

ORDINANCE NO. 28-2008

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ZONING CODE CHAPTER 23.84 (NON-CONFORMING USES, BUILDINGS, AND STRUCTURES) MODIFYING THE PROVISIONS REGARDING TERMINATION OF NON-CONFORMING STATUS BY INVOLUNTARY DESTRUCTION

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

Section 1: Purpose and Authority

The purpose of this Ordinance is to amend the City of Elk Grove Zoning Code text to clarify its intent regarding non-conforming uses, buildings, and structures. This amendment clarifies the provisions regarding termination of non-conforming status by involuntary destruction.

Section 2: Findings

CEQA

Finding:

This activity is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15302.

Evidence:

This exemption applies to the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. No special circumstances exist that would create a reasonable possibility that the proposed Zoning Code amendment will have a significant effect on the environment. Therefore, no further environmental review is required.

Text Amendment to Zoning Code

Finding:

The proposed Zoning Text Amendment is consistent with the General Plan goals, policies, and implementation programs.

Evidence:

The proposed amendment to Chapter 23.84 of the Zoning Code is consistent with General Plan Economic Development Policy ED-11 to retain existing businesses and Land Use Policy LU-1 by using the City's land use authority to regulate the use of land within the city to create an attractive, vibrant community which fulfills the goals expressed in the General Plan. The City's legal non-conforming uses are an intrinsic part of the community and urban fabric. The proposed text changes would allow additional legal non-conforming uses to be restored in the event of involuntary

destruction.

Section 3: Amendment

Section 23.84.010 is amended as follows:

23.84.010 Purpose and Intent

- (1) This section provides regulations for nonconforming land uses, structures, and parcels that were lawful before the adoption, or amendment of this Zoning Ordinance, but which would be prohibited, regulated, or restricted differently under the current terms of this Zoning Ordinance or future amendments.
- (2) It is the intent of this Zoning Ordinance to discourage the long-term continuance of nonconformities that have the potential to create nuisance or other incompatibility issues, providing for their eventual elimination, while allowing them to exist under the limited conditions outlined in this Chapter.

Section 23.84.030 is deleted in its entirety.

Section 23.84.040 is amended as follows:

23.84.040 Loss of Nonconforming Status

(1) **Termination by discontinuance.**

- (A) If a nonconforming use of land or a nonconforming use of a conforming structure is discontinued for a continuous period of six months or more, rights to legal nonconforming status shall terminate.
- (B) The Director shall base a determination of discontinuance on evidence including the removal of equipment, furniture, machinery, structures, or other components of the nonconforming use, disconnected or discontinued utilities, or no business records to document continued operation.
- (C) Without further action by the City, any further use of the site or structure shall comply with all of the regulations of the applicable zoning district and all other applicable provisions of this Zoning Ordinance.

(2) **Termination by destruction.** Nonconforming status shall terminate if a nonconforming structure, or a conforming structure occupied by a nonconforming use, is involuntarily damaged or destroyed, provided that the structure may be repaired or rebuilt and reoccupied as follows.

- (A) An involuntarily damaged or destroyed structure may be repaired or replaced with a new structure, except for industrial uses in agricultural or residential zones as provided in subsection (B), with the same footprint, height, and number of dwelling units, in compliance with current Building

and Fire Code requirements if the restoration is started within one year of the date of damage and is diligently pursued to completion.

- (B) Conditional Use Permit approval shall be required prior to restoring or reconstructing a structure for an industrial use in an agricultural or residential zone if the cost of repairing or replacing the damaged portion of the structure is more than 50 percent of the assessed value of the structure immediately before damage. Conditional Use Permit approval shall require a finding, in addition to those contained in Section 23.16.070, that the benefit to the public health, safety or welfare exceeds the detriment inherent in the restoration and continuance of nonconformity.
- (C) A nonconforming mobile home may be replaced with a new or newer and larger mobile home placed in the same location as the former unit, subject to applicable provisions of this Title.

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: 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.

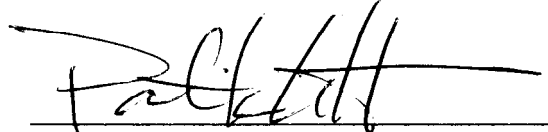
Section 6: No impairment of certain rights or pending actions.

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 7: Effective Date and Publication

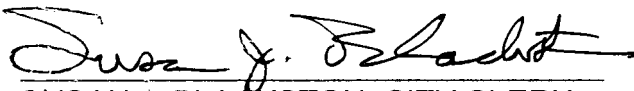
This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

ORDINANCE: 28-2008
INTRODUCED: May 28, 2008
ADOPTED: June 11, 2008
EFFECTIVE: July 11, 2008



PATRICK HUME, VICE MAYOR of the
CITY OF ELK GROVE

ATTEST:



SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

Date signed: June 19, 2008

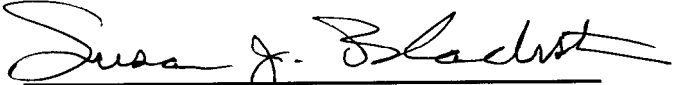
CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 28-2008

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

I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on May 28, 2008 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on June 11, 2008 by the following vote:

AYES : **COUNCILMEMBERS:** *Hume, Scherman, Leary,*
NOES: **COUNCILMEMBERS:** *None*
ABSTAIN: **COUNCILMEMBERS:** *None*
ABSENT: **COUNCILMEMBERS:** *Davis, Cooper*

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



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