

## ORDINANCE NO. 9-2011

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING PORTIONS OF THE ELK GROVE MUNICIPAL CODE TITLE 6

**WHEREAS**, staff identified a series of amendments to the Elk Grove Municipal Code that needed to be made; and

**WHEREAS**, the proposed amendments at this time include the remaining major amendments that were identified by the City Council, the Planning Commission, the public, and staff over the past year; and

**WHEREAS**, the proposed amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to the California Code of Regulations, Title 14, Division 6, Chapter 3 (State CEQA Guidelines); and

**WHEREAS**, the approval of these amendments does not approve any development project. Rather, the amendments relocate and adopt recodified text previously adopted by the City of Elk Grove.

**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 Title 6 of the City of Elk Grove Municipal Code text to relocate the noise standards from Title 23 (Zoning) and adopt recodified text to continue in effect the applicability and enforceability of all ordinances previously enacted by the City of Elk Grove.

#### Section 2: Findings

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

Finding: The proposed amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to the California Code of Regulations, Title 14, Division 6, Chapter 3 (State CEQA Guidelines).

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." Section 15061 (b)(3) of Chapter 3, Title 14 of the California Code of Regulations (the CEQA Guidelines) describes the General Rule that CEQA only applies to projects which "have the potential for causing a significant effect on the environment; 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. Rather, the amendments relocate and adopt recodified text previously adopted by the City of Elk Grove. Each of these components, individually and cumulatively, does not result in the possibility of creating significant or cumulative effects on the environment. 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 6 are consistent with the General Plan goals, policies, and implementation programs.

Evidence: The proposed text amendments to Title 6 implement the goals and policies of the General Plan Noise Element which includes polices related to the effects of noise on noise sensitive land uses.

### Section 3. Amendments to Title 6 – Health and Sanitation

Elk Grove Municipal Code Chapter 6.32 is adopted as follows:

#### **Chapter 6.32 NOISE CONTROL**

Sections:

- 6.32.010 Purpose.
- 6.32.020 Declaration of policy.
- 6.32.030 Liberal construction.
- 6.32.040 Definitions.
- 6.32.050 Violation.
- 6.32.060 Other remedies.
- 6.32.070 Sound level measurement generally.
- 6.32.080 Exterior noise standards.
- 6.32.090 Interior noise standards.
- 6.32.100 Exemptions.
- 6.32.110 Machinery, equipment, fans and air conditioning.
- 6.32.120 Off-road vehicles.
- 6.32.130 Radios, music playing devices, and televisions on publicly owned property.
- 6.32.140 Prohibited activities.
- 6.32.150 General noise regulations.

#### **6.32.010 Purpose.**

The City Council of the of Elk Grove finds:

A. Excessive, unnecessary or offensive noise within the City is detrimental to the public health, safety, welfare and the peace and quiet of the inhabitants of the City and therefore is declared a public nuisance; and

B. Every person in the City is entitled to live in an environment free from excessive, unnecessary or offensive noise levels; and

C. The establishment of maximum permissible noise levels will further the public health, safety, welfare and peace and quiet of city inhabitants.

**6.32.020 Declaration of policy.**

It is declared to be the policy and purpose of this chapter of the EGMC to assess complaints of noises alleged to exceed the ambient noise levels.

**6.32.030 Liberal construction.**

This chapter shall be liberally construed so as to effectuate its purposes.

**6.32.040 Definitions.**

For the purposes of this title, the following terms, phrases, words, and their derivations shall have the meanings given in this chapter, unless the context clearly indicates or requires a different meaning:

A. "A" Definitions.

1. "Ambient noise level" means the all-encompassing noise level associated with a given environment, being a composite of sounds from all sources, excluding the alleged offensive noise, at the location and approximate time at which a comparison with the alleged offensive noise is to be made.

B. Reserved for future use.

C. "C" Definitions.

1. "Cumulative period" means an additive period of time composed of individual time segments which may be continuous or interrupted.

