

ORDINANCE NO. 42-2005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ARTICLE 1 AND ARTICLE 5 OF CHAPTER 6.20 OF THE CITY OF ELK GROVE MUNICIPAL CODE RELATING TO RESIDENTIAL SOLID WASTE HANDLING SERVICE CHARGES

WHEREAS, prior to incorporation by the City of Elk Grove ("City") effective July 1, 2000, residents received residential solid waste handling services from the County of Sacramento (the "County");

WHEREAS, upon incorporation, the City adopted the County Code and began providing its own residential solid waste handling services to its citizens by hiring waste hauling companies;

WHEREAS, to help pay for those services, the City imposed solid waste handling service charges upon the citizens who received those services;

WHEREAS, the City has noticed an increase in the number of citizens who fail to pay at all or in a timely manner;

WHEREAS, the City has traditionally absorbed much of the cost of delinquent accounts and/or has suspended service when citizens have failed to pay solid waste handling fees, forcing the citizens as a whole to absorb that expense;

WHEREAS, the City seeks to pursue more vigorously the placement of tax liens upon those properties whose solid waste handling payments continue to be delinquent;

WHEREAS, the City desires to reduce the City's cost of pursuing these liens by using the same lien procedure used for collection of delinquent storm drainage fees in Chapter 15.10, thereby simplifying consolidated utility collection efforts for each residence and/or parcel; and

WHEREAS, the City also seeks to clarify and increase the number of solid waste service fee exemptions for which citizens may apply;

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

Section 1: Recitals

The foregoing recitals are true and correct and this Council so finds and determines.

Section 2: Purpose

The purpose of this ordinance is to clarify and simplify lien procedures for the collection of delinquent and/or unpaid refuse collection charges to reimburse the City and provide for the ongoing maintenance of the City's refuse collection system, and to provide more service fee exemptions for citizens.

Section 3: Action Amending Sections

The City Council hereby amends Elk Grove Municipal Code Section 6.20.030, which is entitled "Definitions," and which is contained in Chapter 6.20 "Solid Waste management," as follows:

6.20.030 Definitions.

For purposes of this Chapter, the following terms are defined as follows:

- a) "**Administrative Services Director**" means the Elk Grove Administrative Services Director or

- his or her designee.
- b) **"Board"** means the Board of Supervisors of the County.
 - c) **"California Integrated Waste Management Act"** means the California Integrated Waste Management Act of 1989 set forth in California Public Resource Code at Sections 40050 *et seq.*, as it may be amended.
 - d) **"Carts"** means the trash, recyclables or greenwaste containers that are provided to the residential property by the franchised haulers for the placement of trash, recyclable and greenwaste materials for collection, transport or disposal by the franchise hauler. Carts range in size from 32 gallon, to 64 gallon, to 96 gallon capacity. All carts bear the City of Elk Grove logo.
 - e) **"City"** means the City of Elk Grove.
 - f) **"City Council"** means the Elk Grove City Council.
 - g) **"City Manager"** means the City Manager or his or her designee.
 - h) **"Commercial refuse"** is any refuse collected in bins or drop boxes or compactors or the like, or as otherwise prescribed by the Department, but does not include refuse collected from which is commonly considered a "garbage can", regardless of size.
 - i) **"County"** means the County of Sacramento.
 - j) **"Department"** means the Sacramento County Department of Public works acting by, through and under the authority of the director of public works, unless the context indicates otherwise.
 - k) **"Department of Health"** or **"Health Department"** means the Sacramento County Environmental Management Department.
 - l) **"Garbage"** includes, but is not limited to, the following: waste resulting from the handling of edible foodstuffs or resulting from decay, and solid or semisolid putrescible waste, and all other mixed, nonrecyclable wastes which are generated in the day-to-day operation of any business, residential, governmental, public or private activity, and may include tin cans, bottles and paper or plastic food or beverage containers.
 - m) **"Gender"**. The masculine includes the feminine and neuter.
 - n) **"Owner"** for purposes of this Article means the person listed as owner of record in the County Assessor's Records, or the record owner's successors in interest, such as an executor, beneficiary, or County probate administrator of an owner's estate.
 - o) **"Permittee"** means any person holding a permit pursuant to the provisions of this Chapter or, in the case of a commercial permittee, a permit issued by the SWA.
 - p) **"Person"** means any individual, firm, copartnership, joint venture, association, corporation, governmental agency, and the plural as well as the singular.
 - q) **"Refuse"** includes rubbish, garbage, or any of them.
 - r) **"Refuse collector"** means the person who is permitted to engage in the collection and transportation of refuse.
 - s) **"Residential parcel"** means an improved parcel of land, shown upon the County Assessor's most recent rolls, on which residential structures (single family, duplex, triplex, fourplex, and multi-family homes) are constructed and in which people can reside.
 - t) **"Rubbish"** includes all the following, but is not restricted to, nonputrescible wastes, such as paper, cardboard, grass clippings, tree or shrub trimmings, wood, bedding, crockery, rubber tires, construction waste and similar waste materials.
 - u) **"Salvageable material"** includes materials which can be separated from refuse and sold for reuse or recycling, but shall not include material disposed of at a landfill.
 - v) **"SWA"** means the Sacramento Regional County Solid Waste Authority. (SCC 1044 § 2, 1986; SCC 517 § 2 (part), 1982.)
 - w) **"Solid waste"** means solid waste defined in Section 40191 of the California Integrated Waste Management Act.
 - x) **"Solid waste handling"** means solid waste handling as defined in Section 40195 of the California Integrated Waste Management Act, including, without limitation: (1) collection of residential garbage, refuse, bulky goods, electronic and other special waste and recyclables, and yard waste, and the transfer, processing, marketing and/or disposal thereof, as the case may be; (2) development and implementation of the City's Source Reduction and Recycling Element and Hazardous Waste Element in

