

**ORDINANCE NO. 50-2008**

**AN ORDINANCE OF THE CITY OF ELK GROVE ADDING ARTICLE III E TO  
CHAPTER 4.10 OF THE ELK GROVE MUNICIPAL CODE REGULATING SMOKING  
LOUNGES**

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

Section 1: Purpose and Authority

The City Council does hereby add Article III E to Chapter 4.10 of the Elk Grove Municipal Code entitled "Smoking Lounges" regarding the City's regulation of smoking in lounges in the City. It is the intent of this Chapter to regulate smoking lounges in order to promote the health, safety, and general welfare of the residents of the City. The City Council enacts this ordinance pursuant to the grant of power to cities under the authority of Article XI, section 7 of the California Constitution.

In support of this ordinance, the City Council finds and declares as follows:

WHEREAS, ongoing research by the American Lung Association reveals that smoking has been identified as the most important source of preventable morbidity and premature mortality worldwide, and that smoking-related diseases claim hundreds of thousands of lives; and

WHEREAS, about 8.6 million people in the United States have at least one serious illness caused by smoking. (Center for Disease Control and Prevention, Morbidity and Mortality Weekly Report, (2003) pp. 842-844.); and

WHEREAS, secondhand smoke has been classified as a known cause of cancer in humans by the Environmental Protection Agency (EPA); and

WHEREAS, nonsmokers exposed to secondhand smoke are at an increased risk for adverse health effects and levels of Environmental Tobacco Smoke (ETS) in restaurants and bars were found to be 2 to 5 times higher than in residences with smokers and 2 to 6 times higher than in office workplaces (Nat. Toxicology Program, U.S. Dept. Health & Human Services, Report on Carcinogens, Tenth Edition 2002); and

WHEREAS, Labor Code section 6404.5 established the California Smoke-free Workplace Act, making it unlawful to smoke in an enclosed place of employment; and

WHEREAS, Penal Code section 308(a) makes it unlawful to provide tobacco to minors; and

WHEREAS, smoking bars and lounges are increasing in popularity and frequented by youth who may not be permitted by law to smoke; and

WHEREAS, State law prohibits the use of any type of tobacco in any form where

food, including beverages, is prepared, served, or stored [Health and Safety Code § 114020(d)]; and

WHEREAS, State law currently prohibits the sale of alcohol or food for consumption on the premises of a tobacco store. (Bus. and Prof. Code § 22926). "Tobacco store" is defined as a retail business that primarily sells tobacco products, generates more than sixty percent of its gross revenues from such goods, and does not permit any person under the age of 18 to be present at the premises, unless accompanied by their parent or legal guardian. (Id.); and

WHEREAS, the City of Elk Grove has an interest in preserving the safety, health, and welfare of its residents by immediately researching the effects of smoke, secondhand smoke, and other negative effects resulting from the establishment of smoking lounges; and

WHEREAS, based on the foregoing, there is a current and immediate threat to the public health, safety, or welfare, and approval of entitlements for smoking lounges or bars without further study of the effects of such establishments would result in a further threat to public health, safety, or welfare.

Section 2:

Chapter 4.10 of the Elk Grove Municipal Code is hereby amended to add the following:

**ARTICLE III E  
CHAPTER 4.10**

**SMOKING LOUNGES**

Sections:

- 4.10.450 Definitions
- 4.10.451 License required
- 4.10.452 Operating requirements for smoking lounge
- 4.10.453 Application for Special Business License
- 4.10.454 Issuance
- 4.10.455 Appeal – Notice and hearing
- 4.10.456 Issuance of license conditions
- 4.10.457 Revocation of license
- 4.10.458 Application to existing businesses
- 4.10.459 Rules and regulations
- 4.10.460 Enforcement

**4.10.450 DEFINITIONS.** The definitions contained in this Section shall govern the construction of this Chapter:

(a) "Applicant" or "applicant" or "Licensee" shall be the person or representative applying for the Special Business License under this Chapter.

(b) "License" or "license" or "Special Business License" shall each mean the Special Business License required under this Chapter.

