

ORDINANCE NO. 22-2018
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

WHEREAS, the California Building Code establishes statewide standards for the construction of buildings and the Elk Grove Municipal Code establishes standards for housing conditions and maintenance of real property; and

WHEREAS, the Elk Grove Municipal Code and California Building Code are enforced through the issuance of notices to inform property owners of violations prior to enforcement actions being taken, and these notices trigger due process procedures that any party having interest may use to appeal the determination of violation(s) documented in the notices; and

WHEREAS, the California Building Code establishes the requirement to have appeals boards for both building and housing to hear appeals related to alleged violations of building and housing codes; or the use, maintenance, and change of occupancy of buildings; and

WHEREAS, California Building Code Sections 1.8.8 and 113 require the establishment of a "Local" and "Housing" Board of Appeal(s) to hear these matters; and

WHEREAS, this ordinance would amend the Elk Grove Municipal Code to delineate between the type of appeal that would be heard by a single hearing officer and the type of appeal that would empanel a Housing or Local Board of Appeal.

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

Section 1: Amend Elk Grove Municipal Code Chapter 1.11 titled Appeals.

Elk Grove Municipal Code Chapter 1.11 is hereby amended to read as follows:

Chapter 1.11

APPEALS

Sections:

- 1.11.010 Application.
- 1.11.020 Conflict with other chapters of the Elk Grove 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.

- 1.11.075 Qualifications of the Housing Appeals Board and Local Appeals Boards.
- 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 EGMC Chapter 1.12 or any notice and order pursuant to EGMC Chapter 16.18, 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 Elk Grove Municipal Code.

To the extent this chapter conflicts with any quasi-judicial appeal procedure for administrative citations and notices of violation 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 fifteen (15) 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 EGMC Section 1.11.170.

1.11.040 City's rejection of request for appeal.

The City Clerk, or his or her designee, shall reject for filing any request for appeal that does not substantially comply with the requirements of EGMC Section 1.11.030, including, but not limited to, the payment of any required fee. The City Clerk, or his or 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 (15th) 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 or her designee upon the appellant either personally or by delivering a copy by first class certified mail, 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) or the names of the members of the Housing Appeals Board and Local Appeals Board, as applicable, selected to hear the matter, the procedures for disqualification of an Appeals Hearing Officer or member of the Housing Appeals Board and Local Appeals Board, and any procedures applicable to the hearing, including notice of when written testimony must be submitted to the Appeals Hearing Officer, the Housing Appeals Board, or the Local Appeals Board.

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. Appeals Hearing Officers shall hear all appeals provided for under this chapter, except for those matters within the jurisdiction of the Housing Appeals Board and the Local Appeals Board.

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, 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, or decision issued 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 (1) peremptory challenge to disqualify an Appeals Hearing Officer without having to demonstrate actual bias, prejudice, interest, or other cause for disqualification.

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.

1.11.075 Qualifications of the Housing Appeals Board and Local Appeals Board.

A. The Housing Appeals Board shall be appointed by the Mayor, and approved by the City Council, or by a designee authorized by the Mayor, and approved by the City Council. The Housing Appeals Board shall hear appeals regarding the requirements of the City relating to the use, maintenance and change of occupancy of buildings and structures, including requirements governing alteration, additions, repair, demolition and moving.

B. The Local Appeals Board shall be appointed by the Mayor, and approved by the City Council, or by a designee authorized by the Mayor, and approved by the City Council. The Local Appeals Board shall hear appeals regarding the building requirements of the City.

C. Except as otherwise provided in law, any person, firm, or corporation adversely affected by a decision, order or determination of the City relating to the application of building standards published in the California Building Standard Code, or any other applicable rule or regulation adopted by the Department of Housing and Community Development, or any lawfully enacted ordinance of the City may appeal the issue for resolution to the Housing Appeals Board or the Local Appeals Board as appropriate. The Housing Appeals Board shall hear appeals relating to existing buildings and the Local Appeals Board shall hear appeals relating to new building construction; all other appeals provided for under this chapter 1.11 shall be heard by an Appeals Hearing Officer.

D. Members of the Housing Appeals Board and Local Appeals Board shall not be employees of the City and shall be knowledgeable in the applicable building codes, regulations and ordinances as determined by the City Council or its designee.

1.11.080 Disqualification of Appeals Hearing Officer(s).

An Appeals Hearing Officer and a member(s) of the Housing Appeals Board and/or Local Appeals Board shall disqualify himself or herself from hearing a particular matter where he or she has a conflict of interest within the meaning of the Political Reform Act (Section 87100, et seq., of the Government Code) 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 Housing Appeals Board, and Local Appeals Board.

The Appeals Hearing Officer, the Housing Appeals Board, and Local Appeals Board have ~~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 (1) of the parties to the hearing or if the Appeals Hearing Officer, Housing Appeals Board, or Local Appeals Board, as applicable, 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 (5) days before the hearing, the Appeals Hearing Officer, Housing Appeals Board, or Local Appeals Board, as applicable, 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;

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, Housing Appeals Board, or Local Appeals Board, as applicable, 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, Housing Appeals Board, or Local Appeals Board, as applicable, and the Appeals Hearing Officer, Housing Appeals Board, or Local Appeals Board, as applicable, 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 EGMC Chapter 1.12 or Chapter 16.18, 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 Elk Grove 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 EGMC Chapter 1.12 or Chapter 16.18 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 (1) 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 (1) 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 first class certified mail, return receipt requested.

1.11.140 Effect of administrative appeal decision.

An administrative appeal decision of an Appeals Hearing Officer, Housing Appeals Board, or Local Appeals Board, as applicable, shall be final and no appeal may be made to the City Council. Any amount found to be due shall be immediately due and payable upon the service of notice.

1.11.150 Judicial review.

Once an administrative order becomes final as provided in this chapter, any person directly aggrieved by the administrative appeal decision must first pay the full amount owed the City plus any applicable penalties and interest. They then may seek 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 EGMC Chapter 1.06.

1.11.160 Failure to comply with administrative appeal decision.

A. After the Appeals Hearing Officer, Housing Appeals Board, or Local Appeals Board, as applicable, issues an administrative appeal decision, the Department Director or his or 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 or 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 or her designee, may defer or waive the payment of a fee required for filing an appeal as specified in EGMC 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 or her designee, with false statements of material facts in an application for a fee deferral is guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

C. The decision of the City Manager, or his or 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, Housing Appeals Board, or Local Appeals Board, as applicable, 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 2: 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 3: 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 4: Savings Clause

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 5: 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: 22-2018
INTRODUCED: October 10, 2018
ADOPTED: October 24, 2018
EFFECTIVE: November 23, 2018



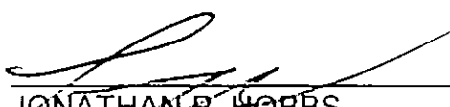
STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:



JASON LINDGREN, CITY CLERK



JONATHAN P. HOBBS,
CITY ATTORNEY

Date signed: November 1, 2018

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 22-2018**

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

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 October 10, 2018 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on October 24, 2018 by the following vote:

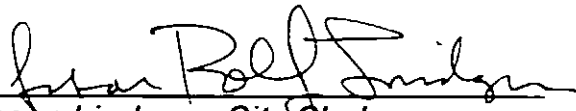
AYES : **COUNCILMEMBERS:** *Ly, Suen, Hume, Nguyen*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *Detrick*

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



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