

ORDINANCE NO. 09-2020

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE EXTENDING THE 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 extend 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 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 or held 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 January 1, 2020, and is otherwise in compliance with applicable laws, may continue to lawfully operate under that permit, license, and/or entitlement, and may apply for the renewal of any such 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.
- C. Notwithstanding any other provision of this ordinance, any person who lawfully held an existing tobacco retail license as of the effective date of this ordinance at a location for which a conditional use permit or other land use entitlement is required may apply for such conditional use permit and/or other land use entitlement and may continue to operate at said current location, provided that the

tobacco retailer licensee receives the conditional use permit and/or other required land use entitlement no later than 180 days from the effective date of this ordinance. Any such application for a conditional use permit and/or other required land use entitlement may be approved or denied by the City under the standards governing such conditional use permit and/or land use entitlement under existing law.

D. Notwithstanding any other provision of this ordinance, any party who has submitted a land use entitlement application or other development project permit as of the effective date of this ordinance is exempted from the moratorium and may be issued any license or permit governed by this ordinance.

E. 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: Extension of Urgency Interim Ordinance.

Ordinance No. 06-2020, adopted on March 11, 2020, prohibiting the issuance of new Tobacco Retailer Licenses and entitlements for Smoke shops and smoking lounges within the City of Elk Grove, (as outlined in Section 5 of the ordinance) and all of the terms and provisions of said ordinance, are hereby extended from its original expiration date for a period of ten (10) months and fifteen (15) days to March 12, 2021, unless it is further extended pursuant to Government Code section 65858 or other applicable law, or repealed before its expiration, all 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.

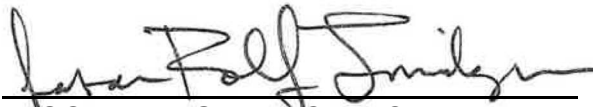
This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

ORDINANCE: **09-2020**
ADOPTED: April 8, 2020
EFFECTIVE: April 8, 2020



STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: April 10, 2020

CERTIFICATION
ELK GROVE CITY COUNCIL URGENCY ORDINANCE NO. 09-2020

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 urgency ordinance, published and posted in compliance with State law, was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a special meeting of said Council held on April 8, 2020 by the following vote:

AYES : **COUNCILMEMBERS:** *Ly, Detrick, Hume, Nguyen, Suen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*



Jason Lindgren, City Clerk
City of Elk Grove, California