

ORDINANCE NO. 10-2017

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
ADDING ELK GROVE MUNICIPAL CODE CHAPTER 23.83 RELATING TO INDOOR
PERSONAL MARIJUANA CULTIVATION, REPEALING ORDINANCE NO. 04-2017
RELATING TO A MORATORIUM ON COMMERCIAL MARIJUANA LAND USE AND
MARIJUANA CULTIVATION, AND AMENDING CHAPTER 23.27 RELATING TO
ALLOWED LAND USES AND REQUIRED ENTITLEMENTS
(CEQA EXEMPT)**

WHEREAS, on November 8, 2016, California voters approved Proposition 64, which is commonly known as the Adult Use of Marijuana Act ("AUMA"); and

WHEREAS, AUMA recognizes a city's authority to regulate and/or prohibit marijuana related business and marijuana cultivation; and

WHEREAS, AUMA provides that a person may possess, plant, cultivate, harvest, dry, or process not more than six living marijuana plants and possess the marijuana produced by the marijuana plants, and that a city may enact and enforce reasonable regulations to reasonably regulate such actions and conduct, but that a city may not completely prohibit such actions or conduct inside a private residence or inside a fully enclosed accessory structure to a private residence located on the grounds of the private residence.

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

Section 1: Purpose

The purpose of this Ordinance is to add regulations relative to marijuana cultivation and commercial marijuana business and activities. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7, Health and Safety Code Section 11362.2, and other statutory and case law governing the authority of cities.

Section 2: Findings

California Environmental Quality Act (CEQA)

Finding: The enactment of this ordinance does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a))

Evidence: The California Environmental Quality Act (section 21000, et. seq. of the California Public Resources Code, hereafter CEQA) requires analysis of agency approvals of discretionary “projects.” A “project,” under CEQA, is defined as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines § 15378(a)).

The proposed amendments to Title 23 would impose reasonable regulations and standards on the indoor personal cultivation of marijuana, as allowed by AUMA. The proposed amendments set specific requirements related to appropriate zoning, location, number of plants and various other standards not impacting the physical environment. The amendments reinforce compliance with existing State and local regulations adopted by the City of Elk Grove (California Building, Electrical, and Fire Codes). Cultivation activities would be subject to existing performance standards, including prohibiting any use from creating noxious odorous emission in a manner of quantity that are detrimental to or endanger the public health, safety, comfort or welfare. A continued prohibition on all commercial activities related to the cultivation of marijuana maintains the status quo and would not cause a significant impact on the environment. All permitted indoor personal cultivation activities would occur within the confines a residential structure or associated accessory structure, thereby resulting in no physical change to the environment. Therefore, the proposed code amendments would not constitute the approval of a project under CEQA, and are exempt from CEQA (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a)).

General Plan Consistency

Finding: The proposed amendments to the Elk Grove Municipal Code are consistent with the General Plan goals, policies, and implementation programs.

Evidence: The City’s General Plan Goals and Policies recognize the need for diversified uses, while equally protecting the health, safety and welfare of its residents and the environment. The proposed amendments would put into place reasonable regulations for personal cultivation of marijuana in accordance with AUMA. These regulations require compliance with existing State and local regulations, including but not limited to the California Building, Electrical and Fire Codes as well as various performance standards in the Municipal Code. By placing reasonable regulations on cultivation of marijuana for personal use, the City is providing a mechanism to ensure the protection of the health, safety and welfare of its residents and the environment which is consistent with the General Plan goals, policies, and implementation programs:

Section 3: Adopt Elk Grove Municipal Code Chapter 23.83 relating to indoor personal marijuana cultivation.

Elk Grove Municipal Code Chapter 23.83 is hereby adopted to read as set forth in Exhibit A.

Section 4: Repeal of Moratorium on Commercial Marijuana Land Use and Marijuana Cultivation.

Ordinance No. 30-2016 Moratorium on Commercial Marijuana Land Use and Marijuana Cultivation and Ordinance No. 04-2017 Extending a Moratorium on Commercial Marijuana Land Use and Marijuana Cultivation are hereby repealed as of the effective date of this ordinance. The staff report dated March 22, 2017 shall serve as the report required by California Government Code, section 65858(h).

Section 5: Amend Elk Grove Municipal Code Chapter 23.27 Allowed Uses and Required Entitlements.

Table 23.27-1 is hereby amended as set forth at Exhibit B.

