

**ORDINANCE NO. 19-2005**

**AN ORDINANCE OF THE CITY OF ELK GROVE  
AMENDING CERTAIN SECTIONS OF CHAPTERS 15.12 and 16.18 OF THE ELK  
GROVE MUNICIPAL CODE REGARDING CIVIL PENALTIES AND  
ADDING CHAPTER 1.12 TO THE ELK GROVE MUNICIPAL CODE REGARDING  
THE ISSUANCE OF ADMINISTRATIVE CITATIONS**

The City Council of the City of Elk Grove ordains as follows:

**Section 1: Purpose and Authority.**

The purpose of this Ordinance is to create a unified procedure for the issuance of administrative citations as one means of enforcing the City of Elk Grove Municipal Code, as authorized by California Government Code sections 36900 and 36901.

**Section 2: Action Amending Sections**

The City Council hereby amends sections 15.12.440 and 15.12.460 of the Chapter entitled "Stormwater Management and Discharge Control," to reference the Chapter regarding Administrative Citations and the Chapter regarding Administrative Appeals, as follows:

**15.12.440 ADMINISTRATIVE APPEALS.**

- (a) Except as set forth in subsection (b) below, any person receiving a notice of non-compliance, a designation as a person who conducts Subject Activities, an administrative compliance order, or an Administrative Citation pursuant to Chapter 1.12, or who is otherwise subject to an adverse determination pursuant to this Chapter may appeal the matter by requesting an administrative appeals hearing before an Appeals Hearing Officer pursuant to Chapter 1.11 of this Code.
- (b) An administrative appeals hearing on the issuance of a cease and desist order or following an emergency abatement action shall be held within seven (7) working days following the issuance of the order or the action of abatement, unless the hearing or the time requirement for the hearing is waived in writing by the party subject to the cease and desist order or the emergency abatement. A request for an administrative appeals hearing shall not be required from the person subject to the cease and desist order or the emergency abatement.
- (c) At any administrative appeals hearing, the administrative appeals officer shall permit any interested party, including, but not limited to the Administrator and/or the appealing party to present evidence and argument in support of or against the imposition of the notice of non-compliance, order, designation, determination, administrative citation or abatement action.

**15.12.460 ADMINISTRATIVE CIVIL PENALTIES; REIMBURSEMENT OF FINES IMPOSED UPON CITY; APPEALS.**

(a) In addition to any other remedies provided by this Chapter or any other law, the Administrator is authorized to impose Administrative Civil Penalties in an amount established by resolution of the City Council, pursuant to Chapter 1.12 of the City Code, upon any person for each violation of this Chapter. Each day, or a portion thereof, that a violation continues constitutes a new violation. Administrative Civil Penalties are subject to the appeal procedures in Chapter 1.11 of this Code.

(b) In addition to any other remedies provided by this Chapter or any other law, the Administrator may also seek and recover reimbursement from any person whose conduct or activity results in any fine, penalty or other charges being imposed upon the City by any authorized Federal, State, or Local Government agency, including, but not limited to, the Central Valley Regional Water Quality Control Board, for violations of the terms of the City's National Pollution Discharge Elimination System ("NPDES") Permit or otherwise, up to the actual amount of the fine, penalty, or charge imposed upon the City. Claims for reimbursement by the City shall be made by written request on forms approved by the Administrator. Claims for reimbursement shall be due and payable as directed by the Administrator in the written request for reimbursement, but in no event shall a claim for reimbursement be due and payable any later than thirty (30) days after presentation of the claim for reimbursement to the responsible person, unless the Administrator finds good cause to allow later payment. Claims for reimbursements by the City are subject to the appeal procedures in Chapter 1.11 of this Code.

(c) In reaching a decision concerning an Administrative Civil Penalty or a claim of reimbursement in any appeal proceeding under this Chapter, the Appeals Hearing Officer, shall be guided by factors including, but not limited to the following: the danger to public health, safety and welfare represented by the violation, recidivism, any economic benefit associated with non-compliance, and any economic impact to the City or the public as a result of the violation.

