

ORDINANCE NO. 9-2003

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE, CALIFORNIA, AMENDING THE ELK GROVE MUNICIPAL CODE BY ADDING CHAPTER 9.97 TO REQUIRE COMPLIANCE WITH SECURITY PLAN AND PAYMENT OF COSTS BY BUSINESSES THAT PLACE AN UNDUE BURDEN ON POLICE PROTECTION SERVICES

WHEREAS, the City of Elk Grove ("City") desires to provide a safe and pleasant environment for the residents and businesses of Elk Grove; and

WHEREAS, providing an adequate level of police protection services is an important part of this effort; and

WHEREAS, the City Council desires to ensure that City is provided with adequate levels of police protection in all areas at all times by reducing inordinate demands created by certain types of businesses.

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

SECTION 1. FINDINGS.

In adopting this Ordinance, the City Council makes the following findings:

1. The provision of police protection comprises more than forty-four percent (44%) of the City's General Fund expenditures in the current fiscal year; and
2. The City of Elk Grove faces potentially substantial revenue reductions due to the State of California's ongoing fiscal crisis; and
3. These revenue reductions make the careful deployment of police protection resources more important than ever before; and
4. Recent events at several businesses in Elk Grove have demonstrated that some businesses and types of businesses can, as a result of the improper management of the business, result in public safety problems that require inequitable and inordinate allocations of police services to protect the public safety; and
5. Deployments of police personnel to address issues at these establishments have required in some cases more than forty (40) sworn public safety personnel over a period of several hours, resulting in shortages of police protection in other parts of Elk Grove; and
6. The Elk Grove Police Department has determined that the types of problems requiring police services could have been avoided or reduced by the presence of private security personnel at these establishments and/or by other changes in operation; and

7. The City currently lacks any ordinance which requires the implementation of a security plan and the payment of costs for failure to implement a security plan to address known or potential public safety problems; and
8. The City Council finds that this Ordinance is enacted in order to mitigate the imminent threat posed to the public peace, health, safety and general welfare by the continued allocation of police resources to protect the public safety at specified businesses and the consequent reduction in police protection in other areas of Elk Grove. In this regard, the findings set forth in this Ordinance are incorporated herein by reference;
9. On April 2, 2003, City Council provided an opportunity for public comment on the proposed amendment to the Municipal Code, and comments were duly considered.
10. The adoption of this amendment to the Municipal Code is consistent with the goals, policies, and implementation programs specified in the City's General Plan.

SECTION 2. AMENDMENTS.

Chapter 9.97 of Title 9 of the City of Elk Grove Municipal Code is hereby added to read as shown below:

CHAPTER 9.97 ON-SITE SECURITY REQUIREMENT

Sections:

- 9.97.010 Purpose
- 9.97.020 Definitions
- 9.97.030 Security Plan May Be Required For Specified Businesses
- 9.97.040 Chief of Police May Determine That a Security Plan is Required
- 9.97.050 Notice and Enforcement Process
- 9.97.060 Payment Required for Businesses, Which Do Not Comply with this
Chapter
- 9.97.070 Appeal

9.97.10 Purpose

The high cost of police protection, and the potential for certain businesses which operate in a way which causes threats to the public safety and a commensurate increase in the demand for police services, requires that the City implement measures to ensure that residents and businesses in Elk Grove do not receive inadequate levels

of police services as the result of the allocation of resources to serve businesses which are operated in an irresponsible manner. This Chapter provides for implementation of measures to ensure that the public's safety is protected, and that the City is reimbursed for the cost of providing services to businesses, which operate with a demonstrated disregard for safety.

9.97.020 Definitions. The following definitions shall be used in this Chapter:

Business shall mean any business, including retail, office, industrial, warehousing, and other types of non-residential land uses.

Chief of Police shall be the Chief of Police of the Elk Grove Police Department, or his or her designated representative.

Call for Service shall be any request, which results in the dispatching of uniformed police officers to a location, regardless of the source of the request.

Incident shall be any occurrence at a place of business, which results in a Call for Service.

Private Security Officer shall be as defined in Section 7582.1(e) of the State of California Business and Professions Code.

Private Security Operator and ***Private Security Service*** shall be as defined in Section 7582.1(a) of the State of California Business and Professions Code.

9.97.030 Security Plan May be Required for Specified Businesses. The City of Elk Grove may require that individual businesses or the management of larger centers provide a security plan, including but not limited to, on-site security provided by a Private Security Operator or Private Security Service, in order to protect the public safety and to reduce the added costs to the City which result from a need for police protection which exceeds that which would be considered normal and reasonable.

