



**CITY OF ELK GROVE
CITY COUNCIL STAFF REPORT**

AGENDA TITLE: Secondhand Smoke Ordinance
MEETING DATE: August 24, 2011
PREPARED BY: Nicole York-Johnson
DEPARTMENT HEAD: Robert M. Lehner, Chief of Police

RECOMMENDED ACTION:

Staff recommends that the City Council of the City of Elk Grove introduce and waive the full reading, by substitution of title only, an ordinance repealing Elk Grove Municipal Code (EGMC) Chapter 6.22 titled “Clean Indoor Air and Health Protection” and replacing with a revised Chapter 6.22 titled “Secondhand Smoke” regulating secondhand smoke to include structural revisions, repeal of provisions now superseded by California Labor Code, and new (additional) restrictions on smoking near children’s facilities.

Staff also recommends that the City Council adopt an option 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.

BACKGROUND INFORMATION:

The City’s existing EGMC Chapter 6.22 (Clean Indoor Air and Health Protection) was essentially a carry-forward from Sacramento County’s Ordinance at the time Elk Grove incorporated. It covers secondhand smoke issues, primarily related to indoor and workplace smoking, but also addresses some forms of retail business and entry / exit ways.

EGMC Chapter 4.27 (Tobacco Retailers) covers the licensing of businesses that sell tobacco and smoking-related products; and EGMC Chapter 9.24 (Distribution of Tobacco Products to Minors) covers the sale to, and use of, tobacco by minors.

Recently, the proximity of a smoke / novelty shop and a daycare business in a shopping center has resulted in a public discussion about incompatible uses of collocated properties. The major problem in this case was the small groups of smokers associated with the smoke shop legally loitering and smoking in relatively close proximity to the daycare center. This combined with related behaviors that, while also legal, were deemed incompatible with the child-centric activities of a daycare.

Complicating the issue was the fact that the smoke shop was located in a proper general retail zone by right, whereas, the daycare center was a conditional use, not permitted by right.

A new type of land-use restriction was discussed, but could not have been applied to these situations retroactively, and potentially raised other issues in terms of where tobacco shops (and potentially other deemed “incompatible” uses) could legally locate.

Many in the Elk Grove community have long advocated for a restriction on the sale of tobacco within 1,000 feet of children’s facilities; however, this restriction could not have been placed retroactively in the present case, either. Although it would have prevented future (new) retailers from selling tobacco in close proximity to children’s facilities, it was determined that there were many businesses already located within these zones in the City of Elk Grove, all of which would have been “grandfathered” in. Licensed retailers are already sufficiently regulated with regard to selling tobacco to minors. Currently, it is only an individual’s sense of courtesy that prevents them from smoking in close proximity to locations frequented by children (except for those California Health and Safety Codes regulating the facilities themselves).

At its June 22, 2011 meeting, the Elk Grove City Council directed staff to return with an ordinance prohibiting the act of smoking within a specific proximity to children’s facilities.

ANALYSIS AND DISCUSSION

A proposal to establish smoking restrictions in those areas in close proximity to children's facilities was considered in light of state law, the existing ordinance, and models of ordinances from other jurisdictions.

Basis in State Law

Basic restrictions on smoking and secondhand smoke are found in California Health and Safety Code (HSC) §118875-118950. Workplace smoking and second-hand smoke restrictions are found in California Labor Code (LC) §6404.5.

Justification for regulations may be found in the following:

LC §6404.5 (*our emphasis*):

- *The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern.*

HSC §118880:

- *The Legislature finds and declares that tobacco smoke is a hazard to the health of the general public.*

HSC §118920:

- *Involuntary smoking is a cause of disease, including lung cancer, in healthy non-smokers.*
- *The children of parents who smoke compared with the children of non-smoking parents have an increased frequency of respiratory infections, increased respiratory symptoms, and slightly smaller rates of increase in lung function as the lungs mature.*
- *The simple separation of smokers and non-smokers within the same air space may reduce, but does not eliminate, the exposure of non-smokers to environmental tobacco smoke.*
- *Non-smokers have no adequate means to protect themselves from the damage inflicted upon them when they involuntarily inhale tobacco smoke.*

- *Regulation of smoking in public places is necessary to protect the health, safety, welfare, comfort, and environment of non-smokers.*

The authority of local jurisdictions to enact tobacco use regulations arises from both Labor and Health and Safety Codes:

LC §6404.5 states, "...it is the intent of the Legislature that any area not defined as a 'place of employment' [definition references] shall be subject to local regulation of smoking of tobacco products.

