

ORDINANCE NO. 20-2010

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
RENUMBERING ELK GROVE MUNICIPAL CODE CHAPTER 6.26 TO CHAPTER
9.24 REGARDING DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS AND
RENUMBERING CHAPTER 6.30 TO CHAPTER 9.28 REGARDING PUBLIC
CONSUMPTION OF MARIJUANA**

WHEREAS, Elk Grove Municipal Code (EGMC) Chapter 6.26 regulates distribution of tobacco to minors; and

WHEREAS, EGMC Chapter 6.30 regulates public use of marijuana; and

WHEREAS, EGMC Title 6 generally regulates subjects of Health and Sanitation; and

WHEREAS, EGMC Title 9 generally regulates subjects of Public Peace, Morals, and Safety; and

WHEREAS, the organization of the EGMC would be improved by locating all tobacco and marijuana use regulations in a Code Title of subject consistency, specifically EGMC Title 9 (Public Peace, Morals, and Safety); and

WHEREAS, the content of these codes will not be changed other than the numbering.

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

Section 1:

EGMC Chapter 6.26 is renumbered to EGMC Chapter 9.24 to read as follows:

**Chapter 9.24
DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS**

Sections:

- 9.24.010 Purposes.
- 9.24.020 Definitions.
- 9.24.070 Distribution of tobacco products to minors prohibited.
- 9.24.080 Distribution of tobacco products to minors prohibited – Premises managers.
- 9.24.090 Proof of age.
- 9.24.100 Defense – Evidence of majority.
- 9.24.110 Purchase of tobacco products by minors prohibited.
- 9.24.120 Posting of signs required.

9.24.010 Purposes.

The protection of the public welfare requires that potential access by minors to all forms of tobacco products be strictly regulated.

Harvard University and the National Institute on Drug Abuse have reported that the nicotine in tobacco is a powerful, habit-forming drug that leads to compulsive use, and produces strong withdrawal symptoms. The U.S. Public Health Service has described nicotine addiction as the most widespread example of drug dependence in our country.

Studies have found that nicotine addiction typically begins in childhood. It has been estimated that thousands of American children smoke for the first time every day. Many youth, particularly male teenagers, use smokeless tobacco. Reported tests have shown that minors as young as eleven (11) years of age have experienced little or no difficulty in purchasing tobacco products.

The purpose of this chapter is to reduce the likelihood of minors obtaining tobacco products in the City, by regulation of the potential sources thereof without unduly interfering with permitted transactions or prohibiting tobacco vending machines. This chapter enables affected persons to determine for themselves the methods they will employ to achieve compliance herewith.

9.24.020 Definitions.

“Distribute” shall mean to sell, give away, or in any way furnish as part of a commercial transaction, including by means of direct retail sale, vending machine sale, or promotional free distribution.

“Person” shall mean an individual, a partnership, corporation, unincorporated association, joint venture or other entity.

“Tobacco product” shall mean any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.

“Tobacco vending machine” shall mean any electronic or mechanical device the operation of which depends upon the insertion of money, in coin or paper bill, or other thing representative of value, which dispenses or vends a tobacco product.

“Tobacco vending machine owner” shall mean any person who has an ownership or leasehold interest in a tobacco vending machine and who installs or places, or causes to be installed or placed, such tobacco vending machine on any premises for the purpose of distributing a tobacco product there from.

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 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.

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 suffers, knowingly or unknowingly, any tobacco product to be distributed from such vending machine to a minor under the age of eighteen (18) years is guilty of an infraction.

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 eighteen (18) years.

9.24.100 Defense – Evidence of majority.

Proof that the defendant, or his employee or agent, demanded, was shown, or acted in reliance upon bona fide evidence of majority and identity in any transaction prohibited by EGMC Section 9.24.070 or 9.24.080 shall be a defense to any criminal prosecution therefore, or to any civil proceeding based thereon. Bona fide evidence of majority and identity of a person shall be a document issued by a Federal, State, County or municipal government, or subdivision or agency thereof, which contains the name, date of birth, description and picture of the person, including, without limitation, a motor vehicle operator's license or an identification card issued to a member of the armed forces.

9.24.110 Purchase of tobacco products by minors prohibited.

It shall be unlawful and an infraction for any minor under the age of eighteen (18) years to purchase a tobacco product within the City of Elk Grove.

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 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 2:

EGMC Chapter 6.30 is renumbered to EGMC Chapter 9.28 to read as follows:

**Chapter 9.28
PUBLIC CONSUMPTION OF MARIJUANA**

Sections:

- 9.28.010 Title.
- 9.28.020 Findings and purposes.
- 9.28.030 Prohibition.
- 9.28.040 Penalty.

9.28.010 Title.

This chapter shall be known as the public consumption of marijuana ordinance.

9.28.020 Findings and purposes.

On November 5, 1996, the voters of the State of California approved Proposition 215 enacting Section 11362.5 of the Health and Safety Code. That section permits, for purposes of State law, the limited use, cultivation and possession of marijuana for specified medical purposes.

However, the use, cultivation and possession of marijuana for other purposes remains illegal within this State and is presently illegal under Federal laws. Additionally, the use of marijuana by minors has been demonstrated to be a gateway to the use of other illicit substances.

While recognizing the enactment of Section 11362.5 of the Health and Safety Code, the City Council believes that the open and public use of marijuana, which might otherwise be permitted by that section, A) is injurious to public health in many of the same ways that tobacco consumption is injurious to the public health and B) provides to a public, including minors, not privy to reasons for such use, a deleterious example regarding the consumption of otherwise illicit, controlled substances.

Therefore, the City Council believes it necessary to balance the uses of marijuana permitted by Section 11362.5, the public health and the need to recognize that possession and use of marijuana for other purposes remains illegal.

9.28.030 Prohibition.

The consumption of marijuana otherwise permitted by Section 11362.5 of the California Health and Safety Code is hereby prohibited on any public property or in any facility or space to which members of the public have access.

9.28.040 Penalty.

Violations of this chapter shall be a misdemeanor punishable by a fine not exceeding One Thousand and no/100^{ths} (\$1,000.00) Dollars, imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.

Section 3: 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 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 4: 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 5: Savings Clause

The provisions of this Chapter 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. 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 6: 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).

ORDINANCE: 20-2010
INTRODUCED: August 25, 2010
ADOPTED: September 8, 2010
EFFECTIVE: October 8, 2010



SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, INTERIM CITY CLERK

APPROVED AS TO FORM:


SUSAN COCHRAN, CITY ATTORNEY

Date signed: September 20, 2010

CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 20-2010

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

I, Jason Lindgren, Interim City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on August 25, 2010 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 8, 2010 by the following vote:

AYES : **COUNCILMEMBERS:** **Scherman, Detrick, Davis, Hume**

NOES: **COUNCILMEMBERS:** **None**

ABSTAIN: **COUNCILMEMBERS:** **None**

ABSENT: **COUNCILMEMBERS:** **Cooper**

A summary of the ordinance was published pursuant to GC 36933(c) (1).



Jason Lindgren, Interim City Clerk
City of Elk Grove, California