9.97.040 Chief of Police May Determine that a Security Plan is Required. The Chief of Police may decide, based on either the number of calls for service from a business or from a business center or on the severity of an individual incident or incidents requiring police response, that the business or business center is subject to the requirements of this Chapter. The Chief of Police's decision may be appealed as provided in this Chapter.

9.97.050 Notice and Enforcement Process.

a) Upon determining that a business or business center is subject to this Chapter based on the number or calls or severity of incidents, the Chief of Police shall notify the business owner or business center management in writing. The notice shall specify the calls and/or incidents upon which the determination is based. The notice shall require the business owner or business center management to provide to the Chief of Police a plan for improving the operation, design, hours of operation, etc., of the business or center to address the public safety issues identified. The plan shall also include a method of and a commitment to implementation at the business and/or center. The written notice shall include a deadline for response of not less than seven (7) or more than fourteen (14) calendar days. Upon the written request by the business owner or owner of the center submitted before the expiration of the time for a response, the Chief of Police may, in writing, grant an extension of the time in which a response is required.

b) The Chief of Police shall review the plan from the business owner or business center management and determine if the suggested plan for improving operation, design, etc., is sufficient to address the identified public safety issues. If the Chief of Police determines that the suggested plan is sufficient to address the identified safety issues, the Chief of Police shall approve the plan and no further action will be taken, provided that the suggested plan is implemented.

c) If the Chief of Police determines that the proposed plan is not sufficient to address the identified safety issues, or if no response is received, the Chief of Police shall develop a plan to address the identified safety issues. This plan may include any reasonable changes in the design, operation, hours of operation, etc., as necessary, and may specifically include a requirement for the provision at no cost to the City of onsite Private Security Officers employed by a Private Security Operator or Private Security Service. The Chief of Police shall notify the business or business center in writing of the plan, and shall specify a reasonable deadline for compliance.

9.97.060 Payment Required From Businesses That Do Not Comply with this Chapter. Businesses or business centers may be charged by the City for the cost of all calls for service to the location if they fail to comply with this Chapter by: (1) failing to respond to the initial notice from the Chief of Police, or (2) failing to comply with any plan approved or imposed by the Chief of Police pursuant to this Chapter. The rate of charge shall be determined by the City based on direct and indirect personnel, equipment, and other costs of calls to the location.

9.97.070 Appeal. All decisions of the Chief of Police pursuant to this Chapter may be appealed. Such appeals of decisions of the Chief of Police pursuant to this Chapter shall be determined the City Manager in writing. No personal hearing before the City Manager is required. In determining the appeal, the City Manager shall give

deference to decisions by the Chief of Police supported by substantial evidence. Decisions by the City Manager pursuant to this Chapter may be appealed to the City Council, which shall decide the matter giving deference to decisions by the Chief of Police supported by substantial evidence. All points to be asserted in an Appeal shall be submitted in writing not less than ten (10) calendar days after the receipt of the written decision by the Chief or Police, or City Manger.

The City Manager shall decide the appeal in writing within 10 business days after the matter has been submitted by the business or business center. The City Council shall hear any appeal no later than the second regular meeting after the filing of the appeal from the City Manager's decision. The City Council shall determine the appeal no later than the next regular meeting of the City Council after the appeal hearing. No business or business center shall be required to implement a security plan while an appeal is pending.

SECTION 3. Regulations Nonexclusive – Remedies Cumulative.

The provisions of this Ordinance requiring payment for security are not intended to be exclusive. Compliance with this Ordinance shall not excuse noncompliance with any other regulations pertaining to the operation of businesses as adopted by the Elk Grove City Council. The remedies provided in this Ordinance are cumulative with all other available remedies, including without limitation those available to abate nuisances.

SECTION 4. Severability.

If any section, subsection, subdivision, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid, ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

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 outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 6. Effective Date.

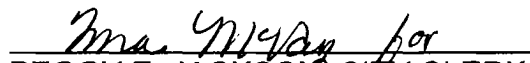
This ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after 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 on this 16th day of April 2003.

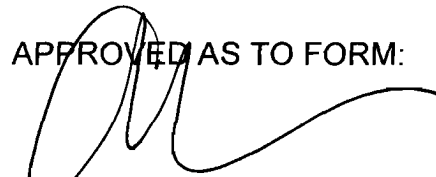


RICK SOARES, MAYOR of the
CITY OF ELK GROVE

ATTEST:


PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

Effective: May 16, 2003

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