

**ORDINANCE NO. 05-2021**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AMENDING ELK GROVE MUNICIPAL CODE CHAPTERS 9.28 AND 9.31  
RELATED TO PERSONAL USE, DELIVERIES AND DISPENSING OF MARIJUANA  
(CEQA EXEMPT)**

**WHEREAS**, Elk Grove Municipal Code (EGMC) Chapter 9.28 governs the public consumption of marijuana within the City of Elk Grove; and

**WHEREAS**, EGMC Chapter 9.31 governs marijuana dispensaries and delivery within the City of Elk Grove; and

**WHEREAS**, the City Council wishes to amend the EGMC to conform with California state law and regulations applicable to the personal use, delivery, and dispensing of marijuana in the City of Elk Grove.

**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 amend Elk Grove Municipal Code Chapter 9.28 (Public Consumption of Marijuana) and Chapter 9.31 (Medical Marijuana Dispensaries, renamed through this Ordinance as Marijuana/Cannabis Dispensaries and Deliveries).

Section 2: Amend Elk Grove Municipal Code Chapters 9.28 (Public Consumption of Marijuana) and 9.31 (Medical Marijuana Dispensaries, renamed through this Ordinance as Marijuana / Cannabis Dispensaries and Deliveries).

Elk Grove Municipal Code Chapters 9.28 and 9.31 are hereby amended to read as follows:

*(All additions are shown as **bold** text, deletions in strikethrough)*

**Chapter 9.28  
PUBLIC CONSUMPTION OF MARIJUANA**

...

Sections:

- 9.28.010 Title.
- 9.28.020 ~~Findings and purposes.~~ **Definitions.**
- 9.28.030 Prohibition.
- 9.28.040 Penalty.

### **9.28.020 Findings and purposes.**

~~On November 5, 1996, the voters of the State of California approved Proposition 215 enacting Section 11362.5 of the Health and Safety Code. That section permits, for purposes of State law, the limited use, cultivation and possession of marijuana for specified medical purposes.~~

~~However, the use, cultivation and possession of marijuana for other purposes remains illegal within this State and is presently illegal under Federal laws. Additionally, the use of marijuana by minors has been demonstrated to be a gateway to the use of other illicit substances.~~

~~While recognizing the enactment of Section 11362.5 of the Health and Safety Code, the City Council believes that the open and public use of marijuana, which might otherwise be permitted by that section, A) is injurious to public health in many of the same ways that tobacco consumption is injurious to the public health and B) provides to a public, including minors, not privy to reasons for such use, a deleterious example regarding the consumption of otherwise illicit, controlled substances.~~

~~Therefore, the City Council believes it necessary to balance the uses of marijuana permitted by Section 11362.5, the public health and the need to recognize that possession and use of marijuana for other purposes remains illegal.~~

### **9.28.20 Definitions.**

- A. “Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. “Cannabis” also does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.**
- B. “Cannabis products” means cannabis 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 cannabis or concentrated cannabis and other ingredients.**
- C. “Day care center” has the same meaning as in Section 1596.76 of the Health & Safety Code.**

- D. **“Marijuana” shall have the same meaning as cannabis, and the terms “marijuana” and “cannabis” may be used interchangeably and synonymously through this Chapter.**
- E. **“Marijuana products” shall have the same meaning as cannabis products, and the terms “marijuana products” and “cannabis products” may be used interchangeably and synonymously through this Chapter.**
- F. **“Smoke” means to inhale, exhale, burn, or carry any lighted or heated device or pipe, or any other lighted or heated cannabis or cannabis product intended for inhalation, whether natural or synthetic, in any manner or in any form. “Smoke” includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in a place.**
- G. **“Volatile solvent” means a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.**
- H. **“Youth center” has the same meaning as in Section 11353.1 of the Health & Safety Code.**

**~~9.28.030~~ 9.28.030 Prohibition.**

~~The consumption of marijuana otherwise permitted by Section 11362.5 of the California Health and Safety Code is hereby prohibited on any public property or in any facility or space to which members of the public have access.~~

