

RESOLUTION NO. 2005-120

**THE CITY OF ELK GROVE
MAYOR'S COMMENT
AND COMMENT OF THE CITY COUNCIL
TO THE REPORT OF THE SACRAMENTO GRAND JURY**

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| <p>To the Hon. Michael G. Virga Presiding Judge of the Superior Court of the County of Sacramento:</p> | <p>In re: Elk Grove City Council and Conflict of Interest Issues as Addressed in the Sacramento Grand Jury Report of February 28, 2005</p> |
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Whereas, the Sacramento County Grand Jury has directed the City of Elk Grove to provide comment to both the findings and recommendations to the Presiding Judge of the Sacramento Superior Court as required by Penal Code Sections 933 and 933.05; and

Whereas, Penal Code Sections 933 and 933.05 require, in the case of a city, that the Mayor shall also comment on the findings and recommendations: and

Whereas, the Mayor and City Council of the City of Elk Grove has reviewed the report by the Grand Jury;

Now, Therefore, the Mayor and City Council of the City of Elk Grove do hereby resolve and comment as follows:

COMMENT TO FINDING A-1:

The City of Elk Grove City Council agrees with the first two sentences of Finding A-1. The City of Elk Grove City Council has insufficient information to either agree or disagree with the balance of Finding A-1.

COMMENT TO RECOMMENDATION A-1:

The City Council of the City of Elk Grove hereby adopts the following policy:

So long as the Sheriff's Department provides law enforcement services to Elk Grove, City Council Members employed by the Sacramento County Sheriff's Department shall completely recuse themselves from, nor influence or attempt to influence, any and all activities, discussions, or City decisions that involve police services in the City. This recusal shall encompass, but not be limited to,

all discussions or votes by the Council concerning law enforcement services, all discussions and/or actions that could involve the funding or curtailment of police services, any discussions and/or actions about or involvement in the operation, management or evaluation of police services, and/or discussions and/or activities related to personnel decisions in the Elk Grove Police Department, even if such involvement would not violate state law governing financial conflict of interests.

By adoption of this resolution and policy, the recommendation is hereby implemented.

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COMMENT TO FINDING A-2:

The City of Elk Grove City Council generally agrees with the first sentence of Finding A-2. The City of Elk Grove City Council has insufficient information to either agree or disagree with the specific number of Council meetings specified in this finding or the balance of Finding A-2.

COMMENT TO RECOMMENDATION A-2:

The City Council of the City of Elk Grove hereby adopts the following policy:

To ensure ongoing compliance with the recusal procedures, the activities of City Council Members that are employed by the Sacramento County Sheriff's Department should be closely monitored and documented as set out in comment to Recommendation B-1. All Elk Grove officials involved in any aspect of providing, assessing or contracting for police services should be informed of the recusal procedure, and be required to report any failure to follow the procedure to the City Manager.

The procedure for recusal shall be as follows:

1. **Statement in Agenda Packets:** The City shall include the following statement in all agenda packets distributed to Members of the Elk Grove City Council:

“State law places the duty on you to ensure that you comply with all of the State’s ethics laws. The City is not responsible for ensuring that you comply with the State’s ethics laws. Before making, participating in making, influencing or attempting to influence a governmental decision, the burden is on you to determine whether you may legally engage in this conduct. The City Attorney’s office represents the interests of the City as a whole, not any individual Council Member. There may, therefore, be times when your interests cannot be adequately represented

by the City Attorney. Please contact the City Attorney as soon as possible to discuss any potential conflicts of interest that you may feel will limit you from making, participating in making or influencing governmental decisions.”

