



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

**AGENDA TITLE:** Consider an Ordinance amending Chapters 4.27, 6.22, and 9.24 of the Elk Grove Municipal Code Concerning Smoking Regulations (CEQA Exempt)

**MEETING DATE:** January 10, 2018

**PREPARED BY/  
DEPARTMENT HEAD:** Jonathan P. Hobbs, City Attorney

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**RECOMMENDED ACTION**

Staff recommends that the City Council introduce and waive the full reading, by substitution of title only, an ordinance finding the proposed amendments to the Elk Grove Municipal Code (“EGMC”) exempt from the California Environmental Quality Act (“CEQA”); and amending Chapters 4.27, 6.22, and 9.24 of the EGMC concerning smoking regulations.

**BACKGROUND INFORMATION**

On October 25, 2017, staff presented the City Council with options for amendments to the EGMC concerning smoking regulations. Following the presentation, the City Council directed staff to return with proposed amendments to the EGMC to align the City’s Code with state law and also provide for a prohibition on smoking at outdoor dining areas within the City.

**ANALYSIS**

Consistent with City Council direction, the proposed ordinance:

- Recognizes the legal age for tobacco purchases as 21 years of age, consistent with state law.

- Acknowledges an exemption to the 21-year age limit for active duty military personnel 18 years of age or older with valid United States Armed Forces identification.
- Provides a definition of “outdoor dining area” and prohibits smoking in or within 20 feet of an outdoor dining area.
- Makes minor non-substantive clerical revisions.

## **ENVIRONMENTAL REVIEW**

Adoption of this ordinance is exempt from environmental review under CEQA (Pub. Res. Code §§ 21000, et. seq.) pursuant to State CEQA Guidelines Sections 15060(c)(2), 15061(b)(3). The passage of the ordinance and its enforcement would not result in direct or indirect physical changes in the environment, and it will not have a significant effect on the environment.

## **FISCAL IMPACT**

The proposed ordinance would be enforced pursuant to routine police and code enforcement efforts included within the City’s approved budget. Fines collected from the enforcement of the ordinance would be deposited into the General Fund. Enactment and enforcement of the ordinance is not expected to have a significant fiscal impact on the City.

## **ATTACHMENT**

1. Ordinance

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AMENDING CHAPTERS 4.27, 6.22, AND 9.24 OF THE ELK GROVE MUNICIPAL  
CODE CONCERNING SMOKING REGULATIONS (CEQA EXEMPT)**

**WHEREAS**, recent changes in state law have raised the legal age for the purchase of tobacco products from 18 years of age to 21 years of age, with certain exceptions for active military personnel 18 years of age or older; and

**WHEREAS**, the City wishes to revise its Municipal Code to align with current state law; and

**WHEREAS**, the City also wishes to impose additional prohibitions on smoking at public outdoor dining areas, all as authorized by state law.

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

Section 1: Purpose and Authority

The purpose of this ordinance is to align the City's Municipal Code with state law concerning access to tobacco products and to prohibit the smoking of tobacco and other substances in public outdoor dining areas, all in furtherance of the public health, safety, and general welfare. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Health and Safety Code section 118910.

Section 2: Environmental Review / California Environmental Quality Act (CEQA).

Finding: Adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (Section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) pursuant to state CEQA Guidelines Sections 15060(c)(2), 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 City's Municipal Code and is a project under CEQA; but it is exempt from CEQA review as set forth below.

CEQA Guidelines section 15060(c)(2) states that a project is not subject to CEQA review where the activity will not result in a direct or reasonably foreseeable indirect physical change to the environment. 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 set forth in this ordinance does not approve any physical development project, and would not result in a direct or indirect physical change in the environment. Rather, this action aligns the City's Code with state law and also regulates the location of persons smoking tobacco or other substances in public places, which would not have a significant impact on the environment.

Note: Language being amended is in **bold and underline**, language being deleted is shown with ~~strikethrough~~, and unchanged subsections in a section are designated with asterisks (\*\*\*)

Section 3: Amendments to Elk Grove Municipal Code Chapter 4.27

The City Council hereby amends Section 4.27.010 as follows:

Section 4.27.010. Legislative Findings.

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B. State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under **twenty-one (21)** ~~eighteen (18)~~-years of age (Section 22956 of the Business and Professions Code) and provide procedures for using persons under **twenty-one (21)** ~~eighteen (18)~~-years of age to conduct on-site compliance checks of tobacco retailers (Section 22952 of the Business and Professions Code).

