



**CITY OF ELK GROVE
CITY COUNCIL STAFF REPORT**

AGENDA TITLE: Consider repealing Ordinance No. 23-2016 or calling an election based on the certified referendum petition directed to the ordinance (CEQA Exempt)

MEETING DATE: February 8, 2017

**PREPARED BY
DEPARTMENT HEAD:** Jason Lindgren, City Clerk

RECOMMENDED ACTION:

Provide direction as deemed appropriate in relation to the referendum petition of Ordinance No. 23-2016 and consider the following options:

- 1) Introduce and waive the full reading by substitution of title only an ordinance repealing Ordinance No. 23-2016 adopting the first amendment to the Development Agreement with Elk Grove Town Center, LP; or
- 2) Initiate actions to call a special election:
 - a) Adopt resolution calling and giving notice of a Special Municipal Election to be held on Tuesday, June 6, 2017 to consider a measure regarding Ordinance No. 23-2016, and requesting the Board of Supervisors of the County of Sacramento to consolidate the Special Municipal Election with any other special election contests held within the County;
 - b) Adopt resolution setting forth the City Council's policy regarding impartial analyses, arguments, and rebuttal arguments for any measure(s) desired to be placed on the ballot for the June 6, 2017 Special Municipal Election; and
 - c) Provide direction to staff to return with a budget amendment to the Fiscal Year (FY) 2016-17 Budget to allocate \$900,000 (or amount agreeable to Sacramento County) from unreserved Fund Balance to cover costs anticipated to conduct the June 6, 2017 Special Municipal Election; or

- 3) Adopt resolution of intent to consider a measure to address Ordinance No. 23-2016 at the regular municipal election scheduled for Tuesday, November 6, 2018; or
- 4) Provide further direction to staff, as appropriate.

BACKGROUND INFORMATION:

On October 26, 2016, the City Council adopted Ordinance No. 23-2016, adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP. A referendum petition entitled “Referendum Against an Ordinance passed by the City Council; Ordinance No. 23-2016. An Ordinance of the City Council of the City of Elk Grove adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP.” was filed with the Office of the City Clerk on November 21, 2016.

The referendum petition was certified as sufficient by the City Council by Resolution No. 2017-010 on January 11, 2017. The City Council provided direction to staff to return with options to address the request of the referendum petition to either repeal Ordinance No. 23-2016 in its entirety or call an election to submit Ordinance No. 23-2016 to the voters. This report was originally scheduled to be considered at the January 25, 2017 regular meeting, and the City Council moved the item to be considered February 8, 2017.

The Elections Code does not specify a time in which a decision must be made regarding repeal of an ordinance subject to a referendum petition, but only that if the ordinance is not repealed then it shall be submitted to the voters. The certification of the petition continues the suspension of Ordinance No. 23-2016 until resolved through a repeal of the ordinance or the certification of the results of a measure submitted to the voters on the matter. The next regular municipal election date is November 6, 2018, and the deadline to submit a measure from the City Council to make that regular municipal election is in the August 2018 timeframe. The next potential date for a special election is June 6, 2017, and that date would be coordinated with Sacramento County.

ANALYSIS:

Repeal of Ordinance No. 23-2016

The repeal of an ordinance would require introduction and adoption of an ordinance to repeal Ordinance No. 23-2016. A repealing ordinance is

submitted for City Council consideration under Attachment 1. If the City Council votes in favor of the repeal, Ordinance No. 23-2016 would be repealed upon the adopted date of the ordinance to repeal, and the City Council could not adopt essentially the same ordinance for a period of one year. The effect of the repeal is that the Development Agreement with Elk Grove Town Center, LP would remain as the Development Agreement adopted October 22, 2014 by Ordinance No. 29-2014. The second reading and adoption of the ordinance would be scheduled for the February 22, 2017 regular meeting.

The City Council would have to make the decision to repeal or not by August 2018 prior to the deadline to submit a measure for the November 6, 2018 regular municipal election.

Submit Ordinance No. 23-2016 to the voters at a regular or special election

If the City Council does not repeal the ordinance, then the ordinance must be submitted to the voters either at the next regular municipal election occurring not less than 88 days after the order of the City Council, or at a special election called for the purpose, not less than 88 days after the order of the City Council. (See Elec. Code § 9241)

Again, the Elections Code does not provide a specific timeframe for when an election must be called; it just states that if the City Council does not repeal the ordinance, the City Council must submit the ordinance to the voters at a regular or special election. In the event the City Council wishes to call a special election at this time, submitted are resolutions for the City Council's consideration (Attachments 2 and 3).

Attachment 2 is a resolution calling and giving notice of the holding of a special election in the City of Elk Grove on June 6, 2017 and requesting the Board of Supervisors of the County of Sacramento to consolidate the special election with any other special election contests. By adoption of the proposed resolution, the County is authorized to canvass the returns of the election, and the City agrees to reimburse County for actual costs accrued for the election.

Attachment 3 is a resolution adopting policy regarding impartial analyses (no more than 500 words), arguments for and against any measure(s) (each no more than 300 words), and for the submittal of rebuttal arguments (each no more than 250 words) as set forth in the Elections Code for any measure(s) that may qualify to be placed on the ballot for the June 6, 2017

special election. The word count limitations are in accordance with the Elections Code and the recommendation of County.

In the event the City Council wishes to schedule an election at the next regular municipal election taking place November 6, 2018, staff presents for the City Council's consideration a resolution providing notice of intent to place this matter on the ballot for November 2018 (Attachment 4). Given the timeframes for the November 2018 election, and the need to coordinate with the County of Sacramento Voter Registration and Elections Department, it is not necessary to call the November 2018 election at this time, and staff does not propose doing so. Rather, at its option, the City Council could provide direction to staff to return an item prior to August 2018 to consider a measure to address Ordinance No. 23-2016 at the regular municipal election scheduled for Tuesday, November 6, 2018.

Staff initially expressed concerns about the propriety of waiting until the next regular municipal election in November of 2018 to place the ordinance on the ballot. The concern was whether an interested party might contend that the City Council was not holding the election within a reasonable time. However, upon further review and analysis, and based on written comments submitted and public testimony at the January 11, 2017 Council meeting, staff is more comfortable that the City Council could schedule the election on this matter at the next general election in November of 2018.

ENVIRONMENTAL REVIEW

The repeal of Ordinance No. 23-2016 would reinstate the terms of a development agreement approved by Ordinance No. 29-2014, for which environmental review has already been completed under the California Environmental Quality Act ("CEQA"). Therefore, no further environmental review is required pursuant to CEQA Guideline section 15162. Additionally, the repeal of Ordinance No. 23-2016, does not constitute the approval of a project under CEQA, will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment, and is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3))

The submittal of the ordinance to a vote of the electorate is exempt from CEQA review. (CEQA Guidelines § 15378(b)(3))

FISCAL IMPACT:

If the City Council repeals Ordinance No. 23-2016, the only associated costs are newspaper publishing costs for the ordinance's first and second readings; such processes are accounted for on an annual basis by the Office of the City Clerk.

Including a measure as part of the November 6, 2018 regular municipal election is estimated at this time to cost less than \$10,000.

