

ORDINANCE NO. 35-2005

AN ORDINANCE OF THE CITY OF ELK GROVE AMENDING SECTION 16.02.160(105) OF CHAPTER 16.02 IN TITLE 16 (BUILDING AND CONSTRUCTION) REGARDING THE CONSTRUCTION BOARD OF APPEALS

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

Section 1: Purpose and Authority

The purpose of this Ordinance is to amend that section of the Elk Grove Municipal Code that provides the opportunity to appeal from building and construction decisions made by the Elk Grove Building Official. The language being amended was adopted from the Sacramento County Code when the City incorporated and must now be amended for the City of Elk Grove.

Section 2: Action Amending Sections

The City Council of the City of Elk Grove hereby amends section 105 of Section 16.02.160 of the Elk Grove Municipal Code entitled "Board of Appeals" as follows:

SECTION 105 - CONSTRUCTION BOARD OF APPEALS

105.010 General. Whenever the Elk Grove Building Official disapproves an application or refuses to grant a permit application, or when it is claimed that the provisions of the code do not apply or that the true intent has been misconstrued or wrongly interpreted, the applicant may appeal the decision of the Elk Grove Building Official within thirty (30) days from the date of the decision being appealed. Such appeal shall be submitted in writing to the Building Official. The fee required to file an appeal shall be set forth by resolution of the City Council. In order to hear and decide such appeals, there shall be and is hereby created a Construction Board of Appeals, pursuant to Section 105 of the 2001 California Building Code.

105.020 Membership.

(a) The Construction Board of Appeals shall consist of five members who are qualified by experience and training to pass on matters pertaining to building construction and who are not contractors to, or employees of the City. The members of the Board shall be appointed by a committee consisting of the Deputy City Manager for Development Services, the Public Works Director and City Attorney or their designated representatives.

(b) At the time of their appointment to the Board, the Board shall have the following representation:

1. General contractor
2. Architect
3. Civil or Structural Engineer
4. Mechanical or Plumbing Contractor
5. Electrical Contractor

(c) The Board shall annually select a chairperson from its appointed members.

(d) The Building Official shall be an ex-officio member and shall act as the secretary of the Construction Board of Appeals but shall have no vote on any matter before the Board.

105.030 Terms. Terms for members other than ex-officio or advisory members of the Construction Board of Appeals shall be four years. The terms for the General Contractor, Civil or Structural engineer and Mechanical or Plumbing Contractor shall expire every other even-numbered year with the terms for the Architect and Electrical Contractor expiring on alternating even numbered years.

105.040 Vacancies. Vacancies shall be filled by appointment for the unexpired portion of the term.

105.060 Attendance. Any appointee member of the Construction Board of Appeals who fails to attend three consecutive board meetings without notifying the secretary shall automatically lose the appointed membership. It shall be the duty of the board chairperson to report to the City Council any appointee member who has failed to attend three consecutive meetings without such notification.

105.070 Secretary. The secretary shall have no vote.

105.080 Meetings. The Construction Board of Appeals shall hold meetings as needed in compliance with the Brown Act. Agendas for each meeting of the Construction Board of Appeals shall be posted at least 72 hours in advance of the meeting, pursuant to Government Code Section 54954.2(a).

105.090 Rules and Regulations. The Construction Board of Appeals shall, after consultation with the City Attorney's office, adopt reasonable rules and regulations for conducting its investigations and shall render all decisions and findings in writing to the appellant with a duplicate copy to the Building Official, and may recommend to the City Council such new legislation as is consistent therewith. Decisions and findings shall be filed in the office of the Building Official for public inspection.

105.100 Granting Modifications. Whenever there are practical difficulties involved with carrying out the provisions of the Building, Electrical, Mechanical, Plumbing, Swimming Pool, and Sign codes of the City of Elk Grove, the Construction Board of Appeals may grant modifications for individual cases, provided it is found that special circumstances make strict adherence to this code impractical and that the modification is in conformity with the intent and purpose of the Code and that such modification does not reduce any fire protection requirements or any degree of structural integrity. The Construction Board of Appeals shall formulate and enforce any implementing rules and regulations concerning the use of materials and installations as are deemed necessary to supplement provisions of this ordinance. Such rules and regulations will require a 30-day public notice prior to their effective date.

105.110 Limitations of Authority. The Construction Board of Appeals shall have no authority relative to interpretation of the administrative provisions of the currently adopted California State Building, Plumbing, Mechanical and Electrical

codes or be empowered to waive requirements of these codes.

105.120 Right to Appeal Decision of Construction Board of Appeals. Any right to appeal a decision of the Board shall be pursuant to State Law.

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 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 12th day of October, 2005, by the following votes:



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: November ¹¹~~30~~, 2005

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