

ORDINANCE NO. 18-2012

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING PORTIONS OF ELK GROVE MUNICIPAL CODE TITLE 23 AND TITLE 4 RELATED TO MOBILE FOOD VENDORS

WHEREAS, the proposed changes would expand and clarify the regulations for mobile food vendors and ice cream trucks in the City; 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.

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 Elk Grove Municipal Code (EGMC) Title 23 (Zoning) and Title 4 (Business Regulation) to expand and clarify the regulations for mobile food vendors and ice cream trucks in the City. The proposed regulations would allow mobile food vendors to be stationary for longer periods of time than currently provided. The regulations would also require mobile food vendors to be located a minimum of 350 feet from any building-enclosed restaurant when operating in the public right-of-way unless special approval is granted, and would impose certain authorization and public safety requirements for mobile food vendors operating on private property within 350 feet of another building-enclosed restaurant. The City Council finds that mobile food vendors are a unique type of business, which can result in large congregations of consumers at particular locations and times throughout the day, such as breakfast, lunch and dinner times, and which congregation can be exacerbated if the mobile food vendors are parked and operate without restrictions in close proximity to other restaurants and eating establishments, thus creating a traffic and pedestrian hazard. Reasonable regulations of the time, place and manner of mobile food vendors, as set forth herein, are appropriate.

Section 2: Findings.

General Plan Consistency

Finding: The proposed amendments to Title 23 and Title 4 are consistent with the General Plan goals, policies, and implementation programs.

Evidence: The proposed amendments related to mobile food vendors are consistent with *General Plan Policy ED-6* to "promote policies, programs and services that support a diverse local economy providing a range of goods and services, support existing local businesses, and that encourage new, independent business ventures." The proposed

amendments would support existing local businesses by allowing local mobile food vendors to legally operate in the City for a longer period of time and in more locations. The amendments are also consistent with General Plan Guiding Goal #1 (a high quality of life for all residents); Guiding Goal 2-1 (a business community which includes a diversity of industrial and office uses, locally and regionally oriented retail and services...); Guiding Goal 2-3 (A positive environment for business retention and expansion); and Guiding Goal 2-4 (Creation of Elk Grove as a desirable place to establish a business).

Zoning Amendment (Text)

Finding: The proposed three (3) hour time limit provides for increased public safety.

Evidence: Mobile food vending for long periods of time may result in illegal parking and large crowds of customers which could impede the free flow of traffic, distract vehicle operators from observing traffic regulations, obstruct the view of pedestrians and of vehicle operators, or encourage pedestrians who wish to inquire about services to cross the street in an unsafe and illegal manner.

Section 3. Amendments to Chapter 4.10 – Special Business Licenses and Employee Permits.

EGMC Chapter 4.10 is amended as follows:

A. Section 4.10.005 is amended as follows:

4.10.005 License required.

A. No person shall, unless under and by authority of a valid unexpired and unrevoked special business license, conduct or operate within the City, whether singularly or in connection with another type of enterprise, the following:

...

21. Mobile food vendors;

...

B. Article IIIId is amended as follows:

Article IIIId. Mobile Food Vendors

4.10.400 License required.

No person shall operate as a Mobile Food Vendor or as an Ice Cream Truck vendor, as defined in EGMC Section 23.100.020, within the City for the purpose of selling food, unless under and by authority of a valid, unexpired and unrevoked special business license authorizing such activity issued pursuant to the provisions of this chapter and this article.

Licensees shall comply with the development and operational standards contained in EGMC Chapter 23.85.

4.10.405 Definition – “Mobile Food Vendor”

Mobile Food Vendor is defined in EGMC Section 23.100.020(M).

4.10.408 Definition - "Ice Cream Truck"

Ice Cream Truck is defined in EGMC Section 23.100.020(I).

4.10.410 Employee permit required.

No person shall, as an employee or other person performing services for an owner or proprietor, engage in mobile food vending without possessing a valid, unexpired and unrevoked employee permit issued pursuant to the provisions of this chapter and this article.

4.10.415 Application for permit.

In addition to the matters prescribed by EGMC Section 4.10.080, an application for an employee permit to provide services identified by EGMC Section 4.10.400 shall contain a list of each conviction of the applicant, plea of guilty or plea of *nolo contendere*. The list shall, for each such conviction, set forth the date of arrest, the offense charged and the offense of which the applicant was convicted.

