

ORDINANCE NO. 23-2011

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
REPEALING ELK GROVE MUNICIPAL CODE CHAPTER 6.22 TITLED CLEAN
INDOOR AIR AND HEALTH PROTECTION AND REPLACING WITH A REVISED
CHAPTER 6.22 TITLED SECONDHAND SMOKE**

WHEREAS, the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke and neither separating smokers from nonsmokers nor instilling ventilation systems effectively eliminates secondhand smoke; and

WHEREAS, the United States Environmental Protection Agency (EPA) has found secondhand smoke to be a risk to public health, and has classified secondhand smoke as a Group A carcinogen, the most dangerous class of carcinogen; and

WHEREAS, exposure to secondhand smoke is the third leading cause of preventable death in this country, killing over 52,000 non-smokers each year, including 3,000 deaths from lung cancer; and

WHEREAS, secondhand smoke exposure adversely affects fetal growth with elevated risk of low birth weight and increased risk of Sudden Infant Death Syndrome (SIDS) in infants of mothers who smoke; and

WHEREAS, secondhand smoke exposure causes as many as 300,000 children in the United States to suffer from lower respiratory tract infections such as pneumonia and bronchitis, exacerbates childhood asthma, and increases the risk of acute chronic middle ear infection in children; and

WHEREAS, the California Air Resources Board has put secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant; and

WHEREAS, the California Office of Environmental Health Hazard Assessment has included secondhand smoke on the Proposition 65 list of chemicals known to the State of California to cause cancer, birth defects, and other reproductive harm; and

WHEREAS, the California Legislature has declared that tobacco smoke is a hazard to the health of the general public and that involuntary smoking is a cause of disease, including lung cancer in healthy nonsmokers; and

WHEREAS, state law prohibits smoking in playgrounds and tot lots while expressly authorizing local communities to enact additional restrictions; and

WHEREAS, air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort of nonsmokers

and constitutes a public nuisance in public places and workplaces.

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 repeal the former Elk Grove Municipal Code (EGMC) Chapter 6.22 and replace with a revised EGMC Chapter 6.22 regulating secondhand smoke and includes structural revisions, a repeal of provisions now superseded by California Labor Code, additional restrictions on smoking near children's facilities, and allowing for City enforcement of a no smoking area declared by a property owner, manager, or operator where such a designation is not otherwise required by law but is desired by the property owner.

This ordinance is enacted pursuant to provisions of California Health and Safety Code §118910 authorizing local governments to regulate smoking, including a complete ban on smoking, *not otherwise inconsistent with state law*; Labor Code §6405.5 permitting local regulation of smoking in any area not defined as a "place of employment" by Labor Code; and Health and Safety Code §104495 permitting cities and counties regulatory authority around playgrounds and tot lot sandbox areas.

Section 2: Repeal former Elk Grove Municipal Code Chapter 6.22 titled "Clean Indoor Air and Health Protection" and Replace with a revised EGMC Chapter 6.22 titled "Secondhand Smoke"

Elk Grove Municipal Code Chapter 6.22 titled "Clean Indoor Air and Health Protection" is hereby repealed in its entirety, and replaced with a revised EGMC Chapter 6.22 titled "Secondhand Smoke" attached as Exhibit A.

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 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 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.

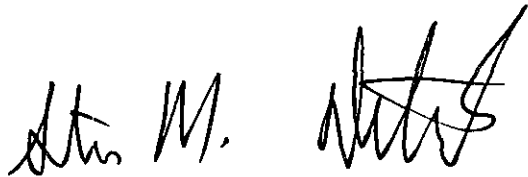
Section 5: Savings Clause

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: 23-2011
INTRODUCED: August 24, 2011
ADOPTED: September 14, 2011
EFFECTIVE: October 14, 2011



STEVEN M. DETRICK, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN HOBBS,
INTERIM CITY ATTORNEY

Date signed: September 19, 2011

EXHIBIT A

Chapter 6.22

SECONDHAND SMOKE

Sections:

