



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

AGENDA TITLE: Consider an Ordinance amending Elk Grove Municipal Code Chapter 4.27 Tobacco Retailers, Chapter 6.22 Secondhand Smoke, Chapter 9.24 Distribution of Tobacco Products to Minors, and Table 23.27-1 Allowed Uses to strengthen restrictions on the sale and distribution of tobacco and electronic vapor products and repealing Urgency Ordinance No. 09-2020 adopted on April 8, 2020, imposing a moratorium on the issuance of Tobacco Retailer Licenses in the City of Elk Grove (CEQA Exempt)

MEETING DATE: January 13, 2021

PREPARED BY: Shane Diller, Assistant Development Services Director

DEPARTMENT HEAD: Darren Wilson, P.E., Development Services Director

RECOMMENDED ACTION:

Staff recommends that the City Council introduce and waive the full reading, by substitution of title only, an ordinance amending Elk Grove Municipal Code Chapter 4.27 Tobacco Retailers, Chapter 6.22 Secondhand Smoke, Chapter 9.24 Distribution of Tobacco Products to Minors, and Table 23.27-1 Allowed Uses, to strengthen restrictions on the sale and distribution of tobacco and electronic vapor products and repealing Urgency Ordinance No. 09-2020 adopted on April 8, 2020, imposing a moratorium on the issuance of Tobacco Retailer Licenses in the City of Elk Grove.

PLANNING COMMISSION:

Consistent with prior City Council direction, staff presented the Planning Commission with the following proposed code amendments at their November 5, 2020 meeting:

- Amend Elk Grove Municipal Code (EGMC) Chapter 4.27 to:
 - Ensure that vaping products are regulated in the same way as tobacco products;
 - Define “Characterizing flavor” and reinforce that tobacco products and tobacco paraphernalia, including electronic vape products may not be sold to minors;
 - Require Zoning and Building Code compliance prior to the issuance of Tobacco Retailer Licenses;
 - Ensure that no new Tobacco Retailer Licenses are issued for locations that are within 1,000 feet of an existing tobacco retailer, school, day care center, playground, park, amusement center, or youth sports facility; and
 - Prohibit the sale of tobacco and electronic vape products that contain a characterizing flavor.

- Amend EGMC Chapter 6.22 increasing the distance within which smoking is prohibited near an existing school, day care center, playground, park, amusement center, or youth sports facility from 300 feet to 1,000 feet.

- Amend EGMC Chapter 9.24 adding electronic vaping products to the definition of Tobacco Product, establishing the same distribution prohibition currently existing in this chapter as it applies to tobacco.

- Amend EGMC Table 23.27-1 to prohibit Smoke shops or Smoking lounges from operating within 1,000 feet of existing tobacco retailers or youth-oriented facilities.

The Planning Commission voted 4-1 (Shuck opposing) to recommend denial of the proposed ordinance. Commissioners, by consensus, expressed support for elements of the proposed ordinance, such as regulating vape products in the same manner as traditional tobacco products, but opposed a flavor ban more strict than the State’s ban, as well

as imposing or increasing the distance restriction between retailers, smokers, and youth-oriented facilities.

Commissioners opposed the proposed flavor ban believing that it would result in significantly lower revenue for tobacco retailers, not only due to the loss of tobacco products sold, but the loss of other non-tobacco sales that customers would have purchased in the same trip. Commissioners also opposed the imposition of a distance restriction between retailers on the basis that it would create an economic disadvantage wherein undeveloped or unapproved commercial centers would lose the ability to offer tobacco retailing in the future while existing nearby centers were allowed to offer the products.

The Commissioners made one recommendation that staff has included in the proposed ordinance (see Attachment 1) as it relates to the distance restriction placed on secondhand smoke. The Commissioners noted that the current language does not clearly exempt private residences from the 300-foot restriction on smoking (proposed to be increased to 1,000 feet). Staff has included language in the proposed ordinance to clarify this exemption, cross-referencing and clarifying existing section 6.22.145 of the code.

The Commissioners also expressed a desire for the City to create a working group with tobacco retailers and other stakeholders to further explore issues related to tobacco retailing and develop other possible code amendments.

BACKGROUND INFORMATION:

California Business and Professions Code Section 22971.3 reserves to cities the ability to enact local tobacco control laws, with the exception of laws related to the collection of state taxes. Section 22971.3 also authorizes cities to implement local tobacco licensing laws.

Consistent with state law, the City of Elk Grove (City) regulates the sale of tobacco products and tobacco paraphernalia through the issuance of a special business license, as set forth in EGMC Chapter 4.27. This chapter of the EGMC was adopted in 2005, in part, to “encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided for violations.” (EGMC § 4.27.020).