Section 6: 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 7: 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 8: 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 9: 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: **10-2017**
INTRODUCED: March 22, 2017
ADOPTED: April 12, 2017
EFFECTIVE: May 12, 2017



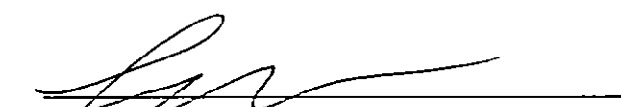
STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: April 17, 2017

Chapter 23.83

INDOOR PERSONAL MARIJUANA CULTIVATION

Sections:

<u>23.83.010</u>	Purpose and intent
<u>23.83.020</u>	Definitions
<u>23.83.030</u>	Cultivation of marijuana for personal use
<u>23.83.040</u>	Enforcement

23.83.010 Purpose and intent.

It is the purpose and intent of this Chapter to enact and enforce reasonable regulations to reasonably regulate the ability of an individual twenty-one (21) years of age or older to possess, plant, cultivate, harvest, dry, or process, for personal noncommercial use, not more than six (6) living marijuana plants indoors and to possess the marijuana produced by the plants, all in accordance with the Adult Use of Marijuana Act of 2016 and, specifically, Sections 11362.1 and 11362.2 of the Health and Safety Code. The cultivation of marijuana for personal noncommercial use may only take place in accordance with this Chapter. Nothing herein is intended to alter or amend any other local, state, or federal law or regulations concerning marijuana.

23.83.020 Definitions.

Consistent with the definitions set forth in the Adult Use of Marijuana Act of 2016, for the purposes of this Chapter, the following words shall have the following meaning. If a word is not defined in this Chapter, the common and ordinary meaning of the word shall apply.

- A. "Accessory structure" means a legally existing fully enclosed detached structure no larger than one hundred twenty square feet (120 ft²) in size that is fully enclosed with walls for all perimeters of the building, including, without limitation, a storage shed located on the same legal parcel as a private residence.
- B. "Commercial marijuana activity" means the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, labeling, transportation, or sale of marijuana and marijuana products for commercial purposes, whether or not conducted with a license issued in accordance with Division 10 of the Business and Professions Code (Business and Professions Code sections 26000, et seq.).
- C. "Cultivate" or "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.
- D. "Distribution" means the commercial procurement, sale, and transport of marijuana and marijuana products whether or not conducted with a license issued in accordance with Division 10 of the Business and Professions Code (Business and Professions Code sections 26000, et seq.).

- E. "Indoor" means inside a private residence, residential structure, or accessory structure.
- F. "Legal parcel" means any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Government Code sections 66410 et. seq.).
- G. "Manufacture" means the commercial production, preparation, propagation, or compounding of marijuana or marijuana products either directly or indirectly or by extractions and chemical synthesis at a fixed location that packages or repackages marijuana or marijuana products or labels or re-labels its container.
- H. "Marijuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resins. Marijuana does not include:
 - a. Industrial hemp, as defined in Health and Safety Code section 11018.5; or
 - b. The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other product.
 The terms marijuana and cannabis shall be synonymous and have the same meaning.
- I. "Marijuana products" means marijuana that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing marijuana or concentrated cannabis and other ingredients.
- J. "Outdoor" means any location within the City of Elk Grove that is not within a fully enclosed structure.
- K. "Premises" means a single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall constitute a single "premises" for purposes of this Chapter.
- L. "Private residence" means a legally existing house, apartment unit, mobile home, or other similar dwelling. A legally existing accessory structure located on the same legal parcel as a private residence shall be considered a part of that private residence.
- M. "Residential structure" means any building or portion thereof legally existing which contains living facilities, including provisions for sleeping, eating, cooking and sanitation on a premises or legal parcel located within a zoning district authorizing such use and which may be legally occupied by persons.

23.83.030 Cultivation of marijuana for personal use.

The following regulations shall apply to the cultivation of marijuana for personal use within the City.

- A. It shall be unlawful and a public nuisance for any person under twenty-one (21) years of age to cultivate marijuana.
- B. It shall be unlawful and a public nuisance for any person to cultivate marijuana for any commercial marijuana activity. Notwithstanding the

foregoing, nothing herein is intended to prohibit the transportation of marijuana or marijuana products on public roads by a licensee duly licensed and acting in compliance with Division 10 of the Business and Professions Code (Business and Professions Code section 26000, et seq.). Commercial delivery of marijuana in the City is prohibited.

