license, as set forth in Elk Grove Municipal Code (EGMC) Chapter 4.27. This chapter of the EGMC was adopted in 2005, in part, to “encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided for violations.” (EGMC Section 4.27.020).

Currently, the City has 57 tobacco retailers licensed by the Development Services Department. These licenses must be renewed annually and are subject to suspension or revocation for violations of state and local laws related to tobacco sales and distribution. In addition to special licensing for tobacco retailers, the City requires that smoke shops and smoking lounges, as defined by EGMC Section 23.26.050.S, obtain a Conditional Use Permit (CUP) to operate pursuant to EGMC Table 23.27-1.

Under state and local law, the distribution of tobacco to a minor, including distribution through a vending machine, is unlawful (EGMC Section 9.24.070; Penal Code Section 308). For purposes of tobacco purchases under the EGMC and state law, a “minor” is generally considered a person under 21 years of age. However, persons 18 years of age or older that are in active service in the United States Armed Forces may lawfully purchase tobacco products under California state law (Penal Code Section 308).

On February 26, 2020, the City Council expressed a desire to further strengthen the City’s tobacco retail regulations; this resulted in the March 11, 2020 adoption of an interim urgency ordinance placing a moratorium

on the issuance of Tobacco Retail Licenses and CUPs for smoke shops and smoking lounges. On April 8, 2020, the City Council extended the moratorium through March 12, 2021.

On August 28, 2020, Governor Newsom signed Senate Bill (SB) 793 (enacting Health and Safety Code Section 104559.5) generally prohibiting tobacco retailers in California from selling tobacco products containing a characterizing flavor. The new law provides exceptions to this sale ban for shisha tobacco (used for hookah pipes), premium cigars, and loose-leaf tobacco.

The new law enacted by SB793 was to take effect on January 1, 2021. However, opponents of the new law have pursued a referendum for voter consideration, which has now qualified for the November 8, 2022 general election. By stipulated court order issued in December of 2020 between the opponents of the new law and state officials, the provisions of SB793 will remain ineffective and unenforceable pending the referendum process (*Agenbroad v. Padilla*, Sacramento County Superior Court, Case No. 34-2020-80003542). Despite this, staff is comfortable that existing state law authorizes the City to enact the proposed ordinance to further strengthen the City's tobacco retail regulations.

On January 13, 2021, the City Council further considered options intended to strengthen the City's regulation of tobacco and vape products. At that meeting, Council gave staff direction to return with an ordinance(s) that would create a ban on certain flavored tobacco products, amend the enforcement process to perform similarly with the model used by the California Alcoholic Beverage Control (ABC) agency, ensure that no new Tobacco Retailer Licenses are issued for locations that are within 1,000 feet of youth-oriented facilities, and extend the current moratorium on the issuance of Tobacco Retail Licenses and CUPs for smoke shops and smoking lounges.

ANALYSIS/DISCUSSION:

The City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use by discouraging the illegal purchase of tobacco products by minors; promoting compliance with laws by prohibiting sales of cigarettes and tobacco products to minors; and protecting minors from being lured into illegal activity through the misconduct of adults.

In recent years, the introduction of vaping and smoking of non-tobacco products, identified by the Centers for Disease Control and Prevention (CDC) as harmful, has created a market for smoking products not currently captured by tobacco sales regulations in the EGMC. Effective January 1, 2020, the City of Sacramento imposed a flavored tobacco ban on retailers, which places Elk Grove in a position to be an attractive market for tobacco and vape retailers.

The most recent National Institutes of Health (NIH) study showed that vaping use is experiencing a significant increase. In that study, 37% of high school seniors surveyed stated they had used an electronic vaping device.

This was up from 28% in the previous year – a 32% increase in a single year of the percent of high school seniors using electronic vaping devices. The steady rise in the use of vaping products by minors dictates that the City more stringently regulate electronic vaping products and tobacco sales in general.

The use of characterizing flavor in tobacco and vape products has also been shown to be harmful to minors as it serves to entice minors to begin smoking. The most recent CDC survey found that 67% of high school students that used tobacco products used products that contained a characterizing flavor.

Based on direction provided by Council at the January 13, 2021 meeting, staff proposes the following EGMC amendments:

- Amend EGMC Chapter 4.27 to:
 - Ensure that vaping products are regulated in the same way as tobacco products;
 - Define “Characterizing flavor”
 - Reinforce that tobacco products and tobacco paraphernalia, including electronic vape products may not be sold to minors;
 - Require Zoning and Building Code compliance prior to the issuance of Tobacco Retailer Licenses;
 - Ensure that no new Tobacco Retailer Licenses are issued for locations that are within 1,000 feet of a school, day care center, playground, park, amusement center, or youth sports facility.

- Prohibit the sale of tobacco and electronic vape products that contain a characterizing flavor with the following exceptions as provided under state law or previous Council direction:
 - Shisha
 - Premium cigars (which includes cigars with a wholesale cost of not less than \$12)
 - Loose-leaf tobacco
 - Menthol-flavored products
- Amend penalties for violating tobacco regulations to correlate with California's ABC enforcement framework by:
 - Decreasing the first violation of selling to a minor or sales of prohibited flavor products from a 30-day to a 15-day license suspension;
 - Decreasing the second violation of selling to a minor or sales of prohibited flavor products within a 36-month period from a 90-day to a 25-day license suspension;
 - Increasing the third violation of selling to a minor or sales of prohibited flavor products within a 36-month period from a 180-day license suspension to license revocation.
 - Address code violations unrelated to the sale of tobacco products to minors or prohibited flavor products through Code Enforcement's standard process of providing notice of violation and opportunity to correct in accordance with EGMC Chapters 1.04 and 16.18. For these types of violations, a 5th violation within 36 months may result in a revocation of the Tobacco Retailers License.
- Amend EGMC Chapter 6.22 to:
 - Clarify that personal smoking restrictions do not apply to private residences.
 - Make clerical and clarifying corrections to the EGMC.
- Amend EGMC Chapter 9.24 to:
 - Add electronic vaping products to the definition of Tobacco Product, establishing the same distribution prohibition currently existing in this chapter as it applies to tobacco.

- Amend EGMC Table 23.27-1 to prohibit smoke shops or smoking lounges from operating within 1,000 feet of youth-oriented facilities.

At the January 13, 2021 City Council meeting, Council directed a delayed effective date of the new ordinance, suggesting a 180-day grace period to provide an opportunity for currently operating retailers to liquidate products prohibited by the ordinance and/or achieve compliance with new Code standards. Staff proposes an effective date of the proposed ordinance of September 1, 2021, which is approximately six months from the expected passage date of February 24, 2021.

The proposed flavor product prohibition is similar to the one adopted into state law through SB793, but also allows an exception for the sale of menthol products. Should SB793 become law, its provisions would govern to preempt local regulations, and menthol products would also then be prohibited for sale in the City of Elk Grove under the more restrictive state law.

At the January 13, 2021 City Council meeting, staff also received direction to seek improvements to enforcement processes. Staff has reviewed the City's licensing and enforcement practices and has implemented new practices that ensure better coordination between the Finance Department, Development Services Department, and the Elk Grove Police Department (EGPD), all of whom perform an aspect of licensing or enforcement of tobacco regulations. The EGPD currently performs enforcement of tobacco regulations (including decoy stings) through a grant funded by the State of California. Code Enforcement is developing a proactive licensing compliance program to complement EGPD's enforcement efforts. Staffing and resources needed to manage a proactive licensing compliance program are currently being analyzed, and if additional resources are necessary, they would be proposed as part of the Fiscal Year 2021-22 Budget. These changes will ensure that all tobacco retailers are properly licensed and permitted, are monitored more closely, and that violations are swiftly enforced.

MORATORIUM EXTENSION:

Staff is recommending adoption of a second ordinance proposing an extension of the current moratorium prohibiting the issuance of tobacco retailer licenses and entitlements for smoke shops and smoking lounges. Should the City Council approve this ordinance, the moratorium would

expire on either the effective date of the new regulations or March 12, 2022 (the latest date allowed by law), whichever is sooner.

This extension would remain in place pending the proposed ordinance. Though the proposed extension will not keep the moratorium in place until November 2022, a one-year extension is the longest moratorium extension allowed by law (Gov. Code Section 65858). Note, however, that if the Council passes the accompanying ordinance regulating tobacco sales, staff proposes that the moratorium terminate concurrently with the effective date of the ordinance – September 1, 2021. The City Council could elect to extend this date up to March 12, 2022 or any date before then.

Staff recommends that the City Council adopt the proposed ordinance extending the moratorium. The passage of the extension ordinance requires a four-fifths vote of the City Council

ENVIRONMENTAL ANALYSIS:

CEQA requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines, Section 15378.) The proposed Project includes discretionary amendments to the EGMC and is a project under CEQA; but it is exempt from CEQA review as set forth below.