- 6.22.000 Purpose.
- 6.22.010 Definitions.
- 6.22.060 Smoking prohibitions, public places.
- 6.22.065 Stores.
- 6.22.070 Banks.
- 6.22.075 Hotels/motels.
- 6.22.090 Theaters.
- 6.22.095 Recreational facilities.
- 6.22.100 Recreation halls.
- 6.22.105 Restaurants.
- 6.22.110 City buildings.
- 6.22.120 Places of exhibition.
- 6.22.125 Hospitals.
- 6.22.130 Adult Schools.
- 6.22.137 Proximity to Children's Facilities.
- 6.22.140 Smoking prohibitions, workplace.
- 6.22.145 Places where smoking permissible.
- 6.22.150 Exemption procedures.
- 6.22.152 Bingo facilities.
- 6.22.155 Posting requirements.
- 6.22.160 Retaliation prohibited.
- 6.22.165 Violation – Smoking or posting.
- 6.22.170 Retaliation remedies.
- 6.22.175 Enforcement.

6.22.000 Purpose.

The purpose of this Chapter is to regulate smoking in the City of Elk Grove.

6.22.010 Definitions.

For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meanings given in this section, unless the context clearly indicates or requires a different meaning:

A. Reserved for future use.

B. "B" Definitions.

1. "Bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental, "bar" or "tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, a "bar" or "tavern" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

C. "C" Definitions.

1. "Children" or "minor" means those persons who are under the age of eighteen (18) years of age.
2. "Commercial Enterprise" shall mean any business entity formed for profit-making purposes, including professional corporations and other entities under which legal, medical, dental, engineering, architectural, or other professional services are delivered, and also any person charged with the responsibility of controlling conduct in behalf of the enterprise upon any premises regulated by this chapter.

D. "D" Definitions.

1. "Day care center" means any licensed child day care facility including infant centers, preschools, extended day care facilities, and school age childcare centers, including a private residence when employees, children, or patients are present.
2. "Director" means the Planning Director or the Director's designee.

E. "E" Definitions.

1. "Enclosed area" shall mean all space between a floor and ceiling which is served by a common heating, ventilating and air conditioning system, and is enclosed on all sides by solid walls or windows (exclusive of doorways or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping," or similar structures.
2. "ETS" means environmental tobacco smoke.

F. Reserved for future use.

G. Reserved for future use.

H. "H" Definitions.

1. "HVAC" means heating, ventilating and air conditioning.

I. Reserved for future use.

J. Reserved for future use.

K. Reserved for future use.

L. Reserved for future use.

M. "M" Definitions.

1. "Members of the general public" includes shoppers, customers, patrons, patients, students, clients and other similar invitees of a commercial enterprise or nonprofit entity; and exclude employees thereof, sales representatives, service repair persons, and persons delivering goods, merchandise or services to a commercial enterprise, nonprofit entity or the City.

N. "N" Definitions.

1. "Nonprofit Entity" shall mean any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from operations of which are committed to promotion of the objects or purposes of the organization and not to private gain, together with any person charged with the responsibility of controlling conduct in behalf of the entity upon any premises regulated by the provisions of this chapter. A public agency is not a "nonprofit entity" within the meaning of this section.

O. Reserved for future use.

P. "P" Definitions.

1. "Park" shall have the same meaning as set forth in California Penal Code Section 3003.5(b).

2. "Playground" means any outdoor premises or grounds owned or operated by the City or other governmental entity that contains any play or athletic equipment used or intended to be used by children, including but not limited to teen centers, youth sports facilities, skate parks, and public swimming pools.

Q. Reserved for future use.

R. "R" Definitions.

1. "Restaurant" means any coffee shop, cafeteria, luncheonette, soda fountain, fast food service, and other establishment where cooked or otherwise prepared food is sold to members of the general public for consumption on the premises.

S. "S" Definitions.

1. "School" means the buildings and grounds of any public or private school used for the purposes of the education of children in kindergarten or any of the grades one (1) through twelve (12) inclusive. "School" shall not include a residence where parents or guardians provide home schooling.
2. "Smoking" means lighting, inhaling, exhaling or burning any pipe, cigar, cigarette, weed, or plant, or carrying any lighted pipe, lighted cigar, lighted cigarette, lighted weed, lighted plant, or other ignited combustible substance in any manner or in any form.

