

## ORDINANCE NO. 1-2008

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING CHAPTER 23.70.040 OF THE CITY OF ELK GROVE ZONING CODE RELATED TO DISTANCE REQUIREMENTS GOVERNING CERTAIN SPECIFIED USES APPLICABLE TO ADULT-ORIENTED BUSINESSES

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 certain distance and spacing requirements in the City of Elk Grove's Zoning Code ("Zoning Code") applicable to Adult Oriented Businesses in order to promote public health and safety by deterring the negative secondary effects related to such businesses. The City Council passes this ordinance pursuant to the authority granted cities by Article XI, Section 7, of the California Constitution and California Government Code section 65850.4.

#### Section 2: Findings

A. Based on evidence concerning adverse secondary effects of Adult-Oriented Businesses on the community as presented in hearings and in reports made available to and reviewed by the City Council, and on findings documented in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002) and on studies conducted by other cities, including but not limited to, Cattaraugus County, New York (1998), Cleburne, Texas (1997), Houston, Texas (1997), Newport News, Virginia (1996), Garden Grove, California (1991); Tucson, Arizona (1990); Seattle, Washington (1989); St. Paul, Minnesota (1987), Austin, Texas (1986); Oklahoma City, Oklahoma (1986); Indianapolis, Indiana (1984), Beaumont, Texas (1982); Minneapolis, Minnesota (1980); Phoenix, Arizona (1979); Whittier, California (1978); Amarillo, Texas (1977); Cleveland, Ohio (1977); and Los Angeles, California (1977), and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the City Council finds that these studies are relevant to the problems addressed by the City in enacting this Ordinance and further finds that these studies provide convincing evidence that:

- a. Both the proximity of Adult-Oriented Businesses to sensitive land uses and the concentration of Adult-Oriented Businesses tend to result in the blighting and deterioration of the areas in which they are located.
- b. The proximity and concentration of Adult-Oriented Businesses adjacent to residential, recreational, religious, educational, and other Adult-Oriented Business uses can have adverse secondary effects on

local businesses and residences including causing other businesses and residences to move elsewhere.

c. There is substantial evidence that an increase in crime tends to accompany, concentrate around, and be aggravated by Adult-Oriented Businesses, including but not limited to an increase in the crimes of narcotics distribution and use, prostitution, pandering, violence against persons and property and sexually transmitted diseases.

d. The studies from other cities establish convincing evidence that Adult-Oriented Businesses which are not regulated as to permissible locations often have a deleterious effect on nearby businesses in residential areas causing, among other secondary effects, an increase in crime and a decrease in property values.

B. The City Council also recognizes the potential harm to minors associated with the adverse side effects of Adult-Oriented Businesses and the importance of maintaining a community that is safe and secure for minors.

C. The City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of City residents; protect the residents from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight.

D. Based on the foregoing, the City Council of the City of Elk Grove finds and determines that special regulation of Adult-Oriented Businesses is necessary to ensure that their adverse secondary effects will not contribute to an increase in crime rates or to the blighting or deterioration of the areas in which they are located or surrounding areas. The need for special regulations is based upon the recognition that Adult-Oriented Businesses have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or located in direct proximity to sensitive uses such as parks, schools, churches, thereby having a deleterious effect upon the adjacent areas. It is the purpose and intent of these special regulations to prevent the concentration of Adult-Oriented Businesses and thereby prevent such adverse secondary effects.

E. The City Council finds that these amendments to the City's Zoning Code are consistent with the City's General Plan. Specifically, this amendment provides for the separation of incompatible land uses and promotes the development of buffer uses between adult oriented businesses and sensitive land uses (e.g. residential, parks, schools, libraries, etc).

F. The City Council finds that these amendments are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(2) (General Rule Exemption) of the CEQA Guidelines. The General Rule Exemption applies to activities which can be seen with certainty to have no possible significant effects on the environment. This amendment to the Zoning Code would increase the spacing

requirement between Adult-Oriented Businesses and sensitive land uses, such as residences, schools, and churches, from 500 feet to 1,000 feet. This action does not have the potential for causing a significant effect on the environment because it does not allow directly or indirectly any development that is not already contemplated in the City's General Plan. It would promote greater compatibility of uses and limit the effects of potential Adult-Oriented Businesses on sensitive land uses. Therefore, the proposed amendment will not cause a direct physical change in the environment and thus qualifies for the General Rule exemption.