(c) "Person" shall mean any of the following:

(1) Any natural person,

(2) "Business" that shall include any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee, whether or not such employee is retained as an independent contractor or is a volunteer to the business.

(3) "Nonprofit entity" that meets the requirements of California Corporations Code section 5003 or any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purpose, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

(d) "Smoking lounge" means a business establishment that permits the smoking of tobacco or other combustible substances onsite, including but not limited to establishments commonly known as cigar lounges, hookah bars/cafes, tobacco clubs, or smoking parlors.

#### **4.10.451 LICENSE REQUIRED.**

(a) It is a violation of this Chapter for any person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises within the City, the operation of a Smoking lounge unless the person first obtains and continues to maintain in full force and effect a valid smoking lounge Special Business License issued by the City Manager pursuant to this Chapter.

(b) The holding or conducting of any event or activity subject to the provisions of this Chapter without a valid Special Business License therefor pursuant to the provisions of this Chapter, unless expressly exempt hereunder, is declared a public nuisance.

#### **4.10.452 OPERATING REQUIREMENTS FOR SMOKING LOUNGE.**

It is unlawful for any person to engage in, conduct, or carry on, or permit to be engaged in, conducted, or carried on, in or upon any premises within the City, the business of a smoking lounge except in compliance with all of the following requirements:

(a) The business or nonprofit entity shall be owner-operated or otherwise comply with the provisions regulating smoking in the workplace set forth in California Labor Code Section 6404.5.

(b) No food or beverages, including but not limited to alcoholic beverages, shall be sold or consumed on the premises.

(c) No persons under eighteen (18) years of age shall be permitted within the business.

(d) No live entertainment, including but not limited to singers, disc jockeys, dancers, or comedians, shall be permitted within the business except as otherwise allowed by the Municipal Code.

(e) All business-related activities shall be conducted wholly within a building, with the exception of outdoor seating, which shall be operated in accordance with the Zoning Code. Operation of outdoor barbecues, fire-pits, braziers or lit coals shall not be permitted.

(f) No admittance fee, cover charge or requirement of any charge or minimum payment as a condition of entry shall be permitted.

(g) No window coverings shall prevent visibility of the interior of the tenant space from outside the premises during operating hours. Any proposed window tint shall be approved in advance by the City Manager or his/her designee.

(h) The interior of the business enterprise shall be maintained with adequate illumination to make the conduct of patrons within the premises readily discernible to persons of normal visual acuity.

(i) Adequate ventilation shall be provided for the heating of coals in accordance with all requirements imposed by the City Manager or his/her designee, or as otherwise required by law.

(j) Parking shall be provided using the standard for bars and nightclubs under the Zoning Code.

(k) The occupancy shall not exceed the lesser of (1) the occupancy limit for the premises established by the City of Elk Grove or Cosumnes Community Service District Fire Department, or (2) an occupancy limit established as a condition of the license approved pursuant to this Chapter, or any zone variance issued pursuant to Zoning Code.

(l) The business or nonprofit entity shall also be in conformity with all other laws.

#### **4.10.453 APPLICATION FOR SPECIAL BUSINESS LICENSE.**

(a) Applications for licenses pursuant to this Chapter shall be filed with the City Manager or his/her designee on a form provided by the City Manager and shall pay a nonrefundable application fee in an amount designated by resolution of the City Council and, at least, the following information:

(1) The legal name, residence address and telephone number of the owner(s) of the proposed establishment making application;

(2) The legal name, residence address and telephone number of the person submitting the application as authorized agent of the owner(s), if applicable;

(3) The business name, address and telephone number under which the activity will be conducted;

(4) The exact nature and location of the activity for which the license is required and an estimate of the number of patrons of the establishment;

(5) A security plan for control of pedestrian and vehicular traffic and prevention of unlawful conduct by employees and patrons (such as assaults, vandalism, littering, theft, sale or use of controlled substances, and consumption of alcohol) within the building(s) and outside in the areas affected by the public attending the event; provided, however, that this requirement shall be excused in the case of a noncommercial activity or event to which the public is invited free of charge and which event shall not be in conjunction with any other commercial activity;

(6) A plan for control of noise affecting nearby premises (noise control plan), with special attention to prevention of noise nuisance to nearby residences, if any;

(7) The hours of operation of the establishment; and

(8) Such other information pertaining to public health and safety as may be required by the City Manager or his/her designee to ensure compliance with the provisions of this Chapter and of the requirements of the Zoning Code and, in addition, any information that the applicant may wish to include.

