

ORDINANCE NO. 41-2008

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE REPEALING AND AMENDING CHAPTER 1.04 OF THE ELK GROVE MUNICIPAL CODE RELATING TO ENFORCEMENT OF CODE

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: Repeal. Chapter 1.04 entitled "Notice to Appeal" is hereby repealed.

Section 3: Amendment. A new Chapter 1.04 "Enforcement of Code Violations," of the City of Elk Grove Municipal Code, is added to read as follows:

CHAPTER 1.04

ENFORCEMENT OF CODE

Sections

- 1.04.010 Enforcement of Code violation.
- 1.04.020 Each day a separate offense.
- 1.04.030 Criminal penalties—Infraction and misdemeanor.
- 1.04.040 Violation of permit.
- 1.04.050 Public nuisance.

1.04.010 Enforcement of Code Violation.

It is unlawful for a person to violate a provision, or to fail to comply with a requirement, of this Code. The City may enforce any such violation of the provisions of this Code by any one or more of the following methods, at the City's discretion.

- (a) Criminal penalties pursuant to this chapter.
- (b) Denial, forfeiture, or revocation of any permit granted by the City.
- (c) Administrative citation and penalties, to the extent authorized by this Code.
- (d) Any other remedy available to the City, including civil injunction or abatement of public nuisance.

1.04.020 Each day a separate offense.

Each day during any portion of which a violation is committed, continued, or permitted is a new and separated offense. This section applies whether a provision of this Code is prosecuted by criminal, administrative, civil, or other procedures.

1.04.030 Criminal penalties--Infraction and misdemeanor.

(a) Misdemeanor. A person who violates a provision of this Code, or who fails to comply with a requirement of this Code, is guilty of a misdemeanor, unless the violation is specifically identified in this Code as an infraction. An infraction is punishable by:

(1) A fine not exceeding one hundred and no/100ths (\$100.00) dollars for a first violation.

(2) A fine not exceeding two hundred and no/100ths (\$200.00) dollars for a second violation of the same Code provision within a twelve month period.

(3) A fine not exceeding five hundred and no/100ths (\$500.00) dollars for each additional violation of the same Code provision within a twelve month period.

(4) An offense, which would otherwise be an infraction, is a misdemeanor if a person has been convicted of two or more violations of the same Code provision within a twelve month period. For the purpose of this subsection, a bail forfeiture is considered a conviction of the offense charged.

(5) An infraction is not punishable by imprisonment. A person charged with an infraction is not entitled to a jury trial nor to a public defense unless arrested and not released.

(b) Infraction. A person who violates a provision of this Code, or who fails to comply with a requirement of this Code, is guilty of a misdemeanor if the violation is specifically identified in this Code as a misdemeanor. A misdemeanor is punishable by a fine not exceeding \$1,000, or imprisonment not exceeding six months, or both.

1.04.040 Violation of permit.

A person who is issued or granted a permit (including a land use entitlement or variance) by the City shall comply with each and every provision and condition of the permit. A person who violates or fails to comply with any provision or condition of the permit is in violation of this section, and is subject to punishment in accordance with this chapter 1.04. In addition, the City may enforce the permit by any other lawful means, including instituting proceedings for revocation of the permit.

1.04.050 Public nuisance.

Any condition which is in violation of this Code is a public nuisance.

Section 4: 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 5: 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 6: Savings Clause.

The provisions of this chapter 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 7: 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: 41-2008
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. 41-2008**

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