Currently, the City has 57 tobacco retailers licensed by the Development Services Department. These licenses must be renewed annually and are subject to suspension or revocation for violations of state and local laws related to tobacco sales and distribution. In addition to special licensing for tobacco retailers, the City requires that smoke shops and smoking lounges, as defined by EGMC Section 23.26.050.S, obtain a Conditional Use Permit (CUP) to operate pursuant to EGMC Table 23.27-1.

Under state and local law, the distribution of tobacco to a minor, including distribution through a vending machine, is unlawful. (EGMC § 9.24.070; Penal Code § 308). For purposes of tobacco purchases under the EGMC and state law, a “minor” is generally considered a person under 21 years of age. However, persons 18 years of age or older that are in active service in the United States Armed Forces may lawfully purchase tobacco products under California state law. (Penal Code § 308).

In 2011, the City adopted a secondhand smoke ordinance (EGMC Chapter 6.22). Among other regulations, Chapter 6.22 prohibits smoking within 300 feet of a school or other youth-oriented facility (EGMC § 6.22.060.B). In 2018, the City Council amended the EGMC to prohibit smoking in or near outdoor dining areas.

On February 26, 2020, the City Council expressed a desire to further strengthen the City’s tobacco retail regulations. Some of the topics requested to be addressed were revising the definitions of tobacco products to expressly include vape products and vapor smoking devices; increasing penalties for violations of local laws; and reviewing licensing fees and licensee restrictions.

On March 11, 2020, the City Council adopted an interim urgency ordinance placing a moratorium on the issuance of Tobacco Retail Licenses and CUPs for smoke shops and smoking lounges. On April 8, 2020, the City Council adopted an urgency ordinance extending the moratorium through March 12, 2021.

On July 22, 2020, Council considered a proposed ordinance on this matter and directed staff to return with additional language that would ban tobacco and vape products containing a characterizing flavor and consider imposing a 1,000-foot separation between tobacco retail locations. The Council also requested the buffer zone for smoking near parks, schools, and other youth-oriented facilities be increased from the current 300-foot distance to 1,000 feet.

On August 28, 2020, Governor Newsom signed Senate Bill (SB) 793 (enacting Health and Safety Code Section 104559.5) generally prohibiting tobacco retailers in California from selling tobacco products containing a characterizing flavor. The new law provides exceptions to this sale ban for shisha tobacco (used for hookah pipes), premium cigars, and loose-leaf tobacco.

The new law enacted by SB 793 was to take effect January 1, 2021. However, opponents of the new law are pursuing a referendum process to have the law placed on the statewide ballot for voter consideration. By stipulated court order between the opponents of the new law and State officials, issued in December of 2020, the provisions of SB 793 will remain ineffective and unenforceable pending the referendum process. (See *Agenbroad v. Padilla*, Sacramento County Superior Court, Case No. 34-2020-80003542.) Despite this, staff is comfortable that existing state law authorizes the City to enact the proposed ordinance.

Tobacco laws are generally enforced by the Elk Grove Police Department. The Development Services Department enforces the licensing and land use regulations related to tobacco businesses within the City.

ANALYSIS/DISCUSSION:

The City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; discouraging the illegal purchase of tobacco products by minors; promoting compliance with laws by prohibiting sales of cigarettes and tobacco products to minors; and protecting minors from being lured into illegal activity through the misconduct of adults.

In recent years, the introduction of vaping and smoking of non-tobacco products, identified by the Centers for Disease Control and Prevention (CDC) as harmful, has created a market for smoking products not currently captured by tobacco sales regulations in the EGMC. Effective January 1, 2020 the City of Sacramento imposed a flavored tobacco ban on retailers, which places Elk Grove in a position to be an attractive market for tobacco and vape retailers.

The most recent National Institutes of Health (NIH) study showed that vaping use is experiencing a significant increase. In that study, 37% of high school seniors surveyed stated they had used an electronic vaping device.

This was up from 28% from the previous year – a 32% increase in a single year. The steady rise in the use of vaping products by minors dictates that the City more stringently regulate electronic vaping products and tobacco sales in general.

The use of characterizing flavor in tobacco and vape products has also been shown to be harmful to minors as it serves to entice minors to begin smoking. The most recent CDC survey found that 67% of high school students that used tobacco products used products that contained a characterizing flavor.

Staff has reviewed the City’s existing regulations and is proposing the following amendments to accomplish the goal of more strictly regulating tobacco, tobacco products, and electronic vaping products:

- Amend EGMC Chapter 4.27 to:
 - Ensure that vaping products are regulated in the same way as tobacco products;
 - Define “Characterizing flavor” and reinforce that tobacco products and tobacco paraphernalia, including electronic vape products may not be sold to minors;
 - Require Zoning and Building Code compliance prior to the issuance of Tobacco Retailer Licenses;
 - Ensure that no new Tobacco Retailer Licenses are issued for locations that are within 1,000 feet of an existing tobacco retailer, school, day care center, playground, park, amusement center, or youth sports facility.
 - Prohibit the sale of tobacco and electronic vape products that contain a characterizing flavor;
 - Strengthening penalties for violating tobacco regulations by:
 - Increasing the first violation from a 30-day to 90-day license suspension;
 - Increasing the second violation within a five year period from a 90-day to 180-day license suspension;
 - Increasing the third violation from a 180-day license suspension to license revocation.