G. The California State Legislature has recognized the authority of municipalities to regulate Adult-Oriented Business by providing in Government Code section 65850.4 that: "The legislative body of any county or city may regulate, pursuant to a content neutral ordinance, the time, place, and manner of operation of sexually oriented businesses, when the ordinance is designed to serve a substantial governmental interest, does not unreasonably limit alternative avenues of communication, and is based on narrow, objective, and definite standards. The legislative body is entitled to rely on the experiences of other counties and cities and on the findings of court cases in establishing the reasonableness of the ordinance and its relevance to the specific problems it addresses, including the harmful secondary effects that the business may have on the community and its proximity to churches, schools, residences, establishments dispensing alcohol, and other sexually oriented businesses."

H. The City's police powers encompass the power to enact zoning, licensing, and other regulations to protect the public health, safety, and welfare. Zoning, licensing, and other police power regulations are legitimate, reasonable means of accountability to help protect the quality of life in City and to help assure that all owners and operators of Adult-Oriented Businesses comply with reasonable regulations to minimize adverse secondary effects which accompany the operation of such businesses.

I. The City Council has reviewed and reconsidered the City of Garden Grove Study and the 1977 City of Los Angeles Study cited herein including the recommendations of 1,000 foot spacing and distance requirements. The City is aware that numerous surrounding communities have enacted 1,000 foot distance and separation requirements related to Adult-Oriented Businesses including the County of Sacramento and the cities of Galt, Lodi, and Rancho Cordova. Additionally, judicial decisions have upheld 1,000 foot distance and separation provisions. (See *e.g. City of Renton v. Playtime Theatres, Inc*, 475 U.S. 41 (1986); *Diamond v. City of Taft*, 215 F.3d 1051 (9<sup>th</sup> Cir. 2000); *Community Visual Communications, Inc. v. City of San Antonio*, 148 F.Supp.2d 764 (W.D.Tex. 2000); and *City of National City v. Wiener*, 3 Cal.4th 832 (1992).

J. The City Council has considered (i) the number of sites that actually are part of the relevant real estate market, (ii) the percentage of acreage theoretically available within the City, (iii) the number of sites available for the simultaneous operation of adult businesses, (iv) the City's community needs and goals, (v) the number of available sites in other, comparable communities, (vi) the City's population,

(vii) the demand versus the supply of potential sites and (viii) the possible chilling effect of locational limitations and provisions on prospective business owners. Study and analysis of these factors reveals that the number of commercially available sites, including available acreage, within the City for simultaneous operation of Adult-Oriented Businesses, exceeds the demand for Adult-Oriented Businesses in the City.

K. The City Council also recognizes that Elk Grove is, to a large extent, a commuter community; adults frequently travel at least 20 to 30 miles outside the City for entertainment venues or to make retail purchases and located within 30 to 45 minutes driving time are existing facilities offering Adult-Oriented goods and services.

L. The City Council also takes note of the proliferation of adult material on the Internet and Cable Television and their availability as alternative avenues of communication. The City Council considers and relies on published decisions examining the proliferation of communications on the Internet. See e.g. *Reno v. American Civil Liberties Union* (1997) 521 U.S. 844 (discussing the availability of sexually explicit communication on the Internet); *U.S. v. Thomas*, 74 F.3d 701 (6<sup>th</sup> Cir. 1996)(recognizing the Internet as a medium for transmission of sexually explicit material in the context of obscenity prosecutions). The emergence of the Internet provides a virtually unlimited additional source of Adult-Oriented sexual material available to persons without regard to geographic boundaries. An adult business no longer needs to be actually physically located within a city to be available to the community.

M. The locational requirements established by this ordinance do not unreasonably restrict the establishment or operation of constitutionally protected Adult-Oriented Businesses in the City of Elk Grove, and a sufficient reasonable number of appropriate locations for Adult-Oriented Businesses are provided by this ordinance.

