



**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

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**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:

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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: \_\_\_\_\_