- Amend EGMC Chapter 6.22
 - At Council's request, increase the distance within which smoking is prohibited near an existing school, day care center, playground, park, amusement center, or youth sports facility from 300 feet to 1,000 feet (retaining exemptions for private residences and other exemptions).
- Amend EGMC Chapter 9.24 to:
 - Add electronic vaping products to the definition of Tobacco Product, establishing the same distribution prohibition currently existing in this chapter as it applies to tobacco.
- Amend EGMC Table 23.27-1 to prohibit smoke shops or smoking lounges from operating within 1,000 feet of existing tobacco retailers or youth-oriented facilities.

Although SB 793 prohibits the sale of specified tobacco products in California, staff recommends including the prohibition against the sale of tobacco, electronic vaping, and hookah products with characterizing flavor as proposed in this ordinance. The proposed prohibition is more stringent than the newly adopted state law in that it includes all tobacco, electronic vaping, and hookah products. Additionally, including the local prohibition provides enforcement staff improved authority by allowing the administrative enforcement of provisions contained in the EGMC to be used for violations of this type.

Staff has also reviewed the implications of implementing a 1,000-foot setback between tobacco retailers and increasing the smoking buffer zone from 300 feet to 1,000 feet for parks, schools, and other youth-oriented facilities. Staff found the business setback would still provide for available new retail space to be available to tobacco retailers, while eliminating the option to provide tobacco retail at some undeveloped or unapproved commercial locations. Staff also reviewed the following impacts that the current regulations and/or proposed ordinance would have on businesses that currently have a Tobacco Retailer License:

- One smoke shop, identified as operating without a CUP, would be prohibited from obtaining a CUP since the zoning of the property prohibits this use. Consequently, pursuant to Title 23 of the EGMC, this business is not operating legally and will be forced to close down;

- Three smoke shops have a legal, nonconforming use as they have been in constant operation since before the 2011 Zoning Code amendment requiring CUPs for smoke shops;
- One smoke shop is operating with only a Tobacco Retailer License without the required CUP but would be prohibited from obtaining a CUP because they are within 1,000 feet of another tobacco retailer. Consequently, under the proposed ordinance, this business would be forced to close down;
- Five tobacco retailers or smoke shops are currently operating within 1,000 feet of another retailer or a school, park, or daycare. Because they are lawfully operating, they may continue to do so even if the 1,000-foot separation requirement is adopted. However, these locations could not expand, and no future Tobacco Retailer Licenses or CUPs could be issued at these locations should the current operations cease long enough (one year) to lose their legal, nonconforming status.
- Staff has visited all of Elk Grove's commercial centers to determine how many currently unlicensed tobacco retailers may be operating. Staff found seven businesses retailing tobacco that did not have an active license, with the majority of these operating with expired licenses. Upon adoption (or rejection) of this ordinance, Code Enforcement will notify all retailers of the new regulations (including these seven) and require they comply with the new ordinance.

In an effort to understand the impacts the proposed ordinance would have on tobacco retailing businesses, staff has held meetings and had discussion with some of the City's tobacco retailers. Though staff's survey of retailers last spring determined that flavored tobacco products were estimated to be 10% of sales, retailers presented estimates of lost revenue between 30 and 45% of total sales. Their estimate is based on the total loss of sales from customers that would purchase in a neighboring jurisdiction operating only under the less-restrictive State flavor ban. Retailers also expressed the concern that the proposed initial ninety (90) day suspension for a first violation was too harsh.

In addition to the proposed amendments, staff has reviewed the City's licensing and enforcement practices and has implemented new practices that ensure better communication between the Finance Department, Development Services Department, and Elk Grove Police Department, all

of whom perform an aspect of licensing or enforcement of tobacco regulations. These changes will ensure that all tobacco sellers are properly licensed and permitted, that licensed tobacco retailers are better monitored, and violations are swiftly enforced.

ENVIRONMENTAL ANALYSIS:

CEQA requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines, § 15378.) The proposed Project includes discretionary amendments to the EGMC and is a project under CEQA; but it is exempt from CEQA review as set forth below.

CEQA Guidelines Section 15061(b)(3) states that a project is exempt from CEQA “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” The approval of the code amendments discussed herein does not approve any physical development project. The EGMC amendments would add electronic cigarettes and electronic vapor devices to existing regulations governing the sale, use, and distribution of tobacco, add prohibitions on the sale of flavored tobacco products, increase buffer zones for smoking and tobacco retailing, and repeal a previous ordinance placing a moratorium on the issuance of certain permits and licenses related to tobacco sales. Therefore, this action would not result in a direct or indirect physical change in the environment.

