

ORDINANCE NO. 43-2008

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING CHAPTER 1.11 OF THE ELK GROVE MUNICIPAL CODE RELATING TO APPEALS

The City Council of the City of Elk Grove does ordain as follows:

Section 1. Purpose. The purpose of this ordinance is to amend Chapter 1.11 of the City of Elk Grove Municipal Code.

Section 2. Findings.

A. On November 3, 2004, the City Council of the City of Elk Grove adopted Ordinance 31-2004 and declared its intent to create a unified procedure to be used in administrative appeal hearings in the City of Elk Grove. These procedures are intended to create a mechanism for efficiently, expeditiously and fairly resolving issues that arise under the Elk Grove Municipal Code.

B. Since then, the City Council has expressed a desire to amend the City's procedures for administrative appeals to allow for more flexibility for fee deferrals, fee waivers, and the selection of Appeals Hearing Officers.

C. The City Council revised the fees for conducting administrative appeal hearings and allowed for fee deferrals and fee waivers by Resolution No. 2008-203, adopted on August 27, 2008.

D. This Ordinance, as amended, provides more flexibility in the selection and qualification of appeals hearing officers and creates a comprehensive procedure for appeals hearings.

Section 3. Amendment. Chapter 1.11 "Appeals," of the City of Elk Grove Municipal Code, is amended to read as follows:

Chapter 1.11

APPEALS

Sections

- 1.11.010 Application.
- 1.11.020 Conflict with other chapters of the Municipal Code.
- 1.11.030 Filing a request for appeal.
- 1.11.040 City's rejection of Request for Appeal.
- 1.11.050 Setting hearing date, time, and place.
- 1.11.060 Notice of hearing.
- 1.11.070 Qualifications of Appeals Hearing Officers.

- 1.11.080 Disqualification of Appeals Hearing Officer(s).
- 1.11.090 Powers of Appeals Hearing Officer.
- 1.11.100 Procedures for conducting administrative appeal hearings.
- 1.11.110 Continuing jurisdiction.
- 1.11.120 Failure to appear at administrative appeal hearing.
- 1.11.130 Administrative Appeal Decision.
- 1.11.140 Effect of Administrative Appeal Decision.
- 1.11.150 Judicial review.
- 1.11.160 Failure to comply with Administrative Appeal Decision.
- 1.11.170 Deferral or waiver of appeal fees.
- 1.11.180 Record of Hearings.

1.11.010 Application. This Chapter is intended as the sole means of quasi-judicial administrative appeal from the issuance of any administrative citation pursuant to Chapter 1.12 or any notice of violation pursuant to Chapter 16.18 of this Code, and from any final decision or ruling resulting from a department-level review or appeal, including decisions of the City Manager and his or her designee(s), except as otherwise expressly provided by law or the Elk Grove Municipal Code. This Chapter shall not be a means of appeal from the decision of any board or commission of the City, including but not limited to the Planning Commission and the Building Board of Appeals, where state law requires the appeal be heard by the City Council or another agency.

1.11.020 Conflict with other chapters of the Municipal Code. To the extent this Chapter conflicts with any quasi-judicial appeal procedure already set out in the Elk Grove Municipal Code, the procedures in this Chapter shall control.

1.11.030 Filing a request for appeal.

(A) The appellant shall file with the City Clerk a request for appeal within the time limits provided by law or by ordinance for the filing of such an appeal or, if none are otherwise specified, within thirty (30) days after the City's service of the final departmental decision being appealed. The appellant's request for appeal under this Chapter shall be called a Request for Appeal.

(B) The Request for Appeal shall specify the name, mailing address and telephone number of the appellant and such other information required by law or by ordinance to be provided with the appeal. The appellant shall also attach a written statement specifying in detail the grounds for the appeal and attach a copy of the decision or order being appealed.

(C) The Request for Appeal shall be accompanied by a fee in the amount established by resolution of the City Council, unless payment of the fee is deferred or waived in accordance with Section 1.11.170.

1.11.040 City's rejection of Request for Appeal. The City Clerk, or his/her designee, shall reject for filing any Request for Appeal that does not substantially

comply with the requirements of Section 1.11.030, including, but not limited to, the payment of any required fee. The City Clerk, or his/her designee, shall mail a Notice rejecting the appeal request to the appellant at the address specified in the Request for Appeal. This Notice shall be called the Notice Rejecting Appeal Request. The Notice Rejecting Appeal Request shall specify the reason(s) for the rejection of the appeal. The appellant shall be afforded the opportunity to correct the identified defect(s) within fifteen (15) business days following the date the City mailed the Notice Rejecting Appeal Request. The corrected Request for Appeal must be received by the City Clerk on or before the fifteenth business day, or the appeal deadline is deemed expired. In that event, the underlying departmental decision will be considered final, the alleged violations deemed admitted, and any accrued fines immediately due and payable.

1.11.050 Setting hearing date, time, and place. After the City Clerk, or his or her designee, accepts a Request for Appeal that meets the requirements of this Chapter, he or she shall set the date, time, and place for the hearing to take place no later than thirty (30) days after such acceptance.