For a special election, the City would request the County of Sacramento Voter Registration and Elections Department to conduct the election. If the special election is a stand-alone contest, which seems most likely in 2017 (no anticipated elections in 2017, with the next anticipated election being the June 2018 Primary), the County would bill the City for actual costs, estimated at this time to be between \$10 and \$20 per registered voter (there were 89,683 registered voters in Elk Grove as of January 27, 2017) with an estimated cost of \$896,830 to \$1,793,660. A budget amendment would be returned with an action to call a special election after concurrence with the County on costs. Since special elections are not budgeted for by the County, the City would be required to prepay costs totaling one half of the full estimated cost of the special election (estimated at this time to be a pre-payment of approximately \$900,000). The final cost of any special election would not be known until certification of the election results (usually a month after the election and submittal of invoices by the County).

ATTACHMENTS:

1. Ordinance to repeal Ordinance No. 23-2016
2. Resolution to call a special election for June 6, 2017
3. Resolution setting forth the City Council's policy regarding impartial analyses, arguments, and rebuttal arguments
4. Resolution of intent to consider a measure to address Ordinance No. 23-2016 at the regular municipal election scheduled for Tuesday, November 6, 2018

ATTACHMENT 1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE REPEALING ORDINANCE NO. 23-2016 ADOPTING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH ELK GROVE TOWN CENTER, LP

WHEREAS, on October 26, 2016, the City Council adopted Ordinance No. 23-2016, adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP.; and

WHEREAS, a referendum petition entitled “Referendum Against an Ordinance passed by the City Council; Ordinance No. 23-2016. An Ordinance of the City Council of the City of Elk Grove adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP.,” was filed with the Office of the City Clerk on November 21, 2016 against City of Elk Grove Ordinance No. 23-2016; and

WHEREAS, the referendum petition was found to be sufficient and the referendum petition was certified as sufficient by the City Council of the City of Elk Grove by Resolution No. 2017-010; and

WHEREAS, the State of California Elections Code Section 9241 directs a legislative body receiving a certified referendum petition to either repeal the ordinance against which the petition was filed, or submit the ordinance to the voters, either at the next regular municipal election occurring not less than 88 days after the order of the legislative body, or at a special election called for the purpose, not less than 88 days after the order of the legislative body.

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 repeal Ordinance No. 23-2016 in response to the referendum petition submitted on November 21, 2016, and certified by the City Council of the City of Elk Grove on January 11, 2017.

Section 2: Environmental Review/California Environmental Quality Act (CEQA).

The passage of this ordinance would reinstate the terms of a development agreement approved by Ordinance No. 29-2014, for which environmental review has already been completed under the California Environmental Quality Act (“CEQA”). Therefore, no further environmental review is required pursuant to CEQA Guideline section 15162. The environmental findings and evidence set forth in Ordinance No. 29-2014 are incorporated herein by reference. Additionally, the adoption of this ordinance, repealing Ordinance No. 23-2016, does not constitute the approval of a project under CEQA, will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment, and is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3))

Section 3: Repeal of Ordinance No. 23-2016

The City's approval of Ordinance No. 23-2016 is hereby repealed. The Development Agreement with Elk Grove Town Center, LP for the project commonly known as The Outlet Collection at Elk Grove is not amended by Ordinance No. 23-2016 and remains as the Development Agreement adopted October 22, 2014 by Ordinance No. 29-2014.

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: 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 effect 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 7: Effective Date and Publication.

This Ordinance shall take effect on the date of its final passage by the City Council pursuant to Elections Code Section 9245, and Government Code section 36937(a), and it is scheduled for adoption at the next regular meeting of the Elk Grove City Council on February 8, 2017. 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).

INTRODUCED:
ADOPTED:
EFFECTIVE:

STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

Signed: _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
CALLING AND GIVING NOTICE FOR THE HOLDING OF A SPECIAL MUNICIPAL
ELECTION TO BE HELD ON TUESDAY, JUNE 6, 2017 TO SUBMIT A MEASURE
TO CONSIDER ORDINANCE NO. 23-2016 AND REQUESTING THE BOARD OF
SUPERVISORS OF SACRAMENTO COUNTY TO CONSOLIDATE THE SPECIAL
MUNICIPAL ELECTION WITH ANY ELECTION CONTESTS THAT MAY BE
SCHEDULED FOR JUNE 6, 2017**

WHEREAS, on October 26, 2016, the City Council adopted Ordinance No. 23-2016, adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP.; and

WHEREAS, a referendum petition entitled "Referendum Against an Ordinance passed by the City Council; Ordinance No. 23-2016. An Ordinance of the City Council of the City of Elk Grove adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP.," was filed with the Office of the City Clerk on November 21, 2016 against City of Elk Grove Ordinance No. 23-2016; and

WHEREAS, the referendum petition was found to be sufficient and the referendum petition was certified as sufficient by the City Council of the City of Elk Grove by Resolution No. 2017-010; and

WHEREAS, the State of California Elections Code Section 9241 directs a legislative body receiving a certified referendum petition to either repeal the ordinance against which the petition was filed, or submit the ordinance to the voters, either at the next regular municipal election occurring not less than 88 days after the order of the legislative body, or at a special election called for the purpose, not less than 88 days after the order of the legislative body; and

WHEREAS, the submittal of an ordinance to a vote of the electorate is exempt from California Environmental Quality Act (CEQA) review (CEQA Guidelines Section 15378(b)(3)); and

WHEREAS, under the provisions of the State of California Elections Code Section 1000, a special election can be called within the City of Elk Grove on June 6, 2017 for the purpose of submitting a measure to consider an ordinance subject to referendum; and

WHEREAS, the City of Elk Grove maintains a Memorandum of Understanding with the Sacramento County Voter Registration and Elections Department (the County) for the County to provide election related services; and

WHEREAS, in the course of conduct of the election the City of Elk Grove requests the services of the County.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELK GROVE DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That under the provisions of the Elections Code, there is called and ordered to be held in the City of Elk Grove, California, on Tuesday, June 6, 2017 a special municipal election for the purpose of submitting a measure to consider Ordinance No. 23-2016.

Section 2. The City Council hereby orders that the following question be submitted to the voters in the City of Elk Grove, California on Tuesday, June 6, 2017:

CITY OF ELK GROVE ORDINANCE NO. 23-2016 Shall Ordinance No. 23-2016 adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP be approved?	YES
	NO

Section 3. The text of Ordinance No. 23-2016 of the proposed measure to be submitted to the voters is attached as Exhibit A.

Section 4. In lieu of printing the full text of Ordinance No. 23-2016 on the ballot, or the voter information portion of the sample ballot, the following legend shall be printed immediately below the impartial analysis of the measure (and may be amended as required by the Sacramento County Voter Registration and Election Department):

“The above statement is an impartial analysis of City of Elk Grove Ordinance No. 23-2016, adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP. If you desire a copy of the ordinance, please access the City of Elk Grove website at: http://www.elkgrovecity.org/city_hall/city_government/city_clerk/election_formation/, or call the Office of the City Clerk, City of Elk Grove, at (916) 478-3635 and a copy will be mailed at no cost to you.”

Section 5. That pursuant to the requirements of Elections Code Section 10403, the City of Elk Grove requests the Board of Supervisors of Sacramento County to consolidate the special municipal election with any election contests that may be held on June 6, 2017.