T. "T" Definitions.

1. "Tavern" – refer to "Bar" entry EGMC 6.22.010(B)(1).
2. "Tobacco shop, Retail or wholesale" means any business establishment the main purpose of which is the sale of tobacco products, including but not limited to, cigars, pipe tobacco, and smoking accessories.

U. Reserved for future use.

V. Reserved for future use.

W. Reserved for future use.

X. Reserved for future use.

Y. "Y" Definitions.

1. "Youth sports facilities" means any indoor or outdoor premises or grounds used or intended to be used for youth sports, including but not limited to soccer fields, ballparks, karate, dance, gymnastic, and cheerleading schools.

Z. Reserved for future use.

6.22.060 Smoking prohibitions, public places.

Except as specifically provided, it is unlawful for any member of the general public or any other person, including an employee, to smoke in the public places named and described in EGMC Sections 6.22.060 through 6.22.137 and other public places similarly situated, including, but not limited to, the following enclosed areas:

- A. Common work areas occupied by employees performing clerical, technical, administrative or other business or work functions;
- B. Merchandise display areas, checkout stations, and counters and other pay stations;
- C. Hallways;
- D. Restrooms;
- E. Escalators, elevators and stairways;
- F. Lobbies;
- G. Reception areas;
- H. Waiting rooms;
- I. Service lines;
- J. Classrooms, meeting or conference rooms, or lecture halls;
- K. Other places in which members of the general public congregate for service or otherwise frequent.
- L. Any public place, enclosed or not, in which smoking is not otherwise prohibited but which the property owner, manager, or operator has designated as non-smoking.

6.22.065 Stores.

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to:

- A. The enclosed common areas of shopping malls;
- B. Automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale at retail;
- C. Grocery, specialty, department and other stores which sell goods or merchandise at retail; and
- D. Service stations, stores or shops for the repair or maintenance of appliances, shoes, or motor vehicles, barbershops, beauty shops, cleaners and laundromats, video games, poolhalls and other amusement centers, and other similar establishments offering services or products to members of the general public.

6.22.070 Banks.

The prohibitions of EGMC Section 6.22.060 shall be applicable to banks, including savings and loan associations, credit unions and other similar institutions which offer financial services to members of the general public.

6.22.075 Hotels/motels.

The prohibitions of EGMC Section 6.22.060 shall be applicable to hotels and motels in which guests typically rent lodging for continuous periods less than thirty (30) days. Smoking is permissible in rental rooms and in on-premises restaurants and bars as provided in EGMC Sections 6.22.105 and 6.22.145(B). The availability of nonsmoking rooms will be prominently posted in the lobby sign-in area. The rooms so designated will be posted as smoking prohibited and ashtrays removed. Customers seeking accommodations will be routinely advised of the availability of nonsmoking rooms.

6.22.090 Theaters.

The prohibitions of EGMC Section 6.22.060 shall be applicable to theaters, including motion picture theaters, meeting halls and auditoriums where motion pictures or live theatrical musical or dramatic productions are made to an audience consisting of members of the general public assembled for the purpose of witnessing the performance or presentation; provided, that neither this section nor EGMC Section 6.22.060 shall be construed to prevent smoking by performers in connection with a stage production or by persons making a presentation concerning addiction to tobacco or other drugs.

6.22.095 Recreational facilities.

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to the following facilities to the extent that they are enclosed areas: sports pavilions, gymnasiums, exercise rooms, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar place where members of the general public assemble to either engage in physical exercise, participate in athletic competition or witness sport events.

Smoking is prohibited at all times within the seating areas of an enclosed arena and in the surrounding open concourses where food and beverages are dispensed.

Smoking may be allowed in enclosed on-site restaurants, subject to the provisions of EGMC Section 6.22.105, and in enclosed on-site bars.

6.22.100 Recreation halls.

The prohibitions of EGMC Section 6.22.060 shall be applicable to recreation halls and other similar facilities where members of the general public play bingo or cards, dance or engage in recreational, character-building or cultural activities.

An owner, manager or operator of a recreation hall shall designate the main activities area of such facility, including restrooms, lounges and kitchens, as nonsmoking. Signs shall be posted in the manner prescribed by EGMC Section 6.22.155. It shall not constitute a violation of this chapter to smoke in a location where smoking has been authorized.

