

ORDINANCE NO. 23-2007

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AMENDING THE CITY OF ELK GROVE ZONING CODE (ARTICLE 23 OF THE ELK
GROVE MUNICIPAL CODE) PERTAINING TO
BIG BOX RETAIL/DISCOUNT SUPERSTORES**

WHEREAS, General Plan policies promote and encourage vital neighborhood commercial districts that are evenly distributed throughout the City so that residents are able to meet their basic daily shopping needs at neighborhood shopping centers; and

WHEREAS, Section 65860 of the California Government Code requires that a zoning ordinance be consistent with the City's General Plan; and

WHEREAS, the California Government Code also provides that in order for the ordinance to be consistent with the General Plan, the various land uses authorized by the ordinance should be compatible with the objectives, policies, general land uses, and programs specified in the General Plan; and

WHEREAS, given the changes in the retail sector and the evolution toward ever-bigger stores, it is necessary that the zoning ordinance be amended to regulate larger retail establishments appropriately and to afford them adequate review; and

WHEREAS, there is an emerging national trend toward increasing the size of retail outlets and the diversity of products offered at such large-scale discount stores and discount superstores; and

WHEREAS, large-scale discount superstores typically combine discount general merchandise and full-service grocery sales under one roof, and, while similar in size to other large-scale retailers and to wholesale membership clubs, such discount superstores tend to generate more intensive impacts; and.

WHEREAS, the establishment of discount superstores in Elk Grove is likely to negatively impact the vitality and economic viability of the City's neighborhood commercial centers by drawing sales away from traditional supermarkets located in these centers; and

WHEREAS, industry and academic studies indicate discount superstores rarely add retail services not currently provided within a community, and that the majority of sales growth at a discount supercenter comes from a direct shift of dollars from existing retailers within a community, primarily from grocery stores; and

WHEREAS, discount superstores compete directly with existing grocery stores that anchor neighborhood-serving commercial centers; and

WHEREAS, smaller stores within a neighborhood center rely upon the foot traffic generated by the grocery store for their existence and in neighborhood centers where the grocery store closes, vacancy rates typically increase and deterioration takes place in the remaining center; and

WHEREAS, discount superstores adversely affect the viability of small-scale, pedestrian-friendly neighborhood commercial areas, contributing to urban decay in these areas; and

WHEREAS, market studies conclude that a grocery store typically supports a population of approximately 10,000 people, and given the City's current population of over 136,300, there are currently adequate grocery stores to support the market for groceries; and

WHEREAS, the proposed zoning ordinance is intended to preserve the City's existing neighborhood-serving shopping centers; and

WHEREAS, the City's current distribution of neighborhood shopping centers provide convenient shopping and employment in close proximity to most residential neighborhoods in Elk Grove; and

WHEREAS, this distribution of shopping and employment creates a land use pattern that reduces the need for vehicle trips and encourages walking and biking for shopping, services, and employment; and

WHEREAS, a significant concern with discount superstores is that they combine neighborhood-serving retail in a more remote, regional-serving retail center, which would result in the decline of neighborhood-serving grocery stores by consolidating their activity in a single, outlying location; and

WHEREAS, the potentially remote location of discount superstores means that local residents are forced to drive further for basic services such as groceries, and are forced to take longer and more frequent traffic trips to the regional commercial center to satisfy basic everyday needs, increasing overall traffic and overburdening streets that were not designed to accommodate such traffic; and

WHEREAS, discount superstores have particularly high transportation impacts because of the frequency of grocery trips combined with the overall scale of the establishments, since a typical household makes 2-3 grocery-related trips weekly; and

WHEREAS, figures from the Institute of Transportation Engineers' Trip Generation manual, a compilation of traffic generation studies, shows that discount superstores are likely to generate more traffic on a daily or weekly basis than other types of large stores; and

WHEREAS, large-scale retail stores of more than 100,000 square feet in floor area that sell a large volume and variety of non-taxable grocery and pharmacy items in a supermarket format significantly increase traffic volumes, strain the existing street network, promote traffic intrusion into nearby neighborhoods, discourage pedestrian travel, and otherwise aggravate traffic congestion; and

WHEREAS, the proposed amendments to the zoning ordinance, by prohibiting large format discount superstores, will prevent the negative transportation, related air quality impacts, and other associated impacts that establishment of such stores is likely to have; and