Section 6. That the polls for the election shall be open at seven o’clock a.m. on June 6, 2017 the day of the election and shall remain open continuously from that time until eight o’clock p.m. of the same day when the polls shall be closed, except as provided in Elections Code Section 14401.

Section 7. That the Sacramento County Voter Registration and Elections Department is authorized to canvass the returns of the special municipal election.

Section 8. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 9. That the City of Elk Grove agrees to reimburse the Sacramento County Voter Registration and Elections Department for actual costs accrued for each election, such costs to be calculated by the proration method set forth in the County's current Election Cost to Allocation Procedures on the basis of the amount of services provided to the City of Elk Grove.

Section 10. That the City Clerk is directed to file a certified copy of this resolution with the Board of Supervisors and the Sacramento County Voter Registration and Elections Department.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 8th day of February 2017.

STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

EXHIBIT A

ORDINANCE NO. 23-2016

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADOPTING
THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT
WITH ELK GROVE TOWN CENTER, LP**

WHEREAS, on June 27, 2001, the City Council certified the Environmental Impact Report (EIR, State Clearinghouse No. 1997122002) for the Lent Ranch Marketplace Project and adopted the Lent Ranch Special Planning Area, which provided for the development of a regional mall and surrounding retail, office, and entertainment development; and

WHEREAS, on September 5, 2001, the City Council adopted a 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 (the "2001 Development Agreement"); and

WHEREAS, on July 11, 2007, the City Council adopted an Agreement Regarding the Regional Mall, Fees, and Infrastructure with Elk Grove Town Center, LP regarding the regional mall; and

WHEREAS, on October 8, 2014, the City Council approved a new Development Plan Review for the Regional Mall site (District A) of, and pursuant to, the Lent Ranch Special Planning Area, referred to as the Outlet Collection at Elk Grove, file EG-14-012; and

WHEREAS, as part of the approval of the Outlet Collection at Elk Grove, the City Council entered into a new Development Agreement and an Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure with the Applicant, Elk Grove Town Center, L.P.; and

WHEREAS, the City of Elk Grove received an application on August 30, 2016, from the Applicant requesting amendments to the Development Agreement and an Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure (the "Agreements") to remove the Phase 2 portion from these agreements; and

WHEREAS, the project covered by the Agreements is located within the Lent Ranch Special Planning Area for which an EIR (State Clearinghouse No. 1997122002) was prepared and certified July 2001; and

WHEREAS, State CEQA Guidelines Section 15162 provides that when an EIR has been certified for a project, no subsequent EIR shall be prepared for that project unless then lead agency (the City) determines, on the basis of substantial evidence in light of the whole record, one or more substantial change in the project, circumstances, or information (as defined in the section) have occurred; and

WHEREAS, the Planning Commission held a duly noticed public hearing on September 15, 2016, as required by law to consider all of the information presented by staff, information presented by the Applicant, and public testimony presented in writing and at the meeting, and the Planning Commission recommended approval of the

amendments to the Agreements to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on October 12, 2016, as required by law to consider all of the information presented by staff, information presented by the Applicant, and public testimony presented in writing and at the meeting.

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

Section 1: Purpose

The purpose of this Ordinance is to adopt amendments to Development Agreement with Elk Grove Town Center, LP for the project commonly known as The Outlet Collection at Elk Grove.

Section 2: Findings

This Ordinance is adopted based upon the following findings:

California Environmental Quality Act (CEQA)

Finding: No further environmental review is required under the California Environmental Quality Act pursuant to State CEQA Guidelines section 15162.

Evidence: The City has reviewed the Development Agreement amendment and analyzed it based upon the provisions in Section 15162 of the State CEQA Guidelines. The proposed amendments to the Development Agreement narrow the scope of these agreements to just the area covered by the 2014 approvals for the Outlet Collection at Elk Grove Project. That project proposed to develop approximately 750,000 square feet of commercial development, which is less than the 1,300,000 square feet analyzed in the Lent Ranch EIR. While the core development area (approximately 525,000 square feet) will be structured as an outlet center, it will continue to operate with retail tenants consistent with the description for the District included in the Draft EIR. The balance of the commercial center will include space for a movie theater, and locations for future pad buildings that will accommodate other retail and restaurant tenants. This is also consistent with the District A description from the Draft EIR that references “varied dining opportunities, and entertainment facilities including a possible theater complex.”

The proposed Development Agreement amendment will modify the application of the existing Development Agreement by narrowing the scope of these agreements to include only the area covered by the 2014 approvals for the Outlet Collection at Elk Grove Project. The amendment does not change the characteristics of the approved development. No specific development of the Phase 2 area is approved by the Development Agreement amendment. Therefore, there are no substantial changes in the project approvals from that analyzed in the 2001 EIR and no new significant environmental effects, or substantial increase in the severity of previously identified significant effects. No new information of substantial importance has been identified.

Further, since no changes to the EIR are necessary to support the approvals, the City is not required to prepare an Addendum to the EIR as provided by State CEQA Guidelines Section 15164. Therefore, the prior EIR is sufficient to support the approvals of the Development Agreement amendment, and no further environmental review is required.

Development Agreement Amendment

Finding #1: The development agreement amendment is consistent with the General Plan objectives, policies, land uses, and implementation programs and any other applicable specific plans.

Evidence: The proposed First Amendment to the Development Agreement is consistent with the General Plan as the General Plan designates the subject property for commercial development and the Development Agreement provides for the development up to the 1,300,000 square feet allocated for District A, consistent with the Special Planning Area. The site is not subject to a specific plan.

Finding #2: The development agreement amendment is in conformance with the public convenience and general welfare of persons residing in the immediate area and will not be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole.

Evidence: The approval of a Development Agreement amendment is in conformity with public convenience, general welfare and good land use practices because it will develop a Regional Mall along the Highway 99 corridor that will accommodate the growing need for such services in the City of Elk Grove and surrounding region. The project that is the subject of the Development Agreement amendment will create a commercial, retail, and entertainment development that is of high quality and fully integrated on one site rather than less desirable piecemeal land uses spread out over several other locations. The project will provide an expanded economic base for the City of Elk Grove through the generation of significant increased tax revenue. The Development Agreement is necessary in order to obtain the major investment necessary to develop the project. Absent approval of the Development Agreement, as amended, the City would not obtain the benefits of the project to the community. The Development Agreement will establish land use regulations for a reasonable period to allow project build out in accordance with the approved entitlements for development, and to ensure a cohesive development. The project subject to the development agreement amendment will provide the variety of land uses noted above at one attractively designed, well-planned site, located adjacent to major highways and a freeway interchange for maximum public convenience. The project will also provide these services to the residents of existing and planned residential developments, thereby reducing the number of vehicle miles traveled to obtain these same services at greater distances, and improving air quality. The project will also create indirect economic benefits and serve as a catalyst for additional economic activity as a result of job creation and the spending of project wages in the City. Thus, in accordance with good land use practices, the project subject to the Development Agreement, as amended, will promote a better balance of

employment, services and housing, and improve the mix of uses in the community.

The First Amendment to the Development Agreement reflects the project boundaries as contained in the project approvals dated October 2014 under File EG-14-102. No other development is approved by the Development Agreement amendments.

Finding #3: The development agreement amendment will promote the orderly development of property or the preservation of property values.