CEQA Guidelines Section 15061(b)(3) states that a project is exempt from CEQA “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” The approval of the code amendments discussed herein does not approve any physical development project. The EGMC amendments would add electronic cigarettes and electronic vapor devices to existing regulations governing the sale, use, and distribution of tobacco, add prohibitions on the sale of certain flavored tobacco products, establish buffer zones for tobacco retailing away from youth-oriented facilities, and extending the moratorium prohibiting the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove. Therefore, this action would not result in a direct or indirect physical change in the environment.

ALTERNATIVE ACTIONS:

Alternative actions Council could consider are:

1. Reject the partial flavor ban included in the ordinance and instead amend EGMC 4.27.040(G) to include a complete ban on the sale of flavored tobacco products;
2. Direct changes to the ordinance regarding the amended distance from youth-oriented facilities for tobacco retailing and smoking to buffers smaller or larger than the proposed 1,000 feet;
3. Direct changes to the penalties outlined in EGMC 4.27.110 to impose different suspension periods;
4. Take no action, rejecting the proposed ordinance and essentially keeping the current tobacco regulations and enforcement framework in place, and allowing the current moratorium to expire; and/or
5. Select a different expiration date for the moratorium and/or the effective date of the regulatory ordinance.

FISCAL IMPACT:

The ordinance would be enforced pursuant to routine EGPD and Code Enforcement efforts, which is included within the City's budget. The passage of the ordinance, therefore, is not expected to have any additional fiscal impact on the General Fund. Enhanced enforcement strategies presented in this report are being analyzed by staff and the fiscal impact of those would be presented for consideration as part of upcoming budget discussions.

ATTACHMENTS:

1. Proposed Ordinance Amending the EGMC
2. Proposed Urgency Ordinance extending Moratorium on New Tobacco Retailer Licenses through March 12, 2022
3. March 11, 2020 Staff Report
4. April 12, 2020 Staff Report
5. Urgency Interim Ordinance No. 06-2020 Imposing Moratorium
6. Urgency Ordinance No. 09-2020 Extending the Moratorium
7. GIS Tobacco Retailer Restrictions Map (1,000' radius)

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 4.27 TOBACCO
RETAILERS; CHAPTER 6.22 SECONDHAND SMOKE; CHAPTER 9.24
DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS; AND TABLE 23.27-1
ALLOWED LAND USES (CEQA EXEMPT)**

WHEREAS, Elk Grove Municipal Code (EGMC) Chapter 4.27 regulates the sale of tobacco in the City of Elk Grove; and

WHEREAS, EGMC Chapter 6.22 regulates smoking in the City of Elk Grove; and

WHEREAS, EGMC Chapter 9.24 establishes a prohibition against the distribution of tobacco products to minors; and

WHEREAS, EGMC Table 23.27-1 establishes allowed land uses and required entitlements; and

WHEREAS, a recent study by the National Institutes of Health shows that minors increased their use of electronic vapor products over 30% from the previous year and in order to help protect the health and safety of Elk Grove youth, electronic vapor products should be regulated as stringently as tobacco products; and

WHEREAS, this ordinance amends EGMC Chapter 4.27, Chapter 6.22, Chapter 9.27, and Table 23.27-1 to ensure that sales of electronic vapor products and electronic cigarettes are more stringently regulated to prevent smoking by minors and improve public health outcomes; and

WHEREAS, this ordinance establishes a prohibition against certain flavored tobacco and electronic vape products as the Centers for Disease Control and Prevention (CDC) has established that flavored tobacco and vape products are more popular with minors, with 67% of high school students who used tobacco in 2018 reporting they smoked flavored products; and

WHEREAS, there is no foreseeable possibility that the adoption of this ordinance would have a significant effect on the environment, and its adoption is therefore exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15061(b)(3), Common Sense Exemption.

NOW, THEREFORE, the City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose

The purpose of this ordinance is to amend EGMC Chapter 4.27 Tobacco Retailers, Chapter 6.22 Secondhand Smoke, Chapter 9.24 Distribution of Tobacco Products to Minors and Table 23.27-1 Allowed Land Uses to more stringently control the sale and consumption of tobacco, tobacco paraphernalia, and electronic vaping products.

Section 2: Amend Elk Grove Municipal Code Chapter 4.27 titled Tobacco Retailers.

*(All additions are shown as **bold** text, deletions in strikethrough)*

Elk Grove Municipal Code Chapter 4.27 is hereby amended to read as follows:

...

4.27.030 Definitions.

As used in this chapter, the following words and phrases shall have the meanings given them in this section, unless the context clearly requires otherwise:

A. “Characterizing flavor” means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, which constitutes a characterizing flavor. “Characterizing flavor” shall not include menthol flavor.

B. “Electronic vaping device” means 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.

C.A “Itinerant tobacco retailing” means engaging in tobacco retailing at other than a fixed location.

DB. “License” means a tobacco retailer special business license issued by the City pursuant to this chapter.

EG. “Licensee” means any proprietor holding a license issued by the City pursuant to this chapter.

FD. “Person” means any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

GE. “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 (10%) percent 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 has, or can have, sole or shared control over the day-to-day operations of a business.

HF. “Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, **including electronic vaping devices, with or without characterizing flavor as defined in this chapter**, or any other preparation of tobacco.

I G. “Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette-rolling machines, and any other item designed or used for the smoking or ingestion of tobacco products, **including electronic vaping devices or cartridges, with or without characterizing flavor as defined in this chapter**.

J H. “Tobacco retailer” means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration tobacco, tobacco products, electronic vapor devices, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

K I. “Tobacco retailing” shall mean selling, offering for sale, exchanging, or offering to exchange for any form of consideration tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

...

4.27.040 Requirement for tobacco retailers license.

...

C. No Tobacco Retailer License will be issued prior to confirming that the applicant’s proposed business location complies with the Elk Grove Zoning Code and that a valid Certificate of Occupancy for the building space being proposed for retail is on file with the Elk Grove Development Services Department.

D. No Tobacco Retailer License shall be issued to any smoke shop or smoking lounge as defined in EGMC 23.26.050(S) without the retailer first having been issued a Conditional Use Permit by the City.

E. No Tobacco Retailer License holder shall sell, offer for sale, or possess with the intent to sell or offer for sale, any tobacco paraphernalia or tobacco product, as defined in this chapter, to any person prohibited from such purchase by California Business and Professions Code Section 22952 or California Penal Code Section 308.

F. No Tobacco Retailer License will be issued for any location within one thousand feet (1,000’) of a school, day care center, playground, park, amusement center, or youth sports facility measured from the primary entryway of the business. This restriction shall not apply to new Tobacco Retailers at a location that was approved by the City, but not yet constructed, prior to March 11, 2020.

G. No Tobacco Retailer License holder shall sell, offer for sale, or possess with the intent to sell or offer for sale, any tobacco product containing any characterizing flavor, as defined in this chapter.

H. Exemptions.

1. Nothing herein shall prohibit the otherwise lawful sale of “premium cigars,” “flavored shisha tobacco products” when sold by a “hookah tobacco retailer,” or “loose leaf tobacco,” as those terms are defined in California Health and Safety Code section 104559.5 or any substantially similar successor state statute.

2. Nothing herein shall prohibit the otherwise lawful sale of menthol flavored tobacco products.

...

4.27.110 Suspension or revocation of license.

...

1. Upon a finding by the City Manager of a first (1st) license violation **of sale of a tobacco product to a minor or unlawful sale of a tobacco product containing characterizing flavor, not otherwise exempted under this chapter**, the license shall be suspended for ~~thirty~~ **fifteen (15)** days.

2. Upon a finding by the City Manager of a second (2nd) license violation **of sale of a tobacco product to a minor or unlawful sale of a tobacco product containing characterizing flavor, not otherwise exempted under this chapter**, within ~~any five (5) year period~~ **thirty-six (36) months**, the license shall be suspended for **twenty-five (25)** ~~ninety (90)~~ days.

3. Upon a finding by the City Manager of a third (3rd) license violation **of sale of tobacco product to a minor or unlawful sale of a tobacco product containing characterizing flavor, not otherwise exempted under this chapter**, within **thirty-six (36) months** ~~any five (5) year period~~, the license shall be suspended for ~~one (1) year~~ **revoked**.

~~4. Upon a finding by the City Manager of a fourth (4th) license violation within any five (5) year period, the license shall be revoked. All other violations of this chapter shall be enforced in accordance with EGMC Title 1 and EGMC Chapter 16.18. Violations of tobacco retailing regulations not enumerated in subsections 1, 2, or 3 of this section may result in revocation of the license upon the fifth (5th) license violation or any other violation of a tobacco retailing regulation within thirty-six (36) months.~~

5. The remedies set forth in this chapter shall be cumulative and shall be in addition to any and all other remedies, civil, equitable or criminal, afforded to the City under applicable law.

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Section 3: Amend Elk Grove Municipal Code Chapter 6.22. titled Secondhand Smoke.

*(All additions are shown as **bold** text, deletions in strikethrough)*

Elk Grove Municipal Code Chapter 6.22 is hereby amended to read:

...