**It shall be unlawful and a public nuisance for any person to:**

- A. **Smoke or ingest cannabis or cannabis products in a public place.**
- B. **Smoke cannabis or cannabis products in a location where smoking tobacco is prohibited.**
- C. **Smoke cannabis or cannabis products within 1,000 feet of a school, day care center, or youth center while children are present at the school, day care center, or youth center, except in or upon the grounds of a private residence and only if such smoking is not detectable by others on the grounds of the school, day care center, or youth center while children are present.**
- D. **Possess an open container or open package of cannabis or cannabis products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.**
- E. **Possess, smoke, or ingest cannabis or cannabis products in or upon the grounds of a school, day care center, or youth center while children are present.**

- F. **Manufacture concentrated cannabis using a volatile solvent.**
- G. **Smoke or ingest cannabis or cannabis products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.**
- H. **Smoke or ingest cannabis or cannabis products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.**

**9.28.040 Penalty.**

~~Violations of this chapter shall be a misdemeanor punishable by a fine not exceeding One Thousand and no/100<sup>ths</sup> (\$1,000.00) Dollars, imprisonment for a term not exceeding six (6) months, or by both such fine and imprisonment.~~

**Each failure to comply with any provision of this chapter or any regulation promulgated under this chapter is unlawful and constitutes a public nuisance and shall be enforced in accordance with procedures set out in EGMC Title 1 and Chapter 16.18.**

Chapter 9.31

**MEDICAL MARIJUANA/CANNABIS DISPENSARIES AND DELIVERY**

Sections:

- ~~9.31.010 Purpose and authority.~~
- ~~9.31.020~~ **9.31.010 Definitions.**
- ~~9.31.030~~ **9.31.020 Dispensaries prohibited.**
- ~~9.31.035~~ **9.31.030 Medical marijuana Medical delivery prohibited.**
- ~~9.31.040~~ **9.31.040 Punishment.**

~~9.31.010 Purpose and authority.~~

~~The City Council of the City of Elk Grove finds that Federal and State laws prohibiting the possession, sale and distribution of marijuana would preclude the opening or establishment of medical marijuana dispensaries, or medical marijuana delivery service, sanctioned by the City of Elk Grove, and in order to serve public health, safety and welfare of the residents and businesses within the City, the declared purpose of this chapter is to prohibit medical marijuana dispensaries from being opened or established within the City of Elk Grove, and to prohibit the delivery of medical marijuana within the City of Elk Grove. Nothing contained in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any State or Federal law.~~

**9.31.020 9.31.010 Definitions**

When used in this chapter, the following words shall have the meanings ascribed to them in this section:

- A. “Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. “Cannabis” also does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.**
- B. “Delivery” or “deliver” means the commercial transfer of cannabis or cannabis products to a customer. “Delivery” also includes the use by a retailer of any technology platform.**
- ~~A. C.~~ **“Identification card” means a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.**
- BD. “Marijuana” shall have the same meaning as cannabis, and the terms “marijuana” and “cannabis” may be used interchangeably and synonymously through this Chapter. ~~“Medical marijuana,” “medical cannabis,” “medical cannabis product,” or “cannabis product” means marijuana authorized in strict compliance with and as set forth in California Health and Safety Code Section 11362.5 et seq. used for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine or any other serious medical condition for which marijuana is deemed to provide relief and includes any product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code.~~**
- CE. “Medical marijuana dispensary” means any facility or location where medical marijuana is made available to, distributed by, or distributed to one (1) or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. All three (3) of these terms are identified in strict accord with California Health and Safety Code Section 11362.5 et seq. A medical marijuana dispensary shall not include the following uses, as long as the location of such use is otherwise in accord with this code and other applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the**

Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq. "Medical marijuana dispensary" shall include a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale or in exchange for contribution of money or other resources, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale or in exchange for contribution of money or other resources.