**Section 3: Action Amending Section**

The City Council hereby amends section 16.18.204 of the Elk Grove Municipal Code "Nuisance Code" Chapter 16.18 to allow appeals to the Appeals Hearing Officer as follows:

**16.18.204 APPEALS HEARING OFFICER.**

Reference to the term "Hearing Examiner" in this Chapter shall be interpreted to mean "Appeals Hearing Officer" as the term is used in Chapter 1.11 of the Elk Grove Municipal Code. An Appeals Hearing Officer shall hear issues and appeals brought by the department head under the provisions of this Chapter.

#### **Section 4: Action Adding Section**

The City Council hereby adds new section 16.18.206 to the Elk Grove Municipal Code “Nuisance Code” Chapter 16.18 to allow the issuance of administrative citations for violations of that chapter, as follows:

**16.18.206 Administrative Citations.** Any department head, as defined in section 16.18.201 of the Elk Grove Municipal Code, may enforce the provisions of this Chapter by issuing an Administrative Citation pursuant to Chapter 1.12 of the Elk Grove Municipal Code.

#### **Section 5: Action Adding Section**

The City Council hereby adds Chapter 1.12 to the Elk Grove Municipal Code as follows:

### **Chapter 1.12 Administrative Citations**

#### **§1.12.010 Applicability.**

The citation provisions in this Chapter shall supercede and control over any conflicting citation provisions found elsewhere in the Elk Grove Municipal Code. This chapter provides the City of Elk Grove with the authority to issue Administrative Citations to address violations of the Elk Grove Municipal Code. Use of this remedy shall be cumulative to any other remedy and shall not preclude the use of any other remedy provided in this Code or other applicable law.

#### **§1.12.020 General Provisions and Definitions.**

- (a) Words used in the masculine (such as “he” or “his”) shall be construed as gender neutral and shall include the feminine.
- (b) References to “day(s)” shall mean calendar days, unless otherwise stated. The time in which to perform an act under this Chapter is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday. If the last day for the performance of any act under this Chapter falls on a Saturday, Sunday or State holiday, then the period to perform the act is extended to and includes the next day which is not a Saturday, Sunday or State holiday.
- (c) “Department” is as defined in §2.78.230 of this Code.

#### **§1.12.040 Enforcement Officer – Definition and Authority – “Responsible Person.”**

- (a) For purposes of this chapter, “Enforcement Officer” shall mean City Department Heads and their designees and any person within the City of Elk Grove authorized by the Elk Grove Municipal Code or by the City Manager or his

designee in writing to enforce compliance with the requirements of the Municipal Code.

(b) When an Enforcement Officer charged with the enforcement of any provision of the Elk Grove Municipal Code determines that a violation of such provision(s) has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any and all responsible person(s).

(c) "Responsible Person" or "Person Responsible" as used in this Chapter shall mean any person or entity responsible for the violation regardless of ownership or possession, including, but not limited to contractors and others working on the property via owner agreements, the owner and/or occupant and/or lessee, and any other person or entity having any interest in the property that is the subject or location of the violation.

#### **§1.12.050 Contents of Administrative Citation.**

Administrative citations may be issued to the person(s) responsible on forms approved by the City Attorney. Each citation shall contain, at a minimum, the following information:

- (1) The name of the Responsible Person(s) to whom citation issued;
- (2) The address or location where the violation occurred;
- (3) The section(s) of this Code or other ordinance, statute, regulation, or law violated;
- (4) The actions constituting each violation(s), the date of each violation(s), and any partial compliance noted;
- (5) The manner and date by which either (a) compliance must be achieved and verified by re-inspection for each violation, and/or (b) administrative review of the citation must be filed, before the administrative fine(s) and/or continuing fines stated in the citation take effect;
- (6) The amount of the administrative fine(s);
- (7) The date that payment of the fine is due;
- (8) The form of payment and location for paying the administrative fine;
- (9) The manner of requesting a re-inspection to verify compliance by the compliance deadline(s) in the citation;
- (10) The Title of "Administrative Citation";
- (11) A statement advising that the persons listed on the citation are responsible for all costs incurred by the City for any abatement hearing;
- (12) A statement advising that, pursuant to Government Code § 38773.5, the City intends to seek recovery of attorney's fees incurred in any hearing to abate a nuisance, and that attorney's fees may be recovered by the prevailing party;
- (13) A telephone number at which the City may be contacted pursuant to this Code, including, but not limited to section 1.12.070.

