

## ORDINANCE NO. 44-2008

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING CHAPTER 1.12 TO THE CITY OF ELK GROVE MUNICIPAL CODE RELATING TO ADMINISTRATIVE CITATIONS

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

Section 1: Purpose and Authority. The purpose of this ordinance is to provide general direction regarding the enforcement of the City's ordinance and is authorized by the City's police powers as set forth in the California Constitution, Article XI, Section 7.

Section 2: Adoption. The City Council hereby adds Chapter 1.12 "Administrative Citations," to the City of Elk Grove Municipal Code, as follows:

#### CHAPTER 1.12

#### ADMINISTRATIVE CITATIONS

##### Sections

- 1.12.010 Applicability.
- 1.12.020 Definitions.
- 1.12.030 Continuing violations of building and zoning issues.
- 1.12.040 Administrative citation.
- 1.12.050 Amount of fines.
- 1.12.060 Payment of the fine.
- 1.12.120 Late payment charges.
- 1.12.130 Recovery of administrative citation fines and costs.
- 1.12.150 Notices.

##### **1.12.010 Applicability.**

This chapter provides for administrative citations, which are in addition to all other legal remedies, criminal or civil, which the City may pursue to address a violation of this Code. Use of this chapter is at the sole discretion of the City. This chapter is authorized under Government Code sections 53069.4 and 36901. The procedures in this chapter shall not be used to enforce a continuing violation regarding building, plumbing, electrical, or other similar structural or zoning issues, without first allowing the person in violation a reasonable time to correct the violation, consistent with the procedures set forth in section 1.28.030.

##### **1.12.020 Definitions.**

In this chapter:

"Enforcement officer" means any City employee or agent of the City with the authority to enforce a provision of this Code.

"Hearing officer" means a person designated by the City Manager to conduct an administrative hearing. The designated hearing officer 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.

#### **1.12.030 Continuing violations of building and zoning issues.**

If a violation pertains to building, plumbing, electrical, or other structural or zoning issues that do not create an immediate danger to health or safety, the City shall provide a reasonable period of time for a person responsible for a continuing violation to correct or otherwise remedy the violation before the imposition of an administrative citation or penalty under this chapter.

Before issuing an administrative citation, the enforcement officer shall give notice to the person responsible, in accordance with section 1.28.150. The notice shall be delivered personally or by certified mail. The notice shall State: the date and location of the violation; the section(s) of the Code violated; a description of the violation(s); the actions required to correct the violation(s); the time period allowed for correcting the violation(s); a Statement that an administrative citation may be issued each day after the time for correction has passed, if correction is not completed; the amount of the fine if an administrative citation is issued; and either a copy of this chapter or an explanation of the consequences of noncompliance and a description of the hearing procedure and appeal process. The enforcement officer shall allow at least fifteen (15) days from the date the first notice is sent for compliance with the notice. If the nature of the condition is such that compliance is very complicated or expensive, and the condition is not an immediate threat to health or safety, the enforcement officer may extend the compliance period to thirty (30), sixty (60) or ninety (90) days, depending upon the circumstances.

If the enforcement officer determines that all violations have been corrected within the time specified in the notice, no further action shall be taken.

#### **1.12.040 Administrative citation.**

(a) Authority. Whenever an enforcement officer charged with the enforcement of a provision of this Code determines that a violation of that provision has occurred, the enforcement officer has the authority to issue an administrative citation to the person responsible for the violation.

(b) Contents of citation. Each administrative citation shall contain the following information:

- (1) The date of the violation, or date the violation was observed;
- (2) The address or a definite description of the location where the violation occurred;
- (3) The section of this Code violated and a description of the violation;
- (4) The amount of the fine for the Code violation;
- (5) A description of the fine payment process, including a description of the time within which, and the place to which, the fine shall be paid;
- (6) An order prohibiting the continuation or repeated occurrence of the Code violation described in the citation;

- (7) A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request-for-hearing form may be obtained to contest the citation; and
- (8) The name and signature of the citing enforcement officer.