HSC §118910 states, "The Legislature declares its intent not to preempt the field of regulation of the smoking of tobacco. A local governing body may ban completely the smoking of tobacco, or may regulate smoking in any manner not inconsistent with this article [California Indoor Clean Air Act of 1976] and Article 3 [HSC §118940]."

HSC §118940 states, "[t]his article does not preempt any local ordinance on the same subject [of prohibiting smoking on a commercial passenger vehicle] where a local ordinance is more restrictive to the benefit of the non-smoker."

Existing EGMC Chapter 6.22 (Clean Indoor Air and Health Protection)

The language of the current EGMC Chapter 6.22 (Clean Indoor Air and Health Protection) was adopted from Sacramento County code when the City incorporated. It contains a number of second-hand smoke regulations, but is primarily directed at workplace smoking. AB13 (1994) adopted Labor Code elements that superseded all workplace-related provisions of the County code and EGMC as adopted upon incorporation that are equal or less restrictive than state law - stricter provisions were not superseded. For this reason, the proposed amendment repeals all similar or less restrictive language of EGMC in favor of the Labor Code. It retains existing workplace smoking language that is more restrictive than Labor Code as authorized by the Labor Code.

Since EGMC Chapter 6.22 requires extensive modification, structural changes are proposed as part of this amendment that combine separate

definitional sections into one section for consistency with more recent ordinances and the Clerk's preferred standard for handling definitions in ordinances.

Staff researched a number of similar ordinances throughout the State of California as well as a model ordinance from the Technical Assistance Legal Center (TALC). Most frequently, these types of ordinances have been titled "Second-hand Smoke Ordinance," "Smoking Pollution Control Ordinance," and other similar titles. Typically, they regulate the entire area of second-hand smoke including workplace and special locations such as healthcare and children's facilities, and a general ban on public smoking.

The existing code and proposed amendments borrow regulatory substance and language heavily from other ordinances and the model. In addition, what is proposed provides the structure required should additional regulation be contemplated in the future.

The resulting amendments to the existing "Clean Indoor Air and Health Protection Ordinance" (retitled, "Secondhand Smoke" for clarity and consistency with the model) directly addresses the act of smoking and the dangers associated with second-hand smoke specifically, and adds regulations prohibiting smoking within proximity (300 feet is recommended) of children's facilities as directed by the City Council.

One additional option not discussed at the City Council meeting on June 22, 2011, is recommended for consideration as an additional amendment. Presently, some businesses and organizations voluntarily designate no smoking areas on their properties as a courtesy to their non-smoking customers and clients even though such restrictions are not required by law. For example, some health care and exercise facilities post no smoking restrictions well beyond that required by law.

On those rare occasions where one of these organizations might need to confront a patron(s) about compliance, the addition of a regulation requiring adherence to a property owner's no smoking designation would permit police officers to enforce such a restriction without having to resort to a trespassing violation.

To simplify that which is to be considered by Council, staff created “Exhibit A,” which is the proposed ordinance update that includes enforcement of non-smoking areas that have posted signs by business owners. In addition, staff has created a second document, “Attachment 2” which provides Council with red and blue strikeout edits. In Attachment 2, blue print allows enforcement as described above and red denotes those recommended updates to the ordinance without the enforcement element of designated non-smoking areas.

FISCAL IMPACT:

It is expected that most, if not all, of the additional requirements of the ordinance will result in voluntary compliance. In some cases, minimal enforcement resources will be required by the Police Department and/or Code Enforcement Division, but both departments are able to handle these enforcement matters with existing staff.

In general, signage requirements are borne by the owners of the properties generating complaints about smoking in violation of the ordinance. The City may bear some costs associated with signage, particularly on public property. Grants are occasionally available for this purpose and staff will seek out these funding opportunities as they become available. There may be some signage requirements associated with nuisance abatement efforts that will result in the expenditure of existing department resources for these purposes. Any major new expense associated with signage requirements will be brought to City Council for approval as part of a future budget appropriation or as part of an associated project.

ATTACHMENTS:

1. Ordinance
 - a. Exhibit A – Ordinance amending EGMC Chapter 6.22, including code provision allowing enforcement of non-smoking areas posted by business owners
2. Red- and blue- lined version of proposed changes to EGMC Chapter 6.22 for the purpose of clarifying changed sections.