The provisions of this section shall not be construed to in any manner restrict or otherwise impair the authority of an owner or operator to increase the nonsmoking seating in a restaurant or bar.

6.22.105 Restaurants.

Within all restaurants, the prohibitions in EGMC Section 6.22.060 shall be applicable to lobbies, waiting areas, restrooms and such dining seating areas as are allocated for nonsmoking.

The provisions of this section shall not be construed to in any manner restrict or otherwise impair the authority of an owner or operator to increase the nonsmoking seating in a restaurant or bar.

6.22.110 City buildings.

Smoking is prohibited in all City buildings.

6.22.120 Places of exhibition.

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to libraries, museums, aquariums, galleries, convention halls and similar facilities where members of the general public assemble for the purpose of viewing the exhibition of art, artifacts, objects of historical or cultural significance, products, merchandise, equipment, appliances or services.

6.22.125 Hospitals.

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to hospitals, rest and convalescent homes, medical clinics, physical therapy facilities and other places where medical, dental, psychiatric or counseling services are delivered to members of the general public. Operators of facilities treating psychiatric or chemically impaired patients may permit smoking by patients in designated areas, provided the Medical Director of such facility has determined in writing that the practice is beneficial for the recovery or treatment of such patients and that the practice will not interfere with

the recovery and treatment of nonsmoking patients; and provided, that adequate nonsmoking areas are made available for nonsmoking patients.

Neither this section nor EGMC Section 6.22.060 shall be construed to prevent smoking in locations or otherwise under conditions in which smoking is expressly authorized by or under statutes or administrative regulations applicable to such licensed facilities.

6.22.130 Adult Schools.

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to any school or educational institution operated by a commercial enterprise or nonprofit entity for the purpose of providing academic classroom instruction, trade craft, computer or other technical training, or instruction in dancing, artistic, musical or other cultural skills where the students are primarily adults.

6.22.137 In Proximity to Children's Facilities.

The prohibitions contained in EGMC Section 6.22.060 shall be applicable to all persons within three hundred (300' 00") feet of schools, day care centers, playgrounds, parks, amusement centers, or youth sports facilities.

.6.22.145 Places where smoking permissible.

Smoking may be permitted in all locations where smoking is not prohibited by state law or this chapter, including the following locations:

A. A private residence, including an attached or detached garage, whether or not the residence is utilized for office or other business purposes.

B. Bars, whether operated as a separate business entity or as a physically separated facility within a restaurant, nightclub or other business entity.

C. Private clubs during events attended exclusively by members of the organization and their invited guests and from which members of the general public are excluded.

D. Within conference/meeting rooms, public and private assembly rooms, banquet rooms, dining rooms or areas of restaurants, hotels and motels, while these places are occupied for private functions to which only persons specially invited are entitled to attend and from which members of the general public are excluded, except while food or beverage functions are taking place, including setup, service, and cleanup activities.

E. In any enclosed place wherein this chapter specifically permits smoking, except those qualifying as places of employment or workplaces.

F. Inside of enclosed tobacco stores if at all times minors are prohibited from entering the store.

G. Inside of private motor vehicles operated or parked in an area where smoking is not otherwise restricted, including public roadways, except when a minor is present in the vehicle.

H. In an area designated and posted for smoking by the owner or operator of a park, provided that the designated smoking area within the park is not within three hundred (300' 00") feet of a playground, swimming pool, youth sports facility, or other area within the park intended primarily for use by children.

It shall not constitute a violation of EGMC Section 6.22.060 for a person to smoke in a location where smoking has been authorized in the manner prescribed by this section.

6.22.152 Bingo facilities.

A. The purpose of this section is to provide organizations who operate bingo games and facilities pursuant to EGMC Chapter 4.21 or 4.22 with an alternative method of providing the health protection from ETS required by this chapter without adversely impacting the patronage of, and the revenue generated for charitable purposes by, such facilities. Such revenue provides an important source of income to these charitable organizations that, in turn, is used to furnish a wide range of social and other programs that are of great benefit to the health and welfare of the community. A total prohibition on smoking within such facilities is likely to significantly discourage the number of persons willing to patronize these facilities, thereby threatening a critical source of income for these organizations. The permit authorized hereunder shall not be subject to any moratorium applicable to exemptions under EGMC Section 6.22.150.