1.11.060 Notice of hearing. Notice indicating the time, place and date of the administrative appeal hearing shall be served by the City Clerk or his/her designee upon the appellant either personally or by delivering a copy by certified U.S. mail, postage prepaid, and return receipt requested or such other delivery method that is reasonably calculated to provide actual notice to the appellant, not less than fifteen (15) days prior to the hearing date. The notice, which shall be called the Notice of Hearing, shall include a list of alleged code violations, the name(s) of the Appeals Hearing Officer(s) selected to hear the matter, the procedures for disqualification of an Appeals Hearing Officer, and any procedures applicable to the hearing, including notice of when written testimony must be submitted to the Appeals Hearing Officer.

1.11.070 Qualifications of Appeals Hearing Officers.

After the City Clerk receives a request for appeal, the City Manager or his or her designee shall appoint an Appeals Hearing Officer.

(A) The officers selected to hear appeals shall be known as Appeals Hearing Officers. Appeals Hearing Officers shall be an impartial person, such as (1) a City employee from a department which has no involvement in Code enforcement, or (2) someone selected randomly from a panel of law students and/or local attorneys willing to volunteer as a hearing officer, or (3) someone hired from an organization which provides hearing officers, in which case the cost will be shared equally by the City and the person cited. Appeals Hearing Officers presiding at administrative hearings shall be compensated by the City Manager or his or her designee. The employment, performance evaluation, compensation and benefits of the Appeals Hearing Officers shall not be directly or indirectly conditioned upon the amount of administrative citation fines or other compensation upheld by the Appeals Hearing Officers.

(B) Disqualification of Appeals Hearing Officer. Any person designated to serve as an Appeals Hearing Officer is subject to disqualification for bias, prejudice,

interest, or for any other reason for which a judge may be disqualified in a court of law. Each party shall have the right to make one peremptory challenge to disqualify an Appeals Hearing Officer without having to demonstrate actual bias, prejudice, interest, or other cause for disqualification. Rules and procedures for the disqualification of a hearing officer shall be promulgated by the City Attorney and ratified by the City Council. Any party may petition the City Manager to disqualify a designated hearing officer after receipt of a notice indicating the identity of the hearing officer or immediately upon discovery of such facts indicating bias, prejudice, or interest. The City Manager shall determine whether to grant the petition for disqualification. A written statement of the facts and reasons for the determination shall be incorporated into the administrative record for the hearing. The decision of the City Manager may be appealed to the City Council within ten (10) days notice of the decision. If a substitute is required for a hearing officer due to disqualification or unavailability, a substitute shall be appointed by the City Manager in accordance with these rules and regulations.

1.11.080 Disqualification of Appeals Hearing Officer(s). An Appeals Hearing Officer shall disqualify himself or herself from serving as Appeals Hearing Officer in a particular matter where he/she has a conflict of interest within the meaning of the Political Reform Act (Government Code sections 87100 et seq.) and shall otherwise comply with the disqualification provisions of Canon 3(E) of the Code of Judicial Ethics.

1.11.090 Powers of Appeals Hearing Officer. The Appeals Hearing Officer has the authority to do the following:

- A. Administer oaths;
- B. Conduct a pre-hearing conference to deal with such matters as exploration of a settlement, preparation or stipulations, clarification of issues, and other matters;
- C. Continue a hearing based on good cause shown by one of the parties to the hearing or if the Appeals Hearing Officer independently determines that due process has not been adequately afforded;
- D. Issue subpoenas in accordance with this section. Upon receipt of a written request which is submitted no later than five days before the hearing, the Appeals Hearing Officer shall subpoena witnesses, documents, and other evidence where the attendance of the witness or the admission of evidence is deemed necessary to decide the issues at the hearing. All costs related to the subpoena, including witness and mileage fees, shall be borne by the party requesting the subpoena. The City Attorney shall develop policies and procedures relating to the issuance of subpoenas in administrative hearings, including the form of the subpoena and related costs;
- E. Maintain continuing jurisdiction over the subject matter of an administrative hearing for the purpose of granting a continuance, ensuring compliance

with an administrative order, modifying an administrative order, or where extraordinary circumstances exist, granting a new hearing;

F. Require the posting of a performance bond or some other equivalent means of guaranteeing that compliance will occur, if necessary;

G. Approve any settlement voluntarily entered into by the parties.

1.11.100 Procedures for conducting administrative appeal hearings. Administrative appeal hearings are intended to be informal in nature. The Appeals Hearing Officer is authorized to take testimony. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. However, the appellant shall have the right to present testimony and documentary and physical evidence on his/her/its behalf and shall have the right to examine any witnesses and rebut any evidence presented against him or her. The City, by Department Director or his or her designee, shall have the burden of proving the existence of the violation by a preponderance of evidence. The City Council may promulgate by resolution additional rules and procedures for the conduct of administrative hearings.

