

## AGENDA ITEM NO. 7.7

### ORDINANCE NO. 16-2022

#### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING CHAPTER 9.38 TO THE ELK GROVE MUNICIPAL CODE

**WHEREAS**, the City Council recognizes that unlawful camping by unhoused persons, and the activities often attendant with unlawful camping, have created public health and safety problems within the City; and

**WHEREAS**, the City Council wishes to adopt an ordinance seeking to address unlawful camping in the City of Elk Grove.

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

#### Section 1: Purpose and Findings

The purpose of this ordinance is to amend the Elk Grove Municipal Code to enact regulations to address unlawful camping and homelessness in the City. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7.

In adopting this ordinance, the City Council makes the following findings:

- A. There are currently approximately 150 unsheltered persons experiencing homelessness within the City.
- B. The living conditions of persons experiencing homelessness in the City are unhealthy and unsafe, and negatively impact the health, safety, and welfare of City residents and the homeless community in the City.
- C. According to Homelessness in Sacramento County (which documents the results from the 2019 Point-in-Time Count), 21 percent of unsheltered respondents reported having a severe psychiatric condition and 9 percent of respondents reported that their use of alcohol or drugs prevents them from keeping a job or maintaining stable housing.
- D. Research indicates that nationally approximately one-third of individuals who are homeless experience alcohol and drug problems. (Gillis, Dickerson, & Hanson, 2010).
- E. Homeless camping areas and encampments generate hazardous waste, including human waste, creating dangerous health conditions within the City. Such unsanitary conditions can lead to infestation of vermin and the spread of communicable diseases.
- F. Some homeless persons in the City live in makeshift shelters on both private and public property, such as tents, tarps, non-permanent boarded structures, and other non-substantial temporary structures creating a public health and safety hazard.
- G. The City's police department and other City departments regularly receive calls for service related to homeless activities.
- H. Criminal activity may be present in and near homeless camping areas or encampments, which creates potential victimization of all residents, housed and unhoused. The prevalence of substance abuse and mental health disorders can also lead to an increase in low-level offenses due to individuals being disconnected from support and housing opportunities.

- I. The City is the owner of a Municipal Separate Storm Sewer System (MS4) that includes, without limitation, storm drains, detention basins, creeks, and channels; and is subject to the requirements of the Clean Water Act National Pollutant Discharge Elimination System (NPDES) Permit, which requires controls to reduce the discharge of pollutants in storm water from MS4s to the maximum extent practicable. Unlawful camping activity can lead to pollutants in runoff, and pollutants in runoff can threaten and adversely affect human health and aquatic organisms.
- J. Unlawful camping can lead to damage to and/or hindrance of operation of public infrastructure in the City, creating a potential health and safety hazard.
- K. Unlawful camping can have a deleterious impact on businesses, private property, and economic development within the City.
- L. By this ordinance, the City Council seeks to implement enforcement efforts to address the health and safety concerns presented by unlawful camping and the homelessness issue in the City, while seeking to provide those experiencing homelessness with potentially available resources to ameliorate their condition.

## Section 2: California Environmental Quality Act (CEQA)

Finding: Adoption of this ordinance is exempt from environmental review under the California Environmental Quality Act (California Public Resources Code, Sections 21000, et. seq., hereafter “CEQA”) pursuant to state CEQA Guidelines Sections 15060(c)(2), 15061(b)(3), 15307, and 15308.

Evidence: CEQA requires analysis of government 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.) The proposed project includes discretionary amendments to the City’s Municipal Code and is a project under CEQA; but it is exempt from CEQA review as set forth below.

CEQA Guidelines section 15060(c)(2) states that a project is not subject to CEQA review where the activity will not result in a direct or reasonably foreseeable indirect physical change to the environment. CEQA Guidelines Section 15061(b)(3) states that a project is exempt from CEQA “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” The approval of the code amendments set forth in this ordinance does not approve any physical development project, and it would not result in a direct or indirect adverse physical changes in the environment. Rather, this action is directed toward addressing homeless issues in the City, including improving conditions within the City through enforcement efforts.

Because the ordinance is aimed at improvement or restoration of the environment through enforcement efforts directed to improve public health and safety, adoption of the ordinance is also exempt from CEQA under CEQA Guidelines 15307 and 15308, as an action taken by the City to assure the maintenance, restoration, or enhancement of a natural resource and/or the environment.

## Section 3: Action

Elk Grove Municipal Code Title 9 is hereby amended by the addition of Chapter 9.38 as shown in Exhibit A, incorporated herein by this reference.

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:**       **16-2022**  
**INTRODUCED:**      June 8, 2022  
**ADOPTED:**  
**EFFECTIVE:**

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

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

\_\_\_\_\_  
JONATHAN P. HOBBS,  
CITY ATTORNEY

Date signed: \_\_\_\_\_

**Exhibit A  
Municipal Code Amendments**

*Additions are shown in underlined text.*

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**Chapter 9.38 is added to the Elk Grove Municipal Code to read as follows:**

Chapter 9.38

UNLAWFUL CAMPING

**9.38.010 Definitions**

**9.38.020 Prohibitions**

**9.38.030 Temporary Seizure of Property**

**9.38.040 Administration**

**9.38.050 Violations**

9.38.010 Definitions.

As used in this chapter, the following terms shall have the following meaning:

- A. “Day care center” means a child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school-age child care centers.
- B. “Camp” or “camping” means to engage in any of the following activity at a single camping area within the City for a period longer than twenty-four (24) consecutive hours: place, pitch, or occupy camp facilities; live temporarily in a camp facility or camping area or outdoors; and/or to use camp paraphernalia.
- C. “Camping area” includes the primary physical area of occupation of a single camping person.
- D. “Camp facilities” includes, but is not limited to, tents, huts, vehicles, or temporary shelter.
- E. “Camp paraphernalia” includes, but is not limited to, bedrolls, tarpaulins, cots, beds, sleeping bags, hammocks, or cooking facilities and similar equipment.
- F. “City” means the City of Elk Grove, including its employees and agents.
- G. “City manager” means the city manager of the City of Elk Grove or their designee.
- H. “Encampment” means four (4) or more persons camping together within fifty (50) feet of each other and without permitted electrical power, permitted running water, and/or permitted bathroom facilities that serve that encampment.
- I. “Housing support services” means housing support services intended to connect a person with temporary or permanent housing resources.