**§1.12.060 Service of Administrative Citation.**

(a) The Administrative Citation shall be served upon the Responsible Person(s) by personal delivery or by certified mail, return receipt requested, to the last known address of the Person(s) Responsible. If the Person(s) Responsible is not present for personal delivery, if certified mail is refused, or if the location of the Person(s) Responsible cannot be determined after diligent efforts, the Administrative Citation may be served by posting a copy in a conspicuous place on the affected property and by mailing a copy by first class mail to the last known address. In the event posting is not possible, alternative service may be accomplished by publication of a copy of the Administrative Citation and/or notice of the citation in a newspaper of general circulation that is most likely to give actual notice to the responsible person(s) twice in a ten (10) day period and by mailing a copy of the Administrative Citation by first class mail to the last known address within the ten (10) day period. If the Administrative Citation alleges a nuisance, the notice provisions of Chapter 16.18 apply over any conflicting provisions of this section.

(b) Notwithstanding any law to the contrary, service shall be deemed complete and the time period for any compliance shall commence as follows:

- (1) If service is by personal service, on the date personal service is accomplished;
- (2) If service is by certified mail, on the date that the person receiving the certified mail signs the certified mail receipt; if the certified mail is sent to the property owner at the address identified in the latest equalized tax roll and is signed for at that address, there shall be a rebuttable presumption that the Responsible Person received the notice;
- (3) If service is by posting, ten (10) days after the notice is posted;
- (4) If service is by publication, upon the date of the second publication.

**§1.12.070 Informal Meeting; Extension to the Administrative Citation; Appeal.**

(a) In lieu of filing an administrative appeal of the citation as provided in section 1.12.080 and Chapter 1.11 ("Appeals"), the recipient(s) of an Administrative Citation may, within twenty-four (24) hours of the issuance date stated on the citation, contact the City at the number provided on the citation to schedule a meeting with City staff for a department-level resolution of the alleged violation(s). The meeting must be held within seven (7) days of the date of issuance noted on the citation, and must be held between the hours of 8:00 a.m. and 5:00 p.m. at the City of Elk Grove City Hall. The City of Elk Grove shall provide staff available for one (1) meeting for this purpose within the seven (7) day time period.

(b) At the conclusion of the meeting, the City may issue an extension of time to cure the violation and/or pay the fine set forth in the Administrative Citation only if the extension contains an agreement, signed by an authorized City

representative and citation recipient(s) stating the following: (1) the specific means, schedule and completion dates for each step of the abatement process for each violation; (2) the date(s) for City re-inspection to confirm abatement of each violation to the City's satisfaction; (3) the fines that shall accrue upon failure to meet each of those new deadlines; and (4) a statement that the citation recipient acknowledges forfeiture of the right to appeal the underlying Administrative Citation and does not contest the alleged violations. The signed extension to the Administrative Citation shall contain all elements of a citation as required under Section 1.12.050 of this Chapter.

(c) The citation recipient may reschedule the meeting once. Upon the second absence, the original Administrative Citation deadlines shall again be effective, and compliance is required.

(d) If the citation recipient does not comply with the terms of the extension, the City may enforce compliance by using applicable criminal and civil remedies provided in any applicable law. Available remedies may include, but are not limited to, referring the citation fines to a collection agency and/or filing an action against the recipient in state court for abatement and collection of fines.

#### **§ 1.12.080 Right to Appeal.**

An Administrative Citation issued pursuant to this Chapter may be appealed pursuant to Chapter 1.11 of the Elk Grove Municipal Code. Failure to appear at the appeal hearing will constitute a failure to exhaust administrative remedies, and the violations alleged in the Administrative Citation shall be deemed admitted, and any fines, penalties, and interest accrued therein shall become immediately due and payable.

#### **§ 1.12.090 Failure to Appeal**

Failure to file a valid and timely appeal shall constitute an admission to the violations stated in any Administrative Citation and acceptance of the fines accrued and accruing thereunder.

#### **§ 1.12.100 Fines; Amounts; Conflict with Other Code Sections; Refunds**

(a) The fines imposed pursuant to this Chapter shall be set forth in a schedule of fines established by resolution of the City Council. The schedule of fines shall also specify the amount of any penalties and interest imposed for the payment of a fine after its due date.

(b) Administrative Citation fines which have been paid shall be refunded if it is determined as a result of the hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

(c) Payment of a fine under this Chapter shall not excuse full compliance with the Elk Grove Municipal Code and abatement of the underlying violation, nor excuse any continuation or repeated occurrence of the Code violation that is the subject of the administrative citation.