~~DF.~~ "Person with an identification card" shall have the meaning given that term by Health and Safety Code Section 11362.7.

~~EG.~~ "Primary caregiver" shall have the meaning given that term by Health and Safety Code Section 11362.7.

~~FH.~~ "Qualified patient" shall have the meaning given that term by Health and Safety Code Section 11362.7, but who does not have an identification card issued by the State Department of Health Services.

~~G.~~ "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or to a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

### ~~9.31.030~~ **9.31.020 Dispensaries prohibited.**

Medical marijuana dispensaries are prohibited and it shall be unlawful for any person to operate or permit to be operated a medical marijuana dispensary in or upon any premises in the City.

### ~~9.31.035~~ **9.31.030 Medical marijuana Marijuana delivery prohibited.**

Delivery of ~~medical marijuana~~ **and/or** , ~~medical cannabis, medical cannabis product, or cannabis product~~ **to any location** within the City is prohibited, and it shall be unlawful for any person to deliver ~~medical marijuana, as specified herein and in California Business and Professions Code Section 19340,~~ **and/or cannabis to any location** within the City.

### **9.31.040 Punishment.**

~~Each failure to comply with any provision of this chapter or any regulation promulgated under this chapter is unlawful and constitutes a public nuisance and shall be enforced in accordance with procedures set out in EGMC Chapters 1.04 and 16.18.1. Additionally, any person who violates this chapter shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.~~

**Each failure to comply with any provision of this chapter or any regulation promulgated under this chapter is unlawful and constitutes a public nuisance and shall be enforced in accordance with procedures set out in EGMC Title 1 and Chapter 16.18.**

Section 3: 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”), will not have a significant effect on the environment, and it is exempt from CEQA. (Pub. Res. Code section 21065; CEQA Guidelines sections 15060(c)(2)-(3), 15061(b)(3), 15064(d)(3), 15378(a).)

Evidence: 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 section 15378(a).) Additionally, activities are exempt from CEQA under the common sense exemption where it can be seen with certainty that the “there is no possibility that the activity in question may have a significant effect on the environment. . . .” (CEQA Guidelines section 15061(b)(3).)

The proposed amendments to EGMC Chapter 9.28 would impose reasonable regulations and standards on the personal consumption of marijuana in the same manner that is already regulated under California Health & Safety Code section 11362.3 and the voter’s approval of Proposition 64 (The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA)) on November 8, 2016, as well as the Medicinal and Adult-Use Cannabis Regulation Act (MAUCRSA) and Business & Professions Code section 26000 et seq. Likewise, the proposed amendments make non-substantive clarifying changes to EGMC Chapter 9.31 to revise the code to make it consistent with AUMA and MAUCRSA while maintaining the previously adopted regulations related to marijuana dispensaries and deliveries. The proposed ordinance does not change any property from one zone to another or impose any new land use regulations. The changes to Chapter 9.31 maintain the status quo, and the proposed ordinance will not cause a significant impact on the environment or result in any physical change to the environment. Therefore, the proposed code amendments to Chapters 9.28 and 9.31 do 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).)

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 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:**           **05-2021**  
**INTRODUCED:**        January 27, 2021  
**ADOPTED:**           February 10, 2021  
**EFFECTIVE:**         March 12, 2021

  
BOBBIE SINGH-ALLEN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:  
  
JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:  
  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: February 12, 2021



**CERTIFICATION**  
**ELK GROVE CITY COUNCIL ORDINANCE NO. 05-2021**

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 January 27, 2021 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on February 10, 2021 by the following vote:*

**AYES:**           **COUNCILMEMBERS:** *Singh-Allen, Nguyen, Hume, Spease, Suen*

**NOES:**           **COUNCILMEMBERS:** *None*

**ABSTAIN:**       **COUNCILMEMBERS:** *None*

**ABSENT:**       **COUNCILMEMBERS:** *None*

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

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