B. Organizations that have a valid special business license issued pursuant to EGMC Chapter 4.21 or 4.22 may apply to the Director for a permit to maintain a smoking area within facilities so licensed. Any such permit shall be subject to compliance with the conditions imposed by the Director.

C. Applications for permits issued hereunder shall be subject to any fee established by resolution of the City Council and such permits shall be valid for a maximum of one (1) year.

D. Permits issued hereunder shall include the following conditions:

1. The facility must provide adequate seating at all times to nonsmokers in a nonsmoking area. With the exception of passageways, the nonsmoking area

shall be physically divided and separated from the area of the facility where smoking is permitted.

2. Ventilation for the facility shall be provided by an HVAC system which shall be designed and operated to provide protection to persons in the nonsmoking area from exposure to ETS equivalent to the protection afforded by EGMC Section 6.22.060.

3. The components of the HVAC system shall be routinely maintained by regular cleaning, replacement of filters and any other procedures necessary to comply with the manufacturer's specifications. The permittee shall also be required, on at least a semi-annual basis, to service the fans and other mechanical equipment to the extent necessary to maintain proper design performance.

4. Performance standards, together with appropriate methodologies for monitoring such standards, shall be established by the Director for each permit. The permittee shall be required to demonstrate compliance with such performance standards under normal ambient operating conditions. Such compliance shall be established by means of performance tests or monitoring, or both, as specified by the Director.

5. The permit is nontransferable.

6. If the Director determines that there has been a significant unauthorized change in the design or configuration of the HVAC system, or in the conditions under which it was designed to operate, the permit shall be revoked. "Significant change," for purposes of this subsection, is a change that could potentially cause an adverse effect on the ability of the HVAC system to continue to provide equivalent health protection from ETS to the nonsmoking area.

7. All staff, whether paid or volunteer, shall be provided with written notice that the facility permits smoking and that ETS is a health hazard. Such staff shall also be notified that requests to work without exposure to ETS will be accommodated without penalty. A copy of this written notice shall be furnished to the Director prior to the issuance of the permit.

8. A written procedure approved by the Director shall be furnished to all staff, whether paid or volunteer, and to organizations that use the facility, that requires security personnel and other staff to monitor nonsmoking areas for compliance with this chapter.

9. The licensee shall post in a conspicuous place at any entrance to the smoking area of the facility a notice regarding exposure to ETS that is in compliance with

Chapter 6.6 (commencing with Section 25249.5) of Division 20 of the Health and Safety Code warning staff and patrons of the facility of exposure to a chemical known to the State of California to cause cancer. A warning notice shall be similarly posted emphasizing that ETS poses special risks to children and pregnant women.

10. Minors shall be prohibited in the smoking area at any time that ETS is present.

11. The facility shall maintain attendance records of each game that document how many patrons used the smoking and nonsmoking areas, respectively, of the facility during each bingo session and shall maintain such records for a period of at least one (1) year.

12. Such other conditions as may be deemed appropriate by the Director.

E. The permit may be revoked by the Director if the HVAC system fails to comply with applicable performance standards or if the permittee violates any of the permit conditions. The provisions of this chapter shall be applicable to any bingo facility for which the permit has been revoked until the permit has been reinstated or a new permit has been issued.

F. If the Director finds that a permittee is in violation of any of the conditions of its permit, the Director shall issue a notice to the permittee setting forth the acts or omissions with which the permittee is charged and informing the permittee of a right to a hearing, if requested, to show cause why the permit should not be revoked. A written request for a hearing from the permittee must be received by the Director within fifteen (15) days after the date of issuance of the notice. A failure to request a hearing within fifteen (15) days after the date of issuance of the notice shall be deemed a waiver of the right to a hearing. When circumstances warrant, the Director may order a hearing at any reasonable time within this fifteen (15) day period to expedite the permit revocation process. The hearing shall otherwise be held within fifteen (15) days of the Director's receipt of a request for a hearing. Upon the agreement of the permittee and the Hearing Officer, the hearing date may be postponed beyond such fifteen (15) day period.