**§1.12.110 Fines; Due Dates.**

Fines authorized by this Chapter shall be imposed and shall be due and payable as follows:

- (1) Within thirty (30) days of the date of notice of the violation, when no request for administrative appeal hearing has been received by the appeal deadline and when there has been no judicial review requested pursuant to Government Code § 53069.4. The citation shall specify the due date for payment.
- (2) If an administrative appeal hearing is requested or if judicial review is sought pursuant to Government Code § 53069.4, the fine shall be due as follows:
  - (A) If an administrative appeal hearing is requested, and a fine is imposed following the appeal hearing, the fine is due upon the date indicated by the decision of the Appeals Hearing Officer; or
  - (B) If an administrative appeal hearing is requested, and the appealing party fails to appear for the appeal hearing, the fine is due upon the date specified by paragraph (1) above or the date of the appeals hearing, whichever is later; or
  - (C) If judicial review is requested pursuant to Government Code § 53069.4, upon determination by the Court that the fine is proper.

**§1.12.120 Fines; Payments.**

Fines shall be collected by the Administrative Services Department and shall be credited to accounts as determined by the City Manager or his designee.

**§1.12.130 Fines; Collection.**

A fine not paid within thirty (30) days of its due date shall be deemed to be delinquent and shall be considered to be a debt to the City. The fine may be collected by any method used to collect civil debts due and owing to the City, including, but not limited to, reference to a collection service or agency or initiation of a civil action. The City may add penalties and interest as authorized by City Council resolution.

**§1.12.140 Fines; Added to Liens.**

If the City has commenced procedures for the abatement of nuisances at the property which is the subject of the Administrative Citation, and if costs of abatement are placed as a lien against the real property, the administrative fine amount may be added to the abatement costs which are secured by the lien.

**§1.12.150 Compliance with Order Required.**

After an order of the Administrative Hearing Officer made pursuant to this Code shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order.

**§1.12.160 Failure to Obey Order.**

If, after an order the Administrative Hearing Officer made pursuant to this Code becoming final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, or fail to complete the required work, the department head of the department initiating the enforcement action may institute any appropriate action to abate such conditions on the subject premises which constitute a public nuisance as authorized by Chapter 16.18 of this Code.

**§1.12.170 Fines; Assessments.**

(a) If the fines imposed under this Chapter are not paid within the time specified in §1.12.110, such fines shall be assessed against the parcel of land pursuant to Government Code §38773.5, and shall be transmitted to the tax collector for collection and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for ad valorem taxes.

(b) If subsequent to service of the Administrative Citation and prior to transmittal of the notice of unpaid costs to the tax collector for collection as set forth in subsection (a) of this section, the property subject to the notice of violation is sold, or title otherwise transferred to a bona fide purchaser, said costs shall be the responsibility of the owner of record as the date said notice of violation was placed in the United States postal system or posted on the property.

(c) In addition to assessing the unpaid costs as provided in subsection (a) herein, the tax collector or his designated representative may pursue any remedy provided by law for collection of the unpaid costs.

**§1.12.180 Treble Costs**

Pursuant to Government Code § 38773.7 upon entry of a second or subsequent civil or criminal judgment within a two (2) year period finding that an owner or person described in Government Code § 38772(d)(3) is responsible for a condition that may be abated pursuant to Government Code § 38773.7, a court may order that person to pay treble the costs of abatement.

**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: 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).

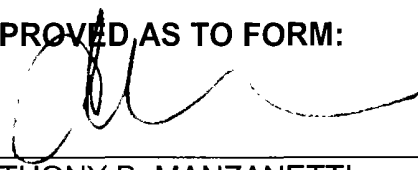
**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 11<sup>th</sup> day of May, by the following vote:

  
\_\_\_\_\_  
DANIEL BRIGGS,  
MAYOR of the CITY OF ELK GROVE

**ATTEST:**

  
\_\_\_\_\_  
PEGGY E. JACKSON, CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
ANTHONY B. MANZANETTI,  
CITY ATTORNEY

**Effective Date: June 10, 2005**

**AYES: Scherman, Soares, Briggs, Cooper, Leary**  
**NOES: None**  
**ABSTAIN: None**  
**ABSENT: None**