N. In developing this Ordinance, the City Council has been mindful of legal principles relating to regulation of Adult-Oriented Businesses and does not intend to suppress or infringe upon any expressive activities protected by the First Amendment of the United States and California Constitution, but instead desires to enact reasonable time, place, and manner regulations that address the adverse secondary effects of Adult-Oriented Businesses. In this regard, the City Council has considered decisions of the United States Supreme Court, as well as state and other federal courts, regarding local regulation of Adult-Oriented Businesses, including but not limited to: *Young v. American Mini Theaters, Inc.*, 427 U.S. 50 (1976); *City of Renton v. Playtime Theaters*, 475 U.S. 41 (1986); *FW/PBS, Inc. v. Dallas*, 493 U.S. 215 (1990); *Barnes v. Glenn Theater*, 501 U.S. 560 (1991); *City of Erie v. Paps A.M.* (2000) 529 U.S. 277; *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of National City v. Wiener*, 3 Cal.4th 832 (1992) and finds that time, place, and manner restrictions established by this Ordinance do not unreasonably restrict the establishment or operation of constitutionally protected Adult-Oriented Businesses in City.

O. While the City Council desires to protect the rights conferred by the United States Constitution to Adult-Oriented Businesses, it does so in a manner that ensures the continued and orderly development of property within the City and diminishes, to the

greatest extent feasible, those undesirable secondary effects which the aforementioned studies have shown to be associated with the development and operation of Adult-Oriented Businesses.

P. It is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of Adult-Oriented Businesses.

Q. It is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the City Council recognizes that state and federal laws prohibit the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City; and

R. Nothing in this Ordinance is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter, or the exhibition or public display thereof.

### Section 3: Amendment

Chapter 23.70.040 of the Zoning Code is amended to read as follows. Proposed language to be added is shown with underlines and language to be removed is shown with strikeouts.

#### **23.70.040 Distance Requirements**

Adult-Orientated Businesses are permitted subject to compliance with all of the following conditions:

1. Such use is situated more than 1,000 feet from any other Adult-Oriented Business whether in the City, in an adjoining city, or within an unincorporated area.

2. Such use is located more than 1,000 feet from any of the following uses whether in the City, in an adjoining city, or within an unincorporated area:

a. Land zoned or used for single family, duplex, or multifamily residences;

b. Any public or private educational facility including but not limited to child day care facility, libraries, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, secondary schools, continuation schools, special education schools. This category of uses does not include vocational or professional institutions of higher education including but not limited to community or junior colleges, colleges and universities;

c. Any public park, or recreational area, or property zoned, planned, or otherwise designated for such use by city action, including but not limited to a park, playground, nature trails, swimming pool, athletic field, basketball or tennis courts, or other similar public land within the City which is under the control, operation, or management of the City, a community services district, or other park and recreation authority; or

d. A church, synagogue, mosque, temple or building or portion of a building or structure which is regularly used for religious worship or related religious activities

3. Such use is situated in either a M-1 or M-2 land use zone.

4. The distance between the Adult-Oriented Business and the zone described in subsections 1 or 2 shall be made in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the building or structure, in which the Adult-Oriented Business is located to the boundary of the property on which the building, structure, or use, or portion of the building structure, or use, described in subsections 1 or 2 is located.

5. No more than one classification of Adult-Oriented Business shall be permitted within a single structure unless such structure is divided so that the perimeters of the individual Adult-Oriented Businesses are separated by more than 1,000 feet at their closest point.

#### 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 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 Government Code section 36933(c)(1).

INTRODUCED: January 9, 2008  
ADOPTED: January 23, 2008  
EFFECTIVE: February 22, 2008

  
GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:

  
SUSAN COCHRAN, CITY ATTORNEY

Date signed: January 31, 2008

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 1-2008**

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, published and posted in compliance with State law, was duly introduced on January 9, 2008 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on January 23, 2008 by the following vote:***

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

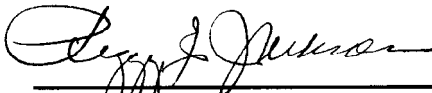
**NOES:        COUNCILMEMBERS:        None**

**ABSTAIN: COUNCILMEMBERS:        None**

**ABSENT: COUNCILMEMBERS:        Leary**

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



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