6.22.060 Smoking prohibitions – Public places.

...

B. In or within three hundred (300' 0") feet of any school, day care center, playground, park, amusement center, or youth sports facility, **provided, however, that nothing herein shall be construed to restrict or prohibit smoking at a location otherwise authorized by Section 6.22.145 of this code.**

...

6.22.145 Places where smoking permissible.

...

A. A private residence, including an attached or detached garage, **or** on ~~in~~ the lot upon which it is located, whether or not the residence is utilized for office or other business purposes, **unless** ~~if~~ the owner or lawful tenant has ~~not~~ designated the property or that portion of the property **being used for office or other business purposes** as non-smoking and provided reasonable notice to that effect ~~has been given.~~

...

Section 4: Amend Elk Grove Municipal Code Section 9.24.020 titled Definitions.

*(All additions are shown as **bold** text, deletions in strikethrough)*

Elk Grove Municipal Code Section 9.24.020 is hereby amended to read:

...

9.24.020 Definitions.

...

“Tobacco product” shall mean any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, or any other form of tobacco, **including electronic vapor devices defined in EGMC Section 4.27.030** which may be utilized for smoking, chewing, inhalation or other manner of ingestion, **with or without characterizing flavor as defined in EGMC Chapter 4.27.**

...

Section 5: Amend Elk Grove Municipal Code Table 23.27-1 titled Allowed Uses and Required Entitlements for Base Zoning Districts

(All additions are shown as **bold** text, deletions in strikethrough)

Elk Grove Municipal Code Table 23.27-1 titled Allowed Uses and Required Entitlements for Base Zoning Districts is hereby amended as follows (note, only the column titles and the rows, as shown, are amended; rows not listed are not amended; where rows are retitled, they shall be reordered within that use's listing as appropriate):

Table 23.27-1

Allowed Uses and Required Entitlements for Base Zoning Districts

Land Use/Zoning District	Zoning Districts																								Specific Use Regulations	
	Agricultural					Residential					Commercial					Mixed Use		Office		Industrial			Public/Quasi - Public			
	AG-80	AG-20	AR-5/10	AR-2	AR-1	RD-1/2/3	RD-4/5/6	RD-7	RD-10/15	RD-20/25/30	LC	GC	SC	AC	C-O	VCM U	RM U	BP	MP	LI	LI/FX	HI	PR	PS		O
Retail, Service, and Office Uses																										
Smoke Shops	-	-	-	-	-	-	-	-	-	-	-	CUP ²³	CUP ²³	-	-	CUP ²⁴	-	-	-	-	-	-	-	-	-	-
Smoking Lounge	-	-	-	-	-	-	-	-	-	-	-	CUP ^{20, 23}	CUP ^{20, 23}	-	-	CUP ²⁴	-	-	-	-	-	-	-	-	-	-

Notes that pertain to commercial zoning districts:

...

23. In accordance with EGMC Chapter 4.27, no new tobacco retailer may operate within one thousand feet (1,000') of a school, day care center, playground, park, amusement center, or youth sports facility measured from the primary entryway of the business.

Notes that pertain to mixed-use zoning districts:

...

9. In accordance with EGMC Chapter 4.27, no new tobacco retailer may operate within one thousand feet (1,000') of a school, day care center, playground, park, amusement center, or youth sports facility measured from the primary entryway of the business.

Section 6: Repeal of Ordinance No. 09-2020

As of the effective date of this ordinance, Ordinance No. 09-2020, placing a temporary moratorium on all new smoking lounges, smoke shops, and tobacco retailers, is hereby repealed.

Section 7: California Environmental Quality Act (CEQA).

Finding: The Project is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3).

Evidence CEQA requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines, § 15378). The proposed Project includes discretionary amendments to the EGMC and is a project under CEQA; but it is exempt from CEQA review as set forth below.

CEQA Guidelines Section 15061(b)(3) states that a project is exempt from CEQA “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” The approval of the code amendments discussed herein does not approve any physical development project. The EGMC amendments would add electronic cigarettes and electronic vapor devices to existing regulations governing the sale, use, and distribution of tobacco, increase buffer zones for tobacco retailing, and prohibit the sale of certain flavored tobacco products. Therefore, the Project would not result in a direct or indirect physical change in the environment.

Section 8: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 9: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed, and the balance of the ordinance be enforced.

Section 10: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but

prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 11: Effective Date and Publication

This Ordinance shall take effect on September 1, 2021. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

INTRODUCED:
ADOPTED:
EFFECTIVE:

BOBBIE SINGH-ALLEN, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: _____

**AN URGENCY ORDINANCE
OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
EXTENDING A MORATORIUM ON ALL NEW SMOKING LOUNGES, SMOKE
SHOPS, AND TOBACCO RETAILERS WITHIN THE CITY OF ELK GROVE
(CEQA EXEMPT)**

The City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose and Authority.

In the interest of protecting the health, safety, and welfare of the residents in the City of Elk Grove, it is the purpose and intent of this ordinance to extend a temporary moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Government Code Section 65858 as an urgency measure prohibiting a use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

Section 2: Findings.

- A. Smoking and use of tobacco products, particularly by persons under 18 years of age (“minors”), poses a significant health hazard to the user and persons in proximity to the user, including, without limitation, nicotine addiction, disease, and premature death.
- B. The City has a significant interest in discouraging tobacco use by minors and discouraging the sale or distribution of tobacco products to minors, including vape pens and devices, e-cigarettes, and flavored tobacco products.
- C. The City has a significant interest in preserving the health, safety, and welfare of its residents, and in particular its minor residents, in considering enactment of additional regulations on the sale and distribution of tobacco products.
- D. There is a current and immediate threat to the public health, safety, or welfare with respect to the sale and distribution of tobacco products within the City, including access to such products by minors, and the approval of additional permits, licenses, and/or any other entitlement for new smoking lounges, smoke shops, and/or tobacco retailers would result in a further threat to public health, safety, or welfare.
- E. This ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public against the potential detrimental health impacts of tobacco smoking, particularly as concerns minors, in order to allow the City an opportunity to study this issue and develop and adopt additional appropriate regulations for the sale and distribution of tobacco products.

Section 3: Environmental Review/California Environmental Quality Act (CEQA).

This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c)(2) and (3); 15061(b)(3); 15064(d)(3); 15378(a).)

Section 4: Definitions.

As used herein the following definitions shall apply:

- A. "Person" shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- B. "Smoking lounge" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.10.450(D).
- C. "Smoke shop" shall have the same meaning as set forth in Elk Grove Municipal Code section 23.26.050(S)(4).
- D. "Tobacco retailer" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.27.030(G).

Section 5: Moratorium on New Permits, Licenses, and Land Use Entitlements.

- A. During the term of this ordinance, any new smoking lounge, smoke shop, and/or tobacco retailer shall be prohibited in all zoning districts and lands within the City of Elk Grove. No application for any permit, license, or land use entitlement shall be granted or approved for any new smoking lounge, smoke shop, and/or tobacco retailer in any zoning districts or lands within the City of Elk Grove.
- B. Notwithstanding any other provision of this ordinance, any person who lawfully holds or held a permit, license, and/or land use entitlement for an existing and lawfully operating smoking lounge, smoke shop, and/or tobacco retailer in the City of Elk Grove as of January 1, 2020, and is otherwise in compliance with applicable laws, may continue to lawfully operate under that permit, license, and/or entitlement, and may apply for the renewal of any such permit, license, and/or entitlement, which renewal may be approved or denied by the City under the standards governing such permit, license, and/or entitlement under existing law.
- C. Notwithstanding any other provision of this ordinance, any person who lawfully held an existing tobacco retail license as of the effective date of this ordinance at a location for which a conditional use permit or other land use entitlement is required may apply for such conditional use permit and/or other land use entitlement and may continue to operate at said current location, provided that the tobacco retailer licensee receives the conditional use permit and/or other required land use entitlement no later than 180 days from the effective date of

this ordinance. Any such application for a conditional use permit and/or other required land use entitlement may be approved or denied by the City under the standards governing such conditional use permit and/or land use entitlement under existing law.

D. Notwithstanding any other provision of this ordinance, any party who has submitted a land use entitlement application or other development project permit as of the effective date of this ordinance is exempted from the moratorium and may be issued any license or permit governed by this ordinance.

E. Nothing herein shall limit the authority of the City to revoke or suspend any existing license, permit, and/or entitlement as authorized under existing law.

Section 6: Extension of Moratorium Ordinance.

Ordinance No. 09-2020, extending the prohibition on the issuance of new Tobacco Retailer Licenses and entitlements for smoke shops and smoking lounges within the City of Elk Grove, (as outlined in Section 5 of the ordinance) and all of the terms and provisions of said ordinance, are hereby extended from its original expiration date of March 12, 2021 to the earlier of: (1) March 12, 2022; or (2) the effective date of an ordinance expressly repealing Ordinance 09-2020.