1.11.110 Continuing jurisdiction. A continuance may be granted at the discretion of the Appeals Hearing Officer and the Appeals Hearing Officer shall continue to have jurisdiction over the subject matter of an administrative appeal for the purposes of granting a continuance, ensuring compliance with a quasi-judicial Administrative Appeal Decision, modifying an Administrative Appeal Decision, or where extraordinary circumstances exist, granting a new hearing. The party requesting the continuance bears the burden of proof to demonstrate why a continuance should be granted, and the opposing party shall be given the opportunity to respond.

1.11.120 Failure to appear at administrative appeal hearing. Failure of the appellant to either abate the conditions specified in the department level decision and/or citation issued pursuant to Chapter 1.12, and timely pay any accrued fines, or to appear at the hearing after Notice of Hearing has been served, shall be deemed a waiver of the right to a hearing and an admission by such owner or responsible party of the existence of the violations of the Municipal Code as specified or referenced by the Notice of Hearing. In that event, the underlying department decision and/or allegations in the citation issued pursuant to Section 1.12 become final.

1.11.130 Administrative Appeal Decision.

(A) After considering all of the testimony and evidence submitted at the administrative appeal hearing, the Appeals Hearing Officer shall issue a written Administrative Appeal Decision. The written Administrative Appeal Decision of the Appeals Hearing Officer shall be issued as soon as practical and preferably within ten (10) days of the close of the hearing.

(B) The Administrative Appeal Decision shall become final on the date the Appeals Hearing Officer serves the Administrative Appeal Decision. The Appeals

Hearing Officer shall serve one copy of the Administrative Appeal Decision on the respondent by forwarding the Administrative Appeal Decision to the City Clerk for the City of Elk Grove and one copy on the appellant. The City Clerk shall file a copy of the Administrative Appeal Decision with the appropriate Department Director. The Administrative Appeal Decision shall be served either by personal service or by certified mail.

1.11.140 Effect of Administrative Appeal Decision. An Administrative Appeal Decision of an Appeals Hearing Officer shall be final and no appeal may be made to the City Council.

1.11.150 Judicial review. Once an administrative order becomes final as provided in this chapter, any person directly aggrieved by the administrative decision rendered in that order may obtain judicial review of the decision by filing a petition for review with the superior court of Sacramento County. The time in which judicial review of the order must be sought shall be governed by California Code of Civil Procedure Section 1094.6, or as may be amended hereafter.

1.11.160 Failure to comply with Administrative Appeal Decision.

(A) After the Appeals Hearing Officer issues an Administrative Appeal Decision, the Department Director or his/her designee, shall monitor violations and determine compliance.

(B) Upon the failure of a party to comply with the terms and deadlines set forth in the Administrative Appeal Decision, the Department Director or his/her designee, may use all appropriate legal means to recover all civil penalties and administrative costs and to obtain compliance with the Administrative Appeal Decision, which includes seeking an injunction.

(C) Failure to comply with an Administrative Appeal Decision constitutes a misdemeanor.

1.11.170 Deferral or waiver of appeal fees.

(A) The City Manager, or his/her designee, may defer or waive the payment of a fee required for filing an appeal as specified in Section 1.11.030 if the appellant meets the financial hardship requirements established by resolution of the City Council.

(B) Any person who willfully provides the City Manager, or his/her designee, with false statements of material facts in an application for a fee deferral is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment of a period of not more than six (6) months, or by both such fine and imprisonment.

(C) The decision of the City Manager, or his/her designee, on the deferral or waiver of fees shall be final and conclusive and there shall be no administrative appeal from this decision.

1.11.180 Record of Hearings.

The Appeals Hearing Officer shall cause all testimony to be tape-recorded and/or otherwise documented. A certified court reporter will not normally be provided. Any party may provide for a certified court reporter and obtain a transcript of the proceedings at his/her/its own expense. If such a court reporter is provided, any other party has the right to obtain a copy of the transcript of the proceedings from the court reporter at the requesting party's expense.

Section 4: No Mandatory Duty of Care

This ordinance is not intended to and shall not be construed 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 changes provided for in this Ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this Ordinance; nor, shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this Ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by resolution of the City Council.

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 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: 43-2008
INTRODUCED: August 27, 2008
ADOPTED: September 10, 2008
EFFECTIVE: October 10, 2008


GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:


SUSAN J. BLACKSTON, CITY CLERK

Date signed: Sept. 17, 2008

APPROVED AS TO FORM:


SUSAN COCHRAN, CITY ATTORNEY

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 43-2008**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Susan J. Blackston, 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 August 27, 2008 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 10, 2008 by the following vote:

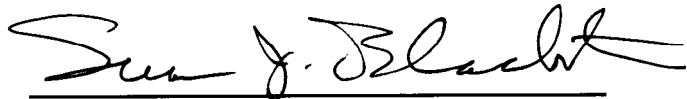
AYES : **COUNCILMEMBERS:** *Davis, Hume, Scherman, Leary, Cooper*

NOES: **COUNCILMEMBERS:** None

ABSTAIN: **COUNCILMEMBERS:** None

ABSENT: **COUNCILMEMBERS:** None

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



**Susan J. Blackston, City Clerk
City of Elk Grove, California**