2. Recusal from Making, Participating in Making, Influencing or Attempting to Influence Governmental Decisions: If a Member of the Elk Grove City Council determines that he or she may have a potentially disqualifying conflict of interest, the Council Member shall notify the other members of the City Council, the City Attorney and the City Manager that such a conflict may exist. Unless and until it is determined that the Council Member does not have a disqualifying conflict of interest, the Council Member shall recuse himself or herself from any involvement in the decision, including recusing himself or herself from making, participating in making, or influencing this decision.
3. Verbal Statement on the Record: If during the course of a public meeting (either during open or closed session), a Council Member has a conflict of interest which requires his or her recusal, the Council Member(s) with a Conflict of Interest shall make a verbal statement on the record immediately prior to the consideration of the matter and before any action is taken on the item in question. This verbal statement shall be required for all matters which are the subject of discussion or debate by the City Council, or which will be the subject of debate by the City Council, regardless of whether the matter is listed on the agenda. The verbal statement may take the following form:

“I am employed by the Sacramento Sheriff’s Department. Therefore, I will not be participating in item [state the agenda item number]. So the record should reflect my recusal on the item and my “abstention” from participation in this matter. In addition to my recusal here today, I have not made, participated in making, or otherwise influenced or attempted to influence this decision.”
4. Physically Leave the Council Chambers: Except with regard to matters on the consent agenda, the Council Member with a conflict of interest shall, after having made a public disclosure of his or her financial interest, step down from the Council dais and leave the Council Chambers until the conclusion of that item. Once that item is concluded and the City Council is ready to move to the next item, the Council Member(s) that left the room may return to the dais.

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The City Council of the City of Elk Grove hereby adopts the following policy and procedure for recusal:

1. **Determination if Conflict of Interest Requirement Might Apply To Any Council Member for Any Item Before the Council:**
 - a. State law places the duty on each City Council Member to ensure that he or she is in compliance with all of the State's ethics laws. The City is not responsible for ensuring that each Council Member conducts him or herself in an ethical manner.
 - b. If a City Council Member discovers that he or she may have a conflict of interest, the Council Members shall notify: (1) the City Council, (2) the City Attorney and (3) the City Manager that such a conflict may exist. The Council Member shall refrain from making, participating in making or influencing governmental decisions unless and until a determination is made that he or she is entitled to participate.

2. **Explicitly Advise the Affected Council Member and All Other Council Members of the Potential Conflict:**
 - a. The City Attorney shall provide advice to the City regarding potential conflicts of interest issues identified by City Council Members. Where necessary, the City Attorney shall consult with outside counsel to provide this advice;
 - b. Opinions of the City Attorney and outside conflicts counsel are drafted for the benefit of the entire City and are, therefore, subject to disclosure to the entire City Council;
 - c. Where the City Attorney concludes that he or she cannot adequately represent the interests of the City as a whole because of particular conduct by a Council Member, the City Attorney shall immediately advise the Council Member that he or she should seek advice from separate legal counsel. The City Attorney shall document this advice for the City Council;

3. **Explicitly Document the Determination that a Conflicts of Interest Restriction Applies or Does Not Apply:**
 - a. All Opinions of the City Attorney regarding conflicts of interest shall be documented in writing (either electronically or on paper) and shall be distributed to the entire City Council. The City Attorney will

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COMMENT TO FINDING B-3:

The City of Elk Grove City Council disagrees with this finding to the extent that it implies that the adoption of a budget is in some manner the making of a contract.

COMMENT TO RECOMMENDATION B-3:

The City Council of the City of Elk Grove hereby adopts the following policy:

The City Manager shall ensure that all actions on the budget that could potentially involve a conflict of interest are considered separately and discretely by the Council, consistent with FPPC regulations regarding the segmentation of decisions.

This policy recognizes that while segmentation is permitted under the Political Reform Act, no such segmentation permitted under Section 1090—the conduct either will be considered the making of a contract or it will not.

By adoption of this resolution and policy, the recommendation is hereby implemented.

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COMMENT TO FINDING B-4:

The City of Elk Grove City Council generally agrees with this finding. However, it is each Council Member's own responsibility, not the City's responsibility or other City Council Members' responsibility, to be accountable for their own action and no other Council Member should have to monitor their colleagues' conduct. Out of respect for each Council Member, in the past each Council Member allowed other Council Members to act as they saw fit without intervention from other Council Members.