Evidence: The project site covered by the Development Agreement amendment is designated in the General Plan for commercial development. Approval of the Development Agreement amendment will assist in the development of these lands and the provision of urban levels of public infrastructure and services to areas within the City. Thus, the uses proposed by the project subject to the Development Agreement amendment are consistent with those envisioned for the area in the General Plan. The project will contribute to a balance of land uses within the City by providing a diversity of necessary services that respond to the needs of the surrounding community and the region. The project will be compatible with and preserve (or even increase) the property values of the predominantly residential development proposed or otherwise approved for surrounding areas, by providing necessary and desirable services nearby. The project, as designed, will be a cohesive, planned multi-use development, and will provide a visually pleasing, safe and attractive gathering place that will encourage community identity. Necessary infrastructure, including sewer, water, and roadways, to serve the project have been constructed. As a result, the project covered by the Development Agreement amendment will not adversely affect the orderly development of property, and property values will be preserved or increased.

Section 3: Approval of Development Agreement Amendment.

The City Council hereby approves and adopts the First Amendment to the Development Agreement between the City of Elk Grove and Elk Grove Town Center, LP, attached as Exhibit A and incorporated herein by this reference. The City Manager is hereby authorized to execute the Development Agreement on behalf of the City in substantially the form attached hereto as Exhibit A.

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: 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 affect; 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 7: 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).

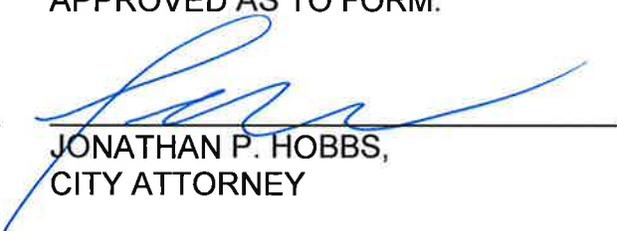
ORDINANCE: 23-2016
INTRODUCED: October 12, 2016
ADOPTED: October 26, 2016
EFFECTIVE: November 25, 2016



GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: October 26, 2016

EXHIBIT A

OFFICIAL CITY BUSINESS
No recording fee
Government Code Section 6103

RECORDING REQUESTED BY:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Clerk

WHEN RECORDED MAIL TO:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT
BETWEEN THE
CITY OF ELK GROVE,
AND
ELK GROVE TOWN CENTER, LP**

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

This FIRST AMENDMENT to the Development Agreement ("Amended Agreement") is entered into between the City of Elk Grove ("City"), and Elk Grove Town Center, LP, a Delaware limited partnership ("Developer"). For the purposes of this Agreement, Developer and City are referred to individually as "Party" and collectively as the "Parties."

RECITALS

- A. The City and Developer have heretofore entered into a Development Agreement, approved by City of Elk Grove by Ordinance No. 29-2014, adopted on October 22, 2014 (the "Development Agreement"), and relating to certain Property in the City of Elk Grove upon which Developer desires to develop
- B. Those recitals provided in the Development Agreement are herein incorporated by reference.
- C. In furtherance of the Project, the City and Developer desire to enter into this First Amendment to make certain modifications and amendments to the Development Agreement.

NOW, THEREFORE, the Parties agree as follows:

AMENDED AGREEMENT

1. Section 1.16 is hereby amended to read as follows:

- 1.16 "Property" is that certain real property consisting of approximately 64.423 acres in the City of Elk Grove, being a portion of Assessor's Parcel Number 134-1010-001, and more particularly described in Exhibit A hereto. The term "Property" may include any part of the Property, depending on the context.

Continued on next page

2. EXHIBIT A, Legal Description of the Property, is hereby amended to read as follows:

**EXHIBIT A
LEGAL DESCRIPTION
ELK GROVE PROMENADE
REMAINING PROPERTY**

Being a portion of Lot A as shown on that certain map entitled "Subdivision No. 00-038.00 Lent Ranch Marketplace" filed for record on December 14, 2007 in Book 372 of Maps, Page 27, located in the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

All of said Lot A.

EXCEPTING THEREFROM, the following described area:

COMMENCING at a point which is the northeasterly corner of Lot A of said map, being a 3/4" iron pipe with plug stamped L.S. 6815; Thence leaving said **POINT OF COMMENCEMENT** along the northeasterly line of said Lot A, South 37°55'18" East, a distance of 533.10 feet; Thence leaving said northeasterly line, entering and passing through said Lot A, South 51°30'01" West, a distance of 24.29 feet to the **TRUE POINT OF BEGINNING**; Thence leaving said Point of Beginning and continuing through said Lot A, South 51°30'01" West, a distance of 1780.56 feet to a point on the southwesterly line of said Lot A, also being a point on the northeasterly right-of-way line of Promenade Parkway as shown on said map;

Thence northwesterly and northerly, respectively, along said right-of-way line, the following Twenty-one (21) arcs, courses and distances:

- 1) from a radial line which bears South 57°17'37" West, along a non-tangent curve concave to the east, having a radius of 1,452.00 feet, northwesterly 564.43 feet along said curve through a central angle of 22°16'20";
- 2) North 79°33'57" East, a distance of 6.00 feet;
- 3) from a radial line which bears South 79°33'57" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 40.55 feet along said curve through a central angle of 92°56'41";
- 4) North 82°30'38" East, a distance of 51.72 feet;
- 5) North 07°29'22" West, a distance of 100.00 feet;
- 6) South 82°30'38" West, a distance of 53.51 feet;
- 7) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 40.62 feet along said curve through a central angle of 93°06'07";
- 8) South 85°36'45" West, a distance of 6.00 feet;
- 9) from a radial line which bears South 85°36'45" West, along a non-tangent curve concave to the east, having a radius of 1,454.00 feet, northerly 93.58 feet along said curve through a central angle of 03°41'16";
- 10) North 00°42'00" West, a distance of 147.80 feet;
- 11) North 89°18'00" East, a distance of 6.00 feet;
- 12) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 39.27 feet along said curve through a central angle of 90°00'00";
- 13) North 89°18'00" East, a distance of 6.00 feet;
- 14) North 00°42'00" West, a distance of 50.00 feet;
- 15) South 89°18'00" West, a distance of 13.34 feet;
- 16) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 38.46 feet along said curve through a central angle of 88°08'33";
- 17) South 87°26'33" West, a distance of 6.00 feet;

- 18) North 02°33'27" West, a distance of 51.58 feet;
- 19) North 00°42'00" West, a distance of 563.84 feet;
- 20) North 89°18'00" East, a distance of 6.00 feet;
- 21) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the east, having a radius of 25.00 feet, northerly 6.76 feet along said curve through a central angle of 15°30'00" to the northwest corner of said Lot A and a point on the common line between said Lot A and Lot G of said Map;

Thence leaving said northeasterly line, along said common line, the following four (4) arcs, courses and distances:

- 1) North 89°12'25" East, a distance of 86.70 feet;
- 2) along a tangent curve concave to the southwest, having a radius of 330.00 feet, southeasterly 314.08 feet along said curve through a central angle of 54°31'51";
- 3) South 36°15'44" East, a distance of 86.17 feet;
- 4) along a tangent curve concave to the north, having a radius of 25.00 feet, easterly 37.96 feet along said curve through a central angle of 87°00'21";