D. "D" Definitions.

1. "Decibel" or "dB" means a unit which denotes the ratio between two quantities which are proportional to power; the number of decibels corresponding to the ratio of two amounts of power is ten times the logarithm to the base of ten of this ratio.

E. "E" Definitions.

1. "Emergency work" means the use of any machinery, equipment, vehicle, manpower or other activity in an effort to protect, maintain, provide or restore safe

conditions in the community or for citizenry, or work by private or public utilities when restoring utility service.

F. Reserved for future use.

G. Reserved for future use.

H. "H" Definitions.

1. "Hertz" means a unit of measurement of frequency, numerically equal to cycles per second.

I. "I" Definitions.

1. "Impulsive noise" means a noise characterized by brief excursions of sound pressures whose peak levels are very much greater than the ambient noise level, such as might be produced by the impact of a pile driver, punch press or a drop hammer, typically with one second or less duration.

J. Reserved for future use.

K. Reserved for future use.

L. Reserved for future use.

M. Reserved for future use.

N. "N" Definitions.

1. "Noise level" means the "A" weighted sound pressure level in decibels obtained by using a sound level meter at slow response with a reference pressure of twenty micropascals. The unit of measurement shall be designated as "dBA."

O. Reserved for future use.

P. Reserved for future use.

Q. Reserved for future use.

R. "R" Definitions.

1. "Residential property" means a parcel of real property which is developed and used either in part or in whole for residential purposes, other than transient uses such as hotels and motels.

S. "S" Definitions.

1. "Simple tone noise" or "pure tone noise" means a noise characterized by the presence of a predominant frequency or frequencies such as might be produced by whistle or hum.

2. "Sound level meter" means an instrument meeting American National Standard Institute's Standard S1.4-1971 for Type 2 sound level meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data.

3. "Sound pressure level" means a sound pressure level of a sound, in decibels, as defined in ANSI Standards 51.2-1962 and 51.13-1921; that is, twenty times the logarithm to the base ten of the ratio of the pressure of the sound to a reference pressure, which reference pressure shall be explicitly stated.

T. Reserved for future use.

U. Reserved for future use.

V. Reserved for future use.

W. Reserved for future use.

X. Reserved for future use.

Y. Reserved for future use.

Z. "Z" Definitions.

1. "Zone" means any of the zones specified in EGMC Chapter 23.24 as such zones are presently identified therein and as they may be subsequently modified or altered.

#### **6.32.050 Violation.**

Violation of EGMC Chapter 6.32 shall be an infraction which shall be enforced pursuant to the provisions of EGMC Chapter 1.04. Upon the receipt of a complaint from any person, Code Enforcement staff may investigate and assess whether the alleged noise levels exceed the noise standards set forth in this chapter. If Code Enforcement officers have reason to believe that any provision(s) of this chapter has been violated, they may cause written notice to be served upon the alleged violator. Such notice shall specify the provision(s) of this chapter alleged to have been violated and the facts alleged to constitute a violation, including dBA readings noted and the time and place of their detection, and may include an order that corrective action be taken within a specified time. If corrective action is not taken within such specified time or any extension thereof approved by the Chief Code Enforcement Officer, upon conviction, the violation shall constitute an infraction. Each day such violation is committed or permitted to continue

shall constitute a separate offense and shall be punishable as such.

**6.32.060 Other remedies.**

A. Provisions of this chapter are to be construed as an added remedy of abatement of the public nuisance declared and not in conflict or derogation of any other action, proceedings or remedies provided by law.

B. Any violation of the provisions of this chapter shall be, and the same is declared to be unlawful and a public nuisance, and the duly constituted authorities of the City shall, upon order of the City Council, immediately commence actions or proceedings for the abatement or enjoinder thereof in the manner provided by law and shall take such steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate such nuisance.

**6.32.070 Sound level measurement generally.**

A. Any noise level measurements made pursuant to the provisions of this chapter shall be performed using a sound level meter as defined in Section 6.32.040.