Section 7: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 8: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 9: Effective Date and Publication.

This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

ORDINANCE:
ADOPTED:
EFFECTIVE:

BOBBIE SINGH-ALLEN, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: _____



CITY OF ELK GROVE CITY COUNCIL STAFF REPORT

AGENDA TITLE: Consider an Urgency Interim Ordinance imposing a Moratorium on the issuance of any new Permit, License, or Entitlement for any new Smoking Lounge, Smoke Shop, or Tobacco Retailer in the City of Elk Grove (CEQA Exempt)

MEETING DATE: March 11, 2020

PREPARED BY: Shane Diller, Assistant Development Services Director

DEPARTMENT HEAD: Darren Wilson, P.E., Development Services Director

RECOMMENDED ACTION:

Staff recommends that the City Council adopt an urgency interim ordinance adopting a moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove.

BACKGROUND INFORMATION:

California Business and Professions Code Section 22971.3 authorizes cities to implement local tobacco licensing laws. Consistent with state law, the City of Elk Grove (City) regulates the sale of tobacco products and tobacco paraphernalia through the issuance of a special business license, as set forth in Elk Grove Municipal Code (EGMC) Chapter 4.27. That chapter of the EGMC was adopted in 2005, in part, to “encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided for violations.” (EGMC § 4.27.020).

Currently, the City has 57 licensed tobacco retailers, which were issued licenses by the Development Services Department. These licenses must be renewed annually and are subject to suspension or revocation for violations of state and local laws related to tobacco sales and distribution.

In addition to special licensing for tobacco retailers, the City requires that smoke shops and smoking lounges, as defined by the EGMC, obtain a Conditional Use Permit (CUP) to operate. (EGMC Table 23.27-1). The City has no smoke shops or smoking lounges operating under City-issued CUP's. Staff, however, has identified seven smoke shops operating as tobacco retailers without a CUP. Three of these smoke shops opened prior to the CUP requirement, and could be considered legal non-conforming uses, which staff is further reviewing. Smoke shops currently operating with a tobacco retailer's license have not been required to obtain a CUP, as business license issuance is not tied to zoning (or building) code compliance as directed by Council in 2013. No complaints related to these smoke shops have been received that would have triggered a code enforcement action to comply with the Elk Grove Zoning Code by obtaining a CUP. However, the City staff is further reviewing the potential for enforcement action and City remedies as to these smoke shops.

Under state and local law, the distribution of tobacco to a minor, including distribution through a vending machine, is unlawful. (EGMC § 9.24.070; Penal Code § 308). For purposes of tobacco purchases under the EGMC and state law, a "minor" is generally considered a person under 21 years of age, except that persons over the age of 18 in active service in the United States Armed Forces may lawfully purchase tobacco products under California State law. (Penal Code § 308.)

In 2011, the City also adopted a secondhand smoking ordinance. (EGMC Ch. 6.22). Among other regulations, Chapter 6.22 prohibits smoking within 300 feet of a school or other youth-oriented facility. (EGMC § 6.22.060(B)). Leading up to the adoption of Chapter 6.22, there was discussion at the City Council about establishing a 1000-foot buffer between tobacco retailers. However, such a restriction was not adopted into the EGMC. In 2018, the City Council amended the EGMC to prohibit smoking in or near outdoor dining areas.

Tobacco regulations are generally enforced by the Elk Grove Police Department. The Development Services Department enforces the licensing and land use components of tobacco businesses within the City.

ANALYSIS/DISCUSSION:

The City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults.

In recent years, the introduction of vaping and smoking of non-tobacco products, identified by the Centers for Disease Control (CDC) as harmful, has created a market for smoking products not currently captured by tobacco sales regulations in the EGMC. Recently strengthened regulations in Sacramento City and County have put Elk Grove in a position to be an attractive market for tobacco and vape retailers.

On February 26, 2020, the City Council expressed concern that the City's current tobacco retail regulations should be strengthened. Some of the topics to be addressed were revising the definitions of tobacco products to expressly include vape products and vapor smoking devices; increasing penalties for violations of local laws; and reviewing licensing fees and licensee restrictions. Subject to the Council's direction, staff intends to bring back an ordinance addressing these points and any others provided by the City Council on the hearing of this item.

Pending the revision of the City's tobacco laws, the City Council directed that staff bring back an ordinance imposing a moratorium on any new tobacco-related business. A proposed urgency ordinance is provided for the Council's consideration imposing the moratorium. If adopted by a four-fifths vote of the City Council, no new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer within the City would be allowed during the moratorium. Existing tobacco retailers would be permitted to apply for renewals of licenses, which would be subject to approval or denial under existing standards. The City would also reserve the right to suspend or revoke any existing permit, license, or entitlement of tobacco-related businesses under existing standards.

The proposed urgency ordinance would require a vote of at least four-fifths of the City Council to pass. If the ordinance is adopted, the moratorium would be in effect for 45 days. Following a noticed public hearing, the Council may extend the moratorium for an additional 10 months and 15 days and could

subsequently extend it for another year. Unless otherwise directed by the Council, and assuming the Council adopts the proposed moratorium, staff intends to return to the Council within the 45-day period to seek an extension of the moratorium. (Gov. Code § 65858.)

ENVIRONMENTAL ANALYSIS:

This proposed ordinance is intended to preserve the status quo while the City considers further regulations on tobacco sales and distribution. The ordinance will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. This action, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

ALTERNATIVE ACTIONS:

The City Council could decide not to adopt a moratorium at this time and direct staff to continue work on possible amendments to City codes while processing new tobacco retailer license applications and renewals. This could result in adverse impacts, such as tobacco and vape retailers that have had to close in Sacramento relocating to Elk Grove during the period required to develop and propose stronger regulations.

FISCAL IMPACT:

The ordinance would be enforced pursuant to routine Police and Code Enforcement efforts, which is included within the City's budget. The ordinance, therefore, is not expected to have any additional fiscal impact on the General Fund.

ATTACHMENT:

1. Urgency Interim Ordinance

**AN URGENCY INTERIM ORDINANCE
OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
IMPOSING A MORATORIUM ON ALL NEW SMOKING LOUNGES, SMOKE SHOPS,
AND TOBACCO RETAILERS WITHIN THE CITY OF ELK GROVE (CEQA EXEMPT)**

The City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose and Authority.

In the interest of protecting the health, safety, and welfare of the residents in the City of Elk Grove, it is the purpose and intent of this ordinance to place a temporary moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Government Code section 65858 as an urgency measure prohibiting a use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

Section 2: Findings.

- A. Smoking and use of tobacco products, particularly by persons under eighteen years of age (“minors”), poses a significant health hazard to the user and persons in proximity to the user, including, without limitation, nicotine addiction, disease, and premature death.
- B. The City has a significant interest in discouraging tobacco use by minors and discouraging the sale or distribution of tobacco products to minors, including vape pens and devices, e-cigarettes, and flavored tobacco products.
- C. The City has a significant interest in preserving the health, safety, and welfare of its residents, and in particular its minor residents, in considering enactment of additional regulations on the sale and distribution of tobacco products.
- D. There is a current and immediate threat to the public health, safety, or welfare with respect to the sale and distribution of tobacco products within the City, including access to such products by minors, and the approval of additional permits, licenses, and/or any other entitlement for new smoking lounges, smoke shops, and/or tobacco retailers would result in a further threat to public health, safety, or welfare.
- E. This urgency ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public against the potential detrimental health impacts of tobacco smoking, particularly as concerns minors, in order to allow the City an opportunity to study this issue and develop and adopt additional appropriate regulations for the sale and distribution of tobacco products.

Section 3: Environmental Review/California Environmental Quality Act (CEQA).

This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

Section 4: Definitions.

As used herein the following definitions shall apply:

- A. "Person" shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- B. "Smoking lounge" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.10.450(D).
- C. "Smoke shop" shall have the same meaning as set forth in Elk Grove Municipal Code section 23.26.050(S)(4).
- D. "Tobacco retailer" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.27.030(G).

Section 5: Moratorium on New Permits, Licenses, and Land Use Entitlements.

- A. During the term of this ordinance, any new smoking lounge, smoke shop, and/or tobacco retailer shall be prohibited in all zoning districts and lands within the City of Elk Grove. No application for any permit, license, or land use entitlement shall be granted or approved for any new smoking lounge, smoke shop, and/or tobacco retailer in any zoning districts or lands within the City of Elk Grove.
- B. Notwithstanding any other provision of this ordinance, any person who lawfully holds an existing permit, license, and/or land use entitlement for an existing and lawfully operating smoking lounge, smoke shop, and/or tobacco retailer in the City of Elk Grove as of the effective date of this ordinance may continue to lawfully operate under that existing permit, license, and/or entitlement, and may apply for the renewal of any such existing permit, license, and/or entitlement, which renewal may be approved or denied by the City under the standards governing such permit, license, and/or entitlement under existing law. Nothing herein shall limit the authority of the City to revoke or suspend any existing license, permit, and/or entitlement as authorized under existing law.