- accordance with the California Integrated Waste Management Act, Section 41000; and (3) disposal and recycling of household hazardous waste.
- y) **"Truck"** means any truck, trailer, semi-trailer, conveyance, vehicle or equipment approved by the Department used to collect or haul refuse.

Section 4: Action Repealing and Replacing Article

Article 5 of Chapter 6.20 "Solid Waste Management" of the Elk Grove Municipal Code is repealed in its entirety and replaced with the following:

Article 5

Residential Solid Waste Handling Service Charges

6.20.500 Purpose.

The purpose of this Article is to provide for the establishment, billing and collection of service charges for solid waste handling, referred to in this Article as "service charges."

6.20.510 Level of Service Charges.

The City Council may by resolution establish and revise from time to time the amount of service charges. The amount of service charges shall be based upon the property type, solid waste handling level as established by the size of cart requested by the resident, and any other factors determined by the City Council to produce an equitable apportionment of the City's costs of providing residential solid waste handling.

6.20.520 Owner Liability for Service Charges.

- a. **Mandatory Service Charges.** All owners of residential parcels must pay to the City the service charges described in this Article, unless the owner has applied for, and received confirmation of, an exemption as provided in this section and in the City Garbage Collection Exemption Policy.
- b. **Exemptions.** An owner may apply for one of the service fee exemptions provided in this section by submitting a completed "Request for Garbage Collection Exemption" form, which can be obtained from the City Utility Bill Department. Within 20 days of receipt of a complete application, the application shall be reviewed and approved or denied by the Administrative Services Director and/or his/her designee at his sole discretion, according to the terms of the City Garbage Collection Exemption Policy. The City Manager or his/her designee shall notify the owner of record if the billing is changed to comply with such a request. Until the owner receives notification that the City has approved the exemption application, the owner of record shall remain liable to pay city garbage collection services and any delinquent fees. The City reserves the right to drive by periodically to ensure compliance with the exemption criteria.
 1. **Vacancy Exemption.** Owners of unoccupied residential parcels may seek an exemption from service charges for a stated period of absence or vacancy in accordance with the City's Garbage Collection Exemption Policy. Owners must give the City written notice within one month after the earlier of re-occupation of residential parcels or re-connection with water, sewer, electrical or gas utilities.
 2. **Self-Haul Exemption.** Owners may qualify to collect or transport refuse by means other than City-provided services if they satisfy the criteria in Section 6.20.110 and the criteria in the City Garbage Collection Exemption Policy.