B. The location selected for measuring exterior noise levels shall be at a point at least one foot inside the property line of the affected residential property. Where feasible, the microphone shall be at a height of three to five feet above ground level and shall be at least four feet from walls or similar reflecting surfaces. Additional points of measurement may be required at the discretion of Code Enforcement or the Planning Director when the existing or proposed conditions may generate noise impacts at a higher point of measure. In the case of interior noise measurements, the windows shall be in normal seasonal configuration and the measurement shall be made at a point at least four feet from the wall, ceiling or floor nearest the affected occupied area.

**6.32.080 Exterior noise standards.**

A. The following noise standards, unless otherwise specifically indicated in this chapter, shall apply to all properties within a designated noise area.

Noise Area	City Zoning Districts	Time Period	Exterior Noise Standard
I	Agricultural; Residential	7 a.m.—10 p.m.	55 dBA
		10 p.m.—7 a.m.	45 dBA

B. It is unlawful for any person at any location within the City to create any noise which causes the noise levels on an affected property, when measured in the designated noise area, to exceed for the duration of time set forth following the specified exterior noise standards in any one hour by:

Cumulative Duration of the Intrusive Sound	Allowance Decibels
1. Cumulative period of 30 minutes per hour	0
2. Cumulative period of 15 minutes per hour	+ 5
3. Cumulative period of 5 minutes per hour	+10

4. Cumulative period of 1 minute per hour	+15
5. Level not to be exceeded for any time per hour	+20

C. Each of the noise limits specified in subdivision (b) of this section shall be reduced by five dBA for impulsive or simple tone noises, or for noises consisting of speech or music.

D. Boundary between different noise areas. If the measurement location is on a boundary between two different designated noise areas, the lower noise level limit applicable to the two areas shall apply.

E. If the ambient noise level exceeds that permitted by any of the first four noise-limit categories specified in subdivision (b), the allowable noise limit shall be increased in five dBA increments in each category to encompass the ambient noise level. If the ambient noise level exceeds the fifth noise level category, the maximum ambient noise level shall be the noise limit for that category.

**6.32.090 Interior noise standards.**

A. In any apartment, condominium, townhouse, duplex or multiple dwelling unit it is unlawful for any person to create any noise from inside his unit that causes the noise level when measured in a neighboring unit during the periods ten p.m. to seven a.m. to exceed:

1. Forty-five dBA for a cumulative period of more than 5 minutes in any hour;
2. Fifty dBA for a cumulative period of more than 1 minute in any hour;
3. Fifty-five dBA for any period of time.

B. If the ambient noise level exceeds that permitted by any of the noise level categories specified in subdivision (a) of this section, the allowable noise limit shall be increased in five-dBA increments in each category to encompass the ambient noise level.

**6.32.100 Exemptions.**

The following activities shall be exempted from the provisions of this chapter:

- A. School bands, school athletic and school entertainment events;
- B. Outdoor gatherings, public dances, shows and sporting and entertainment events, provided said events are conducted pursuant to a license or permit by the City;
- C. Activities conducted on parks, public playgrounds and school grounds, provided such parks, playgrounds and school grounds are owned and operated by a public entity or private school;
- D. Any mechanical device, apparatus or equipment related to or connected with emergency activities or emergency work; the exemption does not include permanently

installed emergency generators.

E. Noise sources associated with construction, repair, remodeling, demolition, paving or grading of any real property, provided said activities do not take place between the hours of eight p.m. and six a.m. on weekdays and Friday commencing at eight p.m. through and including seven a.m. on Saturday; Saturdays commencing at eight p.m. through and including seven a.m. on the next following Sunday and on each Sunday after the hour of eight p.m. Provided, however, when an unforeseen or unavoidable condition occurs during a construction project and the nature of the project necessitates that work in process be continued until a specific phase is completed, the contractor or owner shall be allowed to continue work after eight p.m. and to operate machinery and equipment necessary until completion of the specific work in progress can be brought to conclusion under conditions which will not jeopardize inspection acceptance or create undue financial hardships for the contractor or owner;