WHEREAS, numerous local jurisdictions in the country and the State of California, taking all of the above considerations in mind, have enacted ordinances that either completely prohibit new retail stores over a certain size or require special impact studies; and

WHEREAS, California jurisdictions that have recently enacted such regulations to help sustain the vitality of small-scale, more pedestrian-oriented neighborhood shopping districts include the Cities of Santa Maria, San Luis Obispo, Arroyo Grande, Oakland, Martinez, Sacramento, and Turlock; and

WHEREAS, the proposed amendments, by prohibiting large-scale combined retail and grocery stores, can serve as a means for protecting Elk Grove's neighborhood-serving shopping centers and perpetuate the land use pattern established by the Elk Grove General Plan and Zoning Code; and

WHEREAS, the proposed new regulations would not affect large retail establishments that do not include a sizable grocery component ("discount stores"); and

WHEREAS, the proposed regulations do not prohibit membership clubs that typically sell in bulk to both businesses and individual households ("discount clubs"); and

WHEREAS, discount superstore activities are distinguished from the above-mentioned large-scale retailers because they have the potential to create particularly high impacts on traffic and transportation, and on the vitality of neighborhood commercial districts; and

WHEREAS, the proposed amendments are intended to protect grocery stores in existing neighborhood centers to prevent a significant change in land use, employment and traffic patterns throughout the city; and

WHEREAS, the proposed regulations will place stricter controls on the establishment of, or conversion to large-scale combined retail and grocery stores and would prevent a large-scale store with potential negative environmental impacts from being established in Elk Grove, but will not itself generate environmental impacts or necessitate environmental review; and

WHEREAS, the City has broad land use and police power to regulate and organize development within its boundaries as a means of serving the general welfare; and

WHEREAS, the adoption of these regulations do not approve any development project nor do they disturb the physical environment either directly or indirectly as the regulations modify the limitations of land use by requiring a conditional use permit for large-scale retail business stores that are between 100,000 and 149,999 square feet and that devote more than ten percent of that floor area to the sale of non-taxable (foot/grocery) merchandise and by prohibiting large-scale retail business stores that exceed 150,000 square feet of gross floor area from devoting more than ten percent of that floor area to the sale of non-taxable (food/grocery) merchandise; and

WHEREAS, the Planning Commission held a public hearing at a regular meeting on June 7, 2007, for which a public notice was published in accordance with applicable state and local law, and provided a recommendation to the Elk Grove City Council as to whether to amend certain sections of the Elk Grove Municipal Code to establish regulations for big box retailers; and

WHEREAS, the Elk Grove City Council held a public hearing at a regular meeting on June 27, 2007, for which a public notice was published in accordance with applicable state and local law; and

WHEREAS, from the facts and testimony presented at the noticed public hearing held on June 27, 2007, the Elk Grove City Council directed staff to revise the ordinance according to Council direction and present such revisions at the July 11, 2007 City Council meeting; and

WHEREAS, from the facts and testimony presented at the continued public hearing held on July 11, 2007, the Elk Grove City Council found and determined as follows:

1. That the proposed amendments to the Elk Grove Municipal Code are consistent with the General Plan;
2. That the proposed amendments to the Elk Grove Municipal Code will implement the goals, objectives, and policies of the General Plan;
3. That the proposed amendments are consistent with the purposes of the Zoning Ordinance; and
4. That the proposed amendments to the Elk Grove Municipal Code are reasonably related to the public interest, and that public necessity, convenience and general welfare support the proposed amendments.

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

Section 1: Action

The City Council hereby amends the City of Elk Grove Zoning as set forth below.

Chapter 23.32 Commercial Zoning Districts

Table 23.32-1 Allowed Uses and Permit Requirements for Commercial Zoning Districts

Land Use	CUP = Conditional Use Permit Required						N = Not Permitted
	Permit by Commercial Zoning District						Specific Use Regulations
	LC	GC	SC	AC	TC	C-O	
Retail, Service, and Office Listings							
Convenience Stores	P ⁹	P	P	N	P	N	
Grocery Stores/ Supermarkets	P	P	P	N	P	N	
Neighborhood Market ⁹	P	P	P	N	CUP	N	
Retail, Discount Stores ¹³	N	CUP	CUP	N	N	N	Chapters 23.74, 23.86
Retail, Discount Superstores ^{13, 14}	N	CUP	CUP	N	N	N	Chapters 23.74, 23.86
Retail, Large-format Discount Superstores ¹³	N	N	N	N	N	N	Chapters 23.74, 23.86
Retail, General ¹³	P	P	P	N	P	N	Chapters 23.74, 23.86
Retail, Discount Warehouse/Club	N	N	CUP	N	CUP	N	Chapters 23.74, 23.86