C. State law requires that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under **twenty-one (21)** ~~eighteen (18)~~-years of age is illegal (Section 22952 of the Business and Professions Code). **State law further provides that this twenty-one (21) year age limitation does not apply to active duty military personnel who are eighteen (18) years of age or older;** (Section 308 of the Penal Code).

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Section 4: Amendments to Elk Grove Municipal Code Chapter 6.22

The City Council hereby amends Chapter 6.22 as follows:

Section 6.22.010. Definitions.

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O. ~~Reserved for future use.~~ **“O” Definitions.**

1. **“Outdoor dining area” means any unenclosed and openly accessible public area adjacent to an establishment selling and serving food and/or beverages for on-site consumption, which area is under the control of the food and/or beverage establishment, and which area is used or intended to be used for eating and drinking activities similar to that occurring within the enclosed establishment.**

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Section 6.22.060. Smoking prohibitions – Public places.

In addition to any location where smoking is prohibited under any other law, including State or Federal law, smoking shall be prohibited in the following locations:

A. Any public place, enclosed or not, in which smoking is not otherwise prohibited but which the property owner, manager, or operator has designated as nonsmoking.

B. ~~In or within~~ within three hundred (300' 0") feet of any schools, day care centers, playgrounds, parks, amusement centers, or youth sports ~~facility~~ facilities.

**C. In or within twenty (20' 0") feet of any outdoor dining area.**

Section 5: Amendments to Elk Grove Municipal Code Chapter 9.24

The City Council hereby amends Chapter 9.24 as follows:

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Section 9.24.070. Distribution of tobacco products to minors prohibited.

Any person, including a tobacco vending machine owner, who distributes a tobacco product to a minor who is in fact under the age of **twenty-one (21)** ~~eighteen (18)~~ years, whether or not the fact of such minority was known to such person at the time of distribution, is guilty of an infraction, **unless the purchaser or recipient of the tobacco product is active duty military personnel presenting a valid identification card issued by the United States Armed Forces providing proof of age of eighteen (18) years or older.**

9.24.080. Distribution of tobacco products to minors prohibited – Premises managers.

Any person who authorizes the installation or placement of a tobacco vending machine upon premises which the person manages or otherwise controls and who permits or **allows** ~~suffers, knowingly or unknowingly,~~ any tobacco product to be distributed from such vending machine to a minor under the age of **twenty-one (21)** ~~eighteen (18)~~ years is guilty of an infraction. **This section shall not apply to the distribution of tobacco products to active duty military personnel presenting a valid identification card issued by the United States Armed Forces providing proof of age of eighteen (18) years or older.**

9.24.090. Proof of age.

For the purpose of preventing the violation of EGMC Section 9.24.070 or 9.24.080, any person may refuse to distribute a tobacco product to a person who is unable to produce adequate written evidence that he or she is over the age of **twenty-one (21)** ~~eighteen (18)~~ years **or, for active duty military personnel, eighteen (18) years.**

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9.24.110. Purchase of tobacco products by minors prohibited.

**A. Except as set forth in subsection (B), lit** shall be unlawful and an infraction for any minor under the age of **twenty-one (21)** ~~eighteen (18)~~ years to purchase a tobacco product within the City of Elk Grove.

**B. Notwithstanding subsection (A), active duty military personnel presenting a valid identification card issued by the United States Armed Forces providing proof of age of eighteen (18) years or older may purchase tobacco products.**

9.24.120. Posting of signs required.

A. Every person who distributes tobacco products within the City of Elk Grove shall post conspicuously and keep so posted in each place of business from which tobacco products are distributed a sign **as developed by the State Department of Public Health pursuant to Business and Professions Code section 22952(b) identifying the restrictions on the sale of tobacco products to minors.** ~~in letters at least one (1") inch high which states as follows:~~

~~It is unlawful to distribute tobacco products to a minor under the age of eighteen (18) years. It is unlawful for a minor under the age of eighteen (18) years to purchase tobacco products. EGMC Sections 9.24.070, 9.24.080 and 9.24.110.~~

B. Every tobacco vending machine owner shall affix and keep affixed to the front of each tobacco vending machine within the City of Elk Grove a sign as described in subsection (A) of this section.

#### **Section 6: 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 7: 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 8: 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 affect; 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 9: Effective Date and Publication

This ordinance shall take effect thirty (30) days after its adoption. 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:

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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: \_\_\_\_\_