6.22.155 Posting requirements.

An owner, operator, or manager of a building or structure in which there is no smoking permitted in any space in the building, shall post a sign stating "No smoking" at each entrance to the building or structure.

Where smoking is permitted in designated areas of the building or structure, a sign stating "Smoking is prohibited except in designated areas" shall be posted at each entrance to the building or structure.

Motion picture theaters shall show upon the movie or live action screens for at least five (5) seconds prior to the showing of each feature motion picture the message that smoking is prohibited within the audience seating and other areas as specified.

Recreational halls shall post signs alerting users of the availability of nonsmoking rooms. Smoking-permitted areas will be posted as such.

Motels and hotels will prominently post in the lobby a sign notifying patrons of the availability of nonsmoking accommodations. The rooms so designated will be posted as nonsmoking rooms and ashtrays removed.

Property owners whose property includes spaces open to the public within three hundred (300' 00") feet of a location frequented by children pursuant to EGMC Section 6.22.137, shall post approved signs providing reasonable notice of proximity to a children's facility where such proximity is not readily apparent and where there have been complaints of smoking. The City Manager will cause signs to be posted on similarly situated publicly-owned properties.

Property owners who have designated an area non-smoking pursuant to EGMC Section 6.22.060(L) shall post conspicuous signs providing reasonable notice of the restricted area.

6.22.160 Retaliation prohibited.

It shall be unlawful for a commercial enterprise, nonprofit entity or the City to retaliate against any member of the *general public or an employee or applicant* for employment of the enterprise, entity or City because such member of the general public, employee or applicant seeks enforcement of the provisions of this chapter or otherwise protests smoking by others.

6.22.165 Violation – Smoking or posting.

Any person who violates the prohibitions contained in EGMC Sections 6.22.060 through 6.22.137 and any person who violates EGMC Section 6.22.155 by failing to post the signs or take the other actions required by this section shall be guilty of an infraction, punishable pursuant to EGMC Chapter 1.04.

6.22.170 Retaliation remedies.

Violation of any of the provisions of EGMC Section 6.22.160 or 6.22.165 shall be remedial through civil action filed in a court of competent jurisdiction for injunctive or other appropriate relief.

6.22.175 Enforcement.

In the performance of the enforcement responsibilities assigned by this chapter, the City Manager shall:

- A. Establish a telephone number through which all complaints by citizens relating to violations of this chapter may be directed or referred;
- B. Reduce such complaints to writing and analyze the frequency and volume thereof in relation to alleged violations of this chapter by or at particular establishments or facilities;
- C. Conduct an on-site inspection of any establishment or facility with respect to which the nature and volume of complaints suggests long-standing and pronounced violation of any of the provisions of this chapter;
- D. Provide to the owner, operator or manager of any such establishment or facility a copy of the provisions of this chapter and such advisory assistance to rectify future violations as may be necessary to achieve compliance with the provisions of this chapter;
- E. Follow up such investigation and advice with a written directive explaining in detail the steps required in order to achieve future compliance with the provisions of this chapter; and
- F. Notwithstanding a prosecution pursuant to EGMC Chapter 1.04, if the violations do not cease following the expiration of a reasonable period of time, commencement of a civil proceeding by the City Attorney may be initiated pursuant to the provisions of EGMC Section 6.22.170.

The Code Enforcement Division may affirmatively seek the support and cooperation of other local public agencies, such as the Cosumnes Community Services District Fire Department, to provide information, assistance and advice in the enforcement of the provisions of this chapter during the conduct by any of such agencies of on-site inspections of establishments or facilities.

Any member of the general public, an employee or applicant for employment may, pursuant to the provisions of this section, commence in his or her name a civil action for injunctive relief, monetary damages or other appropriate relief against a person who violates EGMC Section 6.22.160. A member of the general public or employee shall also be authorized to individually commence a civil action pursuant to the provisions of this section for injunctive relief, monetary damages or other appropriate relief for the purpose of remedying any other violation of the provisions of this chapter.

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 23-2011**

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 ordinance, published and posted in compliance with State law, was duly introduced on August 24, 2011 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 14, 2011 by the following vote:

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

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*

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


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