Section 6: Term of Ordinance.

This ordinance shall be in effect from the date of adoption for a period of forty-five (45) days, unless it is extended pursuant to Government Code section 65858(a) or other applicable law, as approved by the City Council.

Section 7: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 8: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 9: Effective Date and Publication.

This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

ADOPTED:
EFFECTIVE:

STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: _____

AGENDA ITEM NO. 9.1

**CITY OF ELK GROVE
CITY COUNCIL STAFF REPORT**

AGENDA TITLE: A Public Hearing to consider the extension of an Urgency Ordinance imposing a moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove (CEQA Exempt)

MEETING DATE: April 8, 2020

PREPARED BY: Shane Diller, Assistant Development Services Director

DEPARTMENT HEAD: Darren Wilson, P.E., Development Services Director

RECOMMENDED ACTION:

Staff recommends that the City Council, by four-fifths vote of approval, adopt an ordinance extending the moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove for an additional 10 months and 15 days, subject to further extensions as may later be approved by the City Council.

BACKGROUND INFORMATION:

On March 11, 2020, the City Council adopted an urgency ordinance imposing a moratorium on any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove. A copy of the ordinance imposing the moratorium is attached for reference. (See Attachment 2)

ANALYSIS/DISCUSSION:

The moratorium imposed by the urgency interim ordinance adopted on March 11, 2020 on permits and entitlements for new smoking lounges, smoke shops, and tobacco retailers remains in effect for 45 days from the

adoption of the implementing ordinance (ending April 25, 2020). Following a noticed public hearing, state law allows the City Council to extend this moratorium up to an additional ten (10) months and fifteen (15) days to study potential regulations. The City Council may thereafter extend the moratorium for an additional one year for further study. (Gov. Code § 65858).

Staff recommends that the City Council adopt the proposed ordinance extending the moratorium for 10 months and 15 days, as allowed by state law, thus extending the moratorium to March 12, 2021. Currently, staff is researching the regulations that may need to be amended or adopted into the Elk Grove Municipal Code to ensure tobacco, vape, and electronic cigarette retailing is properly managed, primarily as it relates to the exposure and sales to minors. This study will continue during the moratorium period, and proposed ordinances and process improvements will be brought back to the City Council for consideration. Should a further extension be warranted, staff will return to the City Council prior to the expiration of the moratorium to seek a further extension, as permitted by state law. The passage of this extension, and any other extension of the moratorium, requires a four-fifths (4/5th) vote of the City Council.

ENVIRONMENTAL ANALYSIS:

This proposed ordinance is intended to extend the original urgency interim ordinance while the City considers further regulations on tobacco sales and distribution. The ordinance will maintain the status quo and will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. This action, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); and 15378(a).)

ALTERNATIVE ACTIONS:

The City Council could select a moratorium expiration date sooner than the date proposed by staff and allowed by state law. The City Council could also decide not to extend the moratorium at this time and/or direct staff to continue work on possible amendments to City codes while processing new tobacco retailer license applications and renewals as provided in the current City code. This alternative could result in adverse impacts, such as tobacco and vape retailers that have had to close in Sacramento relocating to Elk Grove during the period required to develop and propose stronger regulations, and it is not recommended.

FISCAL IMPACT:

The ordinance would be enforced pursuant to routine Police and Code Enforcement efforts, which is included within the City's budget. The ordinance, therefore, is not expected to have any additional fiscal impact on the General Fund.

ATTACHMENTS:

1. Proposed Ordinance Extending Moratorium
2. Urgency Ordinance No. 06-2020 Imposing Moratorium

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
EXTENDING THE MORATORIUM ON ALL NEW SMOKING LOUNGES, SMOKE
SHOPS, AND TOBACCO RETAILERS WITHIN THE CITY OF ELK GROVE
(CEQA EXEMPT)**

The City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose and Authority.

In the interest of protecting the health, safety, and welfare of the residents in the City of Elk Grove, it is the purpose and intent of this ordinance to extend a temporary moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Government Code section 65858 as an urgency measure prohibiting a use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

Section 2: Findings.

- A. Smoking and use of tobacco products, particularly by persons under eighteen years of age (“minors”), poses a significant health hazard to the user and persons in proximity to the user, including, without limitation, nicotine addiction, disease, and premature death.
- B. The City has a significant interest in discouraging tobacco use by minors and discouraging the sale or distribution of tobacco products to minors, including vape pens and devices, e-cigarettes, and flavored tobacco products.
- C. The City has a significant interest in preserving the health, safety, and welfare of its residents, and in particular its minor residents, in considering enactment of additional regulations on the sale and distribution of tobacco products.
- D. There is a current and immediate threat to the public health, safety, or welfare with respect to the sale and distribution of tobacco products within the City, including access to such products by minors, and the approval of additional permits, licenses, and/or any other entitlement for new smoking lounges, smoke shops, and/or tobacco retailers would result in a further threat to public health, safety, or welfare.
- E. This ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public against the potential detrimental health impacts of tobacco smoking, particularly as concerns minors, in order to allow the City an opportunity to study this issue and develop and adopt additional appropriate regulations for the sale and distribution of tobacco products.

Section 3: Environmental Review/California Environmental Quality Act (CEQA).

This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

Section 4: Definitions.

As used herein the following definitions shall apply:

- A. "Person" shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- B. "Smoking lounge" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.10.450(D).
- C. "Smoke shop" shall have the same meaning as set forth in Elk Grove Municipal Code section 23.26.050(S)(4).
- D. "Tobacco retailer" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.27.030(G).

Section 5: Moratorium on New Permits, Licenses, and Land Use Entitlements.

- A. During the term of this ordinance, any new smoking lounge, smoke shop, and/or tobacco retailer shall be prohibited in all zoning districts and lands within the City of Elk Grove. No application for any permit, license, or land use entitlement shall be granted or approved for any new smoking lounge, smoke shop, and/or tobacco retailer in any zoning districts or lands within the City of Elk Grove.
- B. Notwithstanding any other provision of this ordinance, any person who lawfully holds or held permit, license, and/or land use entitlement for an existing and lawfully operating smoking lounge, smoke shop, and/or tobacco retailer in the City of Elk Grove as of January 1, 2020, and is otherwise in compliance with applicable laws, may continue to lawfully operate under that permit, license, and/or entitlement, and may apply for the renewal of any such permit, license, and/or entitlement, which renewal may be approved or denied by the City under the standards governing such permit, license, and/or entitlement under existing law.
- C. Notwithstanding any other provision of this ordinance, any person who lawfully held an existing tobacco retail license as of the effective date of this ordinance at a location for which a conditional use permit or other land use entitlement is required may apply for such conditional use permit and/or other land use entitlement and may continue to operate at said current location, provided that the

tobacco retailer licensee receives the conditional use permit and/or other required land use entitlement no later than 180 days from the effective date of this ordinance. Any such application for a conditional use permit and/or other required land use entitlement may be approved or denied by the City under the standards governing such conditional use permit and/or land use entitlement under existing law.

D. Notwithstanding any other provision of this ordinance, any party who has submitted a land use entitlement application or other development project permit as of the effective date of this ordinance is exempted from the moratorium and may be issued any license or permit governed by this ordinance.

E. Nothing herein shall limit the authority of the City to revoke or suspend any existing license, permit, and/or entitlement as authorized under existing law.

Section 6: Extension of Urgency Interim Ordinance.

Ordinance No. 06-2020, adopted on March 11, 2020, prohibiting the issuance of new Tobacco Retailer Licenses and entitlements for Smoke shops and smoking lounges within the City of Elk Grove, (as outlined in Section 5 of the ordinance) and all of the terms and provisions of said ordinance, are hereby extended from its original expiration date for a period of ten (10) months and fifteen (15) days to March 12, 2021, unless it is further extended pursuant to Government Code section 65858 or other applicable law, or repealed before its expiration, all as approved by the City Council.

Section 7: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 8: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 9: Effective Date.

This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

ORDINANCE:
ADOPTED:
EFFECTIVE:

STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: _____

ORDINANCE NO. 06-2020**AN URGENCY INTERIM ORDINANCE
OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
IMPOSING A MORATORIUM ON ALL NEW SMOKING LOUNGES, SMOKE SHOPS,
AND TOBACCO RETAILERS WITHIN THE CITY OF ELK GROVE (CEQA EXEMPT)**

The City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose and Authority.

In the interest of protecting the health, safety, and welfare of the residents in the City of Elk Grove, it is the purpose and intent of this ordinance to place a temporary moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Government Code section 65858 as an urgency measure prohibiting a use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

Section 2: Findings.