4.10.420 Issuance of permit.

Upon receipt of an application for an employee permit to perform services as a Mobile Food Vendor or Ice Cream Truck, the Chief of Police shall conduct such investigation pursuant to EGMC Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the permit unless he or she finds, pursuant to EGMC Section 4.10.090, any of the following:

...

Section 4. Amendments to Chapter 4.54 – Street Businesses.

EGMC Chapter 4.54 is amended as follows:

A. Section 4.54.015 is amended as follows:

4.54.015 Exceptions.

The provisions of this article shall not be applicable to or deemed to prohibit:

- A. The placement of newspaper racks upon sidewalks; or
- B. The peddling or hawking of merchandise by the taking of orders or delivering of commodities from any vehicle which is parked pursuant to EGMC Section 23.85.050.

B. Section 4.54.020 is repealed as follows:

4.54.020 REPEALED.

Section 5. New Chapter 23.85 – Mobile Food Vendors.

A. A new Chapter 23.85 shall be added as follows:

Chapter 23.85

MOBILE FOOD VENDORS

Sections:

- 23.85.010 Purpose.
- 23.85.020 Definitions.
- 23.85.030 Permit requirements.
- 23.85.040 Exemptions.
- 23.85.050 General development and operational standards for Mobile Food Vendors.
- 23.85.060 Additional Operational Standards for Ice Cream Trucks.

23.85.010 Purpose.

It is the purpose of this section to preserve the peace, safety, and welfare of the City and its residents by:

- A. Providing clear and concise regulations governing Mobile Food Vendors to prevent safety, traffic, and health hazards;
- B. Preventing the unregulated proliferation of too many vendors near one location, thus negatively impacting traffic and pedestrian safety; and
- C. Establishing standards to ensure that Mobile Food Vendors within permitted zone districts are compatible with their surroundings and aesthetics of the City.

23.85.020 Definitions.

Terms unique to the chapter are listed in EGMC Chapter 23.100 (General Definitions).

23.85.030 Permit Requirements.

Mobile food vendors are permitted in all zoning districts, subject to the general development and operational standards in this chapter. Mobile Food Vendors and Ice Cream Trucks shall acquire any necessary business license and/or special business license as required by Title 4 (Business Regulation) of this municipal code.

23.85.040 Exemptions.

The following are exempt from the requirements of this chapter as specified below, but still must satisfy all other applicable permit requirements (e.g., business license, County health permit, encroachment permit, etc).

A. Mobile Food Vendors conducted in connection with:

1. the operations of a state certified farmers' market;
2. an event authorized by a street use permit, temporary use permit or other permit or entitlement issued by the City, such as an authorized street fair;
3. an event at a school facility, assembly use facility, or recreational facility if the vendor is in partnership with the organization conducting the event and is located on the site of the event (i.e., not in the public right-of-way);
4. a public park with Park Manager approval; or
5. a private event or party in a Residential or Agricultural zone located either on the site of the event or in the public right-of-way with no retail sale to the general public.

23.85.050 General development and operational standards for Mobile Food Vendors.

Unless otherwise exempt, the following general and operational standards shall apply to all Mobile Food Vendors (including Ice Cream Trucks):

A. All Mobile Food Vendors shall obtain all required permits from the City (e.g. General and Special Business License), Sacramento County, and the State, if applicable.

B. All Mobile Food Vendors shall comply with the California Vehicle Code and California Health and Safety Code.

C. Mobile Food Vendors and Ice Cream Trucks may not be parked or stored on any residential property or local residential street. Additionally, no trailer used for commercial purposes shall be parked or stored in any residential zone except for loading or unloading services.

D. Hours of operation shall be no earlier than seven o'clock (7:00) A.M. and no later than ten o'clock (10:00) P.M. and no overnight parking shall be permitted.

E. Food sales (not including set-up and take-down) shall be limited to three (3) hours at a single location in a thirty six (36) hour period, unless otherwise authorized by permit or entitlement issued by the City, including but not limited to a conditional use permit, temporary use permit, street permit, or similar. For purposes of this section, "a single location" shall mean a new location within a five hundred (500' 0") foot radius of the original location.

F. Mobile Food Vendors shall not operate in an unsafe manner, including but not limited to, impeding on or off-site vehicle circulation and obstructing the view of pedestrians by motorists.