Thence leaving said common line, entering and passing through said Lot A, the following eight (8) arcs, courses and distances:

- 1) South 32°02'06" East, a distance of 66.91 feet;
- 2) from a radial line which bears North 33°08'11" West, along a non-tangent curve concave to the south, having a radius of 978.00 feet, easterly 417.51 feet along said curve through a central angle of 24°27'35";
- 3) North 81°19'25" East, a distance of 19.83 feet;
- 4) along a tangent curve concave to the south, having a radius of 879.00 feet, easterly 342.73 feet along said curve through a central angle of 22°20'25";
- 5) South 76°20'11" East, a distance of 12.19 feet;
- 6) along a tangent curve concave to the southwest, having a radius of 342.00 feet, southeasterly 157.69 feet along said curve through a central angle of 26°25'03";
- 7) along a compound curve concave to the southwest, having a radius of 342.00 feet, southeasterly 71.04 feet along said curve through a central angle of 11°54'08";
- 8) South 38°01'00" East, a distance of 346.19 feet to the **TRUE POINT OF BEGINNING.**

TOGETHER WITH, the following described area:

That portion of that certain "Frontage Road" being 46 feet wide, 65 feet wide and of varying width in the City of Elk Grove, County of Sacramento, State of California as described in that certain document entitled "Relinquishment of State Highway, in the County of Sacramento, Road III SAC-4-A,B" recorded in Volume 3710, Page 472, recorded in the County of Sacramento Recorder's Office at the request of the Commissioner of Highways on February 26, 1959, Official Records of said County described as follows:

Bounded on the southeast by the northwesterly prolongation that certain line having a bearing and distance of North 33° 02' 59" West 245.24 feet in the northeasterly line of Lot A as shown on "Subdivision No. 00-038.00, Lent Ranch Marketplace" filed in Book 372, Page 27 of Maps, Records of said County, on the northeast by the northeasterly line of said "Frontage Road", on the northwest by the north line of southeast one-quarter of Section 12, T.6.N., R.5.E., Mount Diablo Baseline and Meridian as shown on said Subdivision Map and on the southwest by the northeasterly lines of Lots A and G as shown on said Subdivision Map.

EXCEPTING THEREFROM that portion of said "Frontage Road" lying northwesterly of the following described line:

Beginning at the easterly terminus in the curved southerly boundary of Lot G, as shown on that certain map entitled "Lent Ranch Marketplace" filed in Book 372, Page 27 of Maps, Records of said County, being a curve concave to the south having a radius of 400 feet, a radial line of said curve to said terminus bears North 24° 22' 51" East; thence from said Point of Beginning North 52° 04' 42" East 46.00 feet to the northeasterly line of said "Frontage Road".

The aforementioned description was abandoned by the City of Elk Grove by Resolution No. 2008-237 recorded November 10, 2008 in Book 20081110, Page 381, Official Records.

Containing 64.423 acres, more or less.

The Basis of Bearings for this description is the California State Plane Coordinate System, Zone 2, NAD 83, Epoch Date 1997.30 as measured between NGS Station "Eschinger", 1st Order and NGS Station "Keller", 1st Order. Said Bearing is North 20°56'36" West. Distances shown are ground based.

June 24, 2016

END OF DESCRIPTION

Continued on next page

IN WITNESS WHEREOF, this Amended Agreement has been executed as of this 26th day of October, 2016.

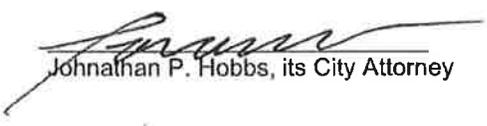
CITY OF ELK GROVE

Laura S. Gill, its City Manager

ATTEST:

Jason Lindgren, its City Clerk

APPROVED AS TO FORM:

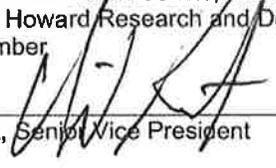


Johnathan P. Hobbs, its City Attorney

ELK GROVE TOWN CENTER, L.P., a Delaware Limited partnership

By: Elk Grove Town Center, L.L.C., its general partner

By: The Howard Research and Development Corporation, its sole member

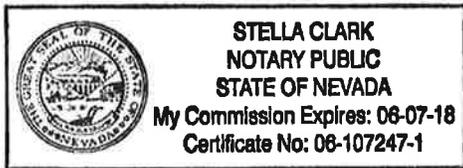
By: 

David Kautz, Senior Vice President

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on Oct 3, 2016,
by David Kautz

Stella Clark
Notary Public



**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 23-2016**

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, 2016 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, 2016 by the following vote:

AYES : **COUNCILMEMBERS:** *Davis, Ly, Detrick, Suen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *Hume*

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**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
SETTING FORTH THE CITY COUNCIL POLICY REGARDING
IMPARTIAL ANALYSES, ARGUMENTS, AND REBUTTAL ARGUMENTS
FOR ANY MEASURE(S) THAT MAY QUALIFY TO BE PLACED ON THE BALLOT
FOR THE JUNE 6, 2017 SPECIAL MUNICIPAL ELECTION**

WHEREAS, the State of California Elections Code sets forth that whenever any city measure(s) qualifies for a place on the ballot, the governing body may direct the City Elections Official to transmit a copy of the measure(s) to the City Attorney for preparation of an impartial analysis. The Elections Code further sets forth the process for receiving arguments for and against the measure(s) and for the submittal of rebuttal arguments.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Elk Grove hereby sets forth the following as it pertains to any measure(s) that may qualify to be placed on the ballot for the June 6, 2017 special municipal election:

Section 1. The City Council of the City of Elk Grove does hereby direct the City Clerk to transmit a copy of any measure(s) that would qualify to be voted upon at the June 6, 2017 Special Municipal Election to the City Attorney to prepare an impartial analysis of the measure(s) showing the effect of the measure(s) on the existing law and the operation of the measure(s) pursuant to Elections Code Section 9280. Any analysis shall not exceed 500 words in length.

Section 2. The City Council of the City of Elk Grove does hereby determine that written arguments for or against any city measure may be submitted pursuant to Elections Code Section 9282. No argument shall exceed 300 words in length.

Section 3. The City Council of the City of Elk Grove does hereby determine that rebuttal arguments may be submitted pursuant to California Elections Code Section 9285. Rebuttal arguments shall not exceed 250 words in length.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 8th day of February 2017.

STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

**A RESOLUTION OF INTENT OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
TO SUBMIT A MEASURE TO CONSIDER ORDINANCE NO. 23-2016 ON THE
GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018**

WHEREAS, on October 26, 2016, the City Council adopted Ordinance No. 23-2016, adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP.; and

WHEREAS, a referendum petition entitled “Referendum Against an Ordinance passed by the City Council; Ordinance No. 23-2016. An Ordinance of the City Council of the City of Elk Grove adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP.,” was filed with the Office of the City Clerk on November 21, 2016 against City of Elk Grove Ordinance No. 23-2016; and

WHEREAS, the referendum petition was found to be sufficient and the referendum petition was certified as sufficient by the City Council of the City of Elk Grove by Resolution No. 2017-010; and

WHEREAS, the State of California Elections Code Section 9241 directs a legislative body receiving a certified referendum petition to either repeal the ordinance against which the petition was filed, or submit the ordinance to the voters, either at the next regular municipal election occurring not less than 88 days after the order of the legislative body, or at a special election called for the purpose, not less than 88 days after the order of the legislative body; and

WHEREAS, the submittal of an ordinance to a vote of the electorate is exempt from California Environmental Quality Act (CEQA) review (CEQA Guidelines Section 15378(b)(3)); and

WHEREAS, under the provisions of the State of California Elections Code, a general municipal election (the next regular municipal election) shall be held within the City of Elk Grove on November 6, 2018 for the purpose of electing the Mayor at-large and two (2) officers from Council Member Residency Districts 2 and 4 of the City Council; and

WHEREAS, a statewide general election will be held within the County of Sacramento on the same day; and

WHEREAS, the City Council desires to submit Ordinance No. 23-2016 adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP to the voters at the next regular municipal election; and

WHEREAS, in the course of conduct of the election the City of Elk Grove will be requesting the services of the County for consolidation with a statewide election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ELK GROVE DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That under the provisions of the Elections Code, there will be called and ordered to be held in the City of Elk Grove, California, on Tuesday, November 6, 2018 a general municipal election for the purpose of electing the Mayor at-large to a two (2) year term, and Council Members from Districts 2 and 4, each to a full four (4) year term.

Section 2. That pursuant to the requirements of Elections Code Section 10403, the City of Elk Grove will be requesting the Board of Supervisors of Sacramento County to consolidate the regularly scheduled general municipal election with the statewide general election to be held on November 6, 2018.

Section 3. The City Council intends to submit the following question to the voters in the City of Elk Grove, California on Tuesday, November 6, 2018:

CITY OF ELK GROVE ORDINANCE NO. 23-2016 Shall Ordinance No. 23-2016 adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP be approved?	YES
	NO

Section 4. The text of Ordinance No. 23-2016 of the proposed measure to be submitted to the voters is attached as Exhibit A.

Section 5. In lieu of printing the full text of Ordinance No. 23-2016 on the ballot, or the voter information portion of the sample ballot, the following legend shall be printed immediately below the impartial analysis of the measure (and may be amended as required by the Sacramento County Voter Registration and Election Department):

“The above statement is an impartial analysis of City of Elk Grove Ordinance No. 23-2016, adopting the First Amendment to the Development Agreement with Elk Grove Town Center, LP. If you desire a copy of the ordinance, please access the City of Elk Grove website at: http://www.elkgrovecity.org/city_hall/city_government/city_clerk/election_in_formation/, or call the Office of the City Clerk, City of Elk Grove, at (916) 478-3635 and a copy will be mailed at no cost to you.”

Section 6. That the City Clerk is directed to file a certified copy of this resolution with the Sacramento County Voter Registration and Elections Department, and return with a resolution to formally request the measure be submitted in the November 6, 2018 General Municipal Election at such time when the City of Elk Grove requests consolidation with the November 6, 2018 General Municipal Election or prior to the Sacramento County Voter Registration and Elections Department’s deadlines for a local agency to submit measures for the November 6, 2018 General Municipal Election.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 8th day of February 2017.

STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JONATHAN P. HOBBS,
CITY ATTORNEY

EXHIBIT A

ORDINANCE NO. 23-2016

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADOPTING
THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT
WITH ELK GROVE TOWN CENTER, LP**

WHEREAS, on June 27, 2001, the City Council certified the Environmental Impact Report (EIR, State Clearinghouse No. 1997122002) for the Lent Ranch Marketplace Project and adopted the Lent Ranch Special Planning Area, which provided for the development of a regional mall and surrounding retail, office, and entertainment development; and

WHEREAS, on September 5, 2001, the City Council adopted a 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 (the "2001 Development Agreement"); and

WHEREAS, on July 11, 2007, the City Council adopted an Agreement Regarding the Regional Mall, Fees, and Infrastructure with Elk Grove Town Center, LP regarding the regional mall; and

WHEREAS, on October 8, 2014, the City Council approved a new Development Plan Review for the Regional Mall site (District A) of, and pursuant to, the Lent Ranch Special Planning Area, referred to as the Outlet Collection at Elk Grove, file EG-14-012; and

WHEREAS, as part of the approval of the Outlet Collection at Elk Grove, the City Council entered into a new Development Agreement and an Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure with the Applicant, Elk Grove Town Center, L.P.; and

WHEREAS, the City of Elk Grove received an application on August 30, 2016, from the Applicant requesting amendments to the Development Agreement and an Amended and Restated Agreement Regarding Regional Mall, Fees, and Infrastructure (the "Agreements") to remove the Phase 2 portion from these agreements; and

WHEREAS, the project covered by the Agreements is located within the Lent Ranch Special Planning Area for which an EIR (State Clearinghouse No. 1997122002) was prepared and certified July 2001; and

WHEREAS, State CEQA Guidelines Section 15162 provides that when an EIR has been certified for a project, no subsequent EIR shall be prepared for that project unless then lead agency (the City) determines, on the basis of substantial evidence in light of the whole record, one or more substantial change in the project, circumstances, or information (as defined in the section) have occurred; and

WHEREAS, the Planning Commission held a duly noticed public hearing on September 15, 2016, as required by law to consider all of the information presented by staff, information presented by the Applicant, and public testimony presented in writing and at the meeting, and the Planning Commission recommended approval of the

amendments to the Agreements to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on October 12, 2016, as required by law to consider all of the information presented by staff, information presented by the Applicant, and public testimony presented in writing and at the meeting.

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

Section 1: Purpose

The purpose of this Ordinance is to adopt amendments to Development Agreement with Elk Grove Town Center, LP for the project commonly known as The Outlet Collection at Elk Grove.

Section 2: Findings

This Ordinance is adopted based upon the following findings:

California Environmental Quality Act (CEQA)

Finding: No further environmental review is required under the California Environmental Quality Act pursuant to State CEQA Guidelines section 15162.

Evidence: The City has reviewed the Development Agreement amendment and analyzed it based upon the provisions in Section 15162 of the State CEQA Guidelines. The proposed amendments to the Development Agreement narrow the scope of these agreements to just the area covered by the 2014 approvals for the Outlet Collection at Elk Grove Project. That project proposed to develop approximately 750,000 square feet of commercial development, which is less than the 1,300,000 square feet analyzed in the Lent Ranch EIR. While the core development area (approximately 525,000 square feet) will be structured as an outlet center, it will continue to operate with retail tenants consistent with the description for the District included in the Draft EIR. The balance of the commercial center will include space for a movie theater, and locations for future pad buildings that will accommodate other retail and restaurant tenants. This is also consistent with the District A description from the Draft EIR that references “varied dining opportunities, and entertainment facilities including a possible theater complex.”

The proposed Development Agreement amendment will modify the application of the existing Development Agreement by narrowing the scope of these agreements to include only the area covered by the 2014 approvals for the Outlet Collection at Elk Grove Project. The amendment does not change the characteristics of the approved development. No specific development of the Phase 2 area is approved by the Development Agreement amendment. Therefore, there are no substantial changes in the project approvals from that analyzed in the 2001 EIR and no new significant environmental effects, or substantial increase in the severity of previously identified significant effects. No new information of substantial importance has been identified.

