

ORDINANCE NO. 27-2011

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AMENDING TITLE 23 OF THE ELK GROVE MUNICIPAL CODE RELATIVE TO
RETAIL ESTABLISHMENTS**

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, in 2007, the City Council adopted Ordinance No. 23-2007, which adopted special land use regulations for various types of retail uses as defined in the Ordinance, including discount stores, discount superstores, and large-format discount superstores; and

WHEREAS, in adopting Ordinance No. 23-2007, the Council found that there are specific direct and indirect negative impacts to the community that are caused by discount stores, discount superstores, and large-format discount superstores; and

WHEREAS, the preamble whereas clauses of Ordinance No. 23-2007 are hereby incorporated by this reference in full; and

WHEREAS, in May 2011, the City Council adopted certain changes to Title 23 of the Elk Grove Municipal Code that included changes in the descriptions and allowed use regulations for various retail uses including discount stores, discount superstores, and large-format discount superstores; and

WHEREAS, on June 24, 2011, the Council adopted a 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; and

WHEREAS, the Council directed the Planning Commission to consider and make recommendations on changes to the descriptions and allowed use listings for retail uses; and

WHEREAS, on August 4 and September 1, 2011, the Planning Commission held duly noticed public hearings to review and consider changes to Title 23 of the Elk Grove Municipal Code relative to retail uses and adopted Planning Commission Resolution

No. 2011-12, making a recommendation to the City Council; and

WHEREAS, on September 28, 2011, the City Council held a duly noticed public hearing to review and consider the recommendation of the Planning Commission; and

WHEREAS, at the September 28, 2011 meeting, the City Council provided direction to staff to modify the draft changes so the overall structure of the regulations (e.g., descriptive elements that address size of store, percent of total sales floor area dedicated to non-taxable goods, format of store, range of products) does not deviate from the existing; and

WHEREAS, at the October 12, 2011 meeting, the City Council reviewed the draft Ordinance.

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 23 of the Elk Grove Municipal Code

Section 2: Findings.

California Environmental Quality Act (CEQA)

Finding: The project is categorically exempt from the California Environmental Quality Act (CEQA) review pursuant Section 15061(b)(3) of the State CEQA Guidelines.

Evidence: The proposed project is exempt from CEQA under Section 15061(b)(3) of Division 6 of Chapter 3 of Title 14 of the California Code of Regulations (State CEQA Guidelines). This exemption applies to activities covered under by the “general rule that CEQA applies only 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 proposed project consists of an amendment to Title 23 of the City’s Municipal Code to add additional land use categories, modify the descriptions of several categories, and identify the permit requirements for these various categories. The changes do not, by themselves, approve any specific development project. All new development requires the approval of a discretionary Design Review permit prior to construction, which is an activity subject to CEQA. New uses that are permitted by right that occupy existing development would be exempted under State CEQA Guidelines section 15301 (Existing Facilities). Therefore, this project qualifies for the identified exemption and no further environmental review is required.

Amendment to Title 23

Finding: The proposed zoning amendment is consistent with the General Plan goals, policies, and implementation programs.

Evidence: The City's General Plan includes policies that 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. The purpose of this Ordinance is to preserve the City's existing neighborhood-serving shopping centers. The proposed Ordinance is consistent with the General Plan because it promotes a diversity of local oriented retail and services (Focused Goal 2-1, LU-11) by providing convenient shopping and employment for residents and recognizes environmental constraints and minimizes impacts to the environment (Focused Goal 3-1) by imposing a Conditional Use Permit requirement on all retail development greater than 75,000 square feet.

Section 3: Action – Section 23.26.015.

Section 23.26.015 of the Elk Grove Municipal Code is hereby amended as follows.

C. 8. "Convenience stores" means easy-access retail stores of five thousand (5,000 ft²) square feet or less in gross floor area that 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. Such stores may devote more than fifty (50%) percent of the total sales floor area to the sale of non-taxable goods. Convenience stores may devote less than fifty (50%) percent of the total sales floor area to the sale of non-taxable goods provided the focus of the store is on food and drink sales (both taxable and non-taxable).

G. 3. "Grocery store" means a retail business focusing on food products packaged for preparation and consumption away from the site of the store. These stores are greater than fifteen thousand (15,000 ft²) square feet but less than seventy five thousand (75,000 ft²) square feet and dedicate at least fifty (50%) percent of the total sales floor area to the sale of non-taxable goods.

N.1. "Neighborhood market" means 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 operate less than eighteen (18) hours per day. Neighborhood markets range in size between five thousand one (5,001 ft²) square feet and fifteen thousand (15,000 ft²) square feet and devote more than fifty (50%) percent of the total floor area to the sale of non-taxable goods. Neighborhood markets may devote less than fifty (50%) percent of the total sales floor area to the sale of non-taxable goods provided the focus of the store is on food and drink sales (both taxable and non-taxable). For larger stores, see "grocery store." Neighborhood markets may include deli or beverage-

tasting facilities that are ancillary to the market/grocery portion of the use.