G. Operations on Private Property.

1. Notwithstanding any other provision of this Chapter, Mobile Food Vendors may operate on private property provided that, prior to conducting such business operations, they have the authorization from the property owner upon which the operations are occurring, and provided further that they have the authorization from any other building-enclosed restaurant located within three hundred fifty (350') foot radius of the operations, as measured from the primary customer entrance of the restaurant, and provided further that neither such restaurant, nor the City, have articulated a public safety concern due to traffic, parking, or otherwise, arising out of such Mobile Food Vendor's operations. Vendor must be able to demonstrate property owner authorization as provided in this section.

2. Mobile Food Vendor shall not use or permit use of parking spaces on the site (e.g., customer queuing, tables, chairs, portable restrooms, signs, and any other ancillary equipment) if doing so will adversely affect the required off street parking available for the primary use(s) of the site during peak periods as determined by the Planning Director.

3. Vendor shall have adequate lighting to ensure customer safety either on the vehicle or at the location of the vehicle during business hours.

H. Operations in Public Right-of-Way.

1. Mobile Food Vendors shall not operate within three hundred fifty (350' 0") feet of any building-enclosed restaurant as measured from the primary customer entrance of the restaurant, except when the Mobile Food Vendor has written authorization from all building-enclosed restaurants that are within that same three hundred fifty (350' 0") foot radius.
2. Mobile Food Vendors shall not stop, stand, or park in any clear vision triangle or no parking zone.
3. Mobile Food Vendors shall not operate within three hundred fifty (350' 0") feet of a public or private school in which children at or below the twelfth (12th) grade level are enrolled, and which is in session.
4. Mobile Food Vendor shall maintain a clear path of travel on the sidewalk pursuant to the Americans with Disabilities Act (ADA) free of customer queuing, signage, and/or all portions of the vehicle for the clear movement of pedestrians.

I. Residential and Agricultural Zones. Mobile Food Vendors shall not park longer than required in order to complete a single transaction adjacent to the premises or residences of the customer.

23.85.060 Additional Operational Standards for Ice Cream Trucks.

Standards for Ice Cream Trucks shall be governed under California Vehicle Code Section 22456. In addition, development and operational standards in EGMC Section 23.85.050 shall apply to Ice Cream Trucks. To the extent that 23.85.050 is more restrictive it shall supersede the requirements of Vehicle Code Section 22456.

Section 6. Revisions to Chapter 23.86 – Outdoor Sales, Display, Storage, and Seating.

EGMC Chapter 23.86 is amended as follows:

A. Section 23.86.050 shall be repealed as follows:

23.86.050 REPEALED.

Section 7. Amendments to Chapter 23.100 – General Definitions.

EGMC Chapter 23.100 is amended as follows:

A. Section 23.100.020(I)(1) is added and the Section is renumbered accordingly as follows:

I. "I" Definitions.

...

1. "Ice Cream Truck" means, as provided in Section 22456(c) of the California Vehicle Code, a motor vehicle engaged in the curbside vending or sale of frozen or refrigerated desserts, confections, or novelties commonly known as ice cream, or prepackaged candies, prepackaged snack foods, or soft drinks, primarily intended for the sale to children under twelve (12) years of age.

...

B. Section 23.100.020(M)(5) is added and the Section is renumbered accordingly as follows:

M. "M" Definitions.

...

5. "Mobile Food Vendor" means any vehicle as defined in Section 670 of the California Vehicle Code, which is equipped and used for retail sales of prepared, prepackaged, or unprepared food or food stuffs of any kind that parks at one or more locations within the City. A mobile food vehicle shall also include any trailer or wagon equipped and used as described in this paragraph and pulled by a vehicle. Accessory retail is permitted. This definition does not include Ice Cream Trucks. "Ice Cream Truck" is defined in subsection (I) of this section.

...

Section 8: 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 9: 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 10: 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 11: 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: 18-2012
INTRODUCED: August 22, 2012
ADOPTED: September 12, 2012
EFFECTIVE: October 12, 2012




JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



JASON LINDGREN, CITY CLERK



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: September 27, 2012

CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 18-2012

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 August 22, 2012 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 12, 2012 by the following vote:


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

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

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

ABSENT: **COUNCILMEMBERS:** **Hume**

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


Jason Lindgren, City Clerk
City of Elk Grove, California