Further, since no changes to the EIR are necessary to support the approvals, the City is not required to prepare an Addendum to the EIR as provided by State CEQA Guidelines Section 15164. Therefore, the prior EIR is sufficient to support the approvals of the Development Agreement amendment, and no further environmental review is required.

Development Agreement Amendment

Finding #1: The development agreement amendment is consistent with the General Plan objectives, policies, land uses, and implementation programs and any other applicable specific plans.

Evidence: The proposed First Amendment to the Development Agreement is consistent with the General Plan as the General Plan designates the subject property for commercial development and the Development Agreement provides for the development up to the 1,300,000 square feet allocated for District A, consistent with the Special Planning Area. The site is not subject to a specific plan.

Finding #2: The development agreement amendment is in conformance with the public convenience and general welfare of persons residing in the immediate area and will not be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole.

Evidence: The approval of a Development Agreement amendment is in conformity with public convenience, general welfare and good land use practices because it will develop a Regional Mall along the Highway 99 corridor that will accommodate the growing need for such services in the City of Elk Grove and surrounding region. The project that is the subject of the Development Agreement amendment will create a commercial, retail, and entertainment development that is of high quality and fully integrated on one site rather than less desirable piecemeal land uses spread out over several other locations. The project will provide an expanded economic base for the City of Elk Grove through the generation of significant increased tax revenue. The Development Agreement is necessary in order to obtain the major investment necessary to develop the project. Absent approval of the Development Agreement, as amended, the City would not obtain the benefits of the project to the community. The Development Agreement will establish land use regulations for a reasonable period to allow project build out in accordance with the approved entitlements for development, and to ensure a cohesive development. The project subject to the development agreement amendment will provide the variety of land uses noted above at one attractively designed, well-planned site, located adjacent to major highways and a freeway interchange for maximum public convenience. The project will also provide these services to the residents of existing and planned residential developments, thereby reducing the number of vehicle miles traveled to obtain these same services at greater distances, and improving air quality. The project will also create indirect economic benefits and serve as a catalyst for additional economic activity as a result of job creation and the spending of project wages in the City. Thus, in accordance with good land use practices, the project subject to the Development Agreement, as amended, will promote a better balance of

employment, services and housing, and improve the mix of uses in the community.

The First Amendment to the Development Agreement reflects the project boundaries as contained in the project approvals dated October 2014 under File EG-14-102. No other development is approved by the Development Agreement amendments.

Finding #3: The development agreement amendment will promote the orderly development of property or the preservation of property values.

Evidence: The project site covered by the Development Agreement amendment is designated in the General Plan for commercial development. Approval of the Development Agreement amendment will assist in the development of these lands and the provision of urban levels of public infrastructure and services to areas within the City. Thus, the uses proposed by the project subject to the Development Agreement amendment are consistent with those envisioned for the area in the General Plan. The project will contribute to a balance of land uses within the City by providing a diversity of necessary services that respond to the needs of the surrounding community and the region. The project will be compatible with and preserve (or even increase) the property values of the predominantly residential development proposed or otherwise approved for surrounding areas, by providing necessary and desirable services nearby. The project, as designed, will be a cohesive, planned multi-use development, and will provide a visually pleasing, safe and attractive gathering place that will encourage community identity. Necessary infrastructure, including sewer, water, and roadways, to serve the project have been constructed. As a result, the project covered by the Development Agreement amendment will not adversely affect the orderly development of property, and property values will be preserved or increased.

Section 3: Approval of Development Agreement Amendment.

The City Council hereby approves and adopts the First Amendment to the Development Agreement between the City of Elk Grove and Elk Grove Town Center, LP, attached as Exhibit A and incorporated herein by this reference. The City Manager is hereby authorized to execute the Development Agreement on behalf of the City in substantially the form attached hereto as Exhibit A.

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: 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 affect; 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 7: 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).

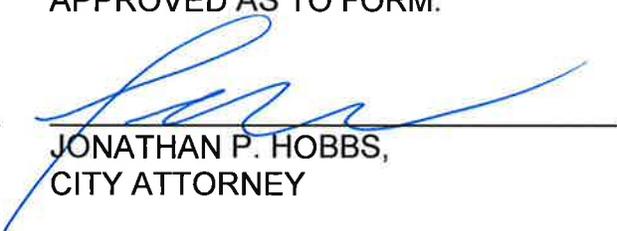
ORDINANCE: 23-2016
INTRODUCED: October 12, 2016
ADOPTED: October 26, 2016
EFFECTIVE: November 25, 2016



GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:


JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:


JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: October 26, 2016

EXHIBIT A

OFFICIAL CITY BUSINESS
No recording fee
Government Code Section 6103

RECORDING REQUESTED BY:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Clerk

WHEN RECORDED MAIL TO:

City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
Attn: City Clerk

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**FIRST AMENDMENT TO THE
DEVELOPMENT AGREEMENT
BETWEEN THE
CITY OF ELK GROVE,
AND
ELK GROVE TOWN CENTER, LP**

FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT

This FIRST AMENDMENT to the Development Agreement ("Amended Agreement") is entered into between the City of Elk Grove ("City"), and Elk Grove Town Center, LP, a Delaware limited partnership ("Developer"). For the purposes of this Agreement, Developer and City are referred to individually as "Party" and collectively as the "Parties."

RECITALS

- A. The City and Developer have heretofore entered into a Development Agreement, approved by City of Elk Grove by Ordinance No. 29-2014, adopted on October 22, 2014 (the "Development Agreement"), and relating to certain Property in the City of Elk Grove upon which Developer desires to develop
- B. Those recitals provided in the Development Agreement are herein incorporated by reference.
- C. In furtherance of the Project, the City and Developer desire to enter into this First Amendment to make certain modifications and amendments to the Development Agreement.

NOW, THEREFORE, the Parties agree as follows:

AMENDED AGREEMENT

1. Section 1.16 is hereby amended to read as follows:

- 1.16 "Property" is that certain real property consisting of approximately 64.423 acres in the City of Elk Grove, being a portion of Assessor's Parcel Number 134-1010-001, and more particularly described in Exhibit A hereto. The term "Property" may include any part of the Property, depending on the context.

Continued on next page

2. EXHIBIT A, Legal Description of the Property, is hereby amended to read as follows:

**EXHIBIT A
LEGAL DESCRIPTION
ELK GROVE PROMENADE
REMAINING PROPERTY**

Being a portion of Lot A as shown on that certain map entitled "Subdivision No. 00-038.00 Lent Ranch Marketplace" filed for record on December 14, 2007 in Book 372 of Maps, Page 27, located in the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

All of said Lot A.