**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, ~~and~~ 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).

INTRODUCED: August 24, 2011

ADOPTED:

EFFECTIVE:

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

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN HOBBS,
INTERIM CITY ATTORNEY

Date signed: _____

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.

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.

Chapter 6.22

SECONDHAND SMOKE~~CLEAN INDOOR AIR AND HEALTH PROTECTION~~

Sections:

- 6.22.000 Purposes.
- ~~6.22.005 Authority.~~
- 6.22.010 Definitions.
- ~~6.22.015 Bar.~~
- ~~6.22.020 Commercial enterprise — Nonprofit entity — Person.~~
- ~~6.22.022 Director.~~
- ~~6.22.023 ETS.~~
- ~~6.22.025 Enclosed area.~~
- ~~6.22.027 HVAC.~~
- ~~6.22.030 Members of the general public.~~
- ~~6.22.035 Office.~~
- ~~6.22.040 Restaurant.~~
- ~~6.22.045 Smoking.~~
- ~~6.22.050 Tobacco store.~~
- ~~6.22.055 Workplace.~~
- 6.22.060 Smoking prohibitions, public places.
- 6.22.065 Stores.
- 6.22.070 Banks.
- 6.22.075 Hotels/motels.
- ~~6.22.080 Terminals.~~
- ~~6.22.085 Buses and taxis.~~
- 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.
- ~~6.22.135 Day care facilities.~~
- ~~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 Purposes.

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

~~The City Council hereby finds as follows:~~

~~The U.S. Environmental Protection Agency (EPA) has determined that tobacco smoke is a major source of indoor air pollution, and the Surgeon General's 1986 report on the health consequences of involuntary smoking concludes that exposure to tobacco smoke places healthy nonsmokers at increased risk for developing lung cancer. Other health hazards of involuntary smoking include respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm. While all members of the population are truly at increased risk due to exposure to sidestream tobacco smoke, it constitutes a special health hazard for children, the elderly and people with chronic lung disorders.~~

~~The Surgeon General labels smoking "the largest single preventable cause of death and disability for the U.S. population."~~

~~Employees subject to prolonged exposure to sidestream smoke in the workplace have been found in scientifically conducted studies to experience a loss of job productivity and some have been forced to take periodic sick leave because of reactions to secondhand smoke. Furthermore, studies have shown higher costs to the employer are associated with smoking in the workplace due to increases in absenteeism, accidents, costs of medical care, loss of productivity, and cleaning and maintenance requirements. A recent scientific study has reported that sidestream smoke from tobacco may cause a significant amount of cardiovascular disease in the United States and that the number of deaths from this cause may exceed the deaths caused by lung disease associated with sidestream smoke. Smoking in public places and workplaces is a major cause of fires and damage to merchandise and equipment as well as costly maintenance and repairs to furniture and fixtures.~~

~~The health care costs produced by smoking-related ailments and diseases constitute a heavy and avoidable financial drain on our community.~~

~~More than three-quarters (0.75) of Sacramento regional residents are nonsmokers and the number of nonsmokers is steadily increasing. Opinion surveys show that a majority of both nonsmokers and smokers favor restrictions on smoking in public places and places of employment.~~

~~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.~~

~~6.22.005 Authority.~~

~~This chapter is enacted pursuant to the provisions of Section 25946 of the Health and Safety Code for the purpose of restricting and regulating smoking in public places and in places of work in order to reduce the hazards and nuisance which smoking causes to those who are involuntarily exposed.~~

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:

~~As used in this chapter, the words and phrases identified in EGMC Sections 6.22.015 through 6.22.055 shall have the following meanings.~~

A. Reserved for future use.

6.22.015 Bar.

B. "B" Definitions.

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

C. "C" Definitions.

1. "Children" or "minor" means those persons who are under the age of eighteen (18) years of age.

~~6.22.020 Commercial enterprise – Nonprofit entity – Person.~~

~~The term~~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.

~~The term “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.~~

~~The term “person” means any natural person, partnership, corporation, unincorporated association, joint venture, business trust, joint stock company, club, or other organization of any kind, except the City or any other public agency.~~

~~6.22.022 Director.~~

D. “D” Definitions.

~~1. —~~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.

~~The term~~

2. “Director” means the Planning Director or the Director’s designee.

~~6.22.023 ETS.~~

E. “E” Definitions.

~~The term “ETS” means environmental tobacco smoke.~~

~~6.22.025 Enclosed area.~~

~~The term~~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.

6.22.027 HVAC.

~~The term~~ 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.

~~6.22.030 Members of the general public.~~

~~The term~~ 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.