3. **Secondary Structure Exemption.** Owners of residential parcels bearing more than one residential structure may request to exempt the secondary structure from City garbage collection service charges if they satisfy the criteria in the City Garbage Collection Exemption Policy.
4. **Temporary Exemption -- Unusual Circumstances.** An Owner who does not qualify for the exemptions listed herein, may seek review by the City Manager, who shall decide on a case-by-case basis whether the owner's specific circumstances warrant a temporary exemption, and shall specify a limited period of duration for the exception, not to exceed one year.

6.20.530 Commencement of Service Charges.

The Administrative Services Director and/or his/her designee will commence billing on the earliest of the following dates:

- a. Immediately following a request for solid waste or other utility services to the residential parcel or written notice that the residential parcel has become occupied or re-connected to utilities in accordance with Section 6.20.520b;
- b. Immediately upon written notification by the owner or occupant of the residential parcel to the Administrative Services Director that construction of a new, renovated or repaired structure on the residential parcel is completed;
- c. The date 90 days after the residential parcel is physically connected to the public sewer system; and
- d. That the residential parcel is considered by the Administrative Services Director to be suitable for occupancy, based on a reasonable interpretation of information obtained from public records or field inspection.

6.20.540 Form of Bills.

- a. **Combined Utility Bill.** The City may bill and collect service charges together with rates, fees, tolls and charges of any other City-administered utility, as authorized by the Administrative Services Director.
- b. **Bill Addressee.** The City will bill service charges to the owner of record of the parcel as of the commencement date provided in Section 6.20.530 or to a designee. The bill may also be sent to the tenant(s) of the property, as permitted in Section 6.20.540(c); All requests to bill a party other than the owner of record must be made in writing to the Administrative Services Director by both the owner of record. The Administrative Services Director shall either approve or deny such requests at his or her sole discretion. The Administrative Services Director shall notify the owner of record if the billing is changed to comply with such a request and the owner of record shall remain liable for any delinquent fees.
- c. **Multiple Service Addresses on Single Residential Parcel; Tenants.** The City may issue a single, consolidated bill for each residential parcel, even if more than one residential structure is located on that residential parcel, or the City may issue separate bills to the occupant of each structure on a residential parcel that receives separate service. The City will issue a single consolidated bill for each residential parcel that has a building or buildings with multiple units, such as apartment buildings, unless the owner of that residential parcel and the building(s) provides written authorization and all requested information to the City, and the Administrative

Services Director agrees to issue bills to individual tenants located in the building(s). Despite the name on the bill, however, the owner of the residential parcel remains liable for payment of those bills as provided in Section 6.20.520.

- d. **Combined bills.** Upon request of the owner of two or more residential parcels or addresses and approval of the Administrative Services Director, which approval may be subject to specified conditions, the City may combine service charges for those residential parcels in one bill.
- e. **Copies to Owners.** Owners of residential parcels may request the City to mail, at the owner's cost, copies of all bills to occupants or tenants residing in residential structures or buildings that receive service.

6.20.550 Billing Adjustments.

- a. **Timing.** The Administrative Services Director may adjust service charges on any bill in the manner the Administrative Services Director deems appropriate in accordance with section 6.20.550(b). The Administrative Services Director will credit any amount paid in excess of the correct service charge against the service charge due and payable on the next succeeding bill. The Administrative Services Director will add any deficient amount to the service charge due and payable on the next succeeding bill. The Administrative Services Director will not adjust any amount for a billing discrepancy with respect to either excess or deficient payments that occurred more than three years prior to the date that the Administrative Services Director determines that a billing discrepancy exists.
- b. **Bases.** The Administrative Services Director may adjust bills under any of the following circumstances:
 - 1. **Errors or Updates.** To correct an error in a bill or billing cycle, or to add late fees and overdue interest charges;
 - 2. **Exemptions:** If the bill addressee, in accordance with section 6.20.540(b), submits documentation satisfactory to the Administrative Services Director that owners of the billed residential parcel qualify for one of the exemptions provided in this Article; or
 - 3. **Credits:** To issue a credit in amounts equal to the service charges collected by the City during periods in which a residential building was unoccupied because fire, damage, or similar causes rendered it uninhabitable in accordance with the City Code or other applicable law, if the person paying the service charges submits documentation satisfactory to the Administrative Services Director.
- c. **Requests.** The bill addressee in accordance with section 6.20.540 may submit to the Integrated Waste Program Manager an Administrative Appeal requesting a bill adjustment and stating grounds therefor. The Integrated Waste Program Manager's determination with respect to any requested adjustment is final and conclusive.