EXCEPTING THEREFROM, the following described area:

COMMENCING at a point which is the northeasterly corner of Lot A of said map, being a 3/4" iron pipe with plug stamped L.S. 6815; Thence leaving said **POINT OF COMMENCEMENT** along the northeasterly line of said Lot A, South 37°55'18" East, a distance of 533.10 feet; Thence leaving said northeasterly line, entering and passing through said Lot A, South 51°30'01" West, a distance of 24.29 feet to the **TRUE POINT OF BEGINNING**; Thence leaving said Point of Beginning and continuing through said Lot A, South 51°30'01" West, a distance of 1780.56 feet to a point on the southwesterly line of said Lot A, also being a point on the northeasterly right-of-way line of Promenade Parkway as shown on said map;

Thence northwesterly and northerly, respectively, along said right-of-way line, the following Twenty-one (21) arcs, courses and distances:

- 1) from a radial line which bears South 57°17'37" West, along a non-tangent curve concave to the east, having a radius of 1,452.00 feet, northwesterly 564.43 feet along said curve through a central angle of 22°16'20";
- 2) North 79°33'57" East, a distance of 6.00 feet;
- 3) from a radial line which bears South 79°33'57" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 40.55 feet along said curve through a central angle of 92°56'41";
- 4) North 82°30'38" East, a distance of 51.72 feet;
- 5) North 07°29'22" West, a distance of 100.00 feet;
- 6) South 82°30'38" West, a distance of 53.51 feet;
- 7) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 40.62 feet along said curve through a central angle of 93°06'07";
- 8) South 85°36'45" West, a distance of 6.00 feet;
- 9) from a radial line which bears South 85°36'45" West, along a non-tangent curve concave to the east, having a radius of 1,454.00 feet, northerly 93.58 feet along said curve through a central angle of 03°41'16";
- 10) North 00°42'00" West, a distance of 147.80 feet;
- 11) North 89°18'00" East, a distance of 6.00 feet;
- 12) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 39.27 feet along said curve through a central angle of 90°00'00";
- 13) North 89°18'00" East, a distance of 6.00 feet;
- 14) North 00°42'00" West, a distance of 50.00 feet;
- 15) South 89°18'00" West, a distance of 13.34 feet;
- 16) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 38.46 feet along said curve through a central angle of 88°08'33";
- 17) South 87°26'33" West, a distance of 6.00 feet;

- 18) North 02°33'27" West, a distance of 51.58 feet;
- 19) North 00°42'00" West, a distance of 563.84 feet;
- 20) North 89°18'00" East, a distance of 6.00 feet;
- 21) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the east, having a radius of 25.00 feet, northerly 6.76 feet along said curve through a central angle of 15°30'00" to the northwest corner of said Lot A and a point on the common line between said Lot A and Lot G of said Map;

Thence leaving said northeasterly line, along said common line, the following four (4) arcs, courses and distances:

- 1) North 89°12'25" East, a distance of 86.70 feet;
- 2) along a tangent curve concave to the southwest, having a radius of 330.00 feet, southeasterly 314.08 feet along said curve through a central angle of 54°31'51";
- 3) South 36°15'44" East, a distance of 86.17 feet;
- 4) along a tangent curve concave to the north, having a radius of 25.00 feet, easterly 37.96 feet along said curve through a central angle of 87°00'21";

Thence leaving said common line, entering and passing through said Lot A, the following eight (8) arcs, courses and distances:

- 1) South 32°02'06" East, a distance of 66.91 feet;
- 2) from a radial line which bears North 33°08'11" West, along a non-tangent curve concave to the south, having a radius of 978.00 feet, easterly 417.51 feet along said curve through a central angle of 24°27'35";
- 3) North 81°19'25" East, a distance of 19.83 feet;
- 4) along a tangent curve concave to the south, having a radius of 879.00 feet, easterly 342.73 feet along said curve through a central angle of 22°20'25";
- 5) South 76°20'11" East, a distance of 12.19 feet;
- 6) along a tangent curve concave to the southwest, having a radius of 342.00 feet, southeasterly 157.69 feet along said curve through a central angle of 26°25'03";
- 7) along a compound curve concave to the southwest, having a radius of 342.00 feet, southeasterly 71.04 feet along said curve through a central angle of 11°54'08";
- 8) South 38°01'00" East, a distance of 346.19 feet to the **TRUE POINT OF BEGINNING.**

TOGETHER WITH, the following described area:

That portion of that certain "Frontage Road" being 46 feet wide, 65 feet wide and of varying width in the City of Elk Grove, County of Sacramento, State of California as described in that certain document entitled "Relinquishment of State Highway, in the County of Sacramento, Road III SAC-4-A,B" recorded in Volume 3710, Page 472, recorded in the County of Sacramento Recorder's Office at the request of the Commissioner of Highways on February 26, 1959, Official Records of said County described as follows:

Bounded on the southeast by the northwesterly prolongation that certain line having a bearing and distance of North 33° 02' 59" West 245.24 feet in the northeasterly line of Lot A as shown on "Subdivision No. 00-038.00, Lent Ranch Marketplace" filed in Book 372, Page 27 of Maps, Records of said County, on the northeast by the northeasterly line of said "Frontage Road", on the northwest by the north line of southeast one-quarter of Section 12, T.6.N., R.5.E., Mount Diablo Baseline and Meridian as shown on said Subdivision Map and on the southwest by the northeasterly lines of Lots A and G as shown on said Subdivision Map.

EXCEPTING THEREFROM that portion of said "Frontage Road" lying northwesterly of the following described line:

Beginning at the easterly terminus in the curved southerly boundary of Lot G, as shown on that certain map entitled "Lent Ranch Marketplace" filed in Book 372, Page 27 of Maps, Records of said County, being a curve concave to the south having a radius of 400 feet, a radial line of said curve to said terminus bears North 24° 22' 51" East; thence from said Point of Beginning North 52° 04' 42" East 46.00 feet to the northeasterly line of said "Frontage Road".

The aforementioned description was abandoned by the City of Elk Grove by Resolution No. 2008-237 recorded November 10, 2008 in Book 20081110, Page 381, Official Records.

Containing 64.423 acres, more or less.

The Basis of Bearings for this description is the California State Plane Coordinate System, Zone 2, NAD 83, Epoch Date 1997.30 as measured between NGS Station "Eschinger", 1st Order and NGS Station "Keller", 1st Order. Said Bearing is North 20°56'36" West. Distances shown are ground based.

June 24, 2016

END OF DESCRIPTION

Continued on next page

IN WITNESS WHEREOF, this Amended Agreement has been executed as of this 26th day of October, 2016.

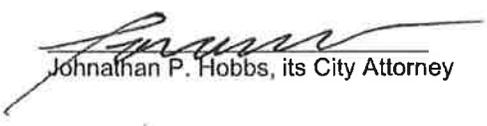
CITY OF ELK GROVE

Laura S. Gill, its City Manager

ATTEST:

Jason Lindgren, its City Clerk

APPROVED AS TO FORM:

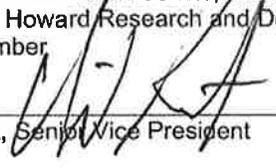


Johnathan P. Hobbs, its City Attorney

ELK GROVE TOWN CENTER, L.P., a Delaware Limited partnership

By: Elk Grove Town Center, L.L.C., its general partner

By: The Howard Research and Development Corporation, its sole member

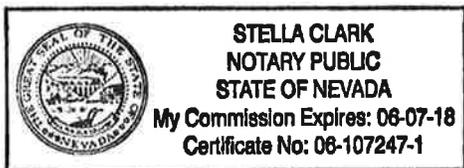
By: 

David Kautz, Senior Vice President

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on Oct 3, 2016,
by David Kautz

Stella Clark
Notary Public



**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 23-2016**

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 October 12, 2016 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, 2016 by the following vote:

AYES : **COUNCILMEMBERS:** *Davis, Ly, Detrick, Suen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *Hume*

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**