F. Noise sources associated with agricultural operations, provided such operations do not take place between the hours of eight p.m. and six a.m.;

G. All mechanical devices, apparatus or equipment which are utilized for the protection or salvage of agricultural crops during periods of adverse weather conditions or when the use of mobile noise sources is necessary for pest control;

H. Any activity, to the extent provisions of Chapter 65 of Title 42 of the United States Code, and Articles 3 and 3.5 of Chapter 4 of Division 9 of the Public Utilities Code of the State of California preempt local control of noise regulations and land use regulations related to noise control of airports and their surrounding geographical areas, any noise source associated with the construction, development, manufacture, maintenance, testing or operation of any aircraft engine, or of any weapons system or subsystems which are owned, operated or under the jurisdiction of the United States, or any other activity to the extent regulation thereof has been preempted by state or federal law or regulation;

I. Any noise sources associated with the maintenance and operation of aircraft or airports which are owned or operated by the United States.

J. Railroad activities. The operation of locomotives, rail cars, and facilities by a railroad that is regulated by the State Public Utilities Commission.

K. State or Federal Preexempted Activities. Any activity, to the extent the regulation of it has been preempted by state or federal law.

L. Public Health and Safety Activities. All transportation, flood control, and utility company maintenance and construction operation at any time on public rights-of-way, and those situations that may occur on private property deemed necessary to serve the best interest of the public and to protect the public's health and well-being, including debris and limb removal, removal of damaged poles and vehicles, removal of downed



wires, repairing traffic signals, repair of water hydrants and mains, gas lines, oil lines, and sewers, restoring electrical service, street sweeping, unplugging sewers, vacuuming catch basins, etc. The regular testing of motorized equipment and pumps shall not be exempt.

M. Solid Waste Collection. Noise sources associated with the authorized collection of solid waste (e.g., refuse and garbage).

N. Maintenance of Residential Real Property. Noise sources associated with the minor maintenance of residential real property, provided the activities take place between the hours of 7:00 a.m. and 10:00 p.m.

#### **6.32.110 Machinery, equipment, fans and air conditioning.**

It is unlawful for any person to operate any mechanical equipment, pump, fan, air conditioning apparatus, stationary pumps, stationary cooling towers, stationary compressors, similar mechanical devices, or any combination thereof in any manner so as to create any noise which would cause the maximum noise level to exceed a maximum limit of fifty-five dBA at any point at least one foot inside the property line of the affected residential property and three to five feet above ground level.

#### **6.32.120 Off-road vehicles.**

It is unlawful for any person to operate any motorcycle or recreational off-road vehicle within the City in such a manner that the noise level exceeds the exterior noise standards specified in Section 6.32.090.

#### **6.32.130 Radios, music playing devices, and televisions on publicly owned property.**

Notwithstanding any other provision of this Code and in addition thereto, it is unlawful for any person to permit or cause any noise, sound, music or program to be emitted from any radio, music playing device or television outdoors on or in any publicly owned property, park or place when such noise, sound, music or program is audible to a person of normal hearing sensitivity one hundred feet from said radio, music playing device or television.

A. As used herein, "a person of normal hearing sensitivity" means a person who has a hearing threshold level of between zero (0) decibels and twenty-five (25) decibels HL averaged over the frequencies 500, 1,000 and 2,000 Hertz.

B. Notwithstanding any other provision of this Code, any person violating this section shall be guilty of an infraction and upon conviction thereof, is punishable by a fine not exceeding fifty dollars for a first violation; a fine not exceeding one hundred dollars for a second violation of this section within one year; a fine not exceeding two hundred fifty dollars for each additional violation of this section within one year. A person who violates the provisions of this section shall be deemed to be guilty of a separate offense for each day, or portion thereof, during which the violation continues or is repeated.