(b) Submitting false or misleading information on the application shall constitute grounds for denial of the application or immediate revocation of the license.

#### **4.10.454 ISSUANCE.**

(a) Upon the filing of an application, the City Manager or his/her designee shall determine whether the application is complete. If the application is not complete, the City Manager or his/her designee shall, within ninety (90) days, give written notice by mail or personal delivery to the applicant advising that the application is incomplete and cannot be acted upon. The notice shall state what information is needed to complete the application.

(b) Upon the filing of a completed application, the City Manager or his/her designee shall conduct an appropriate investigation, including, but not limited to, consultation with the Elk Grove Police Department, Planning Department, and Cosumnes Community Service District Fire Department and inspection of the premises as needed. Within forty-five (45) business days after receipt of a completed application, the City Manager or his or her designee shall either grant or deny the application, and shall give written notice to the applicant of the decision.

(c) An application for a smoking lounge Special Business License pursuant to this Chapter shall be granted, subject to compliance with the requirements set forth in this Chapter and in the Code, unless it is found and determined that issuance of the license would allow the smoking lounge to be held or conducted:

(1) In violation of any provisions of this Code, or in violation of any other Federal, State, County, or City law or laws; or

(2) In a building or structure which is hazardous to the health or safety of the employees or patrons of the business, activity, or event, or the general public, under the standards established by the Uniform Codes or the California Fire Code, as adopted by the City; or

(3) On premises which lack adequate on-site parking areas for employees and the public attending the proposed event or activity, under the standards set forth in the Zoning Code, or any regulations adopted by the City, except for existing uses that are legal and nonconforming with respect to parking; or

(4) In a manner in which proposed security measures are determined to be inadequate to deter unlawful conduct on the part of employees or patrons, or to promote the safe and orderly assembly and movement of persons and vehicles, or the proposed noise control plan is determined to be inadequate to prevent disturbance of the neighborhood by excessive noise created by the activity or by patrons entering or leaving the premises.

#### **4.10.455 APPEAL – NOTICE AND HEARING.**

An applicant whose application for a smoking lounge license has been denied or has been granted conditionally may appeal such decision pursuant to requirements of Sections 4.10.115, 4.10.120, 4.10.125, and any other relevant provision of the Code.

#### **4.10.456 ISSUANCE OF LICENSE CONDITIONS.**

(a) After the decision approving or conditionally approving any license becomes final, the City Manager or his or her designee shall issue the license, for the period requested, but not to exceed one year.

(b) The license shall be issued subject to compliance with all operating requirements established by the City as may be required to ensure compliance with City regulations governing the matters contained in the application.

#### **4.10.457 REVOCATION OF LICENSE.**

(a) On determining that grounds for license revocation or suspension exist the City Manager or his/her designee shall furnish written notice of the proposed suspension or revocation to the licensee. Such notice shall set forth the time and place of a hearing to be conducted by a Hearing Authority appointed by the City Manager or his/her designee and the grounds upon which the hearing is based, the pertinent Code sections at issue, and a brief summary of the facts in support of the suspension or revocation. In addition to any other requirements of this Chapter, any license issued pursuant to the provisions of this Chapter shall be revoked by the City Manager or his/her designee following a hearing on the basis of any of the following:

(1) The business or activity has been conducted in a manner which violates one or more of the conditions imposed upon the issuance of the license or which fails to conform to the plans and procedures described in the application, or which violates the occupant load limits set by the City or Cosumnes Community Services District Fire Department;

(2) The applicant has failed to obtain or to maintain all required City, County and State licenses and permits;

(3) The license is being used to conduct an activity different from that for which it was issued;