ALTERNATIVE ACTIONS:

Council has several alternatives available to them. These alternatives include but are not limited to:

- Council could reject the total flavor ban included in the ordinance and instead amend EGMC 4.27.040 (E) to include a partial ban mirroring California Health and Safety Code Section 104559.5 (State flavored product ban) as enforceable against a Tobacco Retail Licensee.
- Council could direct changes to the ordinance regarding the amended distances for tobacco retailing and smoking to buffers smaller or larger than the proposed 1,000 feet.

- Council could direct changes to the penalties outlined in EGMC 4.27.110 to impose different suspension periods.
- Council could choose to do nothing, rejecting the proposed ordinance and allowing the moratorium to expire in March, essentially keeping the current tobacco regulations and enforcement framework in place

Should Council direct staff to return with further analysis or alternatives to the proposed ordinance, staff recommends also returning with an extension of the moratorium set to expire in March 2021, extending the moratorium until such time as a new ordinance would take effect.

FISCAL IMPACT:

The ordinance would be enforced pursuant to routine Police and Code Enforcement efforts, which is included within the City's budget. The ordinance, therefore, is not expected to have any additional fiscal impact on the General Fund.

ATTACHMENTS:

1. Ordinance
2. Urgency Ordinance No. 09-2020
3. GIS Tobacco Retailer Restrictions Map (1,000' radius)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 4.27 TOBACCO RETAILERS; CHAPTER 6.22 SECONDHAND SMOKE; CHAPTER 9.24 DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS; AND TABLE 23.27-1 ALLOWED LAND USES; AND REPEALING URGENCY ORDINANCE NO. 09-2020 IMPOSING A MORATORIUM ON THE ISSUANCE OF TOBACCO RETAILER LICENSES IN THE CITY OF ELK GROVE (CEQA EXEMPT)

WHEREAS, Elk Grove Municipal Code (EGMC) Chapter 4.27 regulates the sale of tobacco in the City of Elk Grove; and

WHEREAS, EGMC Chapter 6.22 regulates smoking in the City of Elk Grove; and

WHEREAS, EGMC Chapter 9.24 establishes a prohibition against the distribution of tobacco products to minors; and

WHEREAS, EGMC Table 23.27-1 establishes allowed land uses and required entitlements; and

WHEREAS, a recent study by the National Institutes of Health shows that minors increased their use of electronic vapor products over 30% from the previous year and in order to help protect the health and safety of Elk Grove youth, electronic vapor products should be regulated as stringently as tobacco products; and

WHEREAS, this ordinance amends EGMC Chapter 4.27, Chapter 6.22, Chapter 9.27, and Table 23.27-1 to ensure that sales of electronic vapor products and electronic cigarettes are more stringently regulated to prevent smoking by minors and improve public health outcomes; and

WHEREAS, this ordinance establishes a prohibition against flavored tobacco and electronic vape products as the Centers for Disease Control and Prevention (CDC) has established that flavored tobacco and vape products are more popular with minors, with 67% of high school students who used tobacco in 2018 reporting they smoked flavored products; and

WHEREAS, there is no foreseeable possibility that the adoption of this ordinance would have a significant effect on the environment, and its adoption is therefore exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15061(b)(3), Common Sense Exemption.

NOW, THEREFORE, the City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose

The purpose of this ordinance is to amend EGMC Chapter 4.27 Tobacco Retailers, Chapter 6.22 Secondhand Smoke, Chapter 9.24 Distribution of Tobacco Products to Minors and Table 23.27-1 Allowed Land Uses to more stringently control the sale and consumption of tobacco, tobacco paraphernalia, and electronic vaping products.

Section 2: Amend Elk Grove Municipal Code Chapter 4.27 titled Tobacco Retailers.

*(All additions are shown as **bold** text, deletions in strikethrough)*

Elk Grove Municipal Code Chapter 4.27 is hereby amended to read as follows:

...

4.27.030 Definitions.

As used in this chapter, the following words and phrases shall have the meanings given them in this section, unless the context clearly requires otherwise:

A. “Characterizing flavor” means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, which constitutes a characterizing flavor.

B. “Electronic vaping device” means an electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.

C.A “Itinerant tobacco retailing” means engaging in tobacco retailing at other than a fixed location.

DB. “License” means a tobacco retailer special business license issued by the City pursuant to this chapter.

EG. “Licensee” means any proprietor holding a license issued by the City pursuant to this chapter.

FD. “Person” means any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

GE. “Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten (10%) percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has, or can have, sole or shared control over the day-to-day operations of a business.

HF. “Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, **including electronic vaping devices, with or without characterizing flavor as defined in this chapter**, or any other preparation of tobacco.