COMMENT TO RECOMMENDATION B-4:

The City Council of the City of Elk Grove hereby adopts the following policy:

All Council Members shall:

1. Undertake efforts to be fully trained and advised on how conflict of interest and other ethics requirements may limit their actions,

2. Undertake efforts to be fully trained and advised on how they can ensure that they and other Council Members abide by legal requirements, and
3. Observe standards of ethical conduct.

The Elk Grove City Council hereby instructs and empowers the City Manager and the City Attorney to explicitly warn the City Council whenever a Council Member may be acting in violation of conflict of interest requirements, including the policies adopted by the City Council herein.

By adoption of this resolution and policy, the recommendation is hereby implemented.

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COMMENT TO FINDING B-5:

The City of Elk Grove City Council is unaware of the sworn testimony the Grand Jury received during its confidential investigation, and therefore has insufficient information to agree or disagree with Finding B-5.

COMMENT TO RECOMMENDATION B-5:

The City Council of the City of Elk Grove hereby adopts the following policy:

The Council shall develop an explicit code of ethics that promotes communication and civil interaction, and eliminates abusive or intimidating behavior. This code of conduct shall be followed in all interactions among Council Members and between Council Members and City staff. All Council Members shall commit to following the code of ethics.

On April 27, 2005 The City of Elk Grove City Council adopted a code of ethics, a copy of which is attached and made a part of this comment and response.

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COMMENT TO FINDING B-6:

The City of Elk Grove City Council disagrees with Finding B-6 in that the City is not aware of any actual or perceived threat to the validity of the Law Enforcement Services contract and is also confident that any such challenge would be rejected by the courts and mooted by appropriate action by the parties.

COMMENT TO RECOMMENDATION B-6:

The City Council of the City of Elk Grove adopts the following policy:

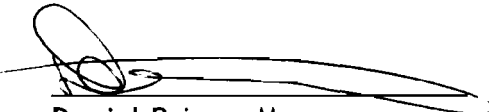
The City of Elk Grove shall work with the County of Sacramento to reach mutual agreement upon a method of providing law enforcement services should a court be asked to determine that the existing Agreement for Law Enforcement Services is void. This agreement should include a mutually acceptable method to resolve any financial problems resulting from a voiding of the contract.

On April 7, 2005 the El Grove City Attorney and County Counsel, Robert Ryan, Jr. met to discuss, among other things, such an agreement. As a follow-up to that meeting, on April 21, 2005 the Elk Grove Assistant City Manager and City Attorney met with Assistant County Counsel John Wisenhunt, Under Sheriff John McGuniess, and Chief Deputy Sheriff George Anderson to further negotiate such an agreement.

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By my signature below, I adopt this as the comment of the Mayor of the City of Elk Grove and it is hereby submitted pursuant to the Laws of the State of California.

May 2, 2005
CITY OF ELK GROVE




Daniel Briggs, Mayor

By action of the City Council of the City of Elk Grove at its regularly scheduled meeting on April 27, 2005, this is the comment of the City of Elk Grove and the comment of the City Council of the City of Elk Grove and is submitted pursuant to the Laws of the State of California.

Attest:

May 2, 2005
CITY OF ELK GROVE



Elk Grove City Clerk
Peggy Jackson



Elk Grove City Council
by Daniel Briggs, Mayor

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2005-120

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

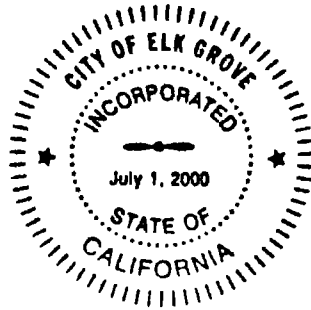
I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 27th day of April 2005 by the following vote:


AYES: COUNCILMEMBERS: Scherman, Soares, Briggs, Cooper, Leary

NOES: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:




Peggy E. Jackson, City Clerk
City of Elk Grove, California