Notes:

- 9. Hours of operation are limited to a maximum of 18 hours per day.
- 13. All activities occur within a completely enclosed building or within a fenced or otherwise delineated area (see City adopted Design Guidelines) directly adjacent to the building, within the property lines.
- 14. Upon submittal and acceptance of an application for this use listing, and in addition to all other requirements of this Title relating to applications, the following special studies and analyses shall be prepared by the City or by a qualified entity or consultant selected and retained by the City, the cost of which shall be an expense of the applicant. The studies shall not be prepared by or under the direction of the applicant. These studies shall be considered by the Designated Approving Authority as part of the review of the proposed use. These studies include:
 - A. A Community Impact Analysis, which shall analyze the project design and compatibility of the proposed use with the surrounding neighborhood and the community as a whole;
 - B. An Economic/Fiscal Impact Analysis, which shall analyze:
 - i. The potential economic and fiscal impacts of the proposed use, both in terms of sales tax and impact on existing businesses in the community;

- ii. Whether the proposed superstore will result in a net increase or decrease of jobs in the City, segregated by types of jobs; and
 - iii. The effects of the proposed superstore on the retail sales in the City and whether there will be a net increase or decrease in net retail sales in the City.
- C. A Crime Analysis, which shall analyze the potential impact of the proposed use on existing police services in the City;
- D. An Urban Decay Analysis as required for preparation of the Environmental Impact Report (EIR) under the California Environmental Quality Act, which evaluates the extent to which the proposed use would have competitive impacts on existing retail facilities in the City and thus would generate urban decay and a physical deterioration of existing retail centers in the City. In instances where an EIR is not required, the Urban Decay Analysis shall be prepared as part of the review of the Conditional Use Permit application.

Chapter 23.74 *Big-Box Retail*

23.74.010 *Purpose*

The following design standards are intended to ensure that large retail development is compatible with its surrounding area, integrates into the natural and built environment, efficiently connects to a multi-modal transportation system, and contributes to the unique character of Elk Grove.

23.74.020 *Applicability*

The development and design standards contained within this section apply to all new retail establishments with single tenant space of 50,000 gross square feet or greater. Existing large retail establishments of said square footage or larger will comply with these standards if the proposed renovations or improvements exceed 50 percent of the market value. Allowed retail uses shall be consistent with the allowed use provisions for commercial districts in Article III and corresponding definitions in Article VI. These design standards supplement the applicable standards in Articles III and IV of this Zoning Code.

Chapter 23.98 *Definitions*

Section 23.98.030 Definitions A-Z

Convenience Stores. Easy access retail stores of 5,000 square feet or less in gross floor area, which carry a range of merchandise oriented to convenience and travelers' shopping needs. These stores may be part of a service station or an independent facility. Also see "Neighborhood Market" and "Grocery Store/Supermarket" for larger stores or stores oriented towards the daily shopping needs of residents.

Grocery Stores/Supermarket. 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 Store."

Neighborhood Market. A pedestrian-oriented grocery/specialty market store offering food products packaged for preparation and consumption away from the site of the store and oriented to the daily shopping needs of surrounding residential areas. Neighborhood markets are less than 15,000 square feet in size and operate less than 18 hours per day. For larger stores, see “Grocery Store/Supermarket.” Neighborhood markets may include deli or beverage tasting facilities that are ancillary to the market/grocery portion of the use.

Non-taxable Merchandise. Products, commodities, or items the sale of which is not subject to California State sales tax.

Retail, Discount Stores. Stores with off-street parking that usually offer a variety of customer services, centralized cashing, and a wide range of products. They usually maintain long store hours seven days a week. The stores are often the only ones on the site, but they can also be found in mutual operation with a related or unrelated garden center or service station. Discount stores are also sometimes found as separate parcels within a retail complex with their own dedicated parking. This use listing includes Big-Box retail uses as defined and regulated in Chapter 23.74. There is no limit on the size of “Discount Stores,” provided that they devote less than ten percent of the total sales floor area to the sale of non-taxable merchandise. Also see Retail, Discount Superstores and Retail, Large-format Discount Superstores.