6.22.035 Office.

O. Reserved for future use.

~~The term “office” means an area enclosed by walls containing a desk, table or similar furnishings for clerical, administrative or supervisory work, a complex of such enclosures and a building containing such enclosures, whether or not the building is utilized primarily for other purposes such as retailing, wholesaling or storage, or manufacturing, together with all hallways, stairways, elevators, escalators, restrooms, lobbies, waiting rooms, reception areas, entry areas, and conference rooms within or associated with the complex of such enclosures, including:~~

- ~~A. Legal, medical, dental, engineering, accounting, counseling and other professional offices;~~
- ~~B. Insurance, real estate, ticket, collection agency, and other offices where business services are offered to or goods or services are offered to or may be ordered by or may be paid for by members of the general public; and~~
- ~~C. Offices to which members of the general public are admitted in order to promote the objects or purposes of the nonprofit entities.~~

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.

6.22.040 Restaurant.

1.

~~The term “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. The term does not include a cafeteria or lunch room defined as a~~

~~“workplace” by EGMC Section 6.22.055(C), whether or not members of the general public incidentally frequent the facility.~~

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.

~~**6.22.045 Smoking.**~~

~~The term~~ 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.

~~**6.22.050 Tobacco store.**~~

T. “T” Definitions.

1. “Tavern” – refer to “Bar” entry EGMC 6.22.010(B)(1).

~~The term~~ 2. “Tobacco storeshop, 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.
~~a place utilized primarily for the sale to members of the general public at retail of tobacco products or accessories, and in which the sale of any other products is merely incidental.~~

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.

6.22.055 Workplace.

~~The term “workplace” means any enclosed area which is occupied by two (2) or more employees of a commercial enterprise, nonprofit entity or the City, including but not limited to places:~~

~~A. Utilized for:~~

- ~~1. The manufacturing, processing, assembly, maintenance or repair of any products, goods, equipment, tools, appliances, furnishings or other object; or~~
- ~~2. The physical storage for purposes of wholesaling, future utilization for operational purposes, or future transfer preceding consumption or other utilization of any products, goods, merchandise, materials, supplies, equipment, tools, appliances or furnishings;~~

~~B. Utilized or operated for a purpose described by EGMC Sections 6.22.060 through 6.22.135 and from which members of the general public are excluded;~~

~~C. Utilized as a union hall, cafeteria, lounge, lunchroom, restroom, conference room, training room, lecture room or classroom primarily for the use or benefit of employees.~~

~~Notwithstanding the provisions of this definition, a private residence including either an attached or detached garage shall not constitute a workplace, except when the residence serves as a licensed day care facility for children.~~

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.~~135-137~~ 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; ~~and~~

K. Other places in which members of the general public congregate for service or otherwise frequent; ~~and-~~

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.

~~6.22.080 Terminals.~~

~~The prohibitions of EGMC Section 6.22.060 shall be applicable to depots and other terminals utilized by members of the general public for the purpose of being transported upon or departing from airplanes, trains, buses and taxis.~~

~~6.22.085 Buses and taxis.~~

~~Smoking by either passengers or operators shall be prohibited within buses, taxicabs and all public transit conveyances operated by or licensed by the City.~~

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 ~~not less than fifty (50%) percent of~~ the main activities area of such facility, ~~not~~ including restrooms, lounges and kitchens, as nonsmoking. ~~Commencing July 1, 1992, an owner, manager or operator of a recreation hall shall designate not less than 75 percent of the main activities area of such facility, not including restrooms, lounges and kitchens, as nonsmoking. Commencing December 31, 1993, the 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.

~~A.—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.

~~The prohibitions contained in EGMC Section 6.22.060 shall be applicable to public school facilities when school district management authorizes their use by members of the general public other than students.—~~

~~6.22.135 Day care facilities.~~

~~The prohibitions contained in EGMC Section 6.22.060 shall be applicable to private residences during the time when such residences are operated as licensed day care facilities for children.~~

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.

~~6.22.140 Smoking prohibitions, workplace.~~

~~Smoking is prohibited in enclosed workplaces of commercial enterprises, nonprofit entities and all City-owned and City-managed buildings including, but not limited to, open office areas, shared offices, private offices, hallways, restrooms, escalators, elevators, stairways, lobbies, reception areas, and waiting rooms, classrooms, meeting or conference rooms, and auditoriums.~~

~~On-site cafeterias, lunchrooms and lounges shall be deemed workplaces and smoking prohibited therein, whether or not such facilities are open to members of the general public.~~

~~Each commercial enterprise, nonprofit entity and the City shall comply with these smoking prohibitions and be responsible for their implementation in the workplace, and~~

~~“No Smoking” signs shall be posted in the manner prescribed by EGMC Section 6.22.155.~~

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, notwithstanding the fact that such location is a workplace.

