

## ORDINANCE NO. 7-2012

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 6.22 TO REMOVE SMOKING REGULATIONS SUPERSEDED BY CALIFORNIA STATE LAW AND TO MAKE MINOR AMENDMENTS CLARIFYING THE REMAINING CODE

**WHEREAS**, the Legislature of the State of California has declared its intent not to preempt the field of regulation of the smoking of tobacco and authorized local governing bodies to regulate smoking, including the complete banning of smoking not otherwise inconsistent with state law; and

**WHEREAS**, the Legislature of the State of California has stated its intent to prohibit smoking in all (100 percent of) enclosed places of employment in the state thereby eliminating the need of local governments to enact workplace smoking restrictions in their respective jurisdictions; and

**WHEREAS**, Elk Grove Municipal Code (EGMC) Chapter 6.22 currently regulates secondhand smoke, including several provisions governing restrictions of places defined as workplaces by state law and is therefore potentially duplicative and conflicting with state law; and

**WHEREAS**, it is the desire of the City Council to clarify EGMC for consistency with state law; and

**WHEREAS**, several clarifying, non-substantive minor modifications to clarify existing language would be helpful for understanding the provisions of EGMC Chapter 6.22 now and in the future.

**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 remove those provisions of Elk Grove Municipal Code (EGMC) Chapter 6.22 regulating secondhand smoke that are also regulated by state law and to make other minor, clarifying modifications.

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, and California Labor Code §6404.5 eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions.

Section 2: Amendments to EGMC Title 6 – Health and Sanitation, amending Chapter 6.22 Secondhand Smoke.

Elk Grove Municipal Code Chapter 6.22 is hereby amended as shown in the attachment 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 or 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 enforced.

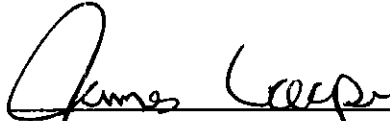
Section 5: Savings Clause.

The provisions of this Ordinance 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 effect; 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:** 7-2012  
**INTRODUCED:** March 28, 2012  
**ADOPTED:** April 11, 2012  
**EFFECTIVE:** May 11, 2012

  
\_\_\_\_\_  
JAMES COOPER, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

  
\_\_\_\_\_  
JONATHAN HOBBS,  
INTERIM CITY ATTORNEY

Date signed: April 27, 2012



## EXHIBIT A

### Chapter 6.22 SECONDHAND SMOKE

#### Sections:

- 6.22.000 Purpose.
- 6.22.010 Definitions.
- 6.22.060 Smoking prohibitions – Public places.
- 6.22.145 Places where smoking permissible.
- 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. Reserved for future use.
- 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 child care 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.

F. Reserved for future use.

G. Reserved for future use.

H. Reserved for future use.

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 excludes 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. Reserved for future use.

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. "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.**

In addition to any location where smoking is prohibited under any other law, including state or federal law, smoking shall be prohibited in the following locations:

A. Any public place, enclosed or not, in which smoking is not otherwise prohibited but which the property owner, manager, or operator has designated as nonsmoking.

B. Within three hundred (300' 0") feet of schools, day care centers, playgrounds, parks, amusement centers, or youth sports facilities.

#### **6.22.145 Places where smoking permissible.**

Unless prohibited by state law or by this Chapter, it is not a violation of this Chapter for a person to smoke in:

A. A private residence, including an attached or detached garage, on in the lot upon which it is located, whether or not the residence is utilized for office or other business purposes if the owner or lawful tenant has not designated the property or that portion of the property as non-smoking and provided reasonable notice to that effect has been given.

B. In an outdoor public location designated and posted for smoking by the owner, tenant, or other lawful authority over the property, provided that the designated smoking area is not within three hundred (300' 00") feet of a public or private school building, playground, swimming pool, youth sports facility, or other area intended primarily for use by children.

C. In an indoor, non-residential location where state law permits smoking, located and posted in the manner required by state law.

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



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

F. 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' 0") feet of a playground, swimming pool, youth sports facility, or other area within the park intended primarily for use by children.

#### **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.

Property owners whose property includes spaces open to the public within three hundred (300' 0") feet of a location frequented by children pursuant to EGMC Section 6.22.060(B) 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 nonsmoking pursuant to EGMC Section 6.22.060(A) 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 state law, this chapter or otherwise protests smoking by others.

#### **6.22.165 Violation – Smoking or posting.**

Any person who violates any provision of this Chapter shall be guilty of an infraction, punishable pursuant to EGMC Chapter 1.04.

#### **6.22.170 Retaliation remedies.**

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

**6.22.175 Enforcement.**

A. Whenever an enforcement officer charged with the enforcement of this Chapter determines that a violation has occurred, the enforcement officer may issue an administrative citation pursuant to EGMC Chapter 1.12.04.

B. 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. 7-2012**

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 March 28, 2012 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on April 11, 2012 by the following vote:*


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

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

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

**ABSENT:**    **COUNCILMEMBERS:**     *Davis*

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

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