- A. Smoking and use of tobacco products, particularly by persons under eighteen years of age ("minors"), poses a significant health hazard to the user and persons in proximity to the user, including, without limitation, nicotine addiction, disease, and premature death.
- B. The City has a significant interest in discouraging tobacco use by minors and discouraging the sale or distribution of tobacco products to minors, including vape pens and devices, e-cigarettes, and flavored tobacco products.
- C. The City has a significant interest in preserving the health, safety, and welfare of its residents, and in particular its minor residents, in considering enactment of additional regulations on the sale and distribution of tobacco products.
- D. There is a current and immediate threat to the public health, safety, or welfare with respect to the sale and distribution of tobacco products within the City, including access to such products by minors, and the approval of additional permits, licenses, and/or any other entitlement for new smoking lounges, smoke shops, and/or tobacco retailers would result in a further threat to public health, safety, or welfare.
- E. This urgency ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public against the potential detrimental health impacts of tobacco smoking, particularly as concerns minors, in order to allow the City an opportunity to study this issue and develop and adopt additional appropriate regulations for the sale and distribution of tobacco products.

Section 3: Environmental Review/California Environmental Quality Act (CEQA).

This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

Section 4: Definitions.

As used herein the following definitions shall apply:

- A. "Person" shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- B. "Smoking lounge" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.10.450(D).
- C. "Smoke shop" shall have the same meaning as set forth in Elk Grove Municipal Code section 23.26.050(S)(4).
- D. "Tobacco retailer" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.27.030(G).

Section 5: Moratorium on New Permits, Licenses, and Land Use Entitlements.

- A. Except as set forth herein, during the term of this ordinance, any new smoking lounge, smoke shop, and/or tobacco retailer shall be prohibited in all zoning districts and lands within the City of Elk Grove, and no application for any permit, license, or land use entitlement shall be granted or approved for any new smoking lounge, smoke shop, and/or tobacco retailer in any zoning districts or lands within the City of Elk Grove.
- B. Notwithstanding any other provision of this ordinance, any person who lawfully holds or held a permit, license, and/or land use entitlement for an existing and lawfully operating smoking lounge, smoke shop, and/or tobacco retailer in the City of Elk Grove as of January 1, 2020, and is otherwise in compliance with applicable laws, may continue to lawfully operate under that permit, license, and/or entitlement, and may apply for the renewal of any such permit, license, and/or entitlement, which renewal may be approved or denied by the City under the standards governing such permit, license, and/or entitlement under existing law.
- C. Notwithstanding any other provision of this ordinance, any person who lawfully held an existing tobacco retail license as of the effective date of this ordinance at a location for which a conditional use permit or other land use entitlement is required may apply for such conditional use permit and/or other land use entitlement and may continue to operate at said current location, provided that the

tobacco retailer licensee receives the conditional use permit and/or other required land use entitlement no later than 180 days from the effective date of this ordinance. Any such application for a conditional use permit and/or other required land use entitlement may be approved or denied by the City under the standards governing such conditional use permit and/or land use entitlement under existing law.

D. Notwithstanding any other provision of this ordinance, this ordinance shall not apply to any development project for which a land use entitlement or development application was submitted to the City and was pending with the City as of the effective date of this ordinance.

E. Nothing herein shall limit the authority of the City to revoke or suspend any existing license, permit, and/or entitlement as authorized under existing law.

Section 6: Term of Ordinance.

This ordinance shall be in effect from the date of adoption for a period of forty-five (45) days, unless it is extended pursuant to Government Code section 65858(a) or other applicable law, as approved by the City Council.

Section 7: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 8: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 9: Effective Date and Publication.

This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

ORDINANCE: **06-2020 (URGENCY INTERIM)**
ADOPTED: March 11, 2020
EFFECTIVE: March 11, 2020
EXPIRES: April 25, 2020




STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: March 17, 2020

CERTIFICATION
ELK GROVE CITY COUNCIL URGENCY INTERIM ORDINANCE NO. 06-2020

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)
CITY OF ELK GROVE) ss

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing urgency interim ordinance, published and posted in compliance with State law, was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on March 11, 2020 by the following vote:

AYES : COUNCILMEMBERS: Ly, Detrick, Hume, Nguyen, Suen

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



Jason Lindgren, City Clerk
City of Elk Grove, California



Incorporated July 1, 2000

8401 Laguna Palms Way
Elk Grove, California 95758

CITY OF ELK GROVE

Telephone: (916) 683-7111
Fax: (916) 627-4400
www.elkgrovecity.org

City of Elk Grove – City Council NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, April 8, 2020 at the hour of 6:00 p.m.** or as soon thereafter as the matter may be heard, the Elk Grove City Council will conduct a public hearing at City Hall in the Council Chambers, 8400 Laguna Palms Way, Elk Grove, California, to consider the following matter:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE EXTENDING MORATORIUM ON ALL NEW SMOKING LOUNGES, SMOKE SHOPS, AND TOBACCO RETAILERS WITHIN THE CITY OF ELK GROVE

This ordinance would extend the moratorium adopted by the City Council on March 11, 2020 (Ordinance No. 06-2020) on the issuance of new permits or entitlements for smoking-related business such as smoking lounges, smoke shops, and tobacco retailers for an additional period of up to ten (10) months and fifteen (15) days, all as determined by the City Council.

LOCATION: City-wide
ZONING: Various

ENVIRONMENTAL: This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

Information regarding this item may be obtained in the Office of the City Clerk, 8401 Laguna Palms Way, Elk Grove, California. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the close of the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Office of the City Clerk, 8401 Laguna Palms Way, Elk Grove, CA, 95758, at or prior to the close of the public hearing.

This meeting notice is provided pursuant to Section 23.14.040 of the Elk Grove Municipal Code.

Dated/Published: March 27, 2020

JASON LINDGREN
CITY CLERK, CITY OF ELK GROVE

ADA COMPLIANCE STATEMENT

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (916) 478-3635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

ORDINANCE NO. 06-2020**AN URGENCY INTERIM ORDINANCE
OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
IMPOSING A MORATORIUM ON ALL NEW SMOKING LOUNGES, SMOKE SHOPS,
AND TOBACCO RETAILERS WITHIN THE CITY OF ELK GROVE (CEQA EXEMPT)**

The City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose and Authority.

In the interest of protecting the health, safety, and welfare of the residents in the City of Elk Grove, it is the purpose and intent of this ordinance to place a temporary moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Government Code section 65858 as an urgency measure prohibiting a use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

Section 2: Findings.

- A. Smoking and use of tobacco products, particularly by persons under eighteen years of age ("minors"), poses a significant health hazard to the user and persons in proximity to the user, including, without limitation, nicotine addiction, disease, and premature death.
- B. The City has a significant interest in discouraging tobacco use by minors and discouraging the sale or distribution of tobacco products to minors, including vape pens and devices, e-cigarettes, and flavored tobacco products.
- C. The City has a significant interest in preserving the health, safety, and welfare of its residents, and in particular its minor residents, in considering enactment of additional regulations on the sale and distribution of tobacco products.
- D. There is a current and immediate threat to the public health, safety, or welfare with respect to the sale and distribution of tobacco products within the City, including access to such products by minors, and the approval of additional permits, licenses, and/or any other entitlement for new smoking lounges, smoke shops, and/or tobacco retailers would result in a further threat to public health, safety, or welfare.
- E. This urgency ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public against the potential detrimental health impacts of tobacco smoking, particularly as concerns minors, in order to allow the City an opportunity to study this issue and develop and adopt additional appropriate regulations for the sale and distribution of tobacco products.

Section 3: Environmental Review/California Environmental Quality Act (CEQA).

This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

Section 4: Definitions.

As used herein the following definitions shall apply:

- A. "Person" shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- B. "Smoking lounge" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.10.450(D).
- C. "Smoke shop" shall have the same meaning as set forth in Elk Grove Municipal Code section 23.26.050(S)(4).
- D. "Tobacco retailer" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.27.030(G).

Section 5: Moratorium on New Permits, Licenses, and Land Use Entitlements.

- A. Except as set forth herein, during the term of this ordinance, any new smoking lounge, smoke shop, and/or tobacco retailer shall be prohibited in all zoning districts and lands within the City of Elk Grove, and no application for any permit, license, or land use entitlement shall be granted or approved for any new smoking lounge, smoke shop, and/or tobacco retailer in any zoning districts or lands within the City of Elk Grove.
- B. Notwithstanding any other provision of this ordinance, any person who lawfully holds or held a permit, license, and/or land use entitlement for an existing and lawfully operating smoking lounge, smoke shop, and/or tobacco retailer in the City of Elk Grove as of January 1, 2020, and is otherwise in compliance with applicable laws, may continue to lawfully operate under that permit, license, and/or entitlement, and may apply for the renewal of any such permit, license, and/or entitlement, which renewal may be approved or denied by the City under the standards governing such permit, license, and/or entitlement under existing law.
- C. Notwithstanding any other provision of this ordinance, any person who lawfully held an existing tobacco retail license as of the effective date of this ordinance at a location for which a conditional use permit or other land use entitlement is required may apply for such conditional use permit and/or other land use entitlement and may continue to operate at said current location, provided that the

tobacco retailer licensee receives the conditional use permit and/or other required land use entitlement no later than 180 days from the effective date of this ordinance. Any such application for a conditional use permit and/or other required land use entitlement may be approved or denied by the City under the standards governing such conditional use permit and/or land use entitlement under existing law.