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.

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.

~~The foregoing places are not considered workplaces subject to the provisions of EGMC Section 6.22.140. Employers will, however, attempt to find a reasonable alternative accommodation where feasible for nonsmoking employees who do not wish to be assigned to work in a smoking-permissible area.~~

~~Notwithstanding any provision in this chapter which permits smoking in a place of employment, any nonsmoking employee may object to his or her employer about smoke~~

~~in his or her workplace. The employer shall attempt to reach a reasonable accommodation, insofar as possible. If an accommodation which is satisfactory to all affected nonsmoking employees cannot be reached within a particular workplace, the commercial enterprise, nonprofit entity or City who employs the nonsmoking employees shall formulate, promulgate and implement restrictions or prohibitions upon smoking in a manner which accommodates the reasonable preferences and needs of the nonsmoking employees in relation to the nuisance and health impacts of the smoking upon the nonsmokers. The area in which smoking is prohibited shall be posted by a "No Smoking" sign in the manner prescribed by the provisions of EGMC Section 6.22.155.~~

6.22.150 Exemption procedures.

~~Any owner or manager of a business or other establishment subject to this chapter may apply to the Chief of the Environmental Health Division for an exemption or modification to its provisions. Exemptions may only be granted on A) a showing by the petitioner of significant financial hardship due to compliance, or B) the proposed implementation of an alternative approach or technology which would provide equivalent protection from the health hazards of sidestream smoke.~~

~~An application for exemption will be accompanied by a reasonable fee to cover the cost of preparation for the hearing, and the application will include any data required by the Division. The Division will review the application and submit it, with recommendations, for hearing by the Sacramento Environmental Commission. The applicant will be entitled to present evidence at the hearing, which will be scheduled within sixty (60) days of the receipt of the application.~~

~~The Commission will, after taking into consideration the testimony received at the hearing, issue its findings and recommendations within twenty (20) days of the completion of the hearing. The Division will complete procedural action on the application and notify interested parties within twenty (20) days of its receipt from the Commission.~~

~~The applicant may appeal the Commission's decision to the City Council within thirty (30) days of receipt of action notification by the Division. Upon appeal, the Council will set a hearing within sixty (60) days and make a final determination at that hearing.~~

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.~~26-21~~ or 4.~~28-22~~ 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.~~26-21~~ or 4.~~28-22~~ 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.

~~Each owner, operator, manager or other person having control of an establishment or facility within which smoking is regulated by this chapter shall conspicuously post in every place where smoking is prohibited "No Smoking" signs, or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, whichever are appropriate, with letters not less than one (1") inch in height.~~

~~An owner, operator, or manager of a building or structure in which wherein, pursuant to ~~these regulations~~, 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. ~~may limit the "No Smoking" postings to first (1st) floor entrances and exits and to the elevator lobby areas of all other floors.~~~~

~~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.

~~Restaurants shall post at their entrances a sign stating that nonsmoking seats are available. Likewise,~~ 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 6.22.140-137 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. in the manner hereinafter prescribed.

~~Fines for the crimes made infractions by this section shall be levied in the amounts prescribed by Section 25132 of the Government Code, as that section may hereinafter be amended.~~

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.

~~It shall be the responsibility of the City Manager to enforce, in behalf of the City, the provisions of this chapter. The City Manager shall be authorized to prosecute, in the name of the City, pursuant to the provisions of Section 25132 of the Government Code, civil actions for the recovery of fines for violations of this chapter made infractions by EGMC Section 6.22.165 for violations of EGMC Sections 6.22.060 through 6.22.155.~~

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, ~~commence civil actions for the recovery of infraction fines pursuant to the provisions of EGMC Section 6.22.165 or request~~ commencement of a civil proceeding by the City Attorney may be initiated pursuant to the provisions of EGMC Section 6.22.170, ~~as may be appropriate~~.

The Code Enforcement Environmental Health Division ~~may shall~~ 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.

~~The provisions of EGMC Section 6.22.160 shall not be remedial by either the Chief of Environmental Health or any other City official.~~ 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 ~~pursuant to the provisions of this section~~. 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.