R.13. "Retail, superstore" means a retail business selling a wide range of consumer products that is at least seventy-five thousand (75,000 ft²) square feet but less than one hundred fifty thousand (150,000 ft²) square feet and dedicating at least ten (10%) percent of the total sales floor area to the sale of non-taxable goods.

R.14. "Retail, warehouse/club" means a retail store where many items are sold in large quantities or bulk. Shoppers may 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.

R.15. "Retail, general" means a retail business focusing on the sales of merchandise not specifically listed under another use classification and that devotes less than a majority portion of the total sales floor area to the sale of non-taxable goods. There are three sub-categories as follows:

- o Small Format – Stores that are less than seventy-five thousand (75,000 ft²) square feet with less than fifty (50%) percent of the total sales floor area dedicated to non-taxable goods;
- o Medium Format – Stores that are at least seventy-five thousand (75,000 ft²) square feet but less than one hundred fifty thousand (150,000 ft²) square feet with less than ten (10%) percent of the total sales floor area dedicated to non-taxable goods; and
- o Large Format – Stores that are one hundred fifty thousand (150,000 ft²) square feet or larger with less than ten (10%) percent of the total sales floor area dedicated to non-taxable goods.

R.16. "Retail, superstore large-format" means a retail business selling a wide range of consumer products that is at least one hundred fifty thousand (150,000 ft²) square feet and dedicating at least ten (10%) percent of the total sales floor area to the sale of non-taxable goods.

R. 17. REPEALED.

Section 4: Action – Table 23.32-1.

Table 23.32-1 of the Elk Grove Municipal Code is hereby amended as follows.

Grocery stores/supermarket is REPEALED.

Retail, discount store is REPEALED.

Retail, discount superstore is REPEALED.

Retail, large-format discount superstore is REPEALED.

Retail, discount warehouse/club is REPEALED.

Retail, general is REPEALED.

Use Permitted	CUP = Conditional Use Permit Required						N = Not Permitted
Land Use	Permit by Commercial Zoning District						Specific Use Regulations
	LC	GC	SC	AC	TC	C-O	
Retail, Service, and Office Uses							
Convenience stores	P ¹¹	P	P	P	P	N	EGMC Chapter 23.86
Grocery stores	P	P	P	N	P	N	EGMC Chapters 23.74, 23.86
Neighborhood market	P ¹¹	P ¹¹	P ¹¹	N	CUP ¹¹	N	EGMC Chapter 23.86
Retail superstore	N	CUP ^{13, 14}	CUP ^{13, 14}	N	N	N	EGMC Chapters 23.74, 23.86
Retail superstore, large format	N	N	N	N	N	N	EGMC Chapters 23.74, 23.86
Retail warehouse/club	N	CUP	CUP	N	CUP	N	EGMC Chapters 23.74, 23.86
Retail general, small format	P ¹³	P ¹³	P ¹³	N	P ¹³	N	EGMC Chapters 23.74, 23.86
Retail general, medium format	CUP ¹³	CUP ¹³	CUP ¹³	N	N	N	EGMC Chapters 23.74, 23.86
Retail general, large format	N	CUP ^{13, 14}	CUP ^{13, 14}	N	N	N	EGMC Chapters 23.74, 23.86

Notes:

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.
- e. The special studies provided for herein may be included as part of the Environmental Document for the Project or may be stand-alone documents.

Section 5: Action - Repeal of Moratorium.

That moratorium on large retail establishments in excess of 50,000 square feet, specifically including general retail and grocery/supermarket uses, as established by Urgency Ordinance No. 18-2011, Urgency Ordinance No. 19-2011, and Urgency Ordinance No. 24-2011, shall be automatically repealed upon the effective date of this Ordinance.

Section 6: 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 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.

Notwithstanding any other provision of the Elk Grove Municipal Code, any retail use lawfully established or any retail use for which a permit or entitlement has been approved by the City under the Elk Grove Municipal Code as it existed prior to the effective date of this Ordinance shall be considered a legal use, and the holder or beneficiary of such permit or entitlement shall be allowed to proceed with construction and/or development consistent with such previously issued permit or entitlement.

Section 7: 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 8: 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.

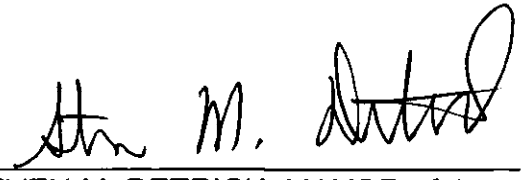
Section 9: Savings Clause.

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 10: 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: 27-2011
INTRODUCED: October 12, 2011
ADOPTED: October 26, 2011
EFFECTIVE: November 25, 2011




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

ATTEST:

APPROVED AS TO FORM:



JASON LINDGREN, CITY CLERK

JONATHAN HOBBS,
INTERIM CITY ATTORNEY

Date signed: October 31, 2011

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 27-2011**

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

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 October 12, 2011 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on October 26, 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**