- C. It shall be unlawful and a public nuisance for any person twenty-one (21) years of age or older who own, lease, occupy, or have charge or possession of any legal parcel or premises within any zoning district in the City of Elk Grove to cultivate marijuana for personal use except as provided for in this Chapter 23.83.
- D. Limitations on Cultivation. Not more than a total of six (6) living marijuana plants may be planted, cultivated, harvested, dried, or processed inside a single private residence and/or inside an accessory structure located on the grounds where the private residence is located, at any one time. The living marijuana plants and any marijuana produced by the plants in excess of 28.5 grams shall be kept within the private residence or accessory structure located upon the premises, in a locked space, and not visible by normal unaided vision from a public view.
- E. Residency Requirement. Any person who cultivates marijuana for personal use shall reside full-time on the premises where the marijuana cultivation occurs.
- F. Outdoor Cultivation Prohibited. It shall be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City of Elk Grove to cause, or allow such parcel or premises to be used for, the outdoor cultivation of marijuana or marijuana products.
- G. Cultivation in Private Residences Only. Personal cultivation of marijuana is prohibited in all zoning districts except inside a private residence or inside an accessory structure located on the same legal parcel as a private residence, as permitted under EGMC section 23.27.020 and Use Table 23.27-1, and all subject to the regulations set forth in this Chapter.
- H. Indoor Personal Cultivation. The indoor personal cultivation of marijuana inside a private residence or inside an accessory structure located on the same legal parcel as a private residence, as permitted herein, shall only be conducted consistent with the following minimum standards:
 - 1. Structures shall comply with all laws concerning building and construction of structures, including, without limitation, and as applicable, the Zoning Code, the California Building Code, Electrical Code, and Fire Code, as adopted by the City of Elk Grove.
 - 2. Marijuana cultivation lighting shall not exceed a total of one-thousand two-hundred (1,200) watts for the cultivation area within the private residence.
 - 3. The indoor use of generators and/or the indoor use of gas products, including, without limitation, CO₂, butane, propane, and natural gas shall be prohibited for the cultivation of marijuana.

4. The private residence shall maintain fully functional kitchen, bathroom, and bedroom facilities for use by the residents and guests, and the private residence shall not be used primarily for marijuana cultivation.
5. Marijuana cultivation areas shall not be readily accessible to persons under twenty-one (21) years of age.
6. Any private residence or accessory structure used for marijuana cultivation shall contain a lock on the entry door, which shall remain locked at all times, except when the accessory structure is in use or occupied by a person twenty-one (21) years of age or older authorized to cultivate marijuana pursuant to this Chapter.
7. Marijuana cultivation activities, including marijuana plants and equipment, shall not be visible from a public right-of-way.
8. No marijuana may be cultivated in a rented private residence without the express consent of the property owner.
9. Marijuana cultivation shall not be conducted in such a manner as to emit detrimental odorous emissions outside of the private residence in violation of EGMC section 23.60.050.

23.83.040 Enforcement.

- A. Violations of this Chapter shall constitute a public nuisance and may be enforced pursuant to the provisions of Title 1 and Chapter 16.18 of this Municipal Code.
- B. Consistent with the restrictions set forth in California Health and Safety Code section 11362.2(a)(3), the City may seize and destroy any living marijuana plants found in excess of the six (6) plants allowed under EGMC section 23.83.030.D. Any marijuana plants seized pursuant to this section shall be held by the City for not less than fifteen (15) days to allow the owner of the marijuana plants to pursue an administrative appeal pursuant to EGMC Chapter 1.11. If an appeal is not properly filed (including the payment of any applicable appeal fee) within this time period, the City may thereafter destroy the seized marijuana plants.
- C. Upon discovery of a violation of this Chapter, the City may require all marijuana plants and marijuana in excess of 28.5 grams to be removed from the premises upon 24 hours' notice from the City, or immediately if the City determines such action is necessary to protect the health, welfare and/or safety of the public and/or occupants of the premises.
- D. The remedies set forth in this Chapter shall be cumulative and in addition to any and all other remedies, civil, equitable or criminal, afforded to the City under the law. Pursuit of one remedy under this Chapter, or any other provision of law, shall not preclude pursuit of any other remedy provided herein or any other provision of law.
- E. Any notice of violation of this Chapter may be appealed pursuant to EGMC Chapter 1.11.

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 10-2017**

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 March 22, 2017 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on April 12, 2017 by the following vote:

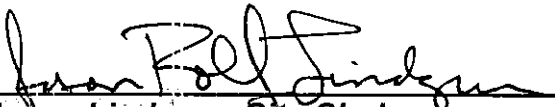
AYES : **COUNCILMEMBERS:** *Ly, Hume, Nguyen, Suen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *Detrick*

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



**Jason Lindgren, City Clerk
City of Elk Grove, California**