

## ORDINANCE NO. 10-2011

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING PORTIONS OF THE ELK GROVE MUNICIPAL CODE TITLE 4

**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 clarify the application process and require findings for the determination of public convenience or necessity for alcohol licenses.

**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 4 of the City of Elk Grove Municipal Code text to clarify the application process and to require findings for the determination of public convenience or necessity for alcohol licenses.

#### 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 clarify the application process and require findings for the determination of public convenience or necessity for alcohol licenses. 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 4 clarify the application process and require findings for the determination of public convenience or necessity for alcohol licenses.

### Section 3. Amendments to Title 4, Article 5 – Public Convenience Determination for Alcohol Licenses

Elk Grove Municipal Code Chapter 4.54 is amended as follows:

A. Sections 4.54.500, 4.54.510, and 4.54.520 are repealed and replaced as follows:

#### **4.54.500 Application for determination of public convenience.**

Any person whose application for any alcohol license is subject to a determination of public convenience or necessity by the City pursuant to Section 23958.4 of the Business and Professions Code shall submit an application to the City for a determination whether or not the public convenience and necessity would be served by the granting of such license. Such application shall be made on forms approved by the Planning Director and shall contain such information as required by him or her. At a minimum, any application shall contain that information required by EGMC Title 23 (Zoning). The application shall be accompanied by payment of a fee to be established by resolution of the City Council calculated to offset the costs of the review and determination. The Public convenience or necessity application shall include a written statement from the applicant demonstrating, by substantial evidence, that the public convenience or necessity would be served by the issuance of a license from ABC.

#### **4.54.510 Review of applications.**

A. Upon receipt of such request for a determination of public convenience or necessity or notice of an application for an alcohol license from the Department of Alcoholic Beverage Control (“ABC”), the Planning Director shall refer such application to the departments and advisory bodies of the City for review and comment. The Planning Director may request from the applicant any additional pertinent information regarding the applicant, the proposed license, or the applicant premises. All departments shall submit their findings, comments, or recommendations to the Planning Director.

B. At a minimum, the Chief of Police shall determine whether there are existing problems

regarding criminal activity at the applicant premises or in the area surrounding the applicant premises. If the Chief of Police determines that there are such existing problems with criminal activity, he shall report such problems, in writing, to the Planning Director. In making this determination, the Chief of Police shall consider the following factors such as the incidence of:

1. Loitering and vandalism;
2. Public drinking and drunkenness;
3. Illegal drug usage and sales; and
4. Theft and violent behavior.

C. At a minimum, the Planning Department shall determine whether the applicant premises are within the appropriate land use designations and have received all required entitlements to permit the type of sale of alcoholic beverages described in the application.

D. At a minimum, the Code Enforcement Department shall investigate whether there is any pending code enforcement action regarding the applicant premises. If it is discovered that there is a pending or on-going code enforcement action involving the applicant premises, no PCN approval may be made by the City until the investigation is completed and all code violations are resolved.

E. At a minimum, the City personnel responsible for business licenses shall determine whether any required business license has been issued and is in good standing for the applicant premises. If the City personnel determine that a license is required and has not been issued or is not in good standing, they shall report such, in writing, to the Planning Director.

F. At a minimum, the Building Official shall determine whether there are any building code violations at the applicant premises and shall report such, in writing, to the Planning Director.

G. The Planning Director shall also determine whether any protests were lodged with the ABC in relation to the applicant's request for a license with that body.

H. The written reports required by this section are to be received by the Planning Director within fifteen (15) days from the date the application is forwarded to such departments and advisory bodies.

#### **4.54.520 Hearing required.**

A. Proceedings to determine the public convenience or necessity of issuing any alcohol license subject to Section 23958.4(b)(2) of the Business and Professions Code shall be scheduled before the City Council. Notice of the public hearing shall be given in the

same manner as required by EGMC Section 23.14.04.

B. The hearing shall be held without regard to the technical rules of evidence and all persons desiring to appear shall be permitted to do so. The Planning Director or his or her designee shall present the results of all written reports from the City departments and advisory bodies. The alcohol license applicant shall be required to demonstrate, by substantial evidence, that the public convenience or necessity will be served by the issuance of a license.

C. In all cases in which an applicant applies for a PCN determination, the designated approving authority may exercise its discretion to grant or deny issuance of a letter of public convenience or necessity. In exercising its discretion, the approving authority shall consider the following factors:

1. Proximity and number of other retail outlets selling alcohol;
2. Proximity of the retail outlets to schools, playgrounds, and other facilities serving young people;
3. Proximity of the retail outlet to residential neighborhoods; and
4. Whether the retail outlet provides: (a) a wide range of desirable goods and services; or (b) a unique type of goods or services.

D. Findings. At the conclusion of the hearing, the designated approving authority shall determine, within the limits of Section 23958.4(b)(2) of the Business and Professions Code, whether the public convenience or necessity will be served by the issuance of a license for the alcohol sales at the applicant premises. The determination shall be reduced to writing by the Planning Director and shall be provided by mail upon the alcohol license applicant and ABC. A determination of public convenience or necessity shall only be issued when the City Council makes all of the following findings:

1. The proposed use is compatible with neighborhood character; and
2. The proposed use will be of benefit to the neighborhood.

#### 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.

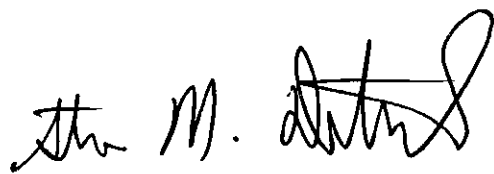
Section 6: Savings Clause

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:** 10-2011  
**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. 10-2011**

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:*

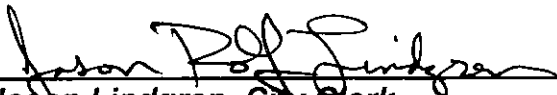
**AYES :**        **COUNCILMEMBERS:**     *Detrick, Cooper, Davis, Hume, Scherman*

**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**