In the case of a continuing violation involving building, plumbing, electrical, or other similar structural or zoning issues identified under section 1.28.020, the administrative citation shall also have attached a copy of the notice that had been sent to the responsible party.

- (c) Delivery of citation. The administrative citation shall either be delivered personally or sent by first class mail to the person responsible for the violation.

#### **1.12.050 Amount of fines.**

(a) Maximum amount of fine. The maximum amount of the fine for each Code violation imposed under this chapter shall be established in a schedule of fines adopted by resolution of the City Council. The schedule of fines shall specify:

(1) Any increased fines for repeat violations of the same Code provision by the same person within a twelve (12) month period; and

(2) Any late payment charges imposed for the payment of a fine after its due date.

(b) Additional amounts. Administrative costs, interest, late payment charges, costs of compliance reinspections, and collection costs are in addition to the fines.

(c) Factors in establishing fine.

(1) Enforcement officer. When preparing the administrative citation, the enforcement officer shall set the fine at the maximum fine established by the City Council.

(2) Hearing officer. Upon request before or at the hearing held under section 1.28.090, the hearing officer may in his or her sole discretion reduce the amount of the fine based on the following factors: (A) the duration of the violation; (B) the frequency, recurrence and number of violations, related or unrelated, by the same violator; (C) the seriousness of the violation; (D) the good faith efforts of the violator to come into compliance; (E) the impact of the violation on the community; and (F) such other factors as justice requires.

#### **1.12.060 Payment of the fine.**

(a) Due date. The fine shall be paid to the City within thirty (30) days from the date of the administrative citation. The City may suspend the imposition of fines for any period of time during which the violator has filed for necessary permits, and such permits are required to achieve compliance, and the permit applications are actively pending before the appropriate governmental agency.

(b) Refund. The City shall refund a fine paid if the hearing officer determines, after a hearing held under Chapter 1.11, that the person charged in the citation was not responsible for the violation or that there was no violation as charged.

(c) Further violations not excused. Payment of a fine under this chapter shall not excuse or discharge any continuation or repeated occurrence of the Code violation.

#### **1.12.120 Late payment charges.**

A person who fails to pay to the City any fine imposed under this chapter on or before the due date is liable for payment of any applicable late payment charges set forth in the schedule of fines.

#### **1.12.130 Recovery of administrative citation fines and costs.**

(a) A person who fails to pay any fine or other charge owed to the City under this chapter is liable in any action brought by the City for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs and attorneys' fees. Such collection costs are in addition to any fines, interest, and late charges.

(b) In addition to the administrative citation fine, the City may collect its administrative costs, interest, late payment charges, costs of compliance reinspections, and collection costs.

(c) The City may collect any past due administrative citation fine and other costs and charges by any available legal means.

#### **1.12.150 Notices.**

(a) Method of service. The administrative citation and all notices required to be given by this chapter shall be served on the responsible party either by personal service, by first class mail, or by certified mail, return receipt requested. (See section 1.08.100.)

(b) Real property. When real property is involved in the violation, the original notice, the administrative citation and all notices required to be given by this chapter shall be served on the responsible party and, if different, to the property owner at the address as shown on the last equalized county assessment roll. If personal service or service by mail on the property owner is unsuccessful, a copy of each notice and the citation shall be conspicuously posted at the property which is the subject of the violation. The City may, in its discretion, also serve notice on a tenant, a mortgagor or any other person having an interest in the property.

(c) Failure to receive notice. The failure of a person to receive a required notice shall not affect the validity of any proceedings taken under this chapter.

#### **Section 3: 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 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 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 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 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:** 44-2008  
**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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
SUSAN COCHRAN, CITY ATTORNEY

Date signed: Sept. 17, 2008

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 44-2008**

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:*

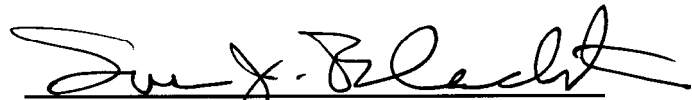
**AYES :**        **COUNCILMEMBERS:**     *Davis, Hume, Scherman, Leary, Cooper*

**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**