C. Notwithstanding any other provision of this Code, no citation or notice to appear shall be issued or criminal complaint shall be filed for a violation of this section unless the offending party is first given a verbal or written notification of violation by any peace officer, public officer, park ranger or other person charged with enforcing this section and the offending party given an opportunity to correct said violation.

D. This section shall not apply to the use of radios, music playing devices or televisions in the course of an assembly or festival for which a license has been issued pursuant to Section 9.36.074 or a parade for which a permit has been issued pursuant to Section 10.32.020 or any other activity, assembly or function for which a permit or license has been duly issued pursuant to any provision of the Code.

**6.32.140 Prohibited activities.**

The following acts shall be a violation of this chapter:

A. Construction Noise. Operating or causing the operation of tools or equipment on private property used in alteration, construction, demolition, drilling or repair work daily between the hours of 7:00 p.m. and 7:00 a.m., so that the sound creates a noise disturbance across a residential property line, except for emergency work of public service utilities.

B. Loading and Unloading Activities. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or similar objects on private property between the hours of 10:00 p.m. and 7:00 a.m. in a manner to cause a noise disturbance.

C. Sweepers and Associated Equipment. Operating or allowing the operation of sweepers or associated sweeping equipment (e.g., blowers) on private property between the hours of 10:00 p.m. and 7:00 a.m. in, or adjacent to, a residential zoning district.

D. Places of Public Entertainment. Operating or allowing to be operated any loudspeaker, musical instrument, or other source of sound in any place of public entertainment that exceeds 95 dB(A) at any point normally occupied by a customer.

E. Stationary Nonemergency Signaling Devices. Sounding or allowing the sounding of an electronically amplified signal from a stationary bell, chime, siren, whistle, or similar devices intended for nonemergency purposes, from a private property for more than 10 consecutive seconds in any hourly period.

F. Public Nuisance Noise. Public nuisance noise is noise that is generally not associated with a particular land use but creates a nuisance situation by reason of its being disturbing, excessive, or offensive. Examples would include excessively loud noise from alarms, animals and fowl in nonagricultural districts, horns, musical instruments, stereos, music players, televisions, vehicle or motorboat repairs and testing, and similar noise as measured in subsection (B) of this section.

### **6.32.150 General noise regulations.**

Notwithstanding any other provisions of this chapter and in addition thereto, it is unlawful for any person to willfully make or continue or cause to be made or continued any loud, unnecessary or unusual noise which disturbs the peace and quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

The standards which shall be considered in determining whether a violation of the provisions of this section exists shall include, but not be limited to, the following:

- A. The sound level of the objectionable noise;
- B. The sound level of the ambient noise;
- C. The proximity of the noise to residential sleeping facilities;
- D. The nature and zoning of the area within which the noise emanates;
- E. The density of the inhabitation of the area within which the noise emanates;
- F. The time of day or night the noise occurs;
- G. The duration of the noise and its tonal informational or musical content;
- H. Whether the noise is continuous, recurrent or intermittent;
- I. Whether the noise is produced by a commercial or noncommercial activity.

#### 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.

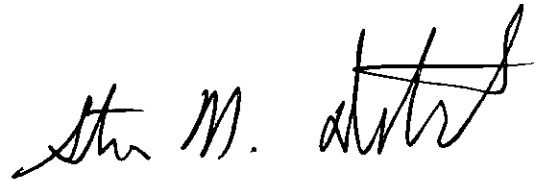
Section 6: Savings Clause

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 affect; 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 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:** 9-2011  
**INTRODUCED:** April 27, 2011  
**ADOPTED:** May 25, 2011  
**EFFECTIVE:** June 24, 2011



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

ATTEST:

  
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:

  
SUSAN COCHRAN, CITY ATTORNEY

Date signed: May 31, 2011

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 9-2011**

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 April 27, 2011 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on May 25, 2011 by the following vote:*


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

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

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

**ABSENT:**    **COUNCILMEMBERS:**     *None*

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

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