

## ORDINANCE NO. 2-2012

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE AMENDING ELK GROVE MUNICIPAL CODE CHAPTER 1.18 RELATING TO DEVELOPMENT SERVICES FLAT FEES APPEALS

**WHEREAS**, the City of Elk Grove (the "City") adopted and maintains the Elk Grove Municipal Code to establish standards for collection of fees; and

**WHEREAS**, the City has a need to have in place a process for project applicants to appeal certain fees; and

**WHEREAS**, sections of the Elk Grove Municipal Code establish a process related to the review of fee appeal requests; and

**WHEREAS**, The California Environmental Quality Act (CEQA), California Public Resources Code section 21000 et seq., and the CEQA guidelines, California Code of Regulations, Title 14, section 15000 et seq., ("CEQA Guidelines") require analysis of the environmental consequences that may flow from the approval of discretionary "projects"; and

**WHEREAS**, Section 15061(b)(3) of the State CEQA Guidelines exempts projects where the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. 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 activity is not subject to CEQA.

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

#### Section 1: Purpose.

The purpose of this Ordinance is to establish a process by which project applicants may appeal Building, Planning and Public Works Services flat fees.

#### Section 2: CEQA Compliance.

The City Council of the City of Elk Grove hereby finds that the proposed fee appeal process is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines section 15061 (b) (3), the general rule exemption. The proposal establishes an administrative process for appealing flat fees imposed by the City to cover the financial impacts of providing services. This process will not have an impact on the environment because the collection or non-collection of fees do not change the physical characteristics of the environment. Therefore, this action qualifies for this exemption and no further environmental review is required.

Section 3: Amendment to Title 1 – Tax and Fee Appeals to adopt Sections 1.18.035 Approving Authority for Waivers and Refunds and 1.18.045 Appeals to City Council.

Elk Grove Municipal Code Sections 1.18.035 and 1.18.045 are hereby added to read in their entirety:

**1.18.035 Approving Authority for Refunds of Development Services Flat Fees.**

A. Any party paying a building permit flat fee, planning process or permit flat fee and/or public works deposits and/or flat fee as established in Resolution 2011-106 may request a refund for such fees to the department head with oversight of the division administering the flat fee. The refund request shall be made by filing a written notice thereof with the City Clerk not later than fourteen (14) calendar days after paying such fees. The refund request shall state: amount of refund request, reasons for request, and any additional pertinent information. Additionally, proof of payment shall be attached to the request. The department head may approve, partially approve, or deny the request for a refund. The decision of the department head shall be in writing. The fee payer shall have the burden of proving by a preponderance of the evidence that the cost to the City was less than the amount charged to the party.

B. Any party requesting appeal of the department head's decision shall submit a request in writing to the City Manager for review within seven (7) calendar days of receiving the department head's decision. The City Manager may approve, partially approve, or deny the request for a refund. The decision of the City Manager shall be in writing.

**1.18.045 Appeals to City Council.**

Any party dissatisfied by the decision rendered by the City Manager under Section 1.18.035(B) may appeal the decision to the City Council in accordance with EGMC Chapter 1.18. The appeal shall be made by filing a written notice thereof with the City Clerk not later than fourteen (14) calendar days after the date of mailing or personal delivery of the notice of the decision of the City Manager. Should the appellant succeed in their appeal, whatever funds so ordered shall be returned to the appellant. The City Council shall hold a hearing on the appeal and its decision thereon shall be final. Instead of hearing the appeal itself, the City Council may refer the matter to a Hearing Officer pursuant to EGMC Chapter 1.18. The Hearing Officer's decision shall be in writing. The Hearing Officer's decision shall have the effect specified in EGMC Section 1.18.130, and judicial review shall be governed by EGMC Section 1.18.150.

Section 4: 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 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.

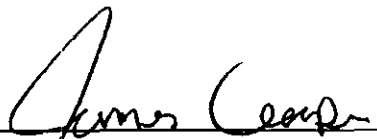
Section 5: No Mandatory Duty of Care.

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 6: 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:** 2-2012  
**INTRODUCED:** January 25, 2012  
**ADOPTED:** February 8, 2012  
**EFFECTIVE:** March 9, 2012

  
\_\_\_\_\_  
JAMES COOPER, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

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

  
\_\_\_\_\_  
JONATHAN HOBBS,  
INTERIM CITY ATTORNEY

Date signed: February 13, 2012

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 2-2012**

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

*I, Jason Lindgren, 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 January 25, 2012 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on February 8, 2012 by the following vote:*

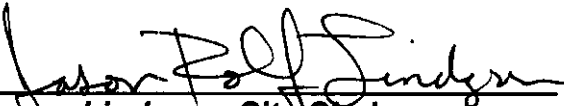
**AYES :**       **COUNCILMEMBERS:**       *Cooper, Hume, Davis, Detrick, Scherman*

**NOES:**       **COUNCILMEMBERS:**       *None*

**ABSTAIN:**   **COUNCILMEMBERS:**       *None*

**ABSENT:**    **COUNCILMEMBERS:**       *None*

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

  
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**Jason Lindgren, City Clerk  
City of Elk Grove, California**