

**ORDINANCE NO. 25-2018**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AMENDING PORTIONS OF THE  
ELK GROVE MUNICIPAL CODE TITLE 23 (ZONING)**

**WHEREAS**, the proposed amendments (1) change the permit type allowing outdoor amplified sound associated with outdoor dining from the approval of a Minor Design Review to a project-related Conditional Use Permit or a stand-alone Minor Conditional Use Permit; and (2) remove the requirement for the City to hold onto seized marijuana plants for not less than 15 days following seizure; and

**WHEREAS**, Section 15061(b)(3) of the California Code of Regulations, Title 14 ("State CEQA Guidelines") describes the General Rule that the California Environmental Quality Act (CEQA) only applies to projects which "have the potential for causing a significant effect on the environment" and "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 activity is not subject to CEQA;" and

**WHEREAS**, based on staff's review, the proposed amendments to Title 23 of the Elk Grove Municipal Code (EGMC) do not approve any specific development project and, therefore, do not result in the possibility of creating significant or cumulative effects on the environment, fitting within the General Rule; and

**WHEREAS**, any future development under the proposed regulations would be subject to CEQA at that time, as those actions would be classified as "projects" under CEQA; and

**WHEREAS**, the Planning Commission of the City of Elk Grove (the "Planning Commission") held a duly-noticed public hearing on November 1, 2018, as required by law to consider all of the information presented by staff, and public testimony presented in writing and at the meeting; and

**WHEREAS**, the City Council of the City of Elk Grove (the "City Council") held a duly-noticed public hearing on December 12, 2018, as required by law to consider all of the information presented by staff, and public testimony presented in writing and at the meeting.

**NOW, THEREFORE**, 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 following Sections of EGMC Title 23 in order to provide the City additional flexibility in land use decisions:

- Note #8 under "Notes that pertain to the commercial zoning districts" in Table 23.27-1 (Allowed Uses and Required Entitlements for Base Zoning Districts);
- Section 23.86.040(D)(5) (Noise); and
- Section 23.83.040(B) (Enforcement)

## Section 2: Findings

### **California Environmental Quality Act (CEQA)**

Finding: No further environmental review is required under the 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" (State CEQA Guidelines Section 15378). State CEQA Guidelines Section 15061(b)(3) describes the General Rule that CEQA only applies to projects which "have the potential for causing a significant effect on the environment" and "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 activity is not subject to CEQA."

The approval of these amendments does not approve any development project. The proposed amendments change the permit type that would allow outdoor amplified sound associated with outdoor dining through the approval of a project-related Conditional Use Permit or stand-alone Minor Conditional Use Permit in order to provide the most logical permit for the imposition of ongoing operational conditions that prevent adverse effects to neighboring land uses. The amendments also remove the requirement for the City to hold onto seized marijuana plants for not less than 15 days following seizure. The City does not have the facilities to hold marijuana plants. The amendments do not result in the possibility of creating significant or cumulative effects on the environment.

Any future development under the proposed regulations would be subject to CEQA at that time, as those actions would be classified as "projects" under CEQA. Therefore, these changes are not subject to CEQA under the General Rule and no further environmental review is necessary.

### **General Plan Consistency**

Finding: The proposed amendments to Title 23 are consistent with the General Plan goals, policies, and implementation programs.

Evidence: The proposed amendments to Title 23 (Zoning) of the Elk Grove Municipal Code include minor amendments to (1) change the permit type allowing outdoor amplified sound associated with outdoor dining from the approval of a Minor Design Review to a project-related Conditional Use Permit or a stand-alone Minor Conditional Use Permit; and (2) remove the requirement for the City to hold onto seized marijuana plants for not less than 15 days following seizure. These changes are consistent with the General Plan because they do not alter the allowed intensity or density of development beyond that contemplated in the General Plan.

### Section 3. Amendments to Title 23 (Zoning)

EGMC Title 23 is amended as shown in Exhibit A.

### Section 4: 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 5: 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 6: 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 6: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

**ORDINANCE:** 25-2018  
**INTRODUCED:** December 12, 2018  
**ADOPTED:** January 9, 2019  
**EFFECTIVE:** February 8, 2019



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STEVE LY, MAYOR of the  
CITY OF ELK GROVE


ATTEST:

APPROVED AS TO FORM:



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JASON LINDGREN, CITY CLERK



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JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: January 29, 2019

## EXHIBIT A

### AMENDMENTS TO EGMC TITLE 23 (ZONING)

**Note #8 under "Notes that pertain to the commercial zoning districts" in Table 23.27-1 (Allowed Uses and Required Entitlements for Base Zoning Districts) shall be amended to read as follows:**

8. All forms of speaker amplification associated with outdoor dining shall be prohibited unless otherwise authorized in combination with a project-related conditional use permit or stand-alone minor conditional use permit.

**23.86.040(D)(5) (Noise) shall be amended to read as follows:**

5. Noise. All forms of speaker amplification associated with the outdoor dining shall be prohibited unless otherwise authorized in combination with a project-related conditional use permit or stand-alone minor conditional use permit.

**Section 23.83.040(B) (Enforcement) shall be amended to read as follows:**

B. Consistent with the restrictions set forth in California Health and Safety Code Section 11362.2(a)(3), the City may seize and destroy any living marijuana plants found in excess of the six (6) plants allowed under EGMC Section 23.83.030(D).

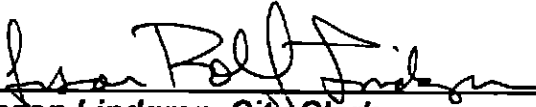
**CERTIFICATION**  
**ELK GROVE CITY COUNCIL ORDINANCE NO. 25-2018**

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

*I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on December 12, 2018 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on January 9, 2019 by the following vote:*

|                 |                        |                                |
|-----------------|------------------------|--------------------------------|
| <b>AYES :</b>   | <b>COUNCILMEMBERS:</b> | <b>Ly, Hume, Detrick, Suen</b> |
| <b>NOES:</b>    | <b>COUNCILMEMBERS:</b> | <b>None</b>                    |
| <b>ABSTAIN:</b> | <b>COUNCILMEMBERS:</b> | <b>None</b>                    |
| <b>ABSENT:</b>  | <b>COUNCILMEMBERS:</b> | <b>Nguyen</b>                  |

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

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