6.20.560 Due Date and Delinquency.

The City may bill the service charges monthly, bimonthly, quarterly or annually, in advance or arrears, as determined by the Administrative Services Director. The City finance department will collect bill payments. The service charges are payable on presentation of the bill and are due 45 days after the date of the billing statement (or, if service charges are billed monthly, 21 days after the date of the billing statement), and

are delinquent if payment is not received by the due date. If due date falls on a Saturday, Sunday or legal holiday on which City offices are not open to conduct business, it will be extended to the next regular business day on which City offices are open to conduct business. The bill must clearly state the due date. Payments made by mail must be received no later than close of business for City offices on the due date. The Administrative Services Director may provide for payments to be made in person on or before the due date between posted hours on posted days, at specified locations. If a customer does not enclose full payment for all the service charges on the consolidated utility billing statement, the City will allocate the amount paid to each service charge proportionally.

6.20.570 Late Charges and Overdue Interest.

If any service charge becomes delinquent as described in section 6.20.560, a late charge of 10% of the amount that has become delinquent will accrue thereon. The delinquent amount and late charge will thereafter accrue added overdue interest equal to the lesser of 1.5% per month and the maximum amount permitted by law until paid or placed on the annual tax bill in accordance with Section 6.20.580(c). If the delinquent amount and late charge are placed on the annual tax bill, the total delinquent amount plus all penalties will incur an additional 10% lien penalty.

6.20.580 Collection of Delinquent Accounts.

a. City's Collection Options. The City may, in its discretion, take the following actions to collect delinquent service charges, late charges and overdue interest that are due with respect to a residential parcel:

1. Impose a lien on the residential parcel as described in Section 6.20.580(b);
2. Impose a lien on the residential parcel as described in Section 6.20.580(c) and collect the amounts due on the tax roll;
3. Institute suit in a court of competent jurisdiction; and
4. Take any other action permitted by law or equity.

b. Lien for Delinquency.

1. **Optional Late Notice.** If service charges become and remain delinquent and unpaid for 30 days, the City may give the assessed person a notice of the delinquent service charges stating the City's authority to impose a lien on the residential parcel.
2. **Lien.**
 - (a) The City shall send a delinquency notice to the assessee shown on the County Assessor's latest equalized assessment roll whenever delinquent and unpaid fees remain delinquent and unpaid for sixty (60) days. The notice will contain a detailed description of the amount owed; the schedule of late service charges and over-due interest; the lien procedure; and any associated costs and administration fees.
 - (b) The garbage collection service fees and any penalties, costs or fees levied pursuant to this Article shall constitute a lien upon the parcel subject to the fee, as provided for pursuant to Health and Safety Code Section 5473.11, if

the fee remains delinquent for a period of sixty (60) days and the City has notified the assessee of the parcel shown on the latest equalized assessment roll of the delinquent fees and the lien provided by this section.

- (c) If delinquent service charges are not paid within 20 days after the delinquency notice is postmarked, the City will record with the County Recorder a certificate that specifies that service charges are delinquent on the residential parcel.
- (d) The lien shall attach upon recordation of the certificate and continue in effect for three years from the time of recording, unless sooner released or otherwise discharged.

c. Collection of Fee with General Taxes. Any lien amount imposed for service charges that remain delinquent and unpaid for sixty (60) days as provided in section 6.20.580(b)(2)(b) above shall be collected as a special assessment on the residential parcel pursuant to Government Code sections 38790.1 and 25831.