(4) The applicant has misrepresented any material fact in the application for license or has not answered each question therein truthfully;

(5) The applicant has failed to comply with one or more of the required conditions and has failed to cure such noncompliance after reasonable notice thereof;

(6) The building or structure in which the licensed event or activity is held or conducted, or is to be held or conducted, is hazardous to the health or safety of the employees or patrons of the business, activity, or event, or of the general public, under the standards set forth in the Uniform Building or Fire Code;

(7) The permitted event or activity creates noise or sound levels that violate any ordinance of the City;

(8) The security measures provided are inadequate to deter unlawful conduct on the part of employees or patrons, or to promote the safe and orderly assembly and movement of persons and vehicles, or that the noise control measures provided are inadequate to prevent disturbance of the neighborhood by excessive noise created by patrons entering or leaving the premises where the activity takes place;

(b) Written notice of the hearing on the proposed license revocation, together with written notification of the specific grounds of complaint against the business or activity of the applicant, shall be personally delivered or sent by certified mail to the applicant at least thirty (30) business days prior to the hearing;

(c) In the event a Special Business License is revoked pursuant to the provisions of this Chapter, or this Code, another Special Business License under this Chapter shall not be granted to the applicant, or to any other applicant for the subject location, within twelve (12) months after the date of such revocation. The City Manager's or his or her designee's determination following a public revocation hearing shall be based upon written findings and shall be final and conclusive in the matter.

#### **4.10.458 APPLICATION TO EXISTING BUSINESSES.**

Any smoking lounge lawfully existing on the effective date of this Chapter which becomes a nonconforming use by reason of the adoption of this Chapter shall cease operation, or otherwise be brought into full compliance with the provisions of this Chapter, not later than either (a) one year following the effective date of this Chapter, or (b) six months following the date of written notice as provided below, whichever is later (the "amortization period"), except that no lawfully existing smoking lounge shall be deemed to be nonconforming for failure to comply with the location and parking requirements established for such uses by this Chapter unless said business is terminated for any reason or voluntarily discontinued for a period of sixty (60) consecutive calendar days or more following the effective date of this Chapter. A smoking lounge which is not operational due to a fire, flood or natural disaster on the effective date of this Chapter shall be deemed a lawfully existing smoking lounge for purposes of this Section, provided such smoking lounge resumes operation within a period of not more than two years from the date of said fire, flood or natural disaster which rendered such business non-operational. Any such lawfully existing smoking lounge may continue to operate, provided said operation is in conformity to all other applicable City, County, State, and Federal laws, until the application pursuant to this Chapter has been acted upon and the decision thereon has become final.

#### **4.10.459 RULES AND REGULATIONS.**

The City Manager or his/her designee may adopt rules and regulations that are deemed necessary or expedient for the administration or implementation of this Article as he or she deems necessary, and review, revise, and/or promulgate new or amended rules and regulations as he or she deems necessary.

#### **4.10.460 ENFORCEMENT.**

Any person violating any provision of this Article or failing to comply with any of its requirements shall be deemed guilty of an infraction. This article shall be enforced as set forth in Title 1 of this Code.



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 declares that it would have adopted this ordinance irrespective of the invalidity to any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 5: 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 15 days after its passage, a summary of the ordinance may be published at least five 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:** 50-2008  
**INTRODUCED:** October 8, 2008  
**ADOPTED:** October 22, 2008  
**EFFECTIVE:** November 21, 2008

  
JAMES COOPER, COUNCIL MEMBER  
and Temporary Presiding Officer of the  
CITY OF ELK GROVE

ATTEST:

  
SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:

  
SUSAN COCHRAN, CITY ATTORNEY

Dated signed: October 31, 2008

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 50-2008**

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

*I, Susan J. Blackston, 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 October 8, 2008 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on October 22, 2008 by the following vote:*

**AYES :**       **COUNCILMEMBERS:**     **Cooper, Leary, Scherman**

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

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

**ABSENT:**    **COUNCILMEMBERS:**     **Davis, Hume**

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

  
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**Susan J. Blackston, City Clerk  
City of Elk Grove, California**