D. Notwithstanding any other provision of this ordinance, this ordinance shall not apply to any development project for which a land use entitlement or development application was submitted to the City and was pending with the City as of the effective date of this ordinance.

E. Nothing herein shall limit the authority of the City to revoke or suspend any existing license, permit, and/or entitlement as authorized under existing law.

Section 6: Term of Ordinance.

This ordinance shall be in effect from the date of adoption for a period of forty-five (45) days, unless it is extended pursuant to Government Code section 65858(a) or other applicable law, as approved by the City Council.

Section 7: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 8: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 9: Effective Date and Publication.

This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

ORDINANCE: **06-2020 (URGENCY INTERIM)**
ADOPTED: March 11, 2020
EFFECTIVE: March 11, 2020
EXPIRES: April 25, 2020




STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: March 17, 2020

CERTIFICATION
ELK GROVE CITY COUNCIL URGENCY INTERIM ORDINANCE NO. 06-2020

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)
CITY OF ELK GROVE) ss

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing urgency interim ordinance, published and posted in compliance with State law, was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on March 11, 2020 by the following vote:

AYES : COUNCILMEMBERS: Ly, Detrick, Hume, Nguyen, Suen

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



Jason Lindgren, City Clerk
City of Elk Grove, California

ORDINANCE NO. 09-2020

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
EXTENDING THE MORATORIUM ON ALL NEW SMOKING LOUNGES, SMOKE
SHOPS, AND TOBACCO RETAILERS WITHIN THE CITY OF ELK GROVE
(CEQA EXEMPT)**

The City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Purpose and Authority.

In the interest of protecting the health, safety, and welfare of the residents in the City of Elk Grove, it is the purpose and intent of this ordinance to extend a temporary moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Government Code section 65858 as an urgency measure prohibiting a use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

Section 2: Findings.

- A. Smoking and use of tobacco products, particularly by persons under eighteen years of age (“minors”), poses a significant health hazard to the user and persons in proximity to the user, including, without limitation, nicotine addiction, disease, and premature death.
- B. The City has a significant interest in discouraging tobacco use by minors and discouraging the sale or distribution of tobacco products to minors, including vape pens and devices, e-cigarettes, and flavored tobacco products.
- C. The City has a significant interest in preserving the health, safety, and welfare of its residents, and in particular its minor residents, in considering enactment of additional regulations on the sale and distribution of tobacco products.
- D. There is a current and immediate threat to the public health, safety, or welfare with respect to the sale and distribution of tobacco products within the City, including access to such products by minors, and the approval of additional permits, licenses, and/or any other entitlement for new smoking lounges, smoke shops, and/or tobacco retailers would result in a further threat to public health, safety, or welfare.
- E. This ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public against the potential detrimental health impacts of tobacco smoking, particularly as concerns minors, in order to allow the City an opportunity to study this issue and develop and adopt additional appropriate regulations for the sale and distribution of tobacco products.

Section 3: Environmental Review/California Environmental Quality Act (CEQA).

This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

Section 4: Definitions.

As used herein the following definitions shall apply:

- A. "Person" shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- B. "Smoking lounge" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.10.450(D).
- C. "Smoke shop" shall have the same meaning as set forth in Elk Grove Municipal Code section 23.26.050(S)(4).
- D. "Tobacco retailer" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.27.030(G).

Section 5: Moratorium on New Permits, Licenses, and Land Use Entitlements.

- A. During the term of this ordinance, any new smoking lounge, smoke shop, and/or tobacco retailer shall be prohibited in all zoning districts and lands within the City of Elk Grove. No application for any permit, license, or land use entitlement shall be granted or approved for any new smoking lounge, smoke shop, and/or tobacco retailer in any zoning districts or lands within the City of Elk Grove.
- B. Notwithstanding any other provision of this ordinance, any person who lawfully holds or held permit, license, and/or land use entitlement for an existing and lawfully operating smoking lounge, smoke shop, and/or tobacco retailer in the City of Elk Grove as of January 1, 2020, and is otherwise in compliance with applicable laws, may continue to lawfully operate under that permit, license, and/or entitlement, and may apply for the renewal of any such permit, license, and/or entitlement, which renewal may be approved or denied by the City under the standards governing such permit, license, and/or entitlement under existing law.
- C. Notwithstanding any other provision of this ordinance, any person who lawfully held an existing tobacco retail license as of the effective date of this ordinance at a location for which a conditional use permit or other land use entitlement is required may apply for such conditional use permit and/or other land use entitlement and may continue to operate at said current location, provided that the

tobacco retailer licensee receives the conditional use permit and/or other required land use entitlement no later than 180 days from the effective date of this ordinance. Any such application for a conditional use permit and/or other required land use entitlement may be approved or denied by the City under the standards governing such conditional use permit and/or land use entitlement under existing law.

D. Notwithstanding any other provision of this ordinance, any party who has submitted a land use entitlement application or other development project permit as of the effective date of this ordinance is exempted from the moratorium and may be issued any license or permit governed by this ordinance.

E. Nothing herein shall limit the authority of the City to revoke or suspend any existing license, permit, and/or entitlement as authorized under existing law.

Section 6: Extension of Urgency Interim Ordinance.

Ordinance No. 06-2020, adopted on March 11, 2020, prohibiting the issuance of new Tobacco Retailer Licenses and entitlements for Smoke shops and smoking lounges within the City of Elk Grove, (as outlined in Section 5 of the ordinance) and all of the terms and provisions of said ordinance, are hereby extended from its original expiration date for a period of ten (10) months and fifteen (15) days to March 12, 2021, unless it is further extended pursuant to Government Code section 65858 or other applicable law, or repealed before its expiration, all as approved by the City Council.

Section 7: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 8: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 9: Effective Date.

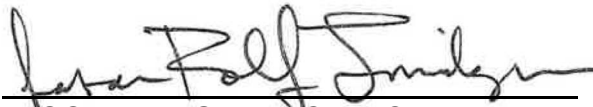
This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

ORDINANCE: **09-2020**
ADOPTED: April 8, 2020
EFFECTIVE: April 8, 2020



STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: April 10, 2020

CERTIFICATION
ELK GROVE CITY COUNCIL URGENCY ORDINANCE NO. 09-2020

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing urgency ordinance, published and posted in compliance with State law, was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a special meeting of said Council held on April 8, 2020 by the following vote:

AYES : **COUNCILMEMBERS:** *Ly, Detrick, Hume, Nguyen, Suen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*

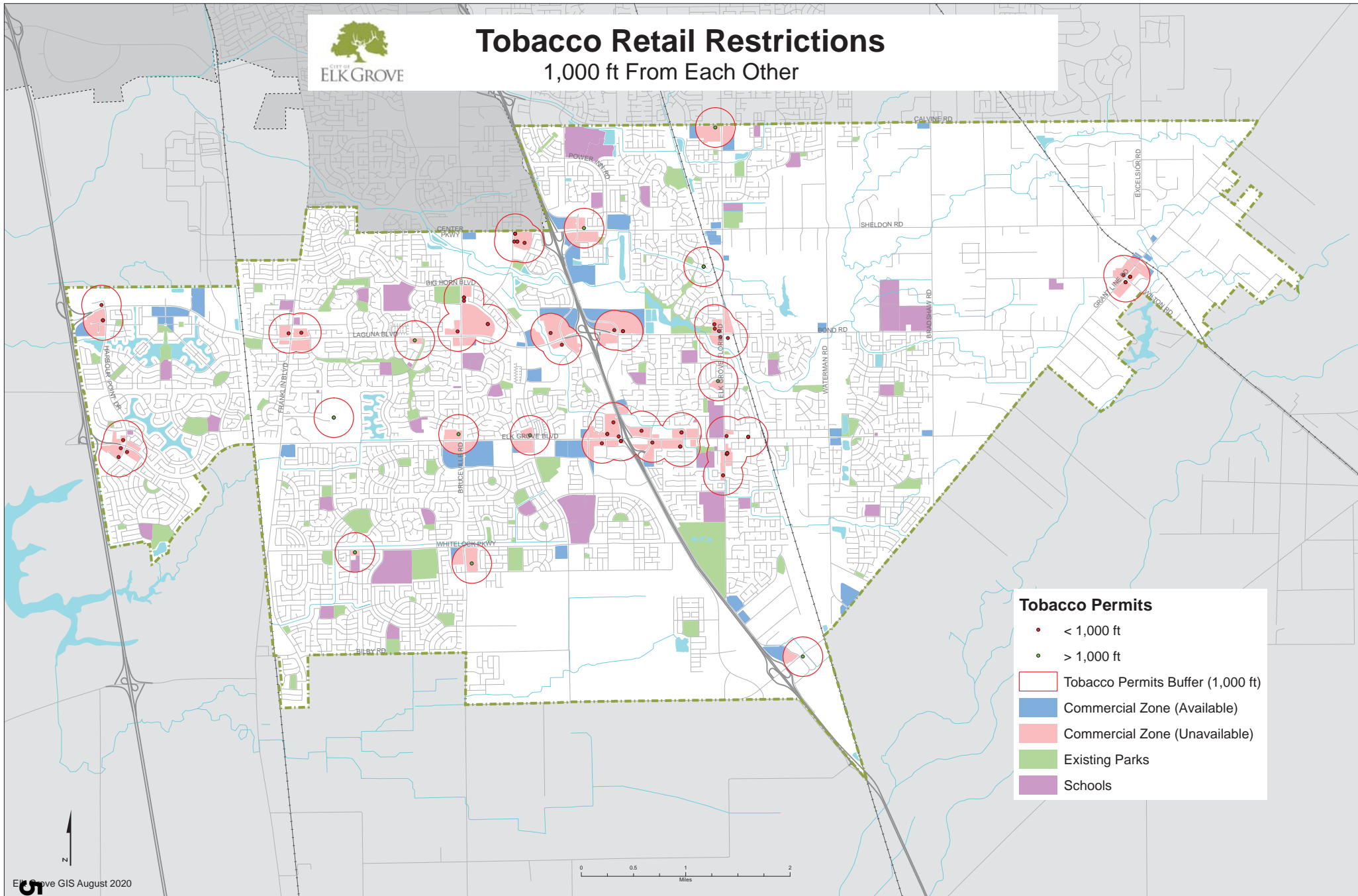
A handwritten signature in dark ink, appearing to read "Jason Rolf Lindgren". The signature is fluid and cursive, with the first name "Jason" and last name "Lindgren" being the most prominent parts.