Retail, Discount Superstore. A store that is similar to a “Discount Store,” except that they range in size from 100,000 to 149,999 square feet and devote at least ten percent of the total sales floor area to the sale of non-taxable merchandise. These stores usually offer a variety of customer services, centralized cashing, and wide range of products. They usually maintain long store hours seven days a week. The stores are often the only ones on the site, but they can also be found in mutual operation with a related or unrelated garden center or service station. Discount superstores are also sometimes found as separate parcels within a retail complex with their own dedicated parking. This use listing includes Big-Box retail uses as defined and regulated in Chapter 23.74. Also see Retail, Discount Stores, Retail and Retail, Large-format Discount Superstores.

Retail, Large-format Discount Superstore. A store that is similar to a “Discount Store,” except that they are 150,000 square feet in size or larger and devote at least ten percent of the total sales floor area to the sale of non-taxable merchandise. These stores usually offer a variety of customer services, centralized cashing, and wide range of products. They may also contain a full service grocery department under the same roof that shares entrances and exits with the discount store area. They usually maintain long store hours seven days a week. The stores are often the only ones on the site, but they can also be found in mutual operation with a related or unrelated garden center or service station. Discount superstores are also sometimes found as separate parcels

within a retail complex with their own dedicated parking. This use listing includes Big-Box retail uses as defined and regulated in Chapter 23.74. Also see Retail, Discount Stores and Retail, Discount Superstores.

Retail – General. Stores and shops selling multiple lines of merchandise. These stores and lines of merchandise include: art galleries, artists' supplies, bakeries (all production in support of on-site sales), bicycles, books, cameras and photographic supplies, clothing and accessories, collectibles (cards, coins, comics, stamps, etc.), department stores, drug stores, dry goods, fabrics and sewing supplies, florists and houseplant stores (indoor sales, only; outdoor sales are "Plant Nurseries"), furniture, home furnishings and equipment, general stores, gift and souvenir shops, hardware, hobby materials, jewelry, luggage and leather goods, musical instruments, parts and accessories, newsstands, orthopedic supplies, pet supplies sales with no animals but fish, religious goods, small wares, specialty shops, sporting goods and equipment, stationery, toys and games, variety stores. This use listing includes Big-Box retail uses as defined and regulated in Chapter 23.74. Also see Retail, Discount Stores, Retail, Discount Superstores, and Retail, Large-format Discount Superstores.

Sales floor area. All interior building space including, but not limited to, storage space, automobile service areas, or open-air garden sales space.

Retail, Discount Warehouse/Club. Discount store or warehouse where shoppers pay a membership fee in order to take advantage of discounted prices on a wide variety of items such as food, clothing, tires, and appliances; many items are sold in large quantities or bulk. This use listing includes Big-Box retail uses as defined and regulated in Chapter 23.74.

Section 2: Interpretation/Application

To the fullest extent permitted by law, it is the intent of the City Council that this ordinance apply city-wide, except that this ordinance shall not apply to the Calvine/Highway 99 Special Planning Area or the area described in the Development Agreement between the City of Elk Grove and M&H Realty Partners, Elk Grove Town Center, L.P., et. al. for the Lent Ranch Marketplace Project.

Section 3: 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 4: Severability.

If any provision of this ordinance or the application thereof to any person or

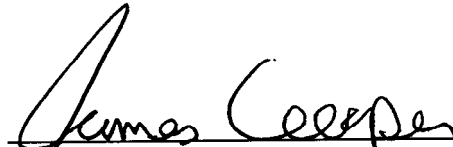
circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have 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 5: 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 15 days after its passage, a summary of the ordinance may be published at least five 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 NO. 23-2007


INTRODUCED: July 11, 2007
ADOPTED: August 22, 2007
EFFECTIVE: September 21, 2007



JAMES COOPER, MAYOR of the
CITY OF ELK GROVE

ATTEST:


PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:


JONATHAN P. HOBBS,
INTERIM CITY ATTORNEY

CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 23-2007

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

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance was duly introduced on July 11, 2007 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on August 22, 2007 by the following vote:

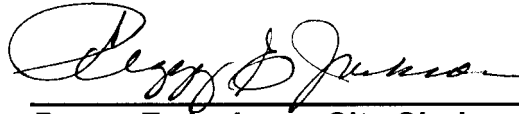
AYES : COUNCILMEMBERS: Cooper, Hume, Davis, Leary

NOES: COUNCILMEMBERS: Scherman

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

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



**Peggy E. Jackson, City Clerk
City of Elk Grove, California**

