

ORDINANCE NO. 19-2011

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE EXTENDING A MORATORIUM ON LARGE RETAIL ESTABLISHMENTS IN EXCESS OF 50,000 SQUARE FEET, SPECIFICALLY INCLUDING GENERAL RETAIL, AND GROCERY / SUPERMARKET USES

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

Section 1: Purpose and Authority

The purpose of this urgency ordinance is to create an immediate moratorium on land use approvals and building permits in all zoning districts for general retail, and grocery store / supermarket uses in excess of 50,000 square feet.

The City of Elk Grove has the authority to adopt this ordinance pursuant to California Constitution Article XI, section 7 and California Government Code Section 65858.

Section 2: Findings.

On May 25, 2011, the City Council of the City of Elk Grove adopted Ordinance No. 8-2011 ("Ordinance"). As adopted, the Ordinance makes changes to various uses that would be "allowed by right". When a use is "allowed by right" it is not subject to a discretionary approval that could impose conditions on the use (e.g., conditional use permit) and may only require application for, and issuance of other entitlements or permits which do not address use, such as design review, building permit(s) and business license.

Included in the "allowed by right" uses were the following:

"Retail, general" means the retail sales of merchandise not specifically listed under another use classification. This classification includes department stores; drug stores; furniture, furnishings, and appliance stores; dry goods; clothing stores; fabric and sewing supplies; home improvement supplies; florists (except that nurseries are separately defined); and businesses retailing goods such as the following: toys, hobby materials, handcrafted items, jewelry, cameras and electronic equipment, audio and video sales and rental, sporting goods, kitchen utensils, art supplies, and similar activities. This definition includes stores of any size where the total floor area dedicated to non-taxable goods is less than ten percent, except where separately defined as a "Retail, Discount Store" in Section 23.26.015(R).

"Grocery store/supermarket" means a retail business where the majority of the floor area open to the public is occupied by food products packaged for preparation and consumption away from the site of the store. These full-service businesses do not typically have limited hours of operation. See separate but

related listings for “neighborhood market” and “convenience stores.” Such establishments are between 15,001 and 99,999 square feet in size and devote more than ten percent of the total floor area to non-taxable goods. Grocery stores include, but are not limited to, establishments such as Super Wal-Mart, Target, and Kmart that meet the square footage and nontaxable goods requirements of this section.

If these certain large retailers are allowed by right, the City of Elk Grove will be unable to protect the public peace, health and morals in that the City, whether acting through the Planning Commission or the City Council, may be unable to (1) review the environmental impacts of such uses, or conduct an analysis of economic and social impacts and (2) impose conditions on such projects to ameliorate the potential conflicts between large retail uses and other zoning designations, such as residential.

Section 3: Moratorium.

There shall be an interim moratorium on land use approvals and building permits in all zoning districts for an immediate moratorium on land use approvals and building permits in all zoning districts for “large retail establishments”.

As used in this ordinance, a “large retail establishment” shall mean any of the following uses as described in Chapter 23.26 of Title 23 of the Municipal Code which are equal to or in excess of 50,000 square feet:

“Retail, general” means the retail sales of merchandise not specifically listed under another use classification. This classification includes department stores; drug stores; furniture, furnishings, and appliance stores; dry goods; clothing stores; fabric and sewing supplies; home improvement supplies; florists (except that nurseries are separately defined); and businesses retailing goods such as the following: toys, hobby materials, handcrafted items, jewelry, cameras and electronic equipment, audio and video sales and rental, sporting goods, kitchen utensils, art supplies, and similar activities. This definition includes stores of any size where the total floor area dedicated to non-taxable goods is less than ten percent, except where separately defined as a “Retail, Discount Store” in Section 23.26.015R.

“Grocery store / supermarket” means a retail business where the majority of the floor area open to the public is occupied by food products packaged for preparation and consumption away from the site of the store. These full-service businesses do not typically have limited hours of operation. See separate but related listings for “neighborhood market” and “convenience stores.” Such establishments are between 15,001 and 99,999 square feet in size and devote more than ten percent of the total floor area to non-taxable goods. Grocery stores include, but are not limited to, establishments such as Super Wal-Mart, Target, and Kmart that meet the square footage and nontaxable goods requirements of this section.

Based on the findings contained in this ordinance, no permit, license, or other applicable entitlement for use, which has as its result the final approval or allowance of a large retail establishment as defined above within the City of Elk Grove, shall be granted or approved by any employee, department, or commission of the City for a period of ninety (90) days immediately following the effective date of this ordinance unless repealed or extended by a later enacted ordinance.

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.

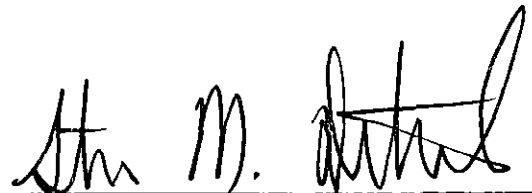
Section 5: Severability.

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: Effective Date and Publication

This Ordinance 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: 19-2011
ADOPTED: July 27, 2011
EFFECTIVE: July 27, 2011

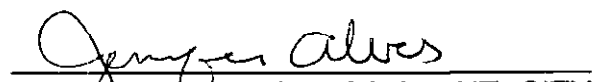


STEVEN M. DETRICK, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JENNIFER ALVES, ASSISTANT CITY
ATTORNEY

Date signed: August 1, 2011

CERTIFICATION
ELK GROVE CITY COUNCIL URGENCY ORDINANCE NO. 19-2011

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 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 regular meeting of said Council held on July 27, 2011 by the following vote:

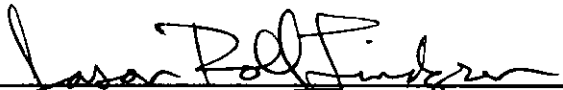
AYES : **COUNCILMEMBERS:** *Detrick, Cooper, Davis, Hume, Scherman*

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