Jason Lindgren, City Clerk
City of Elk Grove, California

ATTACHMENT 7



Tobacco Retail Restrictions 1,000 ft From Each Other



Tobacco Permits

• < 1,000 ft

• > 1,000 ft

Tobacco Permits Buffer (1,000 ft)

Commercial Zone (Available)

Commercial Zone (Unavailable)

Existing Parks

Schools



Incorporated July 1, 2000

8401 Laguna Palms Way
Elk Grove, California 95758

CITY OF ELK GROVE

Telephone: (916) 683-7111
Fax: (916) 627-400
www.elkgrovecity.org

City of Elk Grove – City Council

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, February 10, 2021 at the hour of 6:00 p.m.**, or as soon thereafter as the matter may be heard, the Elk Grove City Council will conduct a public hearing at City Hall in the Council Chambers, 8400 Laguna Palms Way, Elk Grove, California, to consider the following matters:

AMENDMENTS TO ELK GROVE MUNICIPAL CODE CHAPTER 4.27 TOBACCO RETAILERS, CHAPTER 6.22 SECONDHAND SMOKE, CHAPTER 9.24 DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS, AND CHAPTER 23.27 ALLOWED LAND USES AND REQUIRED ENTITLEMENTS:

Pursuant to the City Council's previous direction, the proposed ordinance consists of a series of City-initiated amendments to Elk Grove Municipal Code (EGMC) Chapter 4.27 Tobacco Retailers, Chapter 6.22 Secondhand Smoke, Chapter 9.24 Distribution of Tobacco to Minors, and Chapter 23.27 Allowed Land Uses and Required Entitlements. Highlights of the amendments recommended by staff include, but are not limited to, the following:

- Amending Chapter 4.27 to:
 - Revise regulations by updating definitions and requirements to ensure the sales of electronic vaping devices and products are regulated the same as tobacco; and
 - Provide regulations and restrictions on certain flavored tobacco products; and
 - Prohibit tobacco retailers within one-thousand foot (1000') of a school, day care center, playground, park, amusement center, or youth sports facility; and
 - Amend penalties for violations of tobacco retailing regulations
- Amending Chapter 6.22 to clarify that certain smoking restrictions do not apply to private residences
- Amending Chapter 9.24 to prohibit furnishing electronic vaping devices to minors
- Amending Table 23.27-1 for consistency with the above-referenced amendments.
- Other EGMC amendments concerning tobacco regulation as may be directed by the City Council.

LOCATION/APN:	Citywide
ENVIRONMENTAL:	No further environmental review is required from the California Environmental Quality Act pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3)(Common Sense Exemption).
PROJECT MANAGER:	Shane Diller (916) 687-3002 or sdiller@elkgrovecity.org

Consistent with Executive Order N-29-20 issued on March 17, 2020, and Executive Order N-35-20 issued on March 21, 2020, by the Governor of the State of California, this meeting will be conducted by teleconference only. The meeting location will be the City Council Chamber, but it will not be open to the public. The live meeting can be viewed via the City's website at http://www.elkgrovecity.org/city_hall/city_government/live_archived_broadcasts

Information regarding this item may be obtained by contacting the City Clerk by email at jlindgren@elkgrovecity.org, or by phone at 916-478-2286. All interested persons are invited to present their views and comments on this matter at the public hearing. Written statements may be filed with the City Clerk either in writing or by email at any time prior to the close of the hearing scheduled herein, and oral statements may be made following the procedures established to accommodate social distancing guidelines, available on the City's website at http://www.elkgrovecity.org/city_hall/city_government/city_council/council_meetings/public_hearing_notices, or by contacting the City Clerk by phone at (916) 478-2286 or email to jlindgren@elkgrovecity.org.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Office of the City Clerk, 8401 Laguna Palms Way, Elk Grove, CA, 95758, at or prior to the close of the public hearing.

This meeting notice is provided pursuant to Section 23.14.040 of Title 23 of the Elk Grove Municipal Code.

Dated/Published: January 29, 2021

JASON LINDGREN
CITY CLERK, CITY OF ELK
GROVE

**ADA COMPLIANCE
STATEMENT**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (916) 478-3635.

Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.



Incorporated July 1, 2000

8401 Laguna Palms Way
Elk Grove, California 95758

CITY OF ELK GROVE

Telephone: (916) 683-7111
Fax: (916) 627-400
www.elkgrovecity.org

City of Elk Grove – City Council NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, February 10, 2021 at the hour of 6:00 p.m.**, or as soon thereafter as the matter may be heard, the Elk Grove City Council will conduct a public hearing at City Hall in the Council Chambers, 8400 Laguna Palms Way, Elk Grove, California, to consider the following matters:

EXTENSION OF MORATORIUM THAT PROHIBITS THE ISSUANCE OF TOBACCO RETAILER LICENSES AND CONDITIONAL USE PERMITS FOR SMOKE SHOPS AND SMOKING LOUNGES (CITY-INITIATED ORDINANCE):

The proposed urgency ordinance would extend the moratorium prohibiting the issuance of tobacco retailer licenses and smoke shop and smoking lounge entitlements until March 12, 2022, or such earlier date as directed by the City Council, while the proposed ordinance consisting of a series of City-initiated amendments to Elk Grove Municipal Code (EGMC) Chapter 4.27 Tobacco Retailers, Chapter 6.22 Secondhand Smoke, Chapter 9.24 Distribution of Tobacco to Minors, and Chapter 23.27 Allowed Land Uses and Required Entitlements is under review.

LOCATION/APN:	Citywide
ENVIRONMENTAL:	No further environmental review is required from the California Environmental Quality Act pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3)(Common Sense Exemption).
PROJECT MANAGER:	Shane Diller (916) 687-3002 or sdiller@elkgrovecity.org

Consistent with Executive Order N-29-20 issued on March 17, 2020, and Executive Order N-35-20 issued on March 21, 2020, by the Governor of the State of California, this meeting will be conducted by teleconference only. The meeting location will be the City Council Chamber, but it will not be open to the public. The live meeting can be viewed via the City's website at http://www.elkgrovecity.org/city_hall/city_government/live_archived_broadcasts

Information regarding this item may be obtained by contacting the City Clerk by email at jlindgren@elkgrovecity.org, or by phone at 916-478-2286. All interested persons are invited to present their views and comments on this matter at the public hearing. Written statements may be filed with the City Clerk either in writing or by email at any time prior to the close of the hearing scheduled herein, and oral statements may be made following the procedures established to accommodate social distancing guidelines, available on the City's website at http://www.elkgrovecity.org/city_hall/city_government/city_council/council_meetings/public_hearing_notices, or by contacting the City Clerk by phone at (916) 478-2286 or email to jlindgren@elkgrovecity.org.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Office of the City Clerk, 8401 Laguna Palms Way, Elk Grove, CA, 95758, at or prior to the close of the public hearing.

This meeting notice is provided pursuant to Section 23.14.040 of Title 23 of the Elk Grove Municipal Code.

Dated/Published: January 29, 2021

JASON LINDGREN
CITY CLERK, CITY OF ELK
GROVE

**ADA COMPLIANCE
STATEMENT**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (916) 478-3635.

Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.