- J. “Playground” means any recreational area specifically designed to be used by children which has play equipment installed, including, without limitation, public grounds designed for athletic activities such as baseball, football, soccer, or basketball, or any similar facility located on public or private school grounds, or on city, county, or state parks.
- K. “Public property” means any real property located in the City and owned in fee title, or its equivalent, by the City or any federal, state, or local government agency.
- L. “Public facility” means any building, structure, or area enclosed by a fence located on public property, whether secured, unsecured, locked, unlocked, open, or enclosed.
- M. “Private property” means any real property located in the City and owned in fee title, or its equivalent, by a private person or entity. The fact that private property may contain an easement, lien, or other interest less than fee title, or its equivalent, by a governmental or public agency does not negate the status of the property as private property.
- N. “School” means the buildings and grounds of any public or private school used for the purposes of the education of children in kindergarten or any of the grades one (1) through twelve (12) inclusive.
- O. “Sidewalk” means any area in the City provided for the use of pedestrians, including planting areas, driveway approaches or parking strips, between the public vehicular roadway and the edge of right-of-way bordering fronting or adjacent private property.
- P. “Youth center” means any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

#### 9.38.020 Prohibitions.

- A. It shall be unlawful and a violation of this chapter for any person or persons to do any of the following on any public property within the City:
  - 1. Camp within 500 feet of the grounds of any day care center, school, playground, or youth center.
  - 2. Occupy a camping area greater than 150 square feet measured from the center of the primary living area of the total camping area.
  - 3. Occupy any encampment.

4. Fail to keep any camping area clean and free of garbage, debris, waste, including without limitation, hazardous waste and/or human waste.
  5. Camp in any structure or structures that an authorized City official finds is unsafe for human occupation.
  6. Break or damage any lock on any public facility in order to access the public facility, and/or to camp within a public facility.
  7. Lock or otherwise impair or impede access of public employees or agents to any public facility.
  8. Block, obstruct, or otherwise interfere with access to, a public facility, sidewalk, and/or other public right-of-way.
- B. It shall be unlawful and a violation of this chapter for any person to camp on private property without the consent of the owner of the private property.
- C. Notwithstanding the foregoing, it shall not be a violation of this section or this chapter for a person to camp on public or private property with the express permission of the owner of the property.

#### 9.38.030 Temporary Seizure of Property.

- A. Subject to section 9.38.050, any person who violates section 9.38.020 shall be subject to having their personal property temporarily seized by the City pursuant to this section.
- B. Prior to any seizure of personal property pursuant to this section, the City shall provide the owner/possessor of the personal property not less than seventy-two (72) hours' written notice, on a form prescribed by the City Manager. The written notice may be personally served on the owner of the personal property or posted at the location where the personal property is stored or located.
- C. Upon seizure of any personal property pursuant to this section, the City shall provide the owner/possessor with a written receipt itemizing the personal property seized, advising that the personal property will be held by the City for not less than 90 days, that the owner/possessor of the seized property may retrieve such personal property within that 90-day period at an address provided on the receipt, during normal business hours, and that the City may destroy or otherwise dispose of that personal property if not reclaimed and retrieved by the owner/possessor within that 90-day period. Nothing herein shall require the City to store or maintain personal property that is determined by the City to present a health or safety hazard, is soiled by human waste or other contamination, is illegal, illegally possessed, and/or that is used or intended to be used in furtherance of illegal activity, including, without limitation, paraphernalia used or intended to be used for illegal drugs.

- D. Following seizure of any personal property pursuant to this section, the City shall secure and store the personal property seized, at the City's expense, for a period of not less than ninety (90) days. Such personal property shall be returned to the owner/possessor upon presentation of the receipt identified in subsection (C), or such other proof satisfactory to the City that person seeking return of the property is the owner or otherwise has a viable claim to reclaim the personal property. Any personal property not reclaimed within ninety (90) days of its seizure may be destroyed or disposed of by the City, in its discretion.

#### 9.38.040 Administration.

The City Manager shall be authorized to administer the provisions of this chapter including, without limitation, developing all documentation and forms, and taking all actions reasonably necessary and consistent with this chapter, to administer the provisions of this chapter.

#### 9.38.050 Violations.

- A. Any person violating this chapter shall be subject to the following penalty.
1. Temporary seizure of personal property, as set forth at section 9.38.030.
  2. Prior to the City pursuing the remedy set forth at subsection A.1., above, the City shall provide the violator, orally or in writing, with information about housing support services. Nothing in this section or this chapter shall require the City to provide housing to such violator.
- B. Notwithstanding subsection A of this section:
1. Any violation of this chapter may be remedied by a civil action brought by the City Attorney.
  2. Violations of this chapter are hereby declared to be public nuisances subject to abatement by the City by any lawful means.
- C. 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.
- D. Notwithstanding any other provision of this chapter or this Code, a person violating a provision of this chapter shall not be subject to any monetary fine or fines.