1. The City may charge administrative processing fees to offset the costs incurred by the City in administering the provisions of this section, including court costs. The amount of any costs, fees and penalties imposed pursuant to this section shall be established by resolution of the City Council.
2. The City Council will cause to be prepared annually a report of delinquent service charges with respect to all residential parcels, including all late charges, interest and administrative processing fees that have accrued against residential parcels plus any County fees for processing and collecting the delinquencies on the tax roll.
3. The City Council will fix a time, date and place for hearing the report and any objections or protests thereto. The City Council will cause notice of the hearing to be mailed to the property owners listed on the report not fewer than 10 days prior to the date of the hearing.
4. At the hearing, the City Council will hear any objections or protests of property owners liable to be assessed for delinquent service charges. The City Council may make such revisions or corrections in the report as it deems just, after which, by resolution, the report will be confirmed. The decision of the City Council will be final and conclusive.
5. Upon confirmation by the City Council in accordance with item (4), delinquent service charges will constitute special assessments against the respective residential parcels and a lien thereon for the amount of the delinquent service charges.
6. A certified copy of the confirmed report must be filed with the County Auditor for the amounts of the respective special assessments against the respective residential parcels as they appear on the County Assessor's latest equalized assessment roll.
7. A lien attaches upon recordation in the office of the County Recorder of a certified copy of the City Council's resolution of confirmation. The special assessment may be collected at the same time and in the same manner as ordinary County property taxes are collected and is subject to the same penalties and the same procedure and sale in case of delinquency as provided for those

taxes. All laws applicable to the levy, collection and enforcement of County ad valorem property taxes are applicable to such assessment, except that, if any real property to which the lien would attach has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of the taxes would become delinquent, then the lien that would otherwise be imposed hereby will not attach to such real property and the delinquent service charges, as confirmed, relating to the residential parcel will be transferred to the unsecured roll for collection.

6.20.590 Administrative Appeal.

- a. Any owner who disputes the amount of the solid waste service fee charged to his parcel, the charges for extra services, any adjustment proposed by the Administrative Service Director, or any other determination affecting the property made by or on behalf of the City pursuant to this Chapter may petition the Integrated Waste Program Manager for an administrative decision. A petition may be filed only once in connection with the issue or issues presented in the petition, except upon showing of changed circumstances sufficient to justify the filing of such additional petition.
- b. Any such petition shall be in writing, signed by the owner under penalty of perjury and filed with the Integrated Waste Program Manager. The petition shall include the following information: (1) a complete description of the factual basis for the appeal; (2) the legal basis for the appeal; (3) the remedy sought by the appellant; (4) any and all efforts by the owner to comply with the City's requests for payment; and (5) the petitioner/owner's accurate phone number and address to which the City can successfully mail its written decision. Within sixty (60) working days after receipt of the petition, the Integrated Waste Program Manager shall mail his/her written decision to the address provided by the petitioner/owner.
- c. The written decision of the Integrated Waste Program shall be the final decision of the Waste Management Department, and shall be considered "issued" as of the date of postmark by the City.
- d. An owner may appeal the Integrated Waste Program Manager's final issued opinion within 15 business days after issuance, pursuant to Chapter 1.11 of the Elk Grove Municipal Code.

Section 5: Effective Date and Publication

This Ordinance will take effect 30 days after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and 15 days after adoption by the City Council and a certified copy will be posted in the office of the City Clerk, pursuant to Government Code section 36933(c)(1).

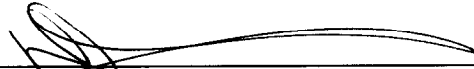
Section 6: Savings Clause

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Article, Chapter or Section. The City Council of the City of Elk Grove hereby declares that it would have adopted the ordinance, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions are declared invalid or unconstitutional.

Section 7. No Mandatory Duty of Care

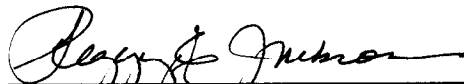
This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 14th day of December, 2005.



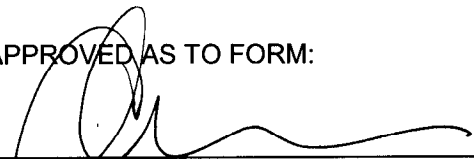
DANIEL BRIGGS, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

EFFECTIVE DATE: January 14, 2006
AYES: Scherman, Soares, Briggs, Cooper, Leary
NOES: None
ABSTAIN: None
ABSENT: None