I G. “Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette-rolling machines, and any other item designed or used for the smoking or ingestion of tobacco products, **including electronic vaping devices or cartridges, with or without characterizing flavor as defined in this chapter**.

J H. “Tobacco retailer” means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration tobacco, tobacco products, electronic vapor devices, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

K I. “Tobacco retailing” shall mean selling, offering for sale, exchanging, or offering to exchange for any form of consideration tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

...

4.27.040 Requirement for tobacco retailers license.

...

C. No Tobacco Retailer License will be issued prior to confirming that the applicant’s proposed business location complies with the Elk Grove Zoning Code and that a valid Certificate of Occupancy for the building space being proposed for retail is on file with the Elk Grove Development Services Department.

D. No Tobacco Retailer License shall be issued to any Smoke shop or Smoking lounge as defined in EGMC 23.26.050 (S) without the retailer first having been issued a Conditional Use Permit by the Elk Grove Development Services Department.

E. No Tobacco Retailer License holder shall sell, offer for sale, or possess with the intent to sell or offer for sale, any tobacco paraphernalia or tobacco product, as defined in this chapter, to any person prohibited from such purchase by California Business and Professions Code Section 22952 or California Penal Code Section 308.

F. No Tobacco Retailer License will be issued for any location within one thousand feet (1,000’) of an existing tobacco retail location or school, day care center, playground, park, amusement center, or youth sports facility measured from the primary entryway of the business. This restriction shall not apply to new Tobacco Retailers at a location that was approved by the City, but not yet constructed, prior to March 11, 2020.

G. No Tobacco Retailer License holder shall sell, offer for sale, or possess with the intent to sell or offer for sale, any tobacco product, as defined in this chapter, containing any Characterizing flavor.

...

4.27.110 Suspension or revocation of license.

...

1. Upon a finding by the City Manager of a first (1st) license violation within any five (5) year period, the license shall be suspended for ~~thirty~~ **ninety (90)** days.

2. Upon a finding by the City Manager of a second (2nd) license violation within any five (5) year period, the license shall be suspended for ~~ninety (90) days~~ **and the licensee shall install and utilize an electronic age verification system approved by the City Manager prior to resuming tobacco sales.**

3. Upon a finding by the City Manager of a third (3rd) license violation within any five (5) year period, the license shall be ~~suspended for one (1) year~~ **revoked.**

4. ~~Upon a finding by the City Manager of a fourth (4th) license violation within any five (5) year period, the license shall be revoked.~~

...

Section 3: Amend Elk Grove Municipal Code Chapter 6.22. titled Secondhand Smoke.

*(All additions are shown as **bold** text, deletions in strikethrough)*

Elk Grove Municipal Code Chapter 6.22 is hereby amended to read:

...

6.22.060 Smoking prohibitions – Public places.

...

B. In or within **one thousand feet (1,000')**~~three hundred (300' 0")~~ feet of any school, day care center, playground, park, amusement center, or youth sports facility, **provided, however, that nothing herein shall be construed to restrict or prohibit smoking at a location otherwise authorized by Section 6.22.145 of this code.**

...

6.22.145 Places where smoking permissible.

...

A. A private residence, including an attached or detached garage, **or** on ~~in~~ the lot upon which it is located, whether or not the residence is utilized for office or other business purposes, **unless** ~~if~~ the owner or lawful tenant has ~~not~~ designated the property or that portion of the property **being used for office or other business purposes** 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 **one thousand feet (1000'0")** ~~three hundred (300' 0")~~ feet of a public or private school building, playground, swimming pool, youth sports facility, or other area intended primarily for use by children.

...

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 **one thousand feet (1000'0")** ~~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.

...

Section 4: Amend Elk Grove Municipal Code Section 9.24.020 titled Definitions.

*(All additions are shown as **bold** text, deletions in strikethrough)*

Elk Grove Municipal Code Section 9.24.020 is hereby amended to read:

...

9.24.020 Definitions.

...

"Tobacco product" shall mean any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, or any other form of tobacco, **including electronic vapor devices defined in EGMC Section 4.27.030** which may be utilized for smoking, chewing, inhalation or other manner of ingestion, **with or without characterizing flavor as defined in EGMC Chapter 4.27.**

...

Section 5: Amend Elk Grove Municipal Code Table 23.27-1 Titled Allowed Uses and Required Entitlements for Base Zoning Districts

(All additions are shown as **bold text**, deletions in strikethrough)

Elk Grove Municipal Code Table 23.27-1 Titled Allowed Uses and Required Entitlements for Base Zoning Districts is hereby amended as follows (note, only the column titles and the rows, as shown, are amended; rows not listed are not amended; where rows are retitled, they shall be reordered within that use’s listing as appropriate):

Table 23.27-1
Allowed Uses and Required Entitlements for Base Zoning Districts

Land Use/Zoning District	Zoning Districts																				Specific Use Regulations					
	Agricultural					Residential					Commercial					Mixed Use		Office		Industrial			Public/Quasi - Public			
	AG-80	AG-20	AR-5/10	AR-2	AR-1	RD-1/2/3	RD-4/5/6	RD-7	RD-10/15	RD-20/25/30	LC	GC	SC	AC	C-O	VCMU	RMU	BP	MP	LI		LI/FX	HI	PR	PS	O
Retail, Service, and Office Uses																										
Smoke Shops	-	-	-	-	-	-	-	-	-	-	-	CUP ²³	CUP ²³	-	-	CUP ²⁴	-	-	-	-	-	-	-	-	-	
Smoking Lounge	-	-	-	-	-	-	-	-	-	-	-	CUP ^{20,23}	CUP ^{20,23}	-	-	CUP ²⁴	-	-	-	-	-	-	-	-	-	

Notes that pertain to commercial zoning districts:

...

23. In accordance with EGMC Chapter 4.27, no new tobacco retailer may operate within one thousand feet (1,000’) of a previously licensed and operating tobacco retailer.

Notes that pertain to mixed-use zoning districts:

...

9. In accordance with EGMC Chapter 4.27, no new tobacco retailer may operate within one thousand feet (1,000’) of a previously licensed and operating tobacco retailer.

Section 6: Repeal of Ordinance No. 09-2020

As of the effective date of this ordinance, Ordinance No. 09-2020, placing a temporary moratorium on all new smoking lounges, smoke shops, and tobacco retailers, is hereby repealed

Section 7: California Environmental Quality Act (CEQA).

Finding: The Project is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3).

Evidence CEQA requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines, § 15378.) The proposed Project includes discretionary amendments to the EGMC and is a project under CEQA; but it is exempt from CEQA review as set forth below.

CEQA Guidelines Section 15061(b)(3) states that a project is exempt from CEQA “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” The approval of the code amendments discussed herein does not approve any physical development project. The EGMC amendments would add electronic cigarettes and electronic vapor devices to existing regulations governing the sale, use, and distribution of tobacco, increase buffer zones for smoking and tobacco retailing, and repeal a previous ordinance placing a moratorium on the issuance of certain permits and licenses related to tobacco sales. Therefore, the Project would not result in a direct or indirect physical change in the environment.

Section 8: 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 9: 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 10: 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 and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in 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 11: 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:
ADOPTED:
EFFECTIVE:

BOBBIE SINGH-ALLEN, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: _____

ORDINANCE NO. 09-2020

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE EXTENDING THE MORATORIUM ON ALL NEW SMOKING LOUNGES, SMOKE SHOPS, AND TOBACCO RETAILERS WITHIN THE CITY OF ELK GROVE (CEQA EXEMPT)

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

Section 1: Purpose and Authority.

In the interest of protecting the health, safety, and welfare of the residents in the City of Elk Grove, it is the purpose and intent of this ordinance to extend a temporary moratorium on the issuance of any new permit, license, or entitlement for any new smoking lounge, smoke shop, or tobacco retailer in the City of Elk Grove. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Government Code section 65858 as an urgency measure prohibiting a use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

Section 2: Findings.

- A. Smoking and use of tobacco products, particularly by persons under eighteen years of age (“minors”), poses a significant health hazard to the user and persons in proximity to the user, including, without limitation, nicotine addiction, disease, and premature death.
- B. The City has a significant interest in discouraging tobacco use by minors and discouraging the sale or distribution of tobacco products to minors, including vape pens and devices, e-cigarettes, and flavored tobacco products.
- C. The City has a significant interest in preserving the health, safety, and welfare of its residents, and in particular its minor residents, in considering enactment of additional regulations on the sale and distribution of tobacco products.
- D. There is a current and immediate threat to the public health, safety, or welfare with respect to the sale and distribution of tobacco products within the City, including access to such products by minors, and the approval of additional permits, licenses, and/or any other entitlement for new smoking lounges, smoke shops, and/or tobacco retailers would result in a further threat to public health, safety, or welfare.
- E. This ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public against the potential detrimental health impacts of tobacco smoking, particularly as concerns minors, in order to allow the City an opportunity to study this issue and develop and adopt additional appropriate regulations for the sale and distribution of tobacco products.

Section 3: Environmental Review/California Environmental Quality Act (CEQA).

This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

Section 4: Definitions.

As used herein the following definitions shall apply:

- A. "Person" shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.
- B. "Smoking lounge" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.10.450(D).
- C. "Smoke shop" shall have the same meaning as set forth in Elk Grove Municipal Code section 23.26.050(S)(4).
- D. "Tobacco retailer" shall have the same meaning as set forth in Elk Grove Municipal Code section 4.27.030(G).

Section 5: Moratorium on New Permits, Licenses, and Land Use Entitlements.

- A. During the term of this ordinance, any new smoking lounge, smoke shop, and/or tobacco retailer shall be prohibited in all zoning districts and lands within the City of Elk Grove. No application for any permit, license, or land use entitlement shall be granted or approved for any new smoking lounge, smoke shop, and/or tobacco retailer in any zoning districts or lands within the City of Elk Grove.
- B. Notwithstanding any other provision of this ordinance, any person who lawfully holds or held permit, license, and/or land use entitlement for an existing and lawfully operating smoking lounge, smoke shop, and/or tobacco retailer in the City of Elk Grove as of January 1, 2020, and is otherwise in compliance with applicable laws, may continue to lawfully operate under that permit, license, and/or entitlement, and may apply for the renewal of any such permit, license, and/or entitlement, which renewal may be approved or denied by the City under the standards governing such permit, license, and/or entitlement under existing law.
- C. Notwithstanding any other provision of this ordinance, any person who lawfully held an existing tobacco retail license as of the effective date of this ordinance at a location for which a conditional use permit or other land use entitlement is required may apply for such conditional use permit and/or other land use entitlement and may continue to operate at said current location, provided that the

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

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

E. Nothing herein shall limit the authority of the City to revoke or suspend any existing license, permit, and/or entitlement as authorized under existing law.

Section 6: Extension of Urgency Interim Ordinance.

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

Section 7: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 8: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 9: Effective Date.

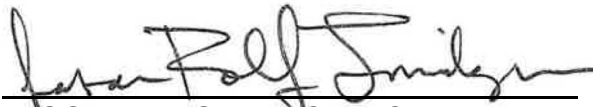
This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

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



STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: April 10, 2020

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

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

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing urgency ordinance, published and posted in compliance with State law, was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a special meeting of said Council held on April 8, 2020 by the following vote:

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

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

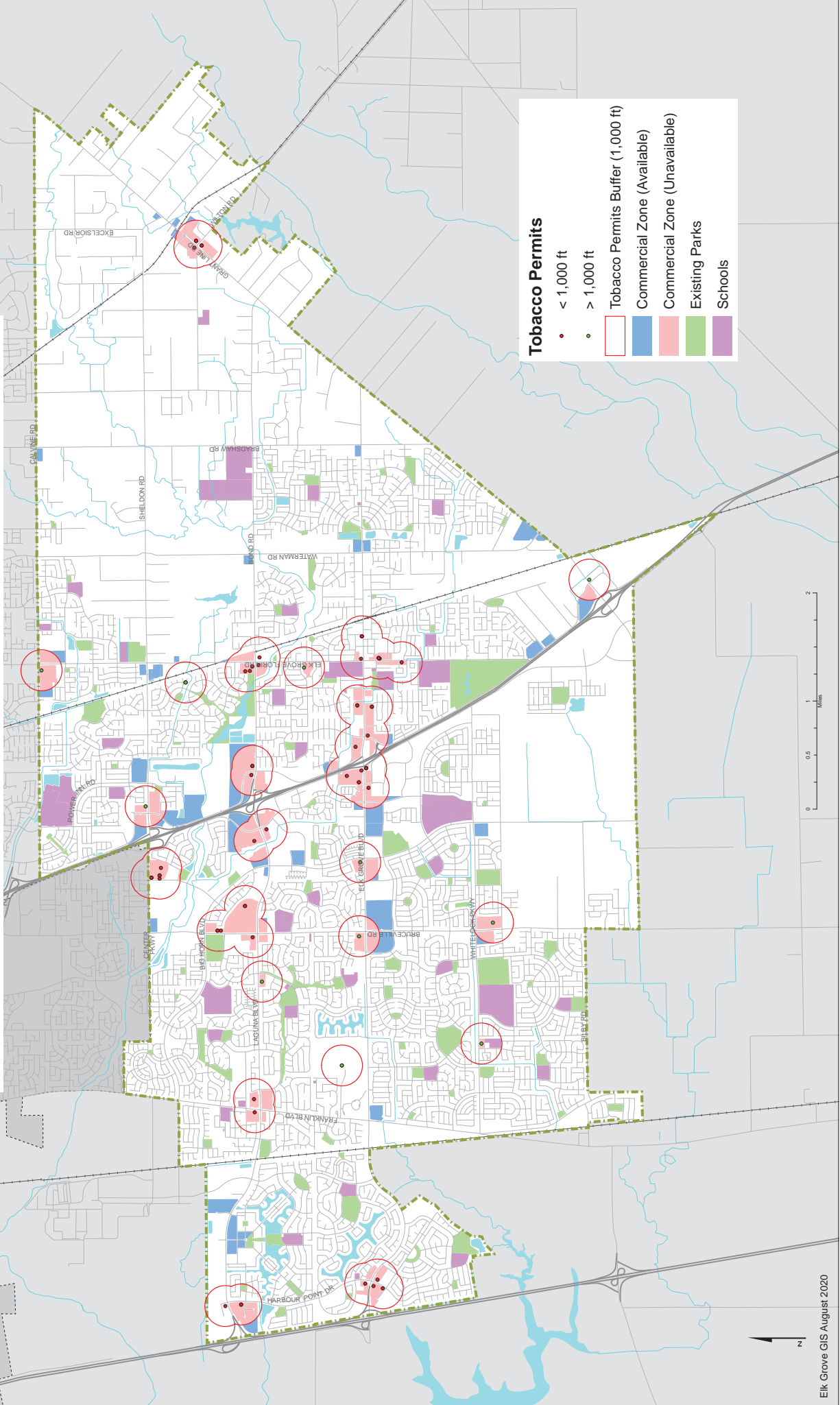
ABSENT: **COUNCILMEMBERS:** *None*



Jason Lindgren, City Clerk
City of Elk Grove, California

ATTACHMENT 3

Tobacco Retail Restrictions 1,000 ft From Each Other





Incorporated July 1, 2000

8401 Laguna Palms Way
Elk Grove, California 95758

CITY OF ELK GROVE

Telephone: (916) 683-7111
Fax: (916) 627-400
www.elkgrovecity.org

City of Elk Grove – City Council NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, January 13, 2021 at the hour of 6:00 p.m.**, or as soon thereafter as the matter may be heard, the Elk Grove City Council will conduct a public hearing at City Hall in the Council Chambers, 8400 Laguna Palms Way, Elk Grove, California, to consider the following matter:

AMENDMENTS TO ELK GROVE MUNICIPAL CODE CHAPTER 4.27 TOBACCO RETAILERS, CHAPTER 6.22 SECONDHAND SMOKE, AND CHAPTER 9.24 DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS (CITY-INITIATED ORDINANCE):

The proposed Project consists of a series of City-initiated amendments to Elk Grove Municipal Code (EGMC) Chapter 4.27 Tobacco Retailers, Chapter 6.22 Secondhand Smoke, Chapter 9.24 Distribution of Tobacco to Minors, and Chapter 23.27 Allowed Land Uses and Required Entitlements. Highlights of the amendments recommended by staff include, but are not limited to, the following:

- Amending Chapter 4.27 to:
 - Amend tobacco retailing regulations to include increased penalties for violations; and
 - Add “Characterizing Flavor” definition; and
 - Prohibit tobacco retailers within one-thousand foot (1000’) of another tobacco retailer, school, day care center, playground, park, amusement center, or youth sports facility; and
 - Amend definitions to ensure that electronic vaping devices are regulated the same as tobacco and tobacco paraphernalia
- Amending Chapter 6.22 to prohibit smoking within one-thousand feet (1000’) of a school, day care center, playground, park, amusement center, or youth sports facility (current restriction is three hundred feet (300’))
- Amending Chapter 9.24 to prohibit furnishing electronic vaping devices to minors
- Amending Table 23.27-1 for consistency with the above-referenced amendments.

The Planning Commission reviewed this matter at its meeting on November 5, 2020 and voted 4-1 to recommend the City Council deny the Amendments.

LOCATION/APN:	Citywide
ENVIRONMENTAL:	No further environmental review is required from the California Environmental Quality Act pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3)(Common Sense Exemption).
PROJECT MANAGER:	Shane Diller (916) 687-3002 or sdiller@elkgrovecity.org

Consistent with Executive Order N-29-20 issued on March 17, 2020, and Executive Order N-35-20 issued on March 21, 2020, by the Governor of the State of California, this meeting will be conducted by teleconference only. The meeting location will be the City Council Chamber, but it will not be open to the public. The live meeting can be viewed via the City's website at http://www.elkgrovecity.org/city_hall/city_government/live_archived_broadcasts

Information regarding this item may be obtained by contacting the City Clerk by email at jlindgren@elkgrovecity.org, or by phone at 916-478-2286. All interested persons are invited to present their views and comments on this matter at the public hearing. Written statements may be filed with the City Clerk either in writing or by email at any time prior to the close of the hearing scheduled herein, and oral statements may be made following the procedures established to accommodate social distancing guidelines, available on the City's website at http://www.elkgrovecity.org/city_hall/city_government/city_council/council_meetings/public_hearing_notices, or by contacting the City Clerk by phone at (916) 478-2286 or email to jlindgren@elkgrovecity.org.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the Office of the City Clerk, 8401 Laguna Palms Way, Elk Grove, CA, 95758, at or prior to the close of the public hearing.

This meeting notice is provided pursuant to Section 23.14.040 of Title 23 of the Elk Grove Municipal Code.

Dated/Published: January 1, 2021

JASON LINDGREN
CITY CLERK, CITY OF ELK GROVE

ADA COMPLIANCE STATEMENT